Title 12

STREETS, SIDEWALKS AND PUBLIC PLACES

Chapters:

12.04 Sidewalk Repair and Maintenance
12.08 Obstruction of Streets and Sidewalks
12.12 Excavations
12.16 *Repealed*
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Chapter 12.04

SIDEWALK REPAIR AND MAINTENANCE

Sections:

12.04.010 Purpose.
12.04.020 Definitions.
12.04.030 Responsibility and duty to maintain, repair and reconstruct planting strips.
12.04.040 Responsibility and duty to maintain, repair and reconstruct transition strips.
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12.04.010 Purpose.

This chapter is enacted to implement chapter 35.70 RCW in the city of Burlington with respect to sidewalk repairs and to clarify the responsibility of the abutting property owners for maintenance of planting strips and transition strips. (Ord. 1549 § 1, 2004).

12.04.020 Definitions.

"Maintenance" means the removal and disposal of debris, litter and vegetation which tends to impair the utilization of the right-of-way for public purposes and the removal of ice and snow from sidewalks.

"Planting strip" means that portion of the right-of-way between the outside of the curb and the inside of the sidewalk.

"Repair" means the removal and/or patching of small damaged portions of sidewalks, retaining walls or rockeries lying within the right-of-way, and planting strips and transition strips with like materials, each such damaged portions not exceeding 150 square inches in area. Larger areas shall be classified as reconstruction.

"Sidewalk" means all pedestrian structures or forms of improvement for pedestrians included in the space between the street margin, as defined by a curb or the edge of the traveled road surface, and the line where the public right-of-way meets the abutting property.

"Street" means street, boulevard, lane, avenue, way, alley, square, road, drive, place or public walkway.

"Transition strip" means that portion of the right-of-way between the outside of the curb and the property line; or where no curb or sidewalk exists, that portion of the right-of-way between the edge of the roadside ditch or the shoulder of the road, whichever is closer to the abutting property line, and the abutting property line. (Ord. 1549 § 1, 2004).

12.04.030 Responsibility and duty to maintain, repair and reconstruct planting strips.

It shall be the responsibility and duty of the abutting property owner to maintain, repair and reconstruct adjacent planting strips in an attractive and safe manner. Planting strips shall be maintained, repaired or reconstructed with an approved material and free of vegetation which tends to impair the utilization of the right-of-way for public purposes. Nonliving material shall be level with the top of the curb and the sidewalk and shall be contained within the planting strip so as not to be a hazard to the persons using the sidewalk or street or crossing the strip going to or from a vehicle. Living vegetation exclusive of street trees placed in the planting strip shall be of a height that does not interfere with the lawful and safe use of the public right-of-way and shall be maintained by weeding, spraying, fertilizing, watering and trimming. Street trees ~~species~~ and root barriers shall be installed and maintained consistent with the requirements of chapter 12.20 17.81 BMC. ~~approved by the planning department to ensure that the species will fit in the space provided. The plans for the planting strip shall be submitted to the permit center for review by the planning and public works departments. Approval of all materials and design~~City authorization is required prior to the installation of materials within the planting strip. (Ord. 1549 § 1, 2004).

12.04.040 Responsibility and duty to maintain, repair and reconstruct transition strips.
It shall be the responsibility and duty of the abutting property owner to maintain, repair and reconstruct adjacent transition strips in an attractive and safe manner, free of vegetation which tends to impair the utilization of the right-of-way for public purposes. Nonliving material shall be contained within the transition strip so as not to be a hazard to the persons using the sidewalk or street. Living vegetation placed in the transition strip shall be maintained by weeding, spraying, fertilizing, watering and trimming. Street tree species and root barriers shall be approved by the planning department to ensure that the species will fit in the space provided. The abutting property owner shall maintain, repair and reconstruct rockeries and retaining walls within the transition strip; provided, however, the city of Burlington shall repair and reconstruct all rockeries and retaining walls constructed under street projects which exceed an average height of six feet as measured from the base of the retaining wall or rockery. (Ord. 1549 § 1, 2004).

12.04.050 Responsibility for sidewalks and procedures and methods for maintenance, repair and/or reconstruction – Apportionment of costs.
A. The city is generally responsible for sidewalk maintenance and repair.

B. The city may construct, reconstruct or repair sidewalks and pay the costs thereof from any available funds, or the city may require the abutting property owner to construct the sidewalk improvement at his or her own cost or expense or, in the alternative, the city may assess all or any portion thereof against the abutting property owner. In the event the city requests an abutting property owner to undertake or pay for the improvement, it shall follow the procedures for resolution, notice and hearing on such improvements as set forth in applicable law.

C. Any person desiring to repair, change or relocate any sidewalk abutting their property shall make application in writing to the city permit center. Such application shall contain, among others, the exact location of such proposed change or relocation, the location of any new sidewalk to be laid and the connections and location of other sidewalks upon such street; no change or relocation of any sidewalk shall be made until the issuance of an appropriate permit; provided further, however, that the cost of reconstruction shall be borne solely by the abutting property owner without contribution from the city.

D. Property owners or tenants are responsible for repairing any damage that they cause. (Ord. 1549 § 1, 2004).

12.04.060 Hazardous conditions on public street right-of-way.
It shall be unlawful for the owner and/or any person occupying or having charge or control of any premises abutting upon any public street right-of-way or alley in the city to construct, place, cause, create, maintain, or permit to remain upon any part of said right-of-way located between the curb line, or if there is no curb line, then between the adjacent edge of the traveled portion of such right-of-way and the abutting property line, any condition, structure, or object dangerous or hazardous to the use of said right-of-way by the members of the general public, including but not limited to the following conditions:

A. Defective sidewalk surfaces, including but not limited to broken or cracked cement concrete, stub-toes, depressions within or between sidewalk joints.

B. Defective cement concrete surfaces placed adjacent to the public sidewalk or defects at the juncture between said cement surfaces and said public sidewalks, including stub-toes or depressions at said juncture.

C. Defects in sidewalks or public ways caused or contributed to by the roots of trees or similar growth or vegetation located either on private adjoining property or on the parking strip portion of any such street right-of-way.

D. Defective conditions caused by tree limbs, foliage, brush, or grass on or extending over such public sidewalks or rights-of-way.

E. Defective conditions on the parking strip area between the curb line and the sidewalk or, if there is no curb line, then between the edge of the traveled portion of the street and the sidewalk and between the sidewalk and the abutting property line.

F. Defects consisting of foreign matter on the public sidewalks, including but not limited to gravel, oil, grease, or any other foreign subject matter that might cause pedestrians using said sidewalk to fall, stumble, or slip by reason of the existence of such foreign matter.

G. Defective handrails or fences or similar structures within or immediately adjacent to said right-of-way area. (Ord. 1549 § 1, 2004).

12.04.070 Enforcement.

BMC Title 1 is hereby adopted by reference as the enforcement provisions for this chapter. (Ord. 1549 § 1, 2004).

Chapter 12.08

OBSTRUCTION OF STREETS AND SIDEWALKS

Sections:

12.08.010 Display of goods beyond three feet from property line prohibited.
12.08.020 Goods damaging to sidewalk or passersby prohibited.
12.08.030 Violation – Penalty.

12.08.010 Display of goods beyond three feet from property line prohibited.

Except as permitted by chapter 5.30 BMC, it is unlawful ~~for any merchant within the city~~ to store, keep, place, exhibit or display goods, wares, ~~or~~ merchandise, or other objects on the public sidewalks of the city beyond a distance of three feet from the line of the property. In all cases a clear and unobstructed path at least four feet in width shall be maintained. All goods, wares or merchandise displayed shall be removed from and kept off said sidewalk during the hours between sunset and sunrise. (Ord. 1759 § 4, 2012; Ord. 183 § 1, 1913; Ord. 109 § 1, 1909).

Commented [BJ1]: BJ – 4-20-2023 – ADA requirement.

12.08.020 Goods damaging to sidewalk or passersby prohibited.

It is unlawful for any person to deposit, store or keep, on any sidewalks within the city, any goods, wares, merchandise or substance of any nature, kind or description that will be detrimental to said sidewalks or which shall interfere with going to and fro on said sidewalks by damaging, injuring or soiling the clothes of those traveling thereon. (Ord. 109 § 2, 1909).

12.08.030 Violation – Penalty.

Violation of or failure to comply with any of the provisions of this chapter shall be subject to a civil penalty as set forth in chapter 1.34 BMC. Each day shall constitute a separate violation. (Ord. 1759 § 4, 2012; Ord. 109 § 3, 1909).

Chapter 12.12

EXCAVATIONS

Sections:

12.12.010 Short title.
12.12.020 Definitions.
12.12.030 Chapter not applicable when.
12.12.040 Permit – Required.
12.12.050 Permit – Application.
12.12.060 Drawings required when.
12.12.070 Property lines and easements.
12.12.080 Permit – Fees.
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12.12.100 Surety bond.
12.12.110 Urgent work.
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12.12.170 Protective measures – Fences, barriers and lights.
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12.12.200 Protective measures – Utilities.
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12.12.240 Damage to existing improvements.
12.12.250 Tunnels.
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12.12.270 Care of excavated material.
12.12.280 Cleanup.
12.12.290 Backfilling – Requirements.
12.12.300 Backfilling – Material.
12.12.310 Backfilling – Water settling method.
12.12.320 Backfilling – Dry method.
12.12.330 Backfilling – Surface finishing.
12.12.340 Restoration of surface – Procedure – Approval.
12.12.350 Restoration of surface – City's right to complete work – Costs.
12.12.360 Prompt completion of work.
12.12.370 Inspections – Rules and regulations – Enforcement authority.
12.12.380 Insurance.
12.12.390 Liability of city.
12.12.400 Attractive nuisance prohibited.
12.12.410 Violation – Penalty.

12.12.010 Short title.

The ordinance codified in this chapter shall be known and may be cited as the "street excavation ordinance of the city of Burlington." (Ord. 763 § 10-1001, 1971).

12.12.020 Definitions.

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future,

Commented [BJ2]: BJ – 3-14-2023 – revised definitions for constancy with other code sections and current city administrative structure.

words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Applicant" means any person making written application ~~to the city engineer~~ for ~~an~~ a ~~excavation~~ permit under this chapter.

B. "City" means the City of Burlington

C~~B~~. "City engineer" or "Public Works Director" means the city engineer of the city.

D. "Development" means any activity that results in a use or modification of land or its resources. Development activities include, but are not limited to: dredging, drilling, dumping, filling, earth movement, grading, clearing or removal of vegetation; storage of materials or equipment; building or construction; land division, boundary line adjustments, lot segregations, subdivision and short subdivisions; binding site plans; land use permit approvals; variances; shoreline development or substantial development; and activities or uses allowed through conditional use permits.

E~~C~~. "~~Excavation work~~Development activity" or "work" means any development subject to regulation under this chapter, required by this chapter, or authorized by a permit issued under this chapter. ~~the excavation and other work permitted under an excavation permit and required to be performed under this chapter.~~

F~~D~~. "Permittee" or "permit holder" means any person who has been granted and has in full force and effect ~~an excavation~~a permit issued under this chapter.

G~~E~~. "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

H~~F~~. "Street" means any street, highway, sidewalk, alley, avenue, right-of-way, or easement made to the city for public use, or other public way or public grounds in the city. (Ord. 763 § 10-1002, 1971).

12.12.030 ~~Chapter not applicable when~~Applicability.

~~The provisions of this chapter shall not be applicable to any excavation work under the direction of competent city authorities by employees of the city or by any contractor of the city performing work for and in behalf of the city necessitating openings or excavations in streets. (Ord. 763 § 10-1038, 1971).~~This chapter shall apply to any clearing, grading, excavation, construction, boring, or other development occurring within an established street right-of-way except as follows:

A. Work performed by the City of Burlington or by a contractor employed by the City of Burlington;

~~A.~~B. Pruning, planting, and removal of trees and other vegetation consistent with the provisions of Chapter 12.20 BMC and other applicable regulatory requirements.

12.12.040 Permit – Required.

~~It is unlawful for any person to~~ A permit shall be required to conduct development activities within a street right-of-way, dig up, break, excavate, tunnel, undermine, or in any manner break up any street or to make or cause to be made any excavation in or under the surface of any street for any purpose or to place, deposit or leave upon any street any earth or other excavated material obstructing or tending to interfere with the free use of the street. ~~, unless such person has first obtained an excavation permit therefor from the city engineer as provided in this chapter.~~ (Ord. 763 § 10-1003, 1971).

12.12.050 Permit – Application Requirements.

Application for excavation permits shall be made on forms provided by the City and shall include all of the information required by the form in addition to all of the items listed below.

A. Vicinity map;

B. Name, address, and phone number of the applicant;

C. Name address, and phone number of the engineer, contractor, or agent;

Commented [BJ3]: 10-24-2022 - BJ – In order to ensure sufficient scope to carry out street improvements and development review specified in the transportation element of the comprehensive plan this language has been updated. Also, was also changed to reflect the city's current permit processing procedures (grading permit review).

D. A complete set of plans depicting the proposed work and including any information, details, or specifications requested by the Public Works Director. Unless waived by the Public Works Director, all plans shall be prepared by civil engineer licensed in the State of Washington; ~~No excavation permit shall be issued unless a written application for the issuance of an excavation permit is submitted to the city engineer. The written application shall state the name and address of the applicant, the nature, location and purpose of the excavation, the date of commencement and date of completion of the excavation, and other data as may reasonably be required by the city engineer. The application shall be accompanied by plans showing the extent of the proposed excavation work, the dimensions and elevations of both the existing ground prior to said excavation and of the proposed excavated surfaces, the location of the excavation work and such other information as may be prescribed by the city engineer. (Ord. 763 § 10-1004, 1971).~~

~~A.~~E. Users of subsurface street space shall furnish the city engineer with accurate drawings, plans and profiles, showing the location and character of all underground structures being installed, including abandoned installations. Horizontal locations are to be referenced to street centerlines, as marked by survey monuments, and shall be accurate to a tolerance of plus or minus one foot. The depth of the utility or structure being installed may be referenced to the elevation of the street above the utility, with depths to the nearest one-half foot being shown at a minimum of 50-foot intervals along the location of the utility. Said maps shall be submitted to the city engineer's office within 60 days after new installations, changes or replacements are made.

12.12.060 ~~Drawings required when~~Permit – Approval Criteria.

~~A. Users of subsurface street space shall furnish the city engineer with accurate drawings, plans and profiles, showing the location and character of all underground structures being installed, including abandoned installations. Horizontal locations are to be referenced to street centerlines, as marked by survey monuments, and shall be accurate to a tolerance of plus or minus one foot. The depth of the utility or structure being installed may be referenced to the elevation of the street above the utility, with depths to the nearest one-half foot being shown at a minimum of 50-foot intervals along the location of the utility. Said maps shall be submitted to the city engineer's office within 60 days after new installations, changes or replacements are made.~~

~~B. In the event that the permittee does not have qualified personnel to furnish these drawings, he shall advise the city engineer in order that necessary field measurements may be taken by the city engineer during construction, and that the maps be prepared by the city engineer's office. The cost of field inspection and measurement, and the preparing of the "as-built" maps shall be at the expense of the permittee. (Ord. 763 § 10-1037, 1971).~~No permit shall be approved without full compliance with the requirements of this chapter and other applicable Burlington Municipal Code requirements including, but not limited to, the requirements of titles 12, 13, 14, 14A, and 15 BMC.

12.12.070 Property lines and easements.

Property lines and limits of easements shall be indicated on the plan of excavation submitted with the application for the excavation permit and it shall be the permittee's responsibility to confine excavation work within these limits. (Ord. 763 § 10-1018, 1971).

12.12.080 Permit – Fees.

A permit fee shall be charged ~~by the city engineer for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The excavation permit fee shall be~~ for permits issued under this chapter consistent with ~~in an amount established by~~ the current city of Burlington fee resolution. (Ord. 1234 § 1, 1993; Ord. 763 § 10-1005, 1971).

12.12.090 ~~(Reserved) Permit – Placard display requirements~~.

~~The city engineer shall provide each permittee at the time a permit is issued under this chapter a suitable placard plainly written or printed in English letters at least one inch high with the following notice:~~

~~City of Burlington Permit No.____ Expires _____~~

~~and in the first blank space there shall be inserted the number of said permit, and after the word "expires" shall be stated the date when the permit expires. It shall be the duty of any permittee under this chapter to keep the placard posted in a conspicuous place at the site of the excavation work. It is unlawful for any person to exhibit such placard at or about any~~

Commented [BJ4]: 10-24-2022 – BJ – Revised to reflect standard language for application requirements. Uniform formatting for all permit types.

Commented [BJ5]: BJ – 3-14-2023 – revised to reflect requirement that permit applications under this chapter are subject to all applicable BMC requirements related to development, engineering, and construction.

Commented [BJ6]: BJ – 3-14-2023 – revised to reference fee resolution and use the same language throughout the BMC.

~~excavation not covered by such permit, or to misrepresent the number of the permit or the date of expiration of the permit. (Ord. 763 § 10-1006, 1971).~~

Commented [BJ7]: 10-24-2022 – No need to provide this level of detail.

12.12.100 Surety bond.

Before ~~an excavation~~ a permit is issued under this ~~as provided in this~~ chapter the ~~is issued, the~~ applicant shall ~~shall~~ deposit with the ~~city clerk-treasurer~~City Finance Department a surety bond in such reasonable amount as set by the Ceity Eengineer payable to the Ceity. The City Engineer may waive this requirement for simple small scale projects where there is little risk of the work not being completed. The required surety bond must be:

Commented [BJ8]: BJ – 3-14-2023 the bond would be triggered by a permit not just work. Revised to tie to permit issuance. Also, we don't normally require a bond for simple projects. Revised to reflect current city practice.

A. With good and sufficient surety;

B. By a surety company authorized to transact business in the state;

C. Satisfactory to the Ceity Aattorney in form and substance;

D. Conditioned upon the permittee's compliance with this chapter and to secure and hold the city and its officers harmless against any and all claims, judgments or other costs arising from the ~~excavation~~ development activities and other work covered by the ~~excavation~~ permit or for which the Ceity, the city council, or any city officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting from the negligence of the permittee, and further conditioned to fill up, restore and place in good and safe condition as near as may be to its original condition, and to the satisfaction of the Ceity Eengineer, all openings, disturbed areas, and excavations made in streets, and to maintain any street where excavation is made in as good condition for the period of 24 months after the work has been done, usual wear and tear excepted, as it was in before the work was done. Any settlement of the surface within the two-year period shall be deemed conclusive evidence of defective backfilling by the permittee. Nothing contained in this section shall be construed to require the permittee to maintain any repairs to pavement made by the Ceity if such repairs should prove defective. Any owner of real estate repairing or engaging another to repair his own sidewalk shall be required to give such bond. Recovery on such bond for any injury or accident shall not exhaust the bond but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the city by reason of the negligence or default of the permittee, upon the city's giving written notice to the permittee of such suit or claim, any final judgment against the city requiring it to pay for such damage shall be conclusive upon the permittee and his surety. An annual bond may be given under this provision which shall remain in force for one year conditioned as above, in the amount specified above in other respects as specified above but applicable as to all excavation work in streets by the principal in such bond during the term of one year from said date. (Ord. 763 § 10-1007, 1971).

12.12.110 Urgent work.

If ~~in his judgment~~ traffic ~~conditions, the~~conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the Ceity Eengineer shall have ~~full power~~the authority to order, at the time the permit is granted, that ~~a crew of men~~workers and adequate facilities be employed by the permittee 24 hours a day to the end that such excavation work may be completed as soon as possible. (Ord. 763 § 10-1032, 1971).

12.12.120 Emergency action.

In the event of any emergency in which a sewer, main, conduit, or utility in or under any street breaks, bursts, or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit under this chapter, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for an excavation permit not later than the end of the next succeeding day during which the city engineer's office is open for business, and shall not proceed with permanent repairs without first obtaining an excavation permit under this chapter. (Ord. 763 § 10-1033, 1971).

12.12.130 Breaking ~~through~~ or cutting pavement.

Whenever it is necessary to break through existing pavement for excavation purposes, and where trenches are to be four feet or over in depth, the pavement in the base shall be removed to at least six inches beyond the outer limits of the subgrade that is to be disturbed in order to prevent settlement, and a six-inch shoulder of undisturbed material

shall be provided in each side of the excavated trench. The face of the remaining pavement shall be approximately vertical. A power-driven concrete saw shall be used so as to permit complete breakage of concrete pavement or base without ragged edges. Asphalt paving shall be scored or otherwise cut in a straight line. No pile driver may be used in breaking up the pavement. (Ord. 763 § 10-1021, 1971).

12.12.140 Sidewalk excavations.
Any excavation made in any sidewalk or under a sidewalk shall be provided with a substantial and adequate footbridge over said excavation on the line of the sidewalk, which bridge shall be at least three feet wide and securely railed on each side so that foot passengers can pass over safely at all times. (Ord. 763 § 10-1013, 1971).

12.12.150 Noise, dust and debris.
~~Each permittee shall conduct and carry out~~ All development activities ~~the excavation work~~ shall be designed and carried out ~~in such manner as~~ to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and between the hours of 10:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the Ceity Eengineer or in case of an emergency as otherwise provided in this chapter, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property. (Ord. 763 § 10-1034, 1971).

12.12.160 Clearance for fire equipment.
~~The excavation work~~All development activities shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants~~plugs~~. Passageways leading to fire escapes or firefighting equipment shall be kept free of piles of material or other obstructions. All development activities shall be consistent with any requirements or specified by the City Fire Marshal. (Ord. 763 § 10-1009, 1971).

12.12.170 Protective measures – Fences, barriers and lights.
The permittee shall be responsible for installing ~~erect such~~ fences, railings or barriers ~~about the site of the excavation work as shall~~as necessary to prevent danger to persons using the city streets or sidewalks, and such protective barriers shall be maintained until the work is completed or the danger removed. At twilight there shall be placed upon such place of excavation, and upon any excavated materials or structures or other obstructions to streets, suitable and sufficient lights which shall be kept ~~burning~~ on throughout the night ~~during the maintenance~~until the work is completed ~~of such obstructions~~. It is unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public. (Ord. 763 § 10-1014, 1971).

12.12.180 Protective measures – Routing of traffic.
~~The permittee shall take a~~Appropriate measures ~~to~~ shall be employed to ~~ensure that during the performance of the excavation work traffic conditions as nearly normal as practicable are maintained at all times so as~~avoid traffic impacts and to cause as little inconvenience as possible to the occupants of the abutting property and to the general public; provided, that the Ceity Eengineer may permit the closing of streets to all traffic ~~for a period of time prescribed by him if in his opinion it is necessary~~as minimally necessary to complete the proposed work. The permittee shall route and control traffic, including its own vehicles, as directed by the ~~city police~~public works department. The following steps shall be taken before any ~~highway~~ street may be closed or restricted to traffic:

A. The permittee must receive the approval of the Ceity Eengineer ~~and the police department therefor~~;

B. ~~The permittee must notify the chief of the fire department of any street so closed~~Notification shall be provided to the Fire Department;

C. Upon completion of construction work, the permittee shall notify the Ceity Eengineer ~~and city police department before traffic is moved back to its normal flow so that any necessary adjustments may be made~~;

D. Where ~~flagmen~~ flaggers or traffic control workers are deemed necessary by the Ceity Eengineer, they shall be furnished ~~by the permittee at its own expense~~at the permit holder's expense. Through traffic shall be maintained without the aid of detours, if possible. In instances in which this would not be feasible, the Ceity Eengineer will designate detours. The Ceity shall maintain roadway surfaces of existing highways designated as detours without

Commented [BJ9]: BJ – 3-14-2023 – revised to use the defined term "development activities" throughout the code. This term is broad in scope and covers all possible work occurring in right-of-way.

Commented [BJ10]: BJ – 3-14-2023 – revised for clarity

Commented [BJ11]: BJ – 3-14-2023 – revised for clarity, to establish criteria, and for use of gender neutral terms.

expense to the permittee, but in case there are no existing streetshighways the permittee shall construct all detours at its expense and in conformity with the specifications of the Ceity Eengineer. The permittee will be responsible for any unnecessary damage caused to any highways streets by the operation of its equipment. (Ord. 763 § 10-1008, 1971).

12.12.190 Protective measures – Highways and crossings.
The permittee shall erect and maintain suitable timber barriers to confine earth from trenches or other excavations in order to encroach upon highways City right-of-way as little as possible. The permittee shall construct and maintain adequate and safe crossings over excavations and disturbed areas and across highways streets under improvement to accommodate vehicular and pedestrian traffic at all street intersections. Vehicular crossings shall be adequately constructed and maintained of plank, timbers and blocking of adequate size to accommodate vehicular traffic safely. Decking shall be not less than four inches thick and shall be securely fastened together with heavy wire and staples. Pedestrian crossings shall consist of planking three inches thick, 12 inches wide and of adequate length, together with necessary blocking. The walk shall be not less than three feet in width and shall be provided with a railing as required by the Ceity Eengineer. (Ord. 763 § 10-1010, 1971).

12.12.200 Protective measures – Utilities.
The permittee shall not interfere with any existing utility without the written consent of the Ceity Eengineer and the utility company or person owning the utility. If it becomes necessary to remove an existing utility, this shall be done by its owner. No utility owned by the Ceity shall be moved to accommodate the permittee unless the cost of such work is borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may, in any way, be affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work. In case any pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee, and his or itstheir bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and its bond shall be liable therefor. The permittee shall inform itself as to the existence and location of all underground utilities and protect the same against damage. (Ord. 763 § 10-1011, 1971).

12.12.210 Protective measures – Adjoining property.
The permittee shall at all times and at his or its owntheir expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license from the owner of such private property for such purpose and if theyhe cannot obtain a license from such owner the Ceity Eengineer may authorize him the permit holder to enter the private premises solely for the purpose of making the property safe. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever it may be necessary for the permittee to trench through any lawn area, the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required in this chapter. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner, or in the case of public property the appropriate Ceity department or city official having control of such property. (Ord. 763 § 10-1012, 1971).

12.12.220 Protective measures – Watercourses.
The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall replace the same in as good condition as it found them or shall make such provision for them as the Ceity Eengineer may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other runoff pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide. Storm-water, erosion, and sedimentation

control shall be managed in accordance with the requirements of Chapter 14.05 BMC and applicable Washington State water quality regulations. All streams, wetlands, watercourses, and fish and wildlife habitat conservation areas shall be protected in accordance with the requirements of Chapter 14.15 BMC. (Ord. 763 § 10-1020, 1971).

12.12.230 Protective measures – Monuments.
The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until ordered to do so by the Ceity Eengineer. All street monuments, property corners, bench marks and other monuments disturbed during the program of the work shall be replaced by the Ceity Eengineer and the cost of the same shall be paid by the permittee. (Ord. 763 § 10-1035, 1971).

12.12.240 Damage to existing improvements.
All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials and workmanship for such repair shall conform ~~with~~to the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs, the Ceity Eengineer shall have the authority to cause said necessary labor and materials to be furnished by the Ceity and the cost shall be charged against the permittee, and the permittee shall also be liable on ~~his or its~~their bond therefor. (Ord. 763 § 10-1017, 1971).

12.12.250 Tunnels.
Tunnels under pavements shall not be permitted except by permission of the Ceity Eengineer. Where pipes or cables are placed under main thoroughfares, concrete streets, state highways, first-grade asphalt streets, or wherever designated by the city engineer, such work shall be done by jacking or boring casings under street surfaces and placing said pipes or cables inside of the casing. (Ord. 763 § 10-1022, 1971).

12.12.260 Trenches.
Except by special permission from the Ceity Eengineer, no trench shall be excavated more than 100 feet in advance of pipe laying nor left unfilled more than 200 feet where pipe has been laid. The length of the trench that may be opened at any one time shall not be greater than the length of pipe and the necessary accessories which are available at the side ready to put in place. Trenches shall be braced and sheathed according to generally accepted safety standards for construction work. No timber bracing, lagging, sheathing or other lumber shall be left in any trench. (Ord. 763 § 10-1030, 1971).

12.12.270 Care of excavated material.
All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the Ceity Eengineer shall have the authority to require that the permittee haul the excavated material to a storage site and then re-haul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal. (Ord. 763 § 10-1016, 1971).

12.12.280 Cleanup.
As the excavation work progresses, all streets and private properties shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All cleanup operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the Ceity Eengineer. From time to time as may be ordered by the Ceity Eengineer, and in any event immediately after completion of said work, the permittee shall at his or its own expense clean up and remove all refuse and unused materials of any kind resulting from said work and, upon failure to do so within 24 hours after having been notified to do so by the Ceity Eengineer, said work may be done by the Ceity Eengineer and the cost thereof charged to the permittee. The permittee shall also be liable for the cost thereof under the surety bond provided under this chapter. (Ord. 763 § 10-1019, 1971).

12.12.290 Backfilling – Requirements.
Backfilling in any street opened or excavated pursuant to a ~~an excavation~~ permit issued under this chapter shall be compacted to a degree equivalent to that of the undisturbed ground in which the trench was dug. Compacting shall be done by mechanical tappers or vibrators, by rolling in layers, or by water settling, as required by the soil in

question and sound engineering practices generally recognized in the construction industry. ~~When water is taken from a fire hydrant, the permittees shall assign one man to operate the hydrant and shall make certain that said man has been instructed in the operation of the hydrant. The public utility district shall likewise be notified at both the beginning and end of the job so that the condition of the fire hydrants can be checked on both occasions. Any damage done to the hydrant during the excavation shall be the responsibility of the permittee. Water shall be paid for by the permittee on the terms agreed upon with the public utility district.~~ (Ord. 763 § 10-1023, 1971).

Commented [BJ12]: BJ – 3-14-2023 fire hydrants are owned by Skagit PUD and any use of hydrants must be approved by PUD and be consistent with their procedures. Deleted the language to avoid confusion. PUD approves civil plans and prescribes their own conditions for work involving water lines and hydrants.

12.12.300 Backfilling – Material.
Whenever any excavation for the laying of pipe is made through rock, the pipe shall be laid six inches above the rock bottom of the trench and the space under, around and six inches above the pipe shall be backfilled with clean river sand, noncorrosive soil or one-quarter inch minus gravel. Broken pavement, large stones and debris shall not be used in the backfill. (Ord. 763 § 10-1026, 1971).

12.12.310 Backfilling – Water settling method.
When backfilling is to be done by water settling and before any compaction of the trenches is attempted, the permittee shall cause the loose material to be wetted by forcing a head of water of not less than 30 feet in height, down into the soft material so that the end of the pipe is not more than three feet above the bottom of the excavation. ~~He shall allow t~~The water shall be allowed to run until the material is saturated as indicated by the water rising and running out on the surface of the ground around the pipe. After each hole has been saturated, the jet pipe shall be moved along the trench line a distance of approximately four or five feet, but in no case more than eight feet, and the process repeated for the entire length of the backfill trench. All work shall be done in such manner as to obtain a relative compaction throughout the entire depth of the backfill of not less than existing adjacent to the excavation. (Ord. 763 § 10-1024, 1971).

12.12.320 Backfilling – Dry method.
Backfilling up to the first 18 inches above the top of the utility pipes or similar installations shall be done with thin layers. Each layer is to be tamped by manual or mechanical means. Layers that are hand-tamped shall not exceed six inches in thickness. Layers that are power-tamped shall not exceed 12 inches in thickness. The same requirements shall apply to the remainder of the backfilling if tamping is the method used for backfilling. Backfilling of all pipes of over 24 inches in diameter shall be carried up to the spring line of the pipe in three-inch layers, with each layer moistened and thoroughly tamped with suitable mechanical equipment. The backfill around all pipes 24 inches or less in diameter shall be flooded or tamped as specified above to a depth of 18 inches above the top of the pipe before any additional backfilling is placed thereon. Any deviation from the method set forth above shall have prior written approval of the city engineer. (Ord. 763 § 10-1025, 1971).

12.12.330 Backfilling – Surface finishing.
Backfilling shall be completed by placing the backfill material well up over the top of the trench. For dry backfilling, the material shall be compacted with a roller of an approved type, or with the rear of a truck carrying at least five tons, until the surface is unyielding. Care shall be taken that material being compacted has proper moisture content for maximum compactibility. The surface shall then be graded as required. (Ord. 763 § 10-1027, 1971).

12.12.340 Restoration of surface – Procedure – Approval.
A. The permittee shall restore the surface of all streets broken into or damaged as a result of the ~~excavation~~ work to their original condition in accordance with the specifications of the Cceity Eengineer. The permittee may be required to place a temporary surface over openings made in paved traffic lanes. Except when the pavement is to be replaced before the opening of the cut to traffic, the fill above the bottom of the paving slab shall be made with suitable material well tamped into place, and this fill shall be topped with a minimum of at least one inch of bituminous mixture which is suitable to maintain the opening in good condition until restoration can be made. The crown of the temporary restoration shall not exceed one inch above the adjoining pavement. The permittee shall exercise special care in making such temporary restorations and must maintain such restorations in safe traveling condition until such time as permanent restorations are made. The asphalt which is used shall be in accordance with the specifications of the Cceity Eengineer. If in the judgment of the Cceity Eengineer it is not expedient to replace the pavement over any cut or excavation made in the street upon completion of the work allowed under such permit by reason of the looseness of the earth or weather conditions, ~~he~~ the City Engineer may direct the permittee to lay a temporary pavement of ~~wood or other~~ suitable material ~~designated by him~~ over such cut or excavation to remain until such time as the repair of the original pavement may be properly made.

B. Permanent restoration of the street shall be made by the permittee in strict accordance with the specifications prescribed by the Cceity Eengineer to restore the street to its original and proper condition, or as near as may be.

C. Acceptance or approval of any work ~~excavation work~~ by the city engineer shall not prevent the Cceity from asserting a claim against the ~~permittee~~ permit holder or permit holder's~~and his or its~~ surety under ~~the~~ a surety bond required ~~hereunder~~ by this chapter for incomplete or defective work if discovered within 24 months from the completion of the ~~excavation~~ work. The Cceity Eengineer's presence during the performance of any excavation work shall not relieve the permittee of its responsibilities under this chapter. (Ord. 763 § 10-1028, 1971).

12.12.350 Restoration of surface – City's right to complete work – Costs.
A. If the permittee has failed to restore the surface of the street to its original and proper condition upon the expiration of the time fixed by such permit or fails to prosecute the work in accordance with the requirements of this chapter or shall otherwise have failed to complete the excavation work covered by such permit, the Cceity Eengineer~~, if he deems it advisable,~~ shall have the right to do all work and things necessary to restore the street and to complete the excavation work. The permittee shall be liable for the actual cost thereof and 25 percent of such cost in addition for general overhead and administrative expenses. The Cceity shall have a cause of action for all fees, expenses and amount paid out and due to it for such work and the city shall also enforce its right under the permittee's surety bond provided pursuant to this chapter.

B. It shall be the duty of the permittee to guarantee and maintain the site of ~~the excavation~~ work authorized under this chapter in the same condition it was prior to the excavation for two years after restoring it to its original condition. (Ord. 763 § 10-1029, 1971).

12.12.360 Prompt completion of work.
The permittee shall prosecute with diligence and expedition all ~~excavation~~ work covered by the ~~excavation~~ permit and shall promptly complete such work and restore the street to its original condition, or as near as may be, as soon as practicable and in any event not later than the date specified in the ~~excavation~~ permit therefor. (Ord. 763 § 10-1031, 1971).

12.12.370 Inspections – Rules and regulations – Enforcement authority.
The Cceity Eengineer shall make such inspections as are reasonably necessary in the enforcement of this chapter. When so made, the permittee shall pay for such inspections at the Cceity's cost. The Cceity Eengineer shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this chapter. (Ord. 763 § 10-1036, 1971).

12.12.380 Insurance.
A permittee, prior to the commencement of ~~excavation~~ development activities ~~work~~ under this chapter, shall file with the public works director a certificate of insurance evidencing insurance in form and amount in accordance with policy established by the Ppublic Wworks Ddirector, which insurance shall be issued by an insurance company authorized to do business in Washington State. (Ord. 1663 § 1, 2008; Ord. 763 § 10-1039, 1971).

12.12.390 Liability of city.
This chapter shall not be construed as imposing upon the Cceity or any official or employee any liability or responsibility for damages to any person injured by the performance of any ~~excavation~~ work for which a~~n excavation~~ permit is issued under this chapter, nor shall the Cceity or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized under this chapter, the issuance of any permit, or the approval of any ~~excavation~~ work. (Ord. 763 § 10-1040, 1971).

12.12.400 Attractive nuisance prohibited.
It is unlawful for the permittee to suffer or permit to remain unguarded at the place of ~~excavation~~ work or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and hazardous to their safety or health. (Ord. 763 § 10-1015, 1971).

12.12.410 Violation – Penalty.
Any person violating any of the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punishable according to the provisions of chapter 1.24 BMC. Each day such violation is committed or

permitted to continue shall constitute a separate offense and shall be punishable as such under this chapter. (Ord. 763 § 10-1041, 1971).

12.12.420 Appeals.

Appeals of decisions made pursuant to this chapter shall be filed and processed in accordance with the applicable procedures identified in Title 14A. BMC.

Commented [BJ13]: BJ – 3-14-2023 – revised to be consistent with appeal lanauge and process throughout the code.

Chapter 12.16

NUMBERING OF BUILDINGS[1]

(Repealed by Ord. 1403)

[1] For current provisions on the city building numbering system, see chapter 15.10 BMC.

Chapter 12.20

TREES

Sections:

12.20.010 Intent.
12.20.020 Definitions.
12.20.030 Urban forestry board – Established.
12.20.040 Urban forestry board – Duties and responsibilities.
12.20.050 Street tree permits.
12.20.060 Tree species to be planted – Spacing – Setbacks – Distances.
12.20.070 Public tree care.
12.20.080 Tree topping.
12.20.090 Pruning – Corner clearance.
12.20.100 Removal of stumps.
12.20.110 Dead, diseased or hazardous tree removal on private property.
12.20.120 Preservation of trees on private property with new development.
12.20.130 Penalty.

12.20.010 Intent.

Recognizing the positive cost-benefit ratio trees provide in maintaining a healthy urban ecosystem through their energy-saving and storm water management potential, as well as their role in improving the quality of our community, it is the purpose of this chapter to provide for the regulation of the planting, maintenance, and removal of trees in the public right-of-way and on city-owned property, and to encourage the preservation of existing trees on private property where new development is planned. (Ord. 1286 § 1, 1995).

12.20.020 Definitions.

A. Appraisal. Tree appraisals shall use the Trunk Formula Method of the Council of Tree and Landscape Appraisers.

B. “City-owned property” means property within the city limits of Burlington, and:

1. Owned by the city in fee simple absolute; or

2. Implied or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic, or for public easements.

C. “Columnar tree” means any tree growing in a symmetrical, pillar-like form with a spread at maturity equal to approximately half the height of the tree.

D. “Large tree” means any mature tree which would reach a maximum height of more than 50 feet with a maximum spread of over 35 feet.

E. “Major pruning” means cutting back of limbs larger than one and one-half inches in diameter on street trees.

F. “Medium tree” means any mature tree which would reach a maximum height of 25 to 50 feet with a maximum spread of 35 feet.

G. “Park trees” means trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

H. “Planter strip”, “planting strip”, or “buffer strip” means that portion of the right-of-way between the outside edge of the curb and the inside edge of the sidewalk.

I~~H~~. “Small tree” means any mature tree which would reach a maximum height of 25 feet with a maximum spread of 25 feet.

JI. “Significant tree” means an existing deciduous or coniferous tree six inches or more in diameter breast high (measured four feet, six inches above adjacent grade – “dbh”), of any species suitable for inclusion as permanent landscaping in a proposed development project. This also includes unusual, historical or rare trees.

KJ. “Street trees” means trees, shrubs, bushes, and all other woody vegetation on public rights-of-way, land lying between property lines on either side of all streets, avenues, or boulevards, within the city.

LK. “Topping” means the severe cutting back of limbs to stubs larger than one and one-half inches in diameter within the tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree.

ML. “Tree owner” means the owner of the real property upon which 51 percent or more of the trunk is located at ground level. (Ord. 1286 § 1, 1995).

N. “Tree plan” means a plan developed and adopted pursuant to this chapter (12.20 BMC).

12.20.030 Urban forestry board – Established.

The Planning Commission shall serve as the Urban Forestry Board for the City of Burlington. ~~There is hereby established an urban forestry board for the city of Burlington, which shall consist of a minimum of five members and any number of interested citizens, including a representative of the parks board, planning commission, business community, school district, and neighborhood planning committees. The board shall choose its own officers, make its own rules and regulations, and keep a journal of its proceedings. A majority of the members shall be a quorum for the transaction of business. (Ord. 1286 § 1, 1995).~~

12.20.040 Urban forestry board – Duties and responsibilities.

~~It shall be the responsibility of t~~The U~~u~~rban F~~f~~orestry B~~b~~oard shall have the authority to develop and provide recommendations to the City Council on ~~to study, investigate, counsel and develop and/or update~~ a ~~written~~ plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, along streets, and in other public areas. ~~The plan is intended to advise the public and the parks board, who will in turn recommend the plan with any proposed modifications, to the planning commission and city council for adoption. The plan may be adopted in phases. (Ord. 1286 § 1, 1995).~~ The plan developed under this section shall be known as the “Tree Plan”. The Tree Plan should, at a minimum, include a map of arterial streets with street tree species identified, along with a list of desirable trees for planting along other streets. The Tree Plan should also include lists of tree species not suitable for planting, such as poplar, willow, and cottonwood.

12.20.050 Street tree permits.

A. Permit Required. ~~Application for street tree installation shall be required and shall be obtained from the permit center~~A permit shall be required prior to any planting, removal, topping, and/or major pruning of street trees. No permit shall be required for work conducted by utility companies as minimally necessary to maintain safe clearances provided the Community Development Department is notified and all such work in conducted in accordance with accepted arboricultural standards.

B. Application Requirements. Applications for street tree permits shall be made on forms provided by the Community Development Department and shall include all of the information required by the form in addition ot the items listed below. Only applications including all of the information required by this section shall be deemed complete for the purposes of complying with this chapter and Title 14A BMC.

1. Vicinity map;
2. A site plan drawn to scale depicting the~~The~~ location of any street trees to be ~~planted or removed~~planted, removed, or pruned;
3. The size and species of all proposed plantings;
4. The location and specifications of any required root barriers. ~~shall be identified and mapped to keep the street tree inventory current. Utility companies shall notify the permit center prior to pruning any tree located on city-owned property for the purpose of maintaining safe line clearance and shall carry out all such work in accordance with accepted arboricultural standards. No street trees other than species listed as~~

Commented [BJ14]: 10-24-2022 – This is not an active board. Planning Commission should have review authority over development regulations and the adoption of plans.

Commented [BJ15]: 10-24-2022 – BJ – see notes above. Revised for more flexibility.

Commented [BJ16]: 3-7-2023 – BJ – reorganized and provided more clarity with respect to application requirements.

~~small trees in BMC 12.20.060 may be planted under or within 10 feet of any overhead utility wire, unless approved by the planning department.~~ (Ord. 1799 § 19, 2014; Ord. 1286 § 1, 1995).

C. Review Process. Street tree permits shall be reviewed by the Community Development Department for compliance with this Chapter and other applicable Burlington Municipal Code requirements. The Public Works Department shall review the application for consistency with applicable engineering, traffic safety, and design standards.

12.20.060 Tree species to be planted – Spacing – Setbacks – Distances.

A. ~~The tree plan shall include a map of arterial streets with street tree species identified, along with a list of desirable trees for planting along other streets in three sized classes based on mature height: small (under 25 feet); medium (25 to 50 feet); and large trees (over 50 feet). Special plantings may be approved by the planning department in consultation with the urban forestry board as applicable. Lists of trees not suitable for planting will also be created by the board, including but not limited to poplar, willow, and cottonwood~~Once adopted the planting, removal, topping, and/or major pruning of street trees shall be consistent with the adopted Tree Plan.~~.~~

B. ~~The spacing, setbacks, distances, and variety of any street tree shall be consistent with the guidelines specified in the tree plan. Consideration shall be given to the definitions of small, medium, large and columnar trees~~ When trees are planted within five feet of a street, sidewalk, curb, underground utility, or other public improvement root barriers shall be provided and tree shall be planted in pits of sufficient dimensions to accommodate future root development.

C. Consideration shall also be given to location of the tree(s) in relation to streets, sidewalks, curbs, gutters, overhead utility wires, fire hydrants, water and sewer lines, and other public improvements. No street tree shall be located in the public right-of-way that would damage any of the improvements listed herein. (Ord. 1286 § 1, 1995).

D. No street trees other than species meeting the definition of "small trees" may be planted under or within 10 feet of any overhead utility wire, unless approved by the Community Development Department.

12.20.070 Public tree care.

A. The C~~c~~ity shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds.

B. The C~~c~~ity may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is affected with any injurious fungus, insect, or other pest. This section does not prohibit the planting of street trees by adjacent property owners providing that the selection and location of said trees is in accordance with this chapter and the tree plan. (Ord. 1286 § 1, 1995).

12.20.080 Tree topping.

It shall be unlawful as a normal practice for any person, firm, or C~~c~~ity department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this chapter ~~at the determination of the parks supervisor~~. (Ord. 1286 § 1, 1995).

12.20.090 Pruning – Corner clearance.

Every tree owner ~~(see definition of tree owner, BMC 12.20.020(L))~~ of any tree overhanging any street or right-of-way within the city shall be responsible for pruning or causing to be pruned the branches so that such branches shall not severely obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of 13 feet above street surface or eight feet above the sidewalk surface. Said owner or owner's representative shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The C~~c~~ity shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light, or interferes

Commented [BJ17]: 10-24-2022 – BJ – Revised to address Public Works concerns about lack of root barriers and sufficient excavations.

Commented [BJ18]: BJ – 3-14-2023 – Relocated and rephrased

Commented [BJ19]: BJ – 3-14-2023 – revised for clarity and to cross reference defined term.

with visibility of any traffic control device or sign or sight triangle at intersections. Tree limbs that grow near high voltage electrical conductors shall be maintained clear of such conductors by the electric utility company in compliance with any applicable franchise agreements. A utility tree trimming policy must be reviewed by the tree board prior to any trimming by the utility company. (Ord. 1286 § 1, 1995).

12.20.100 Removal of stumps.
All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground. (Ord. 1286 § 1, 1995).

12.20.110 Dead, diseased or hazardous tree removal on private property.
The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property, or harbor significant infestations of insects or disease which constitute a potential threat to other trees within the city. (Ord. 1286 § 1, 1995).

12.20.120 Preservation of trees on private property with new development.
Landscaping on private property, including the planting, maintenance, pruning and removal of trees shall be subject to landscaping requirements identified in the City's zoning code (Chapter 17.81 BMC). ~~This section shall apply to any new development or substantial addition to an existing development, including but not limited to the following: short and full subdivisions, construction of duplex and multifamily structures, business, commercial, and industrial projects other than construction of a single-family dwelling or accessory structure on an existing lot of record.~~

Commented [BJ20]: 10-24-2022 – These requirements were moved to the landscaping code already approved by the Planning Commission.

~~A. No existing trees shall be removed until a final decision is made regarding the feasibility of preserving existing trees.~~

~~B. At the time of the initial contact with the city, the applicant shall be advised that the site plan for the proposed project shall show the location, size and species of existing trees. If there are many trees on the site, a preliminary evaluation of the site shall be made by a certified arborist, at the applicant's expense, to identity the trees that should be protected and to determine the feasibility of protecting the trees.~~

~~C. The goal is a net gain in tree canopy, to be achieved initially by making an effort to save the significant trees and as much of the canopy as is feasible. Protecting 10 percent of the diameter of the trees on the site is the minimum requirement. Credit for saving small trees shall be given when larger, significant trees must be removed. If the goal of preserving a minimum of 10 percent of the diameter is not achieved, the applicant has two options:~~

~~1. Significant trees, as defined in BMC 12.20.020, shall be appraised using the methodology defined in BMC 12.20.020, and the applicant shall contribute a sum equal to the value of the trees to the urban forestry program; or~~

~~2. Trees shall be planted either on the site or on designated public property to replace the trees that are removed; or~~

~~A combination of subsections (C)(1) and (2) above.~~

~~D. Specifications for the contractor shall be shown on the construction plans, in conformance with the city standards for tree protection during construction, adopted by administrative rule. The contractor and all utilities shall be notified by the applicant that no work shall be done in the protected area without full-time inspection. Notices shall be posted on the fence in the protected area.~~

~~E. The tree protection zone, defining the limits of work adjacent to trees, shall be delineated by installation of temporary chain link fencing six feet in height, or alternate approved by the planning department, around each tree or group of trees to be protected during construction. If there is not a full-time construction inspector on the job, inspection shall be done by the planning department and/or building department.~~

~~1. Location and installation of the fence shall be designated by the certified arborist or, if plans are approved by the arborist and there is a full-time construction inspector on the project, the inspector may inspect the fence installation to ensure compliance with the approved plans.~~

~~2. Construction activities that must occur in the tree protection zone shall be monitored by a certified arborist or may be subject to special restrictions for performance that can be inspected by the full-time construction inspector on the job site, when approved by the planning director.~~

~~3. Typical issues are grading and compaction, storage of materials, use of herbicides or other chemicals, installation of utility or irrigation lines, and demolition of structures and pavement. (Ord. 1286 § 1, 1995)~~.

12.20.130 Penalty.

Any person, firm or corporation responsible for removing a street or park tree without a permit shall be subject to any applicable fines identified in the fee schedule adopted by the City Council and shall ~~comply with one of the following options~~be required to provide replacement trees. When required replacement trees shall be either be provided on the site or on a designated public property.~~:~~

~~A. Significant trees, as defined in BMC 12.20.020, shall be appraised using the methodology defined in BMC 12.20.020, and the applicant shall contribute a sum equal to the value of the trees to the urban forestry program; or~~

~~B. Trees shall be planted either on the site or on designated public property to replace the trees that are removed; or~~

~~C. A combination of subsections A and B above. (Ord. 1286 § 1, 1995).~~

12.20.140 Appeals.

Appeals of decisions made pursuant to this chapter shall be filed and processed in accordance with the applicable procedures identified in Title 14A. BMC.

Commented [BJ21]: 3-7-2023 – BJ – added appeal procedures

Chapter 12.24

STREET USE

Sections:
12.24.010 Title.
12.24.020 Exercise of police power.
12.24.030 Definitions.
12.24.040 Permit – Required.
12.24.045 Burlington Hill Business Park.
12.24.050 Permit – Application – Contents.
12.24.060 Permit – Application – Processing.
12.24.070 Permit – Fees.
12.24.080 Permit – Revocation.
12.24.090 Termination of use.
12.24.100 Indemnity deposit.
12.24.110 Agreement to save city harmless.
12.24.120 Right to prosecute in civil action.
12.24.130 Violation declared misdemeanor.

12.24.010 Title.
This chapter shall constitute the street ordinance of the Ceity and may be referred to as such. (Ord. 917 § 1, 1978).

12.24.020 Exercise of police power.
This chapter is declared to be an exercise of police power of the Ceity for the public safety, health and welfare, and its provisions shall be liberally construed to the accomplishment of that purpose. (Ord. 917 § 2, 1978).

12.24.030 Definitions.
A. “Public place” means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks, planting (parking) strips, squares, triangles and right-of-way open to the use of the public in the space above or beneath the surface of the same.

B. “Use” means and includes to construct, store, erect, place upon or maintain, upon, over or under any public place any staging, scaffolding, elevator, loading ramp or dock, building, or any other structure, or to use or occupy any public place for the storage or placement of any material, equipment or thing. (Ord. 917 § 4, 1978).

12.24.040 Permit – Required.
A written permit may be required from the Ceity to ensure compliance with all the provisions of this chapter and those specific provisions addressed in the permit for the respective public place; provided, that nothing contained in this chapter shall apply to street construction and/or maintenance, utility construction and/or maintenance performed by the Ceity or its authorized agents, and ~~street excavation performed~~development work authorized under chapter 12.12 BMC, relating to the opening and excavation of streets. (Ord. 1799 § 17, 2014; Ord. 1527, 2003; Ord. 917 § 5, 1978).

12.24.045 Burlington Hill Business Park.
Applicants requesting the use of those public places within the area known as Burlington Hill Business Park that front and are adjacent to Old Highway 99 shall have the following:

A. The public place that is requested by the applicant will include the entire useable area located within the parameters of this policy.

B. The area of display shall be limited to the following setbacks:

1. Displayed merchandise may not be parked within 25 feet of the center line of Old Highway 99.

2. Displayed merchandise may not be parked within 100 feet of either side of the street curb of Walton Street or North Hill Blvd.

3. Displayed merchandise shall not be parked within 50 feet of adjoining property lines unless the adjoining property is owned or leased by the same party. Exception: There shall be a 100-foot setback from the southern east-west property line of Lot 7.

4. The city shall place markers that clearly designate the boundaries of the public places permitted in the Burlington Hill Business Park.

C. There shall be overnight parking in the public space fronting Burlington Hill Business Park Lots 1, 2, 4, 5 and 6.

D. There shall be no overnight parking in the public space fronting Burlington Hill Business Park Lots 7, 8, 9, 10 and 16.

E. There shall be no parking on the walking/bike path.

F. No structures of any kind shall be permitted in the public place.

G. This area will be used for display purposes only in compliance with city codes.

H. The entire public place fronting their property shall be mowed, maintained and free of garbage and weeds.

I. Any agent of the city can require removal of displayed merchandise immediately if it should be determined to be a traffic or safety hazard to the public. (Ord. 1799 § 18, 2014; Ord. 1527, 2003).

12.24.050 Permit – Application – Contents.

Application for permits provided for in this chapter shall be filed ~~with the city public works director up~~on a form ~~supplied~~ provided by the Ccity ~~public works department~~. ~~Such application shall be directed to the public works department and~~A complete application shall, at a minimum, ~~shall~~ contain:

Commented [BJ22]: BJ – 3-14-2023 – consistent with application language used throughout the code. Ties to titel 14A and requirements for "complete application".

A. An accurate description of the public place or portion thereof desired to be used;

B. The use desired to be made of such public place;

C. The plans and specifications for any utility or structure desired to be constructed, erected or maintained by the applicant. (Ord. 1527, 2003; Ord. 917 § 6, 1978).

12.24.060 Permit – Application – Processing.

A. The city public works director shall examine each application to determine if it complies with the provisions of this chapter.

B. The city public works director or designee may inspect the premises which are desired to be used in order to ascertain any facts which may aid in determining whether a permit should be granted, and shall endorse his findings in such application.

C. The application shall then be submitted to the city council for consideration. Final approval of the permit shall be by the city council; provided, that the proposed use of such public place will not unduly interfere with the rights of the public or create a public safety hazard or nuisance. The city council may seek recommendations and comments from the planning commission.

D. If the application is approved, the time for which the permit may be granted shall be fixed and the city public works director shall be directed to issue the permit upon the applicant's compliance with the provisions of this chapter relative to indemnity. (Ord. 1527, 2003; Ord. 917 § 7, 1978).

12.24.070 Permit – Fees.

The Cc~~c~~ity Pp~~p~~ublic Ww~~w~~orks Dd~~d~~irector is authorized and directed to prepare and adopt a schedule of fees applicable to all such permits heretofore or hereafter issued commensurate with the cost of administration, inspection and policing

involved in the issuance and continuance of such permits, and the use thereby granted. Any such schedule, when approved by the city council by resolution shall govern the amount of the fee for any such permit. The fee shall be paid on an annual basis. In the event the fee is not paid by the applicant, the permit shall be revoked. (Ord. 1527, 2003; Ord. 917 § 11, 1978).

12.24.080 Permit – Revocation.
All permits granted under the provisions of this chapter for the use of any public place shall be wholly of a temporary nature, shall vest no permanent right, and when issued it may in any case be revoked by the city upon 30 days' written notice, or immediately without written notice in case such use or occupation shall become dangerous or any structure or obstruction permitted shall become insecure or unsafe, or shall not be constructed, maintained or used in accordance with the provisions of the permit and this chapter. (Ord. 1527, 2003; Ord. 917 § 10, 1978).

12.24.090 Termination of use.
In the event that a permit is not renewed, or in the event a permit is revoked, if the permittee fails to discontinue and/or remove the use within 60 days of the termination date of the permit, then the use may be enjoined by the city and any structures shall be removed by the city at the expense of the permittee. (Ord. 1527, 2003; Ord. 917 § 12, 1978).

12.24.100 Indemnity deposit.
A. In the event that the city public works director, city administrator or the city council determines that there is a possibility of injury, damage or expense to the city arising from an applicant's proposed use of any public place, the applicant shall deposit with the city clerk-treasurer a cash indemnity deposit, the amount to be determined by the city administrator or the city council as the case may be at the time of approving the application. Such indemnity deposit shall be used to pay the cost, plus 15 percent thereof, of inspections, surveys, plans and other services performed by the city, restoring the street and removing any earth or other debris from the street, the replacement of any utility interrupted or damaged, or the completion of any work left unfinished, the cost of filing an indemnity agreement, if such an agreement is required with the permit, and any other expense the city may sustain in conjunction with the permitted work. The balance of the cash indemnity deposit, if any, after the foregoing deductions shall be returned to the applicant. If the indemnity deposit is insufficient, the applicant will be liable for the deficiency. In the event any studies are required prior to the issuance of a permit, the cost of such studies shall be paid for by the applicant.

B. The applicant, in lieu of or in addition to the cash indemnity deposit, may, as approved by the city administrator, file with the city a surety bond, which bond shall assume all the requirements provided in subsection A of this section in relation to a cash indemnity deposit, shall run for the full period of the permit, shall be in an amount to be fixed by the city, and conditioned that such applicant shall faithfully comply with all the terms of said permit and all the provisions of this chapter, and all other ordinances of the city, and indemnify and save the city free and harmless from any and all claims, actions or damages of every kind and description which may accrue to, or be suffered by, any person by reason of the use of any public place, as provided for in the application. (Ord. 1527, 2003; Ord. 917 § 8, 1978).

12.24.110 Agreement to save city harmless.
The owner of the premises in front of which, and in connection with which, a public way is going to be used, shall execute and deliver to the city public works department upon a form provided by the city public works department, an agreement in writing signed and acknowledged by such owners and by any existing lessee wherein they agree to save the city free and harmless and agree to indemnify the city, its elected and/or appointed officials, employees and/or agents from any and all claims, actions or damages of every kind and description which may accrue to, or be suffered by, any person by the use of such public place, or by the construction, existence or maintenance or use of such structure. No permit shall be issued until such agreement is signed and delivered to the city public works department. In addition, such agreement shall contain a provision setting forth the terms of BMC 12.24.080. (Ord. 1527, 2003; Ord. 917 § 9, 1978).

12.24.120 Right to prosecute in civil action.
Nothing in this chapter shall be construed to curtail or abridge the right of anyone to prosecute a civil action for damages by reason of injury to person or property resulting from the negligent use by any other person of any public place or the space above or beneath the same, nor shall the issuance of a permit under the provisions of this chapter

be construed as relieving the persons accepting the same, or anyone, from liability caused by the occupation, obstruction of or encroachment on, any public place. (Ord. 1527, 2003; Ord. 917 § 3, 1978).

12.24.130 Violation declared misdemeanor.

Anyone who violates or fails to comply with any of the provisions of this chapter, or who fails to remove any obstruction or discontinue use or occupancy of any public place when ordered to do so by the city, under authority of this chapter, is, upon conviction, guilty of a misdemeanor. (Ord. 1527, 2003; Ord. 917 § 14, 1978).

Chapter 12.26

COMPLETE STREETS

Sections:
12.26.010 Complete streets.
12.26.020 Exceptions.

12.26.010 Complete streets.
The purpose of the complete streets program is to plan for, design and construct all city transportation projects to provide appropriate accommodation for bicyclists, pedestrians, transit users and persons of all abilities in comprehensive and connected networks. (Ord. 1792 § 1, 2013).

12.26.020 Exceptions.
Facilities for bicyclists, pedestrians, transit users and/or people of all abilities are not required to be provided:

A. Where their establishment would be contrary to public safety;

B. Where there is no identified long-term need; or

C. Where the public works director grants a documented exception which may only be authorized in specific situations where conditions warrant. Such site-specific exceptions shall not constitute general changes to the standards set in BMC 12.26.010. (Ord. 1792 § 1, 2013).

Chapter 12.28

CONSTRUCTION OF STREETS, SIDEWALKS AND STORM DRAINS

Sections:

12.28.010 Application.
12.28.020 Standard specifications.

I. Street Classifications
12.28.030 Generally.
12.28.040 Major arterial (Principal).
12.28.050 Secondary arterial (Minor).
12.28.060 Collector arterial (Collector).
12.28.070 Access street (Access).
12.28.080 Street designations.

II. Street and Sidewalk Design Criteria
12.28.090 Plans required.
12.28.095 Telecommunication conduit required.
12.28.100 Geometric design standards – Generally.
12.28.110 Geometric design standards – General requirements.
12.28.120 Geometric design standards – Major arterials.
12.28.130 Geometric design standards – Secondary arterials.
12.28.140 Geometric design standards – Collector arterials.
12.28.150 Geometric design standards – Access streets.
12.28.160 Structural design standards.

III. Storm Sewers
12.28.170 *Repealed*.
12.28.180 *Repealed*.
12.28.190 *Repealed*.

12.28.010 Application.

This chapter sets forth the specifications and requirements for the construction of public works, including streets and sidewalks, within the city.

A. Improved right-of-way is required for access to all new construction projects. A traffic study prepared to the specifications of the Ceity Eengineer may be required to identify required right-of-way improvements.

B. Improved right-of-way for new single-family and duplex buildings on existing lots of record is defined as grading to a minimum of 20 feet and installing six inches of crushed rock. An additional three-inch lift of crushed rock is required if the roadbed is destroyed by trucks during the construction process.

C. All other new construction shall meet the right-of-way improvement standards specified in this code unless, in the opinion of the city engineer, improvements are not warranted at the time of development. In that case, the property owner shall be required to do one of the following, as specified by the city engineer:

1. Enter into a binding agreement to participate in any street improvement, local improvement district (LID) affecting the described right-of-way which LID may be formed now or in the future;

2. Enter into a binding agreement to construct specified right-of-way improvements at a specified date;

3. Construct improvements which conform to existing improvements in the immediate area.

D. The Ceity of Burlington comprehensive transportation plan has adopted level of service "DC" for all streets ~~except Burlington Boulevard, for which a level of service "D" is adopted~~. If a traffic study meeting the

Commented [BJ23]: BJ – 3-14-2023 – revised for consistency with adopted transportation element of comp plan.

specifications of the city engineer is prepared that demonstrates that the development causes the level of service to decline below the adopted standards, then transportation improvements or strategies to accommodate the impacts of development are required to be made concurrent with the development, or the development permit application shall be denied.

These strategies may include ~~increased~~ public transportation ~~service~~improvements, ride sharing programs, connectivity improvements, demand management, pedestrian or bicycle infrastructure, and other transportation systems management strategies. For the purposes of this section, "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. In the case of transportation facilities of statewide significance, which includes State Route 20, every effort shall be made to coordinate with the state to work toward timely planned improvements, although a six-year commitment may not be feasible. (Ord. 1536 § 1, 2004; Ord. 1474 § 1, 2001; Ord. 1419 § 1, 1999; Ord. 1401 § 1, 1999; Ord. 1188 § 1, 1991; Ord. 959 § 1, 1980).

12.28.020 Standard specifications.
Construction and maintenance of all public works, including streets, sidewalks, storm drains and all associated appurtenances shall be in conformance with, and comply with, the most current Washington State Department of Transportation/American Public Works Association (WSDOT/APWA) standard specifications, WSDOT amendments and General Special Provisions (GSPs), and the APWA amendments, and as hereafter amended, unless different standards or specifications are required by the city engineer, or are provided for in the applicable public works contract. (Ord. 1708 § 1, 2010; Ord. 1059 § 2, 1985; Ord. 959 § 2, 1980).

I. Street Classifications

12.28.030 Generally.
All streets in the city shall be functionally classified in one of the categories specified in BMC 12.28.040 through 12.28.070. (Ord. 959 § 3, 1980).

12.28.040 Major arterial (Principal).
Major arterials provide for the movement of traffic across and between large subparts of the urban region and serve predominately "through" trips with minimum direct service to abutting land uses. Major arterial service is required by the central business district, large shopping centers, large industrial plants, major governmental centers, large hospitals, important secondary business districts and similar land uses which comprise the top layer of hierarchy of trip generators. Major arterials shall form a closed, interconnected system linking together major traffic generators in the urban region, and functioning to collect and distribute traffic from freeways and state highways to less important arterial streets. (Ord. 959 § 3, 1980).

12.28.050 Secondary arterial (Minor).
Secondary arterials provide for movement within the large subparts prescribed by major arterials. Secondary arterials may also serve "through" traffic, but provide more direct service to abutting land uses than do major arterials. Secondary arterial service is required by small central business districts, tourist districts with motels and restaurants, high schools and some grade schools, strip commercial development, parks and recreational areas, warehousing areas and similar land uses which comprise the middle layer of the trip generator hierarchy. Secondary arterials shall, whenever possible, be long, continuous streets with direct rather than meandering alignments. (Ord. 959 § 3, 1980).

12.28.060 Collector arterial (Collector).
Collector arterials provide for movement within the smaller areas, which are often definable neighborhoods and may be bounded by higher class arterials. Collector arterials serve very little "through" traffic but serve a high proportion of local traffic requiring direct access to abutting land uses. Collector arterial service is required for the majority of land uses which generate measurably important traffic volumes such as plats, churches, small parks and recreation areas, convenience shopping centers and other areas which are not served by major or secondary arterials. Collector arterials need not be particularly long or continuous since this would tend to attract through trips. (Ord. 959 § 3, 1980).

12.28.070 Access street (Access).
Access streets provide for movement within residential neighborhoods, light commercial areas, and the residential agricultural districts. Access streets serve little or no through traffic and may terminate in cul-de-sacs. (Ord. 959 § 3, 1980).

12.28.075 Pedestrian amenity street.
Pedestrian amenity streets are designated in Transportation Element of the Burlington Comprehensive Plan for enhanced pedestrian amenities. Pedestrian amenity streets are intended to promote and accommodate increased pedestrian traffic in areas of intensive mixed-use development.

Commented [BJ24]: BJ – 4-20-2023 – cross reference added to comp plan for clarity.

12.28.080 Street designations.
The city council shall designate a comprehensive arterial street plan. Classification of new streets shall be made by the ~~city supervisor~~Public Works Director according to the comprehensive street plan. Every effort shall be made to incorporate new streets into the existing street grid pattern, and to provide for systematic naming and numbering of streets. (Ord. 959 § 3, 1980).

II. Street and Sidewalk Design Criteria

12.28.090 Permit required~~Plans required~~.
~~Street and sidewalk improvements or new street and sidewalk construction shall require engineering plans with the following information~~A. Permit required. The construction, modification, or repair of public streets, sidewalks, and utilities located within a public right-of, and all other development activities occurring within a public right-of-way shall require a permit and approved plans. ~~:~~

B. Application requirements~~A~~. Applications shall be made on forms provided by the City and shall include all of the information required by the form in addition to all of the items listed below.

1. Vicinity map showing the location of existing arterial streets adjoining the proposed improvement or within the immediate vicinity of the improvement;

2. Name, address, and phone number of permit applicant;

3. Name, address, and phone number of engineer, contractor, or agent;

4. A complete set of plans depicting the proposed work and including any information, details, or specifications requested by the Public Works Director. Unless waived by the Public Works Director, all plans shall be prepared by a civil engineer licensed in the State of Washington

C~~B~~. Plan requirements. ~~Street plans for individual street sections shall contain at least the following information~~Unless waived or modified by the Public Works Director, plans shall, at a minimum, include all of the following:

Commented [BJ25]: BJ – 10-24-2022 – Revised to reflect standardized format for permit application requirements used in all code sections.

1. Width and location of existing streets adjoining the improvement,

2. Property lines, right-of-way lines and easement lines with dimensions and north arrow,

3. Location of street improvement and appurtenances including driveways, properly dimensioned and stationed along the centerline and location and stationing of all horizontal angle points and horizontal curve data,

4. Location of all existing and proposed overhead and underground utilities, including storm and sanitary sewers, water courses, railroad crossings, structures within the right-of-way, trees, and all pertinent topographic features, including location and elevations of all survey bench marks,

5. Suitable title plate on each drawing with street name, name and address of developer, scale, date and the name, address and telephone number and stamp of the registered engineer or land surveyor responsible for the plan preparation;

6. ~~C.~~ Street profiles for individual street sections including ~~shall contain at least~~ the following information:

a~~1~~. Street centerline stationing and vertical elevations,

b~~2~~. A two or three line profile showing the existing ground surface along the street centerline and proposed top of curb and street centerline profiles,

c~~3~~. Slope of the street between grade changes and vertical curve information,

d~~4~~. Centerline profile of intersecting streets a minimum of 100 feet each side of street improvement and profile of all driveways with grades greater than eight percent,

d~~5~~. Suitable title plate on each drawing with street name, name and address of developer, vertical and horizontal scale, date and the name, address, telephone number and stamp of the registered engineer or land surveyor responsible for the plan preparation;

6~~D~~. Structural details shall include properly dimensioned details of curbs and gutters, street cross sections, drainage facilities, retaining walls and all major structures to be constructed within the right-of-way. (Ord. 959 § 4, 1980).

7. Information and specifications for telecommunications conduit and vaults.

12.28.095 Telecommunication conduit required.

A. Applicability. This section shall apply whenever a permit is required for the following actions:

1. Clearing, grading, cutting, boring, trenching, excavation, or the construction or modification of utilities within a city right-of-way or a future city right-of-way identified in the capital facilities or transportation elements of the city's comprehensive plan;

2. Land divisions, including subdivisions, short subdivisions, and binding site plans;

3. The construction of new residential and nonresidential buildings;

4. Any development involving the construction or establishment of public or private streets.

B. As a condition of permit approval fiber optic telecommunications conduit and vaults shall be installed or constructed in accordance with the requirements of this section.

C. Unless otherwise specified by the public works director or city engineer fiber optic telecommunications conduit and vaults shall be provided along any streets, alleys, sidewalks, or pedestrian paths that are disturbed, constructed or established in conjunction with the development activities identified in subsection (A) of this section.

D. For proposals involving land divisions or the construction of new residential or nonresidential buildings telecommunications conduit shall be provided between the demarcation point(s) associated with the proposed buildings and adjacent rights-of-way. If city telecommunications conduit exists in the adjacent right-of-way, the conduit serving the development shall be connected to the existing conduit. If no conduit exists in the adjacent right-of-way a vault shall be provided in the adjacent right-of-way and the conduit serving the new development shall terminate in the vault.

E. Conduit shall be four-inch diameter for primary telecommunication paths and two-inch diameter for secondary paths. Vaults shall be located at intervals of no more than 500 feet. Conduit shall be placed at horizontal and vertical locations as determined by the public works director. Conduits shall be labeled for identification and provided with pull strings. The conduit shall conform to the size, shape and characteristics as determined by the public works director based on an evaluation of industry standards.

F. Conduit and vaults installed within a city right-of-way, and accepted by the city, shall become the property of the city of Burlington. For conduit and vaults located on private property the property owner shall be responsible for all maintenance.

G. Any abandoned, unmarked or unused conduit and/or vaults located within the city right-of-way shall become the property of the city following 60 days' notice posted at the approximate location of the conduit, and following reasonable efforts by the city public works director to contact the last known owner of said conduit and/or vaults. If reasonable efforts by the public works director fail to identify the last known presumed owner of said conduit and/or vaults, then the public works director shall publish a notice in the legal newspaper for the city of Burlington notifying the public of the city's intent to take possession of the applicable conduit and/or vaults, and shall provide 60 days' notice of said possession.

H. All conduit and vaults installed within the city right-of-way shall be properly labeled and identified as determined by the public works director. An "as built" drawing shall be provided to the public works director on the completion and/or inspection of the completed work.

I. Applicability to Service Providers. This section shall apply to "service providers" as defined in RCW 35.99.010 except as modified by RCW 35.99.070. (Ord. 1904 § 1 (Exh. A), 2021; Ord. 1810 § 1, 2015; Ord. 1805 § 1, 2014).

12.28.100 Geometric design standards – Generally.
Streets shall be designed and constructed in accordance with the requirements set out in BMC 12.28.110 through 12.28.150. (Ord. 959 § 5, 1980).

12.28.110 Geometric design standards – General requirements.
Streets shall be designed and constructed in accordance with the following general requirements:

A. Streets shall be designed to provide vehicular access according to the street classification to, from and through the service area;

B. Street widths shall be adequate to provide access for emergency vehicles, firefighting equipment, garbage trucks and city service vehicles;

C. Whenever possible streets shall be used to collect runoff from adjacent properties in the service area and divert it into storm drain systems;

D. Whenever possible new streets shall align with the existing street grid. New streets shall intersect existing streets at an approximate 90-degree angle;

E. Vertical clearance of structures or vegetation above a paved roadway shall be 16-1/2 feet. Vertical clearance of structures or vegetation above a sidewalk or walkway surface shall be eight feet;

F. Lateral clearance between the curb or edge of street shoulder and the closest part of any fixed object (excluding traffic control signs and breakaway supports) shall be at least three feet;

G. Traffic control devices shall conform to the Washington State Department of Transportation Manual on Uniform Traffic Control Devices, latest edition;

H. Ramps for Handicapped. Curb ramps for physically handicapped persons shall be included in all construction in accordance with the laws of the state of Washington;

I. Roadway Geometrics. Street designs shall be based on accepted engineering practices and current standards of the American Association of State Highway and Transportation Officials;

J. Design Year. Twenty years after the year construction is completed;

K. Street Intersections. Gutter drainage should not be allowed to cross any intersections on major, secondary or collector arterials. (Ord. 959 § 5, 1980).

L. Transit Stops. Concrete pads shall be provided to accommodate the installation of transit stops or shelters in accordance with any plans or specifications adopted by the Skagit Transit Authority (SKAT).

12.28.120 Geometric design standards – Major arterials.
Major arterials shall be designed and constructed in accordance with the following requirements:

A. Access conditions; intersections at grade with traffic signals at all major intersections; traffic channelization at all major intersections or driveways; parking restricted within road right-of-way; access control to adjoining properties according to the following conditions:

1. One driveway per lot or driveways spaced a minimum of 150 lineal feet apart,

2. No driveways within 150 lineal feet of street intersections,

3. Driveway width 24 feet minimum, 36 feet maximum;

B. Average daily traffic. 5,000 to 25,000 vehicles per day;

C. Right-of-way width: 80 feet minimum;

D. Traffic lane width criteria:

Two-way traffic	12 feet minimum
Turn lane	12 feet minimum
Shoulders	8 feet minimum
Bus lane	12 feet minimum

E. Pavement width (two-way traffic):

With curbs	48 feet measured to face of curb
With shoulders	56 feet

F. Horizontal curvature: minimum centerline radius = 955 feet;

G. Maximum grade = 6 percent; minimum grade = 0.5 percent;

H. Road surface cross slope: 2.5 percent minimum;

I. Curb radii at intersections = 25 feet minimum;

J. Curb type: APWA Type A;

K. ~~Five-foot-wide sidewalks each side required unless exempted by city council. (Ord. 959 § 5, 1980)~~Sidewalks shall be provided on both sides of the street and shall have a minimum width of ten feet;~~.~~

L. Buffer strips with a minimum width of five feet shall be provided between the curb and sidewalk.

Commented [BJ26]: BJ – 10-24-2022 – Revised to implement comprehensive plan

12.28.130 Geometric design standards – Secondary arterials.
Secondary arterials shall be designed and constructed in accordance with the following requirements:

A. Access conditions: intersections at grade with traffic channelization at major intersections; driveways within 150 feet of an intersection may be prohibited if there are potential traffic hazards. The extent of the potential traffic hazard shall be determined by the city engineer ~~in his sole discretion~~;

Commented [BJ27]: BJ – 3-14-2023 – deleted gender specific language.

B. Average daily traffic: 1,500 to 10,000 vehicles per day;

C. Right-of-way width: 60 feet minimum;

D. Traffic lane width criteria:

Two way traffic	11 feet minimum
Turn lane	12 feet minimum
Shoulders	8 feet minimum
Parking lane	10 feet minimum
Bus lane	12 feet minimum

E. Pavement width (two-way traffic):

With curbs	44 feet measured to face of curb
With shoulders	52 feet

F. Horizontal curvature: minimum centerline radius = 820 feet;

G. Maximum grade = 6 percent; minimum grade = 0.5 percent;

H. Road surface cross slope: 2.5 percent minimum;

I. Curb radius at intersections = 20 feet minimum;

J. Curb type: APWA Type A;

K. ~~Five-foot-wide sidewalks required each side of street unless exempted by the city council. (Ord. 1326 § 1, 1996; Ord. 959 § 5, 1980).~~Sidewalks shall be provided on both sides of the street as follows:

1. Pedestrian amenity streets, minimum width: 10 feet;

~~1.~~2. All other secondary arterials, minimum width: 8 feet.

Commented [BJ28]: BJ – 10-24-2022 – See notes above

12.28.140 Geometric design standards – Collector arterials.
Collector arterials shall be designed and constructed in accordance with the following requirements:

A. Access conditions: intersections at grade with stop signs at major cross streets; driveways within 150 feet of an intersection may be prohibited if there are potential traffic hazards. The extent of the potential traffic hazard shall be determined by the city engineer in his sole discretion;

B. Average daily traffic: 1,000 to 5,000 vehicles per day;

C. Right-of-way width: 60 feet minimum;

D. Traffic lane width criteria:

Two-way traffic	11 feet minimum
Parking lane	8 feet minimum
Bus lane	12 feet minimum

E. Pavement width (two-way traffic):

With curbs	36 feet measured to face of curb

With shoulders	44 feet

F. Horizontal curvature: minimum centerline radius = 715 feet;

G. Maximum grade = 7 percent; minimum grade = 0.4 percent;

H. Road surface cross slope = 2.78 percent minimum;

I. Curb radius at intersections = 20 feet minimum;

J. Curb type: APWA Type A or D;

K. ~~Five-foot wide sidewalks each side of street required. (Ord. 1326 § 2, 1996; Ord. 959 § 5, 1980).~~Sidewalks shall be provided on both sides of the street as follows:

1. Pedestrian amenity streets, minimum width: 10 feet;

~~1.~~2. All other collector arterials, minimum width: 6 feet.

12.28.150 Geometric design standards – Access streets.
Access streets shall be designed and constructed in accordance with the following requirements:

A. Access conditions: intersections at grade with stop signs at all major cross streets; driveways within 150 feet of an intersection may be prohibited if there are potential traffic hazards. The extent of the potential traffic hazard shall be determined by the city engineer in his sole discretion;

B. Average daily traffic: 500 vehicles per day or less;

C. Right-of-way width: 50 feet minimum;

D. Traffic lane width criteria:

Two-way traffic	10 feet minimum
Parking lane	8 feet minimum;

E. Pavement width (two-way traffic):

With curbs and parking both sides	36 feet measured to face of curbs
With curbs and parking one side	32 feet
With shoulders (five feet each side)	34 feet total width

F. Horizontal curvature: minimum centerline radius = 410 feet;

G. Maximum grade = 12 percent; minimum grade = 0.4 percent;

H. Road surface cross slope = 2.78 percent;

I. Curb radius at intersections = 10 feet minimum;

J. Curb type: APWA Type A or D;

K. Cul-de-sacs:

Length 300 feet maximum

Diameter 90 feet – residential zone

100 feet – commercial zone

L. Sidewalks shall be provided on both sides of the street and shall have a minimum width of five feet.~~Sidewalks optional at discretion of the city council. (Ord. 1326 § 3, 1996; Ord. 959 § 5, 1980).~~

12.28.160 Structural design standards.

A. All streets shall be designed to provide a useful life span of 20 years without excessive maintenance. Major, secondary and collector arterials shall be designed and stamped by a civil engineer registered in the state of Washington. Accepted engineering practices shall be employed in the street designs. Soil, drainage and traffic conditions shall be considered in the design.

B. Access streets shall be subject to the following minimum design and construction standards;~~will not require design by a registered engineer but shall be submitted to the city according to the format described in BMC 12.28.090. The following minimum pavement cross-sections shall apply to access streets:~~

Commented [BJ29]: BJ – 4-20-2023 – city requires PE to design all public streets.

1. Asphalt concrete surfacing:

   a. Three inches Class B asphalt concrete placed in two lifts of one and one-half inches;

   b. One and one-half inches crushed rock base;

   c. Eight inches pit run gravel ballast.

2. Portland cement concrete pavement:

   a. Five inches 4,000 psi PC concrete on compacted subgrade.

C. Adequate storm sewers shall be provided for all streets. (Ord. 959 § 5, 1980).

12.28.170 Detailed street plans.

The City Council may adopt detailed street plans for specific geographic areas or individual street segments. In such cases the geometric and structural design standards identified in the adopted detailed street plan shall apply.

Commented [BJ30]: BJ – 10-24-2022 – allows for the development of more detailed street plans and urban design efforts in small areas of the city.

12.28.180 Appeals.

Appeals of decisions made pursuant to this chapter shall be filed and processed in accordance with the applicable procedures identified in Title 14A. BMC.

III. Storm Sewers

12.28.170
Definitions. *Repealed by Ord. 1273.* (Ord. 959 § 6, 1980).

12.28.180
Plans required. *Repealed by Ord. 1273.* (Ord. 959 § 6, 1980).

12.28.190

Design criteria. *Repealed by Ord. 1273.* (Ord. 959 § 6, 1980).

Chapter 13.04

SEWAGE DISPOSAL

Sections:

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13.04.130 Connection to system – Inspection and testing.
13.04.140 Connection to system – Within right-of-way or easement – Specifications.
13.04.150 Connection to system – Costs.
13.04.160 *Repealed.*
13.04.161 Federal categorical pretreatment standards.
13.04.170 *Repealed.*
13.04.171 Industrial user surveys.
13.04.177 Wastewater discharge permits.
13.04.180 *Repealed.*
13.04.181 Wastewater discharge permit appeals.
13.04.190 *Repealed.*
13.04.191 Search warrants.
13.04.200 Vandalism.
13.04.210 Emergency suspension.
13.04.220 Termination of discharge (nonemergency).
13.04.230 Appeal procedures.
13.04.240 Injunctive relief.
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13.04.265 Pretreatment charges and fees.
13.04.270 Private wastewater disposal system – Prohibited when.
13.04.280 Private wastewater disposal system – Permitted when.
13.04.290 Private wastewater disposal system – Permit required.
13.04.300 Private wastewater disposal system – Notice to connect to public system.
13.04.310 Private wastewater disposal system – Maintenance.
13.04.320 *Repealed.*
13.04.330 *Repealed.*
13.04.340 *Repealed.*
13.04.350 *Repealed.*
13.04.360 *Repealed.*
13.04.370 Deposit of objectionable materials prohibited.
13.04.380 Discharge to natural outlet prohibited – Exception.

13.04.390 *Repealed.*
13.04.400 Failure to connect – Penalty.
13.04.410 Violation – Liability.
13.04.420 Violation – Notice to be served.
13.04.430 Violation – Continuance – Penalty.
13.04.440 Maintenance of disposal system.
13.04.450 Noncompliance – Nuisance.
13.04.460 Confidential information.

13.04.003 Purpose.
Pursuant to the authority conferred by chapters 35.67 and 90.48 RCW, this chapter sets forth uniform requirements for users of the POTW of the city of Burlington, and allows the city to comply with all applicable state and federal laws including, but not limited to, the Clean Water Act, and the General Pretreatment Regulations, 40 CFR Part 403. Through the adoption of these code provisions, it is the intent of the city council to provide for the general welfare of the residents of the city of Burlington. The city council expresses no intent to create a class of persons who are specially benefited by this code. The objectives of this chapter are to:

A. Prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;

B. Prevent the introduction of pollutants into the POTW that are incompatible with the POTW, or that will pass through the POTW inadequately treated into receiving waters;

C. Ensure that the quality of POTW biosolids is maintained at a level that allows its use and disposal in compliance with applicable statutes and regulations;

D. Protect POTW personnel who may be affected by wastewater, wastewater solids, and biosolids in the course of their employment, and to protect the general public;

E. Improve the opportunity to recycle and reclaim wastewater and biosolids from the POTW;

F. Promote strategies to reduce the amounts of pollution generated by users, thereby reducing the associated hazards to the POTW and the receiving waters. (Ord. 1617 § 2, 2007; Ord. 1583 § 2, 2005);

G. Implement the City's Comprehensive Plan and address the requirements of the Washington State Growth Management Act (Chapter 36.70A RCW);

Commented [BJ1]: BJ – 3-14-2023 – added language connecting this to implementing provisions of comp plan. By referencing the comp plan this strengthens impact on coordinating with other local goverments such as Skagit County.

13.04.005 Construction – Intent.
A. This chapter is enacted as an exercise of the police power of the city of Burlington to protect and preserve the public health, safety and welfare; its provisions shall be liberally construed to accomplish this purpose.

B. It is expressly the purpose of this code to provide for and to promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited.

C. It is the specific intent of this code to place the obligation of compliance upon the owner/operator. Nothing contained in this code is intended to be or shall be construed to create or form the basis for liability on the part of the city of Burlington, its utility, officers, employees or agents for any injury or damage resulting from the failure of the owner/operator of any private system to comply with the provisions of this code, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code by the city of Burlington, its utility, officers, employees or agents.

D. The provisions of this chapter shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. Compliance with the provisions of this chapter and regulations referenced under this chapter does not necessarily mitigate all impacts to the environment, and additional mitigation may be required to protect the environment. (Ord. 1583 § 3, 2005).

13.04.010 Definitions.
Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

1. “Accessory building” means a subordinate building, the use of which is incidental to the use of the main building on the same lot.

2. “Accessory dwelling unit”, “accessory dwelling”, or “ADU” means a building, or a portion of a building, used as a self-contained dwelling that is secondary and subordinate to a primary dwelling. Accessory dwellings may be either attached or detached. An attached accessory dwelling is located within the primary dwelling. A detached dwelling is located in a detached accessory building located on the same lot as the primary dwelling.

2. “Biochemical oxygen demand (BOD)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees centigrade, usually expressed in milligrams per liter.

3. “Building drain” means that part of the lowest horizontal piping of a drainage system which receives the discharge from wastes inside the walls of the building and conveys it to the building sewer, beginning two feet (0.6 meters) from the outside face of the building wall.

4. “Building sewer” or “side sewer” means a sewer, not directly controlled or maintained by City, that begings approximately two feet outside the outer face of a building wall or foundation conveying wastewater from the building(s) to a public sewer.~~the extension from the building drain to the side sewer or other place of disposal, also called “house connection.”~~

5. “City sewer system” means the sewer system owned by or under operational control of the city within and outside the city limits.

6. “Contract customer” means a customer located outside the city of Burlington sewer service area that discharges wastewater to the city of Burlington sewer system.

7. “Easement” means an acquired legal right for the specific use of land owned by others.

8. “Equivalent residential unit (ERU)” means a common measure for all types of users to allow wastewater flows to be evaluated on an equivalent basis with a single detached dwelling. One ERU is defined in the current wastewater facility plan.~~the equivalent of one residential unit for purposes of computing general facilities charges.~~

9. “Garbage” means the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

10. “General facilities charge” means the charge that is assessed against property owners seeking to connect to the sewer system, in order that such property owners shall bear their equitable share of the cost of such system.

11. “High strength” means wastewater discharged from commercial accounts with Standard Industrial Classification Codes 5812, 5147, or 5093, or wastewater discharged to the sewer system containing a BOD between 700 to 1,050 mg/l or suspended solids of 700 to 1,050 mg/l.

12. “Industrial wastes” or “industrial user” as defined in WAC 173-216-030(8) means the wastewater from industrial processes, t~~rade or business as~~ distinct from domestic ~~or~~ sanitary waste~~r~~ss.

13. “Low strength” means wastewater discharged to the sewer system containing less than 350 mg/l biochemical oxygen demand (BOD) or less than 350 mg/l suspended solids.

14. “May” is permissive (see “shall,” subsection (26) of this section).

15. “Medium strength” means wastewater discharged from commercial accounts with Standard Industrial Classification Codes 2051, 5411, or 7833, or wastewater discharged to the sewer system containing a BOD of 350 to 700 mg/l and less than 700 mg/l suspended solids, or wastewater discharged to the sewer system containing suspended solids of 350 to 700 mg/l and BOD less than 700 mg/l.

16. “Natural outlet” means any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

Commented [BJ2]: BJ – 3-14-2023 – added lanague clarifying what an ADU is (consistnet wth zoning code) – useufull for the purpose of exempting ADUs from separate sewer connection fees. This is constent with comp plan goals and policies aimed at incentivizing ADU production and reducing housing costs.

Commented [BJ3]: BJ – 4-20-2023 – added to address sewer comments

17. “Person” means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all federal, state, or local government entities.

18. “pH” means the reciprocal of the logarithm of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of seven and a hydrogen-ion concentration of 10^{-7}.

19. “POTW” means the publicly owned treatment works.

20. “Properly shredded garbage” means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

21. “Public sewer” means a common sewer constructed for the conveyance of liquid wastes, which is controlled by a governmental agency or public utility.

22. “Sanitary sewer” means a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of groundwater, storm water and surface waters that are not admitted intentionally.

23. “Sewage” means the spent water of a community. The preferred term is “wastewater,” subsection (34) of this section.

24. “Sewer” means a pipe, conduit, ditch, or other device used to collect and transport wastewater from the generating source to the POTW.

25. “Sewer service area” means the city of Burlington sewer service area shown on Plate I of the 1991 comprehensive wastewater plan, city of Burlington, adopted by Resolution No. 7-91.

26. “Shall” is mandatory (see “may,” subsection (14) of this section).

27. “Side sewer” means a privately owned and maintained pipe system, including any private grinder pumps and associated force main/discharge pipelines, that is designed to carry sewage or wastewater leading from a building or other approved facilities to the public sewer system or other approved outlet. Sewer service connections are the responsibility of the property owner served by the connection. This responsibility extends to all sewer service connection facilities, including those that may be located in public right of way.~~the sewer from the main collection public sewer in either public right-of-way or easement to the building sewer (usually at the boundary of the property being served).~~

28. “Slug” means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation and adversely affects the collection system and/or performance of the wastewater treatment works.

29. “Storm drain” (sometimes referred to as “storm sewer”) means a drain or sewer for conveying rainwater, groundwater, subsurface water or unpolluted water from any other source.

30. “Sewer department supervisor” means the city supervisor or his authorized deputy, agent or representative.

31. “Suspended solids” means total suspended matter that either floats on the surface of, or in suspension in, water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in “Standard Methods for the Examination of Water and Wastewater” and referred to as non-filterable residue.

32. “Unpolluted water” is water of quality equal to or better than the effluent criteria in effect, or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

33. "Urban growth area (UGA)" means anthe area ~~inside the city's sewer service area east of Pulver Road, as defined by Plate I of the 1991 comprehensive wastewater plan, city of Burlington, adopted by Resolution No. 7-91~~designated by Skagit County to accommodate urban growth pursuant to RCW 36.70A.110.

a. "Urban growth area, municipal" means an urban growth area associated with, and containing, an incorporated city or town.

b. "Urban growth area, non-municipal" means an urban growth area that does not contain an incorporated city or town.

c. "Urban growth area, Burlington" means the municipal urban growth area containing the City of Burlington and designated on the City's adopted Comprehensive Plan Map.

Commented [BJ4]: BJ – 3-14-2023 – revised for constancy with UGA terms used throughout the code and in countywide planning policies. City UGA is a specific UGA. As drafted this would not have been limited to the City's UGA but rather old service boundaries. Serving city UGA is different from serving other UGAs.

34. "Wastewater" means the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, manufacturing facilities and institutions, whether treated or untreated, together with any groundwater, surface water and storm water that may be present, that are contributed to the POTW.

35. "Wastewater facilities" means the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

36. "Wastewater treatment works" means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. This term is sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant."

37. "Watercourse" means a natural or artificial channel for the passage of water, either continuously or intermittently.

38. "Western service area" means the area inside the city of Burlington sewer service area west of Pulver Road, as defined by Plate I of the 1991 comprehensive wastewater plan, city of Burlington, adopted by Resolution No. 7-91. (Ord. 1583 § 4, 2005; Ord. 1302 § 1, 1995; Ord. 846 Art. I §§ 1 – 29, 1976).

13.04.012 Applicability.

A. General. This chapter shall apply to all direct and indirect users of the city's municipal sewer system.

B. Territorial Application. This code shall be in effect throughout the utility service area, as reflected in the current adopted City of Burlington ~~2005 Sanitary~~ Sewer ~~and~~ Comprehensive Wastewater Plan~~, attached to the ordinance codified in this section and identified as Exhibit "A." (Ord. 1583 § 5, 2005).~~

13.04.015 Service interruptions.

Notwithstanding any provision of this chapter to the contrary, the city of Burlington does not guarantee that sewer service will be continuously available within the utility service area. Sewer service may be temporarily unavailable due to a system failure, emergency, construction or maintenance, or other unforeseen circumstances. (Ord. 1583 § 6, 2005).

13.04.017 Administration.

A. The director of public works is hereby authorized and directed to enforce all provisions of this chapter. The director shall have the authority to render interpretations of this chapter, and may adopt reasonable rules and administrative procedures to enforce the provisions of this chapter. The director is further authorized to adopt an industrial waste policy, consistent with state and federal law, that will prohibit or limit the discharge of deleterious substances to the wastewater treatment works. Such interpretations, rules, policies and administrative procedures shall be in conformity with the intent and purposes of this chapter.

B. Deputies. In accordance with prescribed procedures, the director may appoint such number of technical officers, inspectors, and other personnel as shall be authorized from time to time. The director may deputize such inspectors or employees as may be necessary to implement the provisions of this chapter.

C. Inspections. All activities regulated by this chapter, except those explicitly exempted herein, are subject to inspection by the director to determine that adequate control is being exercised, or to determine whether an approval is warranted. The director may establish inspection programs to ensure compliance with the requirements of this chapter and accomplishment of its purposes.

D. Inspection programs may be established on any reasonable basis including, but not limited to, routine inspections, random inspections, inspections based upon complaints or other notice of possible violations, inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water quality standards or the city's NPDES permit, and joint inspections with other agencies inspecting under environmental or safety laws.

E. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices.

F~~D~~. Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the director or the director's authorized representative has reasonable cause to believe that there exists in any building or upon any property any condition or violation of this chapter relating to the pollution or the possible pollution of any of the waters of the state, the director or the director's authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the director by this chapter; provided, that if such building or premises be occupied, the director shall first present proper credentials and request entry; and if such building or premises be unoccupied, the director shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the director shall have recourse to every remedy provided by law to secure entry.

G~~E~~. Authority to Stop Work. Whenever construction work is being done that is contrary to the provisions of this chapter, or contrary to the provisions of plans, drawings, specifications, or calculations approved by the director, then the director may order the construction work stopped by notice in writing, served on those persons engaged in or causing the work to be done. Any such persons shall thereafter stop such work until authorized by the director to proceed. (Ord. 1617 § 3, 2007; Ord. 1583 § 7, 2005).

13.04.020 Connection to system – Required.

The owner(s) of any house, building or property used for human occupancy, employment, recreation or other purposes, situated within the city, or within the area served by the city sewer system, and located on a property within 200 feet of a public sanitary sewer or a property abutting on any street, alley or right-of-way in which there is located a public sanitary sewer ~~of the city~~, is required at the owner or owners' expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter within 90 days after the date of official notice to do so~~; provided, that the building to be served is not located more than 200 feet from a public sewer~~. (Ord. 1583 § 21, 2005; Ord. 846 Art. II § 4, 1976).

13.04.030 ~~Connection to system – Permit –~~ r~~R~~equired.

No unauthorized person(s) shall construct, extend, uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a ~~written~~ permit ~~from the public works director of the city~~. (Ord. 1302 § 2, 1995; Ord. 846 Art. IV § 1, 1976).

13.04.040 Permit application requirements and approval criteria.~~Connection to system – Permit – Application~~.

A. Applications. Application for ~~building~~ sewer permits shall be made on ~~a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the sewer department supervisor and public works director. A permit and connection fee shall be charged as determined by council resolution and this chapter. (Ord. 1517 § 1, 2003; Ord. 1302 § 3, 1995; Ord. 846 Art. IV § 2, 1976)~~forms provided by the City and shall include all of the information required by the form in addition to all of the items listed below.

1. Vicinity map;

Commented [BJ5]: BJ – 3-14-2023 – revised to address long standing confusion about whether the property or the building needed to be within 200 feet of the sewer. Building connnections are comparitivly cheap, it is the extension in the stree that is the financial barrier and should be subject to the 200 foot standard.

Commented [BJ6]: BJ – 3-14-2023 – revised for consistency with "complete application" lanauge used throughout the code and connected to the requirements in title 14A BMC.

2. Name, address, and phone number of property owner;

3. Name, address, and phone number of engineer, contractor, or agent;

4. A complete set of plans depicting the proposed work and including any information, details, or specifications requested by the Public Works Director. Unless waived by the Public Works Director, all plans shall be prepared by a civil engineer licensed in the State of Washington;

B. Approval criteria. No sewer permit shall be approved without full compliance with the requirements of this chapter and other applicable Burlington Municipal Code requirements including, but not limited to, the requirements of titles 12, 13, 14, 14A, and 15 BMC.

13.04.045 General facilities charge.

A. The general facilities charge for property owners seeking to connect to the sewer system shall be adopted by city council resolution in the following categories:

1. Residential.

a. Single-family residences, duplexes and triplexes, western service area: fee per dwelling unit, plus applicable state taxes.

b. Single-family residences, duplexes and triplexes, Burlington urban growth area (UGA): fee per dwelling unit, plus applicable state taxes.

c. Residential accounts containing more than three dwelling units, western service area: fee per dwelling unit, plus applicable state taxes.

d. Residential accounts containing more than three dwelling units, Burlington urban growth area (UGA): fee per dwelling unit.

e. The general facilities charge shall not apply to accessory dwelling units authorized by City of Burlington.

f. The City Council may waive facility charges for affordable housing and emergency housing as those terms are defined in Title 17 BMC.

2. Commercial. Commercial connection charges shall be based on a plumbing fixture count in accordance with the current version of the Uniform Plumbing Code adopted under Title 15 BMC. ~~/Industrial.~~

a. The following definitions and Table of Equivalent Fixture Units shall be used as the basis for determining fees for commercial and industrial customers:

Private or Private Use. Applies to plumbing fixtures in residences and apartments, to private bathrooms in hotels, motels and hospitals, and to restrooms in commercial establishments where the fixtures are intended for the use of a family or an individual.

Public or Public Use. Applies to plumbing fixtures that are not defined as private or private use.

TABLE OF EQUIVALENT FIXTURE UNITS (Includes Combined Hot and Cold Water Demand)

Fixture	Private Use	Public Use
Bar sink	1	2
Bathtub (with or without shower over)	2	4

Commented [BJ7]: BJ – 3-14-2023 – clarifies which UGA we're referring to (the City's) not Skagit County Bayview Ridge.

Commented [BJ8]: BJ – 3-14-2023 – implements housing element of comp plan.

Fixture	Private Use	Public Use
Bidet	2	4
Dental unit or cuspidor	–	1
Drinking fountain (each head)	1	2
Hose bibb or sill cock (standard type)	3	5
Mobile home (each)	6	6
Laundry tub or clothes washer (each pair of faucets)	2	4
Lavatory	1	2
Lavatory (dental)	1	1
Lawn sprinklers (standard type, each head)	1	1
Shower (each head)	2	4
Sink (bar)	1	2
Sink or dishwasher	2	4
Sink (flushing rim, clinic)	–	10
Sink (washup, each set of faucets)	–	2
Sink (washup, circular spray)	–	4
Urinal (pedestal or similar type)	–	10
Urinal (stall)	–	5
Urinal (wall)	–	5
Urinal (flush tank)	–	3
Water closet (flush tank)	3	5
Water closet (flushometer-tank)	3	5
Water supply outlets for items not listed above shall be computed at their maximum demand, but in no case less than:		
3/8 inch (9.5 mm)	1	2
1/2 inch (12.7 mm)	2	4
3/4 inch (19.1 mm)	3	6
1 inch (25.4 mm)	6	10

b. Low strength commercial/industrial customers, western service area: Fees shall be per plumbing fixture unit as described in the Table of Equivalent Fixture Units, plus applicable state taxes, or by other method approved by the public works director.

c. Low strength commercial/industrial customers, urban growth area: Fees shall be per plumbing fixture unit as described in the Table of Equivalent Fixture Units, plus applicable state taxes, or by other method approved by the public works director.

d. Medium strength and high strength commercial/industrial customers, western service area: fee per plumbing fixture unit as described in the Table of Equivalent Fixture Units, plus fee per pound/day BOD discharged into the sewer system, plus applicable state taxes. Pounds per day of BOD discharged into the sewer system will be determined based on the number of plumbing fixture units and the North American Industrial Classification Code, or by other method approved by the public works director.

e. Medium strength and high strength commercial/industrial customers, urban growth area: fee per plumbing fixture unit as described in the Table of Equivalent Fixture Units, plus fee per pound/day BOD discharged into the sewer system, plus applicable state taxes. Pounds per day of BOD discharged into the sewer system will be determined based on the number of plumbing fixture units and the North American Industrial Classification Code, or by other method approved by the public works director.

3. Residential Service Charge Credits for General Facilities Charge. Any residential account not connected to the sewer system within the western and urban sewer service area, paying a monthly service charge, will receive a credit at time of connection equal to the service charge payments that have been paid by the present owner since June 1, 1998, up to 50 percent of the general facilities charge to connect to the sewer system. This policy will become effective May 1, 2003, and will not be retroactive to those residential accounts that have been connected prior to this date.

4. Contract Customers. Contract customers shall pay the general facilities charge specified for the western service area customers.

5. Charges for Industrial or "bulk water" shall be determined by using Equivalent Residential Unit (ERU) to convert industrial wastewater flows to an equivalent number of single family residences. An ERA is defined as a service connection that discharges the same flow to the sewer system as a single Family residence. A single family residential by definition equal one (1) REU. The single family residential flow discharges to the sewer system is estimated to be 126 gallons per day, per the current comprehensive wastewater plan.

B. General Facilities Charge – Proceeds. All proceeds of the general facilities charge shall be placed in the sewer capital improvements fund for the following uses: construction of sewer expansion made necessary by system growth, debt service for indebtedness resulting from construction of sewer expansion made necessary by system growth, and the repair, replacement, and maintenance of existing sewer facilities. (Ord. 1799 § 20, 2014; Ord. 1641 § 1, 2007; Ord. 1517 § 2, 2003; Ord. 1302 § 4, 1995).

13.04.050 Connection to system – Outside city limits.

A. Sewer connections shall not be allowed outside the city limits of Burlington. Only after a property is annexed into the city may a sewer connection be made in accordance with this chapter. This provision shall not apply to:

1. Any sewer connection outside the city limits that exists or any sewer connection agreement between the city and property owner in effect prior to the effective date of this ordinance; or

2. Any sewer connection within the boundaries of the Bayview Ridge non-municipal urban growth area;

B~~A~~. In those limited instances where a connection beyond the city limits is specifically authorized by this section no connection shall be authorized until the City Council has approved a sewer connection agreement. The sewer connection agreement shall address the following: ~~Pursuant to the authority granted by RCW 35.67.310, connections to the city sewer system, either direct or indirect, from property situated beyond the corporate boundaries of the city shall be allowed only upon specific approval from the city council, and upon the terms, conditions, and payments as may be set forth in an agreement authorized by the city council.~~

~~B. An agreement authorizing property situated beyond the corporate boundaries of the city to connect to the city sewer system shall address the following subjects; provided, that the city council, by appropriate action, may waive any of the following requirements:~~

1. Such agreement shall identify with specificity the property to be connected with the city sewer system;

Commented [BJ9]: BJ – 3-14-2023 – revised for consistency with comp plan policies and to clarify connection requirements. Connections should not be allowed in adance of annexation except in limtited circumstances, such as existing Bayview Ridge UGA and contracted customers outside the city UGA.

2. Such agreement shall grant permission for connection upon payment of prescribed fees and charges therefor; provided, that monthly or periodic fees for sewer services shall not be fixed or otherwise capped in the agreement;

3. Such agreement shall require the property owners to construct such connection in accordance with city plans and specifications and under the supervision of the director of public works, without cost or expense to the city;

4. Such agreement shall provide that the property owner shall not allow any additional property to be served by such connection until the owner of such additional property has executed a similar agreement;

5. Such agreement shall provide that the owner of the property to be served, its successors and assigns, shall agree to execute an annexation petition to the city of Burlington when presented for signature by the city;

6. Such agreement shall provide that the owner of the property shall agree that the city, in the event the terms and conditions of said agreement are not faithfully kept and performed, may disconnect the sewer serving the property from the city's system and for that purpose shall authorize the director of public works to enter upon the premises of such property owner; and

7. Such agreement shall provide that such agreement shall be filed for record in the office of the auditor of Skagit County, Washington, and shall constitute a covenant running with the land binding upon the property owner, his heirs and assigns, and upon any parties subsequently acquiring any right, title or interest in said property. (Ord. 1583 § 22, 2005; Ord. 846 Art. IV § 4, 1976).

13.04.060 Connection to system – Separate sewer required.

A. A separate and independent building sewer shall be provided for every building or residence; provided:

1. Where one building or residence stands at the rear of another on an interior lot and no public sewer is available or can be constructed to the rear building or residence through an adjoining alley, courtyard or driveway, the side sewer to the front building or residence may be extended to the rear building or residence with the sewer department supervisor's approval;

2. Where two buildings or residences share a common property line, a common side sewer line located on the common property line may be shared, with city approval;

3. Service to accessory buildings as defined in BMC 13.04.010, may be extended from the primary building sewer line on approval of the sewer department supervisor. Side sewers, whether located in a public or private place, shall be owned, installed, operated, and maintained by the owner or occupant of the premises served.

B. The city does not and will not assume any obligation or responsibility for maintenance or damage caused by or resulting from any such single connection aforementioned. (Ord. 1302 § 5, 1995; Ord. 846 Art. IV § 5, 1976).

13.04.070 Connection to system – Construction specifications.

The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. (Ord. 846 Art. IV § 7, 1976).

13.04.080 Connection to system – Specifications.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. All such connections shall be made gastight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the sewer department supervisor before installation. (Ord. 1302 § 6, 1995; Ord. 846 Art. IV § 10, 1976).

13.04.090 Connection to system – Elevation requirements.
Wherever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. (Ord. 846 Art. IV § 8, 1976).

13.04.100 Connection to system – Use of old sewers permitted when.
Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the sewer department supervisor, to meet all requirements of this chapter. (Ord. 1302 § 7, 1995; Ord. 846 Art. IV § 6, 1976).

13.04.110 Connection to system – Certain types prohibited.
No person(s) shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the sewer department supervisor for purposes of disposal of polluted surface drainage. (Ord. 1302 § 8, 1995; Ord. 846 Art. IV § 9, 1976).

13.04.120 Connection to system – Excavations.
All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city. All construction and development activities shall be consistent with applicable Burlington Municipal Code requirements including, but not limited to, titles 12, 13, 14, and 15 BMC (Ord. 846 Art. IV § 12, 1976).

Commented [BJ10]: BJ – 3-14-2023 – consistency between code chapters. All "development" must comply with all applicable development codes.

13.04.130 Connection to system – Inspection and testing.
The applicant for the building sewer permit shall notify the sewer department supervisor when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the sewer department supervisor or his representative. (Ord. 1302 § 9, 1995; Ord. 846 Art. IV § 11, 1976).

13.04.140 Connection to system – Within right-of-way or easement – Specifications.
All construction related to sewer installation within public rights-of-way and easements shall be governed by the latest edition of the Washington State Chapter American Public Works Association, "Standard Specification for Municipal Public Works Construction." (Ord. 846 Art. IV § 13, 1976).

13.04.150 Connection to system – Costs.
All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. (Ord. 846 Art. IV § 3, 1976).

13.04.160 Discharges – Applicability – Special agreements authorized when.
Repealed by Ord. 1583. (Ord. 846 Art. V § 10, 1976).

13.04.161 Federal categorical pretreatment standards.
The national categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405 through 471, adopted, and hereafter amended by the EPA pursuant to the Act, are incorporated herein by reference as if set forth in full. These standards shall be met by all industrial users of the regulated industrial categories. (Ord. 1583 § 8, 2005).

13.04.170 Discharges – Unpolluted water – Prohibited when.
Repealed by Ord. 1583. (Ord. 1302 § 10, 1995; Ord. 846 Art. V § 1, 1976).

13.04.171 Industrial user surveys.
All existing and new businesses that discharge or have the potential to discharge wastes regulated by BMC 13.04.161 shall be required to complete an industrial user survey form. (Ord. 1583 § 9, 2005).

13.04.177 Wastewater discharge permits.
The director shall establish a policy by which no user of the POTW shall discharge industrial wastes to the POTW without first having obtained a permit from the director. Any violation of the terms and/or conditions of such a permit shall be deemed to be a violation of this section. (Ord. 1583 § 10, 2005).

13.04.180 Discharges – Unpolluted water – Exemptions.
Repealed by Ord. 1583. (Ord. 1302 § 11, 1995; Ord. 846 Art. V § 2, 1976).

13.04.181 Wastewater discharge permit appeals.
Any person, including the user, may petition the director to reconsider the terms of a wastewater discharge permit within 30 days of its issuance.

A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

B. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

C. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

D. If the director fails to act within 60 days of the receipt of an appeal, the appeal shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative actions for purposes of judicial review. (Ord. 1583 § 11, 2005).

13.04.190 Discharges – Prohibited substances.
Repealed by Ord. 1583. (Ord. 846 Art. V § 3, 1976).

13.04.191 Search warrants.
If the director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this policy, or that there is a need to inspect as part of a routine inspection program of the city designed to verify compliance with this policy or any wastewater discharge permit or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the director has the right to seek issuance of a search and/or seizure warrant from the municipal court, the district court, or the Skagit County superior court. Such warrant shall be served at reasonable hours by the director and may be accomplished in the company of a uniformed police officer of the city. (Ord. 1583 § 12, 2005).

13.04.200 Vandalism.
No person shall willfully break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance, or equipment, or other part of the POTW. Any person found in violation of this provision shall be subject to the sanctions set out in RCW 9A.48.070 through 9A.48.090. (Ord. 1583 § 13, 2005).

13.04.210 Emergency suspension.
The director may immediately suspend a user's discharge permit (after informal notice to the user) whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons.

The director may also immediately suspend a user's discharge permit (after informal notice and opportunity to respond) that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.

A. Any user notified of a suspension of its discharge permit shall immediately stop or eliminate its discharge. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals.

B. The director shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the city that the period of endangerment has passed, unless the termination proceedings in BMC 13.04.220 are initiated against the user.

C. No person shall attempt to prevent the city from terminating wastewater service in an emergency situation by barring entry, by physically interfering with city employees or contractors, or by any other means.

D. A user that is responsible, in whole, or in part, for any discharge presenting imminent danger to persons, property, or the POTW, shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause or termination hearing under BMC 13.04.220.

E. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section. (Ord. 1583 § 14, 2005).

13.04.220 Termination of discharge (nonemergency).
Any user that violates the following conditions is subject to revocation of the user's discharge permit:

A. Violation of wastewater discharge permit conditions;

B. Failure to accurately report the wastewater constituents and characteristics of its discharge;

C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or

E. Violation of the pretreatment standards established by the director pursuant to BMC 13.04.017;

F. Violation of any lawful order of the city, issued with respect to this policy.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause why the proposed action should not be taken. Exercise of this option by the city shall not be a bar to, or a prerequisite for, taking any other action against the user. (Ord. 1617 § 4, 2007; Ord. 1583 § 15, 2005).

13.04.230 Appeal procedures.
A. Appeals.

Appeals of decisions made pursuant to this chapter shall be filed and processed in accordance with the applicable procedures identified in Title 14A BMC.

Commented [BJ11]: BJ – 3-14-2023 – clarifies appeal procedures and consistency with title 14A (procedures).

~~1. Any user seeking to dispute a notice of violation, order, or other action of the director, may file an appeal.~~

~~2. The appeal must be filed in writing and received by the director within 10 calendar days of the receipt of notice of the disputed action. If the notice of appeal is not received by the director within the 10-calendar-day period, the right to an appeal is waived.~~

~~The notice of appeal shall state with particularity the basis upon which the appellant is disputing the action taken.~~

~~3. Upon receipt of a timely appeal, the director shall set a date and time for an appeal hearing, but in no case shall the hearing be set for more than 30 days from the receipt of the timely notice of appeal. The appellant shall be notified in writing of the date, time, and place for the appeal hearing. The director or his/her designee shall serve as the hearing examiner.~~

~~B. Appeal Hearing.~~

~~1. The director may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The hearing examiner shall give effect to the rules of privilege recognized by law. The director may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Factual issues shall be resolved by a preponderance of evidence.~~

~~2. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.~~

~~3. Every party shall have the right to cross-examine witnesses who testify and shall have the right to submit rebuttal evidence; provided, that the director may control the manner and extent of the cross-examinations and rebuttals.~~

~~4. The director may take notice of judicially cognizable facts.~~

~~C. Appeal Conclusion. At the conclusion of the hearing, the director shall determine if the disputed action was proper, and shall approve, modify, or rescind the disputed action. The final determination of the director shall be in writing, and all parties shall be provided a copy of the final determination.~~

B~~D~~. Judicial Review of Appeal.

1. Pursuant to chapter 36.70C RCW, any party, including the city, the Washington State Department of Ecology, the United States Environmental Protection Agency, or the user/appellant, is entitled to review of the final determination of the director in the Skagit County superior court.

2. Copies of the petition for review shall be served as in all civil actions.

3. The filing of the petition shall not stay enforcement of the final determination except by order of the superior court and on posting of a bond to be determined by the court naming the city as beneficiary.

4. The review shall be conducted by the court without a jury. The record shall be satisfied by a narrative report certified by the director and no verbatim record of proceedings before the director shall be required to be presented to the superior court. (Ord. 1583 § 16, 2005).

13.04.240 Injunctive relief.
When the director finds that a user has violated or continues to violate any provision of this policy, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the director may petition the Skagit County superior court through the city attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this policy on activities of the user.

The city may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user. Injunctive relief shall be non-exclusive to other remedies available to the city. (Ord. 1583 § 17, 2005).

13.04.250 Civil penalties.
A. This section shall be applicable to all violations of this chapter and to violations of regulations and federal or Washington State statutes that are incorporated into this code by reference or otherwise, except for violations that are expressly designated to be misdemeanors or gross misdemeanors in this chapter.

B. Except as set forth in subsection (A) of this section, any violation of this chapter is deemed and declared to be a Class 1 civil infraction unless such violation is expressly designated as another class of civil infraction in the applicable section of this chapter. Each day of violation shall constitute a separate civil infraction.

C. Notice of Civil Infraction – Issuance, Service and Filing.

1. A civil infraction proceeding is initiated by the issuance, service and filing of a notice of infraction.

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

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

b. By the city attorney.

3. A notice of infraction may be served either by:

a. The enforcement officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance;

b. The enforcement officer or the city attorney filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address. If a notice of infraction served by mail is returned to the court as undeliverable, the court shall issue a summons.

4. A notice of infraction shall be filed with the Burlington municipal court within 48 hours of issuance, excluding Saturdays, Sundays and legal holidays. A notice of infraction not filed within the time limits prescribed in this section may be dismissed without prejudice.

D. Person Receiving Notice – Identification and Detention. A person who receives a notice of infraction is required to identify himself or herself to the enforcement officer by giving his or her true name, address, and date of birth. Upon request of the enforcement officer, the person shall produce reasonable identification, including a driver's license or identicard.

E. Notice of Civil Infraction – Form. The notice of civil infraction shall be as prescribed by the administrator for the courts, and shall contain the following information:

1. A statement that the notice of infraction represents a determination that a civil infraction has been committed by the defendant and that the determination is final unless contested as provided in this chapter;

2. A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;

3. A statement of the specific infraction that the defendant is alleged to have committed and the accompanying Burlington Municipal Code section number, the date, time and place the alleged infraction occurred, the time that the notice of infraction was issued, and the name and, if applicable, the number of the enforcement officer;

4. A statement that the defendant must respond to the notice of infraction within 14 days of issuance;

5. A space for the defendant to sign a promise to respond to the notice of infraction within the time required;

6. A space for the entry of a monetary penalty which defendant may pay in lieu of appearing in court;

7. A statement that a mailed response must be mailed not later than midnight on the day the response is due;

8. A statement of the options provided in this chapter for responding to the notice of civil infraction and the procedures necessary to exercise these options;

9. A statement that at any hearing to contest the determination that the city has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that the defendant may subpoena witnesses including the enforcement officer who issued the notice of civil infraction;

10. A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the civil infraction, the defendant will be deemed to have committed the civil infraction and may not subpoena witnesses;

11. A statement that failure to respond to the notice of infraction or a failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in a default judgment against the defendant in the amount of the penalty and that this failure may be referred to the city attorney for criminal prosecution for failure to respond or appear;

12. A statement that the defendant shall sign that the defendant promises to respond to the notice of infraction in one of the ways provided in this chapter;

13. A statement that failure to respond to a notice of infraction as promised or to appear at a requested hearing is a misdemeanor and may be punished by a fine or imprisonment in jail;

14. The name, address, and telephone number of the Burlington municipal division of the district court;

15. The name and address of the defendant.

F. Notice – Determination Final Unless Contested. A notice of infraction represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in this chapter.

G. Response to Notice of Infraction – Required. A defendant who receives a notice of infraction shall respond to such notice as provided in subsection (H) of this section within 15 days of the date of the notice if it is personally served or, if the notice is served by mail, within 10 days of the date the notice was mailed. If the response is mailed, it must be postmarked not later than midnight of the day the response is due.

H. Response to Notice of Infraction – Uncontested Determination. If the person determined to have committed the civil infraction does not contest the determination, such person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court. A check or money order in the amount of the penalty prescribed for the civil infraction must be submitted with the response. The clerk of the court may accept cash in payment for a civil infraction. When a response that does not contest the determination is received, an appropriate order shall be entered into the court's records.

I. Response to Notice of Infraction – Contested Determination. If the person determined to have committed the civil infraction wishes to contest the determination, such person shall respond by completing the appropriate portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall be not earlier than seven days nor more than 90 days from the date of the notice of hearing, except by agreement.

J. Response to Notice of Infraction – Mitigation Hearing. If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, such person shall respond by completing the appropriate portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall be not earlier than seven days nor more than 90 days from the date of the notice of hearing, except by agreement.

K. Response to Notice of Infraction – Failure to Respond or Appear. The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction and shall notify the city attorney of the failure to respond to the notice of civil infraction or to appear at a requested hearing if a person issued a notice of infraction:

1. Fails to respond to the notice of infraction as provided herein; or

2. Fails to appear at a hearing requested as provided herein.

L. Hearings – Rules of Procedure. Procedures for the conduct of all hearings provided for in this chapter are those established by the Washington State Supreme Court in the "IRLJ."

M. Hearings – Counsel.

1. A person subject to proceedings under this section may be represented by counsel.

2. The attorney representing the city may appear in any proceedings under this chapter but need not appear, notwithstanding a statute or rule of court to the contrary.

N. Hearings – Contesting Determination That Infraction Committed – Appeal.

1. A hearing held to contest the determination that a civil infraction has been committed shall be without a jury and shall be recorded in the manner provided for in courts of limited jurisdiction.

2. The court may consider the notice of infraction and any other written report made under oath submitted by the enforcement officer who issued the notice of infraction or whose statement was the basis for the issuance of the notice of infraction in lieu of the enforcement officer's personal appearance at the hearing. The person named in the notice of infraction may request the court for issuance of a subpoena of witnesses, including the enforcement officer who issued the notice of infraction, and has the right to present evidence and examine witnesses present in court.

3. The burden of proof is upon the city to establish the commission of the civil infraction by a preponderance of the evidence.

4. After consideration of the evidence and argument, the court shall determine whether the civil infraction was committed. Where it has not been established that the civil infraction was committed, an order dismissing the notice of infraction shall be entered into the court's records. Where it has been established that the civil infraction was committed, an appropriate order shall be entered into the court's records.

5. An appeal from the court's determination or order shall be to the superior court in the manner provided by the "Rules for Appeal of Decision of Court of Limited Jurisdiction."

O. Hearing – Explanation of Mitigating Circumstances.

1. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of a civil infraction shall be an informal hearing. The person may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

2. After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's records.

3. There is no appeal from the court's determination or order.

P. Monetary Penalties – When Payable. Whenever a monetary penalty is imposed by the court under this section it is immediately due and payable. If the person is unable to pay at that time, the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the city attorney of the failure to pay.

Q. Costs and Attorney Fees. Each party to a civil infraction case is responsible for costs incurred by that party, but the court may assess witness fees against a nonprevailing defendant.

R. Notice – Failure to Sign – Nonappearance – Failure to Pay Penalty – Misdemeanor.

1. A person upon whom a notice of civil infraction is personally served by an enforcement officer who fails to sign the same is guilty of a misdemeanor.

2. Any person willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. A written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by an appearance by counsel.

3. A person who willfully fails to pay a monetary penalty or to perform community service as required by a court under this chapter may be found in contempt of court as provided in chapter 7.21 RCW. (Ord. 1583 § 18, 2005).

13.04.260 Criminal prosecution.

A. A user who knowingly introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a gross misdemeanor and be subject to a penalty of not more than $5,000 and/or one year in jail. Each day a violation occurs shall constitute a separate offense. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

B. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this policy, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this policy shall, upon conviction, be guilty of a gross misdemeanor, and punished by a fine of not more than $5,000 and/or one year in jail. Each day a violation occurs shall constitute a separate offense.

In addition, the user shall be subject to:

1. The provisions of 18 USC Section 1001 relating to fraud and false statements;

2. The provisions of Section 309(c)(4) of the Clean Water Act, as amended, governing false statements, representation, or certification; and

3. The provisions of Section 309(c)(6) of the Clean Water Act, regarding responsible corporate officers. (Ord. 1583 § 19, 2005).

13.04.265 Pretreatment charges and fees.

Pretreatment charges are adopted by city council resolution and are identified as separate from all other rates or charges for sewer service; provided, that the city shall collect said charges in the same manner as other sewer utility rates are collected including, but not limited to, the sewer lien procedures provided under chapter 35.67 RCW in the following categories:

A. A five-year permit for a categorical user or a significant industrial user.

B. A five-year discharge authorization.

C. A one-year discharge authorization.

D. A discharge authorization for a one-time batch discharge.

E. Permit transfer fee.

F. Permit Modification Fee. Permit modification fees will only be charged in a case where changes in the user's operation require modification, or when the user requests a modification.

G. Monitoring Fees. Fees for semi-annual inspections and semi-annual sampling events of categorical users and significant industrial users per visit.

H. Any user establishing a pattern of noncompliance, or having a history of noncompliance, or suspected of being in noncompliance, may require additional monitoring visits as deemed appropriate by the director. Any additional inspections, sampling, surveillance monitoring activities, and analysis performed which detect noncompliance will be billed directly to the user.

I. Enforcement Actions. All expenses in preparing enforcement actions will be billed directly to the user.

J. Medium, high, and very high strength waste fees: in accordance with BMC 13.08.050.

K. Industrial Flow Surcharge. An industrial flow surcharge will be billed to significant industrial users and categorical users based upon the amount of industrial waste flow. The surcharge rate is based on gallons of industrial waste flow. The director may establish new rates by city council resolution based upon the cost of administering the pretreatment program. (Ord. 1799 § 21, 2014; Ord. 1641 § 2, 2007; Ord. 1583 § 20, 2005).

13.04.270 Private wastewater disposal system – Prohibited when.
Except as provided in BMC 13.04.280 through 13.04.310, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater. (Ord. 846 Art. II § 3, 1976).

13.04.280 Private wastewater disposal system – Permitted when.
All building sewers shall be connected to the City sewer system except that a private wastewater disposal system may be authorized as follows:

A. To permit the construction of a single detached dwelling on an existing lot when the lot is located 200 feet or more from the nearest sanitary sewer;

B. The modification or enlargement of an existing legally established development connected to a private wastewater system, provided the modification or enlargement does not increase wastewater flows.

C. Under no circumstances shall the use of a private wastewater disposal system be authorized for uses involving hazardous or toxic materials.

~~Where a public sanitary sewer is not available under the provision of BMC 13.04.020, the building sewer shall be connected to a private wastewater disposal system complying with the regulations of the Skagit County health department. (Ord. 846 Art. III § 1, 1976).~~

13.04.290 Private wastewater disposal system – ~~Permit required~~Requirements.
~~Before commencement of construction of a private wastewater disposal system, the owner(s) shall first obtain a written permit signed by the county health officer. (Ord. 846 Art. III § 2, 1976).~~

A. When the use of a private wastewater disposal system has been authorized by this Chapter or when development occurs on a property with a private wastewater disposal system, the following requirements shall apply:

1. Private wastewater systems shall not be constructed, enlarged, or modified without full compliance with applicable Skagit County Health Department regulations;

2. No development shall be authorized until one of the following has been provided to the City:

a. A permit issued by the Skagit County Health authorizing the construction, modification, or enlargement of a private wastewater disposal system; or

b. If not permit is required, written authorization from the Skagit County Health Department verifying that the proposed development fully complies with all applicable regulatory requirements including, but not limited to, requirements for location, design, and land area.

~~a.~~B. Private wastewater disposal systems shall not be constructed, enlarged, or modified without full compliance with applicable City of Burlington requirements, including, but not limited to, the flood development and critical area standards in Chapter 14.15 BMC, requirements for grading and building permits in Title 15 BMC; and any applicable zoning regulations in Title 17 BMC.

13.04.300 Private wastewater disposal system – Notice to connect to public system.
At such time as a public sewer, as defined in BMC 13.04.010, becomes available to a property served by a private wastewater disposal system, a direct connection shall be made to the public sewer within 90 days after date of official notice to do so, in compliance with this chapter, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material; provided, that cement septic tanks with reinforced concrete lids may be exempt from cleaning and filling at owner's option. (Ord. 846 Art. III § 3, 1976).

Commented [BJ12]: BJ – 3-14-2023 – implements comp plan policies and ensures Skagit County coordinates with the City.

Commented [BJ13]: BJ – 3-14-2023 – revised for consistency with comp plan and to ensure coordination with Skagit County health department. We did not previously have a way to compel coordination or get verification from the County.

13.04.310 Private wastewater disposal system – Maintenance.
A. The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city in compliance with Skagit County health department regulations. (Ord. 846 Art. III § 4, 1976).

B. Buildings and properties with failing private wastewater disposal systems shall be connected to the City sewer system immediately unless the use of a private wastewater disposal system is authorized by BMC 13.04.280.A and the system is repaired in accordance with all applicable Skagit County Health Department requirements.

C. When the use of a private wastewater disposal system is discontinued the system shall be abandoned in accordance with applicable Skagit County Health Department requirements.

Commented [BJ14]: BJ – 3-14-2023 – added to ensure we received notification when a system fails so we can contact the property owner about sewer connection.

13.04.320 Sewer department supervisor – Right of entry for inspection.
Repealed by Ord. 1583. (Ord. 1302 § 16, 1995; Ord. 846 Art. VII § 1, 1976).

13.04.330 Sewer department supervisor – Obtaining information – Restrictions.
Repealed by Ord. 1583. (Ord. 1302 § 17, 1995; Ord. 846 Art. VII § 2, 1976).

13.04.340 Sewer department supervisor – Inspection – Safety rules applicable – Liability.
Repealed by Ord. 1583. (Ord. 1302 § 18, 1995; Ord. 846 Art. VII § 3, 1976).

13.04.350 Sewer department supervisor – Right of entry on easements.
Repealed by Ord. 1583. (Ord. 1302 § 19, 1995; Ord. 846 Art. VII § 4, 1976).

13.04.360 Additional requirements authorized when.
Repealed by Ord. 1583. (Ord. 846 Art. VII § 5, 1976).

13.04.370 Deposit of objectionable materials prohibited.
It is unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the jurisdiction of the city, any human or animal excrement, garbage or objectionable waste. (Ord. 846 Art. II § 1, 1976).

13.04.380 Discharge to natural outlet prohibited – Exception.
It is unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with the provisions of this chapter. (Ord. 846 Art. II § 2, 1976).

13.04.390 Damage of system declared misdemeanor – Penalty.
Repealed by Ord. 1583. (Ord. 846 Art. VI § 1, 1976).

13.04.400 Failure to connect – Penalty.
Any person failing to connect a residential unit to the city sewer system in compliance with BMC 13.04.020 shall pay a penalty to the city in the amount equal to the minimum residential service charge that would be made for sewer service if the property was connected to such system. The minimum service charge will be based on the location of the property whether it is inside the city limits or is located outside of the city limits per BMC 13.08.030 and 13.08.065. All penalties collected shall be considered revenue of the system. (Ord. 1517 § 3, 2003; Ord. 846 Art. VIII § 3, 1976).

13.04.410 Violation – Liability.
Any person violating any of the provisions of this chapter shall become liable to the city for any engineering, legal or administrative expense, loss or damage occasioned the city by reason of such violation. (Ord. 846 Art. VIII § 4, 1976).

13.04.420 Violation – Notice to be served.
Any person found to be violating any provision of this chapter except BMC 13.04.020 shall be served by the city with written notice stating the nature of the violation and providing a 90-day time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. (Ord. 846 Art. VIII § 1, 1976).

13.04.430 Violation – Continuance – Penalty.
Any person who continues any violation beyond the time limit provided for in BMC 13.04.420 is guilty of a misdemeanor, and on conviction thereof shall be punishable according to the provisions of chapter 1.24 BMC. Each day in which any such violation shall continue shall be deemed a separate offense. (Ord. 846 Art. VIII § 2, 1976).

13.04.440 Maintenance of disposal system.
It is the duty of all owners and occupants of premises using disposal systems to at all times maintain the same in such a manner as to protect the public health and welfare; and in the event a disposal system fails to function properly although constructed in accordance with this chapter, the same shall be forthwith reconstructed in order to place the same in a sanitary condition. (Ord. 1583 § 41, 2005).

13.04.450 Noncompliance – Nuisance.
Compliance with the terms and conditions of this chapter constitutes minimum health, sanitation and safety provisions and material; noncompliance with said terms and conditions constitutes a public nuisance and may be abated as such, in addition to any other criminal, civil and equitable remedies that may be available. (Ord. 1583 §§ 25, 42, 2005).

13.04.460 Confidential information.
A. Presumption of Open Records. In accordance with the Public Records Act (chapter 42.17 RCW) and the provisions of 33 USC 1318, information and data that relate to a discharger that is obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and city inspection and sampling activities, shall be available to the public without restriction, unless a discharger specifically requests, and is able to demonstrate to the satisfaction of the city, that the release of such information and data would divulge processes, methods of production, or information that is entitled to protection as trade secrets. When requested and demonstrated by the discharger as described above, the portions of a report, survey, wastewater discharge permit application, wastewater discharge permit, or monitoring program which might disclose trade secrets shall not be made available for inspection by the public.

B. Violations. During the time that possible violations of this chapter are being investigated by the city, investigation notes, draft orders, worksheets, summaries, and similar documents pertaining to the investigation shall be considered confidential information. Such documents shall be clearly marked, "CONFIDENTIAL," and shall be maintained as confidential documents to the extent allowed under chapter 42.17 RCW. At the time that an enforcement action, if any, is signed thus designating that enforcement action as final, then the confidential status shall terminate, and the document shall be made available for public inspection.

C. Disclosure Pursuant to Government Programs. Nothing in this section shall prohibit the director from disclosing such information to other officers, employees, or authorized representatives of a governmental agency for uses related to applicable governmental programs including, but not limited to, the NPDES program, and the pretreatment program.

D. Disclosure Pursuant to Enforcement Activities. Nothing in this section shall prohibit the director from disclosing such information to other officers, employees, or authorized representatives of a governmental agency pursuant to enforcement proceedings involving the person or entity furnishing the information. (Ord. 1583 § 25, 2005).

Title 14

ENVIRONMENTAL REGULATIONS[1]

Chapters:

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

[1] Prior legislation: Ords. 1273, 1330, 1441, 1471, 1636, 1640, 1681, 1708, 1709, 1799 and 1839.

Chapter 14.01

GENERAL PROVISIONS

Sections:
14.01.010 Title.
14.01.020 Application.
14.01.030 Purpose.
14.01.040 Authority.
14.01.050 Adoption by reference.
14.01.060 Definitions.
14.01.070 Liability.
14.01.080 Minimum requirements.
14.01.090 Violations and penalties.
14.01.100 Appeal.
14.01.110 Severability.

14.01.010 Title.
This title shall be called "Environmental Regulations." This chapter shall be called "General Provisions." (Ord. 1853 § 2 (Exh. B), 2018).

14.01.020 Application.
This title shall be applicable as is set forth in the following chapters. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.030 Purpose.
The purpose of this title is to include all regulations concerning the protection of the environment and critical areas. The specific chapters included are General Provisions, Surface Water Management, Environmental Policy, and Critical Area Regulations. The shoreline master program is adopted separately as BMC Title 18, Shoreline Master Program. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.040 Authority.
This title is authorized by the general provisions of chapters 35A.63 and 36.70A RCW, the specific authority set forth in each chapter and other applicable laws and regulations. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.050 Adoption by reference.
Statutes, codes or regulations identified or adopted herein shall be the existing version of that statute, code or regulation and any subsequent amendment to the same, unless expressly stated otherwise. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.060 Definitions.
For the purpose of this title, the words listed in this chapter shall have the following meanings unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this title, shall be as defined in chapters 173-303 and 173-340 WAC, the International Building Code or the International Fire Code. Words used in the singular include the plural, and words used in the plural include the singular.

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

"A"

"Agency" means any governmental entity or its subdivision.

"AKART" means all known, available, and reasonable methods of prevention, control, and treatment. See also the State Water Pollution Control Act, RCW 90.48.010 and 90.48.520.

"Alteration of watercourse" means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine water body.

"Area of shallow flooding" means a designated zone AO, AH, AR/AO or AR/AH (or VO) on a flood insurance rate map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. Also referred to as the sheet flow area.

"Area of special flood hazard" means the land in a floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on the flood insurance rate map (FIRM) as zone A, AO, AH, A1-30, AE, A99, or AR (V, VO, V1-30, VE). "Special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard."

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

"B"

"Base flood" means a flood event with a one percent chance of being equaled or exceeded in any given year. This term may be used interchangeably with the term "100-year flood."

"Base flood elevation" means the elevation to which floodwater is projected to rise during a base flood event.

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

"Basin plan" means a plan to manage the quality and quantity of stormwater in a drainage basin as described in the city of Burlington comprehensive surface water management plan, as now or hereafter amended.

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, structural or managerial practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

"Burlington Hill Special Management Area" means those portions of Burlington Hill with a ground elevation 40 feet or more above sea level as shown on the most current USGS 7.5 minute topographic quadrangle map.

"Nonstructural best management practices" are those which require modified or additional operational or behavioral practices, such as sweeping a parking lot or having spill response equipment on site.

"Structural best management practices" are those which require the construction of a structure or other physical modification on the site.

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

"C"

"Cause or contribute" to a violation includes acts or omissions that create a violation, that increase the duration, extent, or severity of a violation, and that aid or abet a violation.

"Certificate of occupancy" means a written document issued by the governing authority in accordance with the provisions of the building permit. The certificate of occupancy indicates that, in the opinion of the building official,

the project has been completed in accordance with the building and zoning codes. This document gives the owner permission from the authorities to occupy and use the premises for the intended purpose.

"City Eengineer" means the ~~Burlington director of public works~~official appointed and acting as the Public Works Director for the City of Burlington.

"Civil engineer, licensed" means a person who is licensed by the state of Washington to practice civil engineering.

"Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

"Combined sewer" means a system that collects sanitary sewage and stormwater in a single sewer system.

"Community Ddevelopment Ddirector" or "Planning Director" means the ~~city administrator or designee~~official appointed and acting as the Community Development Director for the City of Burlington.

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

"Complete application" or "completed application" means an application that contains all of the materials and information required by Burlington Municipal Code in accordance with the requirements of this title and Title 14A BMC.~~.~~

"Critical areas" include the following areas and ecosystems:

1. Wetlands;

2. Areas with a critical recharging effect on aquifers used for potable water;

3. Fish and wildlife habitat conservation areas;

4. Frequently flooded areas; ~~and~~

5. Geologically hazardous areas;~~.~~

6. Special management areas including:

   a. Burlington Hill

   b. Gages Slough corridor

   c. Skagit River corridor

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

"D"

"Damages" means monetary compensation for harm, loss, costs, or expenses incurred by the city including, but not limited to, costs of abating violations of this title or public nuisances; fines or penalties by the city incurred as a result of a violation of this title; and costs to repair or clean the public drainage control system as a result of a violation. For the purposes of this title, it does not include compensation to any person other than the city.

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

"Design storm" means a rainfall event used in the analysis and design of drainage facilities.

“Designated receiving waters” means the Skagit River, Padilla Bay and other receiving waters designated by the public works director as having the capacity to receive drainage discharges.

“Detention” refers to temporary storage of drainage water.

“Developed parcel” means a parcel of real property which has been altered by developmental coverage.

“Development” means any manmade change to the land or improvements occurring after the effective date of the ordinance codified in this chapter including structures, mining, dredging, drilling, filling, grading, paving or excavation, storage of equipment and materials, clearing, and the removal of vegetation. Where a project is dividable into parts, the entire scope of such changes or improvements constituting an integral, functional project should be considered the development for purposes of determining whether such development is allowed or requires a permit.

“Developmental coverage” means all areas within a site planned to be developed or redeveloped including, but not limited to, rooftops; driveways; carports; accessory buildings; parking areas; areas in which soils, slopes and vegetation have been altered; and roadways and other pervious and impervious surfaces.

“Director” means the Cc~~e~~ommunity Dd~~d~~evelopment Dd~~i~~irector.

“Discharge point” means the location to which drainage water from a specific site is released.

“Discharge rate” means the rate at which drainage water is released from a specific site. The discharge rate is expressed as volume per unit of time, such as cubic feet per second.

“Drainage basin” means the tributary area through which drainage water is collected, regulated, transported, and discharged to receiving waters.

“Drainage control” means the management of drainage water. Drainage control is accomplished through the collection, conveyance, and discharge of drainage water, controlling the rate of discharge from a site, or separating, treating or preventing the introduction of pollutants.

“Drainage control facility” means any facility, including best management practices, installed or constructed for the purpose of controlling the flow, quantity, and/or quality of drainage water. Drainage control facilities include, but are not limited to, all types of catch basins, pipes, detention/retention ponds, bioswales, and other structural and nonstructural components that handle surface water.

“Drainage control plan” means a plan for collecting, controlling, transporting and disposing of drainage water falling upon, entering, flowing within, and exiting the site, including designs for drainage control facilities. The plan shall contain information as set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

“Drainage control system” means a system to collect, convey and control release of only drainage water. The system may serve public or private property. It includes constructed and/or natural components such as ditches, culverts, streams and drainage control facilities.

“Drainage water” means stormwater, snow melt, surface water, surface and irrigation runoff, water from footing drains and other drains approved by the public works director or installed in compliance with this title and rules which may be adopted hereunder. Other water which is not an illicit discharge as defined in BMC 14.05.070 shall be considered drainage water if it drains from the exterior of a building or structure, a pervious or impervious surface, or undeveloped land, or by surface or shallow subsurface flow.

“Dredging” means the excavating of earth materials from land covered by water. The term shall include dredging which maintains an established water depth.

“E”

"Elevation certificate" means an administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support a request for a letter of map amendment (LOMA) or letter of map revision based on fill (LOMR-F)

"Equivalent service unit" means a configuration of impervious surface estimated to contribute an amount of runoff to the city's surface water management system which is approximately equal to that created by the average single-family residential developed parcel in Burlington. One equivalent service unit (ESU) is equivalent to 2,400 square feet of impervious surface area. For purposes of computation of rates, the number of equivalent service units shall be rounded to the nearest tenth.

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

"F"

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

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

"Flood" or "flooding" means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from:

    a. The overflow of inland or tidal waters.

    b. The unusual and rapid accumulation or runoff of surface waters from any source.

    c. Mudslides, or mudflows, caused, or precipitated by, flooding as defined in subsection (1)(b) of this definition resulting in a river of liquid and flowing mud across normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1)(a) of this definition.

"Flood elevation study" or "flood insurance study" means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide or erosion hazards.

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

"Flood insurance rate map" means an official map on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones. A flood insurance rate map available digitally is called a "digital flood insurance rate map."

"Flood protection elevation" means the elevation to which development must be protected against flooding and flood damage. Methods for determining the required flood protection elevation are identified in Chapter 14.15 BMC.

"Floodplain management area" means floodplains and other related areas as defined in BMC 14.15.400.

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

"Floodplain administrator" means the official designated to administer and enforce the city's floodplain regulations. The floodplain administrator shall be the community development director or designee.

"Floodprone area" is as defined in the critical areas code, BMC 14.15.390.

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

"G"

"Gages Slough Special Management Area" means the open water areas of Gages Slough together with all associated wetlands, deep-water habitat, wetland buffers, and special flood risk areas.

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

"Geotechnical professional" means either (a) a geologist licensed in the State of Washington or (b) a professional engineer licensed in the State of Washington with training and experience analyzing geologic, hydrologic, and ground water flow systems.

Commented [BJ1]: 3-7-2023 – BJ – Added to address comment from DNR – Previous section in 14.15.320 did not specify that geologists needed to be licensed. Geotechnical professional includes both categories of qualified professionals and requires appropriate license.

"Ground water" means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

"H"

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

"Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

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

The 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. The hearing examiner for the city of Burlington shall be the person designated under chapter 17.120 BMC.

"Highest adjacent grade" means the highest natural surface elevation adjacent to the walls of a proposed structure. The highest adjacent grade shall be measured using preconstruction conditions.

"Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior.

“Hyperchlorinated” means water that contains more than 10 milligrams per liter of chlorine.

“I”

“Illicit connection” means any manmade conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains, footing drains, and other similar type connections that convey any material not composed entirely of stormwater. Examples of illicit connections include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

“Illicit discharge” means any direct or indirect non-stormwater discharge to the city’s storm drain system as expressly defined by BMC 14.05.070.

“Impervious surface” means any surface from which most water runs off including, but not limited to, paved streets, graveled or paved areas such as driveways, parking areas, packed earth material, oiled macadam or other treated surfaces, walkways, roof surfaces, patios and formal planters.

“Inspector” means the city inspector, inspection agency, or licensed civil engineer performing the inspection work required by this title.

“L”

“Land disturbing activity” means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) or the existing topography. Land disturbing activities include but are not limited to demolition, clearing, grading, filling and excavation.

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

“Low impact development” or “LID” means a stormwater and land use management strategy that strives to mimic predisturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design. Low impact development features, practices, and techniques include bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated or green roofs, minimum excavation foundations, and water reuse.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is ~~not built so as to render the structure in violation of the applicable nonelevation design requirements of this title found in~~designed to allow the entry and exit of flood waters and equalize hydrostatic forces on exterior wall consistent with the requirements of BMC 14.15.430(B)(5).

“M”

“Manufactured home” means a single-family dwelling unit built in accordance with regulations adopted under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et seq.) and RCW 43.22.335. This term includes modular homes as defined in this chapter but does not include mobile homes. This term also does not include recreational vehicles, park models, trailers, and other similar vehicles which are licensed for use on public roads, capable of being licensed for use on public roads, or designed and constructed to be licensed

for use on public roads. Only structures which are certified by the state of Washington or federal government for use as a permanent habitable dwelling are included in this definition.

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

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

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

“Municipal separate storm sewer system (MS4)” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (1) owned or operated by the city of Burlington; (2) designed or used for collecting or conveying stormwater; (3) which is not part of a publicly owned treatment works (POTW).

“N”

“National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit” means a permit issued by the Environmental Protection Agency (EPA) (or by the Washington Department of Ecology under authority delegated pursuant to 33 U.S.C. 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general areawide basis.

“New construction” means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial flood insurance rate map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the start of construction commenced on or after the effective date of applicable floodplain management regulations and includes any subsequent improvements to such structures.

“New development” means any of the following activities:

1. Structural development, including construction of a new building or other structure;

2. Expansion or alteration of an existing structure that results in an increase in the footprint of the building or structure;

3. Land disturbing activities;

4. Creation or expansion of impervious surface;

5. Demolition;

6. Subdivision and short subdivision of land as defined in BMC Title 16, Land Divisions and Adjustment; or

7. Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses.

No other forest practices or commercial agriculture are considered new development.

“Non-stormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

"NPDES" means National Pollutant Discharge Elimination System, the national program for controlling discharges under the Federal Clean Water Act.

"O"

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

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

"P"

"Parcel" means the smallest separately segregated unit or plot of land having an identified owner, boundaries, and surface area which constitutes a separate lot or tract capable of being conveyed without further subdivision.

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

"Person" means an individual, firm, partnership, corporation, municipal corporation, and government, and the individual's or entity's heirs, successors and assigns.

"Plan" means, for the purposes of this title, and unless a different meaning is set forth or clearly required, a graphic or schematic representation with accompanying notes, schedules, specifications and other related documents.

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

"Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; flotables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

"POTW" or "publicly owned treatment works" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned.

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

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

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

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

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

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

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

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

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

“Q”

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

“R”

“Reasonably safe from flooding” means development that is designed and built to be safe from flooding based on consideration of current flood elevation studies, historical data, high water marks and other reliable data known to the community. In unnumbered A zones where flood elevation information is not available and cannot be obtained by practicable means, “reasonably safe from flooding” means that the lowest floor is at least two feet above the highest adjacent grade.

“Recreational vehicle” or “RV” means a structure or vehicle containing living space intended to provide short-term accommodations for recreational purposes and licensed for use on public roads, designed to be licensed for use on public roads, or capable of being licensed for use on public roads. This term includes trailers, campers, motor homes, park models, and other similar vehicles but does not include manufactured homes as defined in this chapter. A recreational vehicle shall not be considered a dwelling unit and shall not be used as a permanent place of habitation.

“Redevelopment” means, on a site that is already substantially developed (i.e., has 35 percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

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

“Responsible party” means all of the following persons: (1) owners and occupants of property within the city of Burlington; and (2) any person causing or contributing to a violation of the provisions of this title.

“Riparian corridor” is as defined in the critical areas code, chapter 14.15 BMC.

“Rules” means administrative rules promulgated by the public works director in accordance with the State Administrative Procedures Act.

“S”

“Secondary drainage system” means a drainage system serving a watershed less than 20 acres in size or a watershed with a runoff of three cubic feet per second or less for a storm with a five-year frequency.

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

“Serve” or “service,” when used regarding a document, means the procedures set forth in BMC 1.34.040 and 1.44.060.

"Service drain" means a privately owned and maintained drainage control facility or system which carries only drainage water. Service drains include, but are not limited to, conveyance pipes, catch basin connections, downspout connections, pipes, and subsurface drain connections.

"Shoreline district" means all land regulated by the Shorelines Management Act of 1971 (chapter 90.58 RCW). See BMC Title 18, Shoreline Master Program.

"Single-family residential parcel" means a parcel which has been actually developed with a detached dwelling (single-family residence).

"Site" means any lot, parcel of land, street or highway right-of-way, or contiguous combination thereof, where a permit for new development, redevelopment, land disturbing activity, or grading has been issued or where any such work is proposed or performed.

"Skagit River Corridor Special Management Area" means the Skagit River and associated shorelines, floodways, dikes, levees, or other flood control structures, and a strip of land extending inland 300 feet from the landward toe of the dikes and levees along the Skagit River.

"Special flood risk zone" means the following areas:

1. Gages Slough, including wetlands and deep water habitat areas; or

2. Areas with a ground elevation three feet or more below the base flood elevation that are hydraulically connected to Gages Slough through a channel, watercourse, or other topographical feature that provides a continuous path capable of conveying floodwaters with an elevation three feet or more below the base flood elevation; or

3. Areas within 300 feet of the landward toe of dikes and levees along the Skagit River, excluding floodways.

"Special Management Areas" means the Burlington Hill, Gages Slough, and Skagit River special management areas as defined in this title.

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

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

"Start of construction" includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Steep slope areas" are areas with slopes greater than 15 percent.

Storm Drain. See "private storm drain," "public storm drain" and "service drain."

"Storm drainage system" means publicly owned facilities, including the city's municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

“Stormwater pollution prevention plan” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable. The plan shall contain elements as set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

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

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

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct previously identified existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and that are the minimum necessary to assure safe living conditions; or

2. Any alteration of a historic structure; provided, that the alteration will not preclude the structure’s continued designation as a historic structure.

“U”

“Uncontaminated” means, for the purposes of this title, not containing sediment or other pollutants or contaminates above natural background levels when referring to surface or ground water, and not containing pollutants or contaminants in levels greater than city-supplied drinking water when referring to potable water.

“Undeveloped parcel” means any parcel of real property which has not been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area which affects the hydraulic properties of the parcel.

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

“W”

“Watercourse” means the route, constructed or formed by humans or by natural processes, generally consisting of a channel with bed, banks, or sides, in which surface waters flow, including lakes, bogs, streams, sloughs, and intermittent artificial components (including ditches and culverts) but not including receiving waters.

“Wetland” or “wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include these artificial

wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands, if permitted by the city. (Ord. 1903 § 2 (Exh. A), 2021; Ord. 1853 § 2 (Exh. B), 2018).

14.01.070 Liability.
It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. Nothing contained in this title is intended to be or shall be construed to create or form the basis for liability on the part of the city of Burlington officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, to comply with the provisions of this title, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code by the city of Burlington officers, employees or agents. This title is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.080 Minimum requirements.
The requirements of this title are minimum requirements. They do not replace, repeal, abrogate, supersede or affect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this title imposes requirements which are more protective of human health or the environment than those set forth elsewhere, the provisions of this title shall prevail.

Approvals and permits granted under this title are not waivers of the requirements of any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this title. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.090 Violations and penalties.
All acts or omissions in violation of any provision contained within this title, or acts or omissions that cause or contribute to a violation of any provision contained within this title, are hereby determined to be detrimental to the public health, safety and general welfare and shall constitute a public nuisance. Further, as specified in chapter 1.24 BMC, such acts or omissions shall be subject to fines and abatement under chapter 8.12 BMC, criminal penalties as set forth in chapter 1.24 BMC, penalties for civil infractions as set forth in chapter 1.34 BMC, or civil violations as set forth in chapter 1.44 BMC. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.100 Appeal.
Decisions made pursuant to this title are appealed in the manner set forth in BMC Title 14A. (Ord. 1853 § 2 (Exh. B), 2018).

14.01.110 Severability.
If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title. (Ord. 1853 § 2 (Exh. B), 2018).

Chapter 14.05

SURFACE WATER MANAGEMENT

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14.05.010 Title.
This chapter shall be called “Surface Water Management.” (Ord. 1853 § 2 (Exh. B), 2018).

14.05.020 Application.
This chapter applies to:

A. All grading, drainage, and erosion control, whether or not a permit is required; and

B. All new development, redevelopment, land disturbing activities, and construction sites, whether or not a permit is required; and

C. All new and existing discharges directly or indirectly to a public drainage control system; and

D. All new and existing land uses. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.030 Purpose.
The provisions of this chapter shall be liberally construed to accomplish its remedial purposes, which are:

A. To protect, to the greatest extent practical, life, property and the environment from loss, injury and damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards whether from natural causes or from human activity;

B. To protect the public interest in drainage and related functions of drainage basins, watercourses and shoreline areas;

C. To protect surface waters, ground waters and other receiving waters from pollution, mechanical damage, excessive flows and other conditions in their drainage basins which will increase the rate of downcutting, streambank erosion, and/or the degree of turbidity, siltation and other forms of pollution, or which will reduce their low flows or low levels to levels which degrade the environment, reduce recharging and ground water, or endanger aquatic and benthic life within these surface waters and receiving waters of the state;

D. To meet the requirements of state and federal law and comply with regulatory standards for the city's municipal storm water; and

E. To fulfill the responsibilities of the city as trustee of the environment for future generations. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.040 Authority.
This chapter is authorized by the provisions of chapters 35A.63 and 36.70A RCW, the Western Washington Phase II Municipal Stormwater Permit and other applicable laws and regulations. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.050 Authority of the public works director/city engineer.
A. The public works director is authorized to issue, monitor, stop work or require modifications of storm water permits and inspections for the construction, capping, alterations, or repairs of privately owned and operated drainage control systems as more specifically set forth in BMC 14.05.120; require modification of drainage control facilities and associated project designs during construction and approve and file approved drainage control plans as more specifically set forth in BMC 14.05.130; and accept and approve when appropriate storm sewer permits for the construction or alteration of all storm water systems as more specifically set forth in BMC 14.05.240. Any powers granted or duties imposed upon the public works director may be delegated to persons or entities acting in the beneficial interest of or in the employ of the agency.

B. The public works director is authorized to take actions necessary to implement the provisions and purposes of this title in their respective spheres of authority, including, but not limited to: promulgating and amending rules and regulations, which may include prescribing best management practices ("BMPs"); establishing and conducting inspection programs; establishing and conducting or, as set forth in BMC 14.05.070, requiring responsible parties to conduct monitoring programs, which may include sampling of discharges to or from drainage control facilities, the public drainage control system, or surface water; taking enforcement action; abating nuisances; promulgating guidance and policy documents under this title. The public works director shall also have the authority to review and approve or disapprove required submittals and applications for approvals and permits as set forth in this title. Any powers granted or duties imposed upon the public works director may be delegated to persons or entities acting in the beneficial interest of or in the employ of the agency as designated by the public works director.

The public works director is further authorized to develop drainage basin plans for managing surface water, drainage water, and erosion within individual subbasins. Compliance with an adopted drainage basin plan may, when approved by the public works director, modify requirements of this title, provided the level of protection for human health, safety, and welfare, the environment, and public or private property will equal or exceed that which would otherwise be achieved. (Ord. 1853 § 2 (Exh. B), 2018).

Part I. Storm Water, Drainage and Erosion Control

14.05.060 Scope.
BMC 14.05.060 through 14.05.130 are applicable to:

A. General. All new and existing discharges subject to this title as set forth in BMC 14.05.030, all land uses and all new development, redevelopment, and grading shall comply with all requirements of this title unless explicitly exempted by this title or exempted by the public works director pursuant to the authority granted in BMC 14.05.050 and as specifically set forth in this chapter.

B. Exemptions. The following land uses are exempt from the provisions of this title.

1. Commercial agriculture, including only those activities conducted on lands defined in RCW 84.34.020(2), and production of crops or livestock for wholesale trade;

2. Forest practices regulated under WAC Title 222, except for Class IV general forest practices, as defined in WAC 222-16-050, that are conversions from timber land to other uses;

3. Development undertaken by the Washington State Department of Transportation in state highway right-of-way that complies with the standards found in chapter 173-270 WAC, the Puget Sound Highway Runoff Program; and

4. Any additional exemptions as set forth in Appendix 1, Minimum Technical Requirements for New Development and Redevelopment, of the Western Washington Phase II Municipal Stormwater Permit. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.070 Prohibited discharges.

A. Storm Water Discharges to Sanitary and Combined Sewers. In consultation with the local sewage treatment agency, the public works director may approve discharges of storm water to a public combined sewer or sanitary sewer if other methods of controlling pollutants in the discharge are not adequate or reasonable, and the discharging party certifies that the discharge will not harm the environment and will not overburden or otherwise harm the public combined sewer or sanitary sewer systems. The public works director shall condition approval of such a discharge on compliance with local pretreatment regulations.

B. Discharges Prohibited to Public Drainage Control Systems. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants other than storm water. It is unlawful to make illicit discharges, as defined in subsection (C) of this section, either directly or indirectly to a public drainage control system.

C. Illicit Discharges Defined. Except as provided in subsection (D) of this section, all discharges which are not composed entirely of storm water are illicit discharges, as defined in BMC 14.01.060.

The following is a partial list, provided for informational purposes only, of common substances which are illicit discharges when allowed to enter a public drainage control system:

1. Trash or debris.

2. Construction materials.

3. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, and heating oil.

4. Antifreeze and other automotive products.

5. Metals in either particulate or dissolved form.

6. Flammable or explosive materials.

7. Radioactive material.

8. Batteries.

9. Acids, alkalis or bases.

10. Paints, stains, resins, lacquers or varnishes.

11. Degreasers and solvents.

12. Drain cleaners.

13. Pesticides, herbicides or fertilizers.

14. Steam cleaning wastes.

15. Soaps, detergents or ammonia.

16. Swimming pool backwash.

17. Chlorine, bromine and other disinfectants.

18. Heated water.

19. Domestic animal wastes.

20. Sewage.

21. Recreational vehicle waste.

22. Animal carcasses.

23. Food wastes.

24. Bark and other fibrous materials.

25. Collected lawn clippings, leaves, or branches.

26. Silt, sediment or gravel.

27. Dyes.

28. Chemicals not normally found in uncontaminated water.

29. Washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates.

30. Any other process-associated discharge except as otherwise allowed in this section.

31. Any hazardous material or waste not listed above.

D. Allowable Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the public works director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Diverted stream flows.

2. Rising ground water.

3. Uncontaminated ground water infiltration.

4. Uncontaminated pumped ground water.

5. Foundation drains.

6. Air conditioning condensation.

7. Irrigation water from agricultural sources that is commingled with urban storm water.

8. Springs.

9. Water from crawlspace pumps.

10. Footing drains.

11. Flows from riparian habitats and wetlands.

12. Non-storm water discharges authorized by another NPDES or state waste discharge permit.

13. Discharges from emergency firefighting activities.

E. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the public works director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the storm water system;

2. Lawn watering and other irrigation runoff is permitted but shall be minimized;

3. Dechlorinated swimming pool discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the storm water system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water;

4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;

5. Other non-storm water discharges. The discharges shall be in compliance with the requirements of a storm water pollution prevention plan (SWPPP) reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

F. Testing for Illicit Discharges. When the public works director has reason to believe that any discharge is an illicit discharge, the public works director or designee may sample and analyze the discharge and recover the costs from a responsible party in an enforcement proceeding. When the discharge is likely to contain illicit discharges on a recurring basis, the public works director may conduct, or may require the responsible party to conduct, ongoing monitoring at the responsible party's expense.

G. Illicit Connections Prohibited. Any connection identified by the public works director that could convey anything not composed entirely of surface and storm water directly to surface and storm water or ground water is considered an illicit connection. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4 or allows such a connection to continue. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.080 Requirements for existing discharges and land uses.

A. General. For all existing discharges directly or indirectly to a public drainage control system, responsible parties shall implement and maintain nonstructural best management practices as specified in rules promulgated by the public works director. Nonstructural best management practices shall include, but not be limited to, maintenance and source control housekeeping practices such as cleaning of catch basins and detention facilities, sweeping of parking

lots, storing oil barrels and other contaminant sources out of the rain, covering material stockpiles, and proper use and storage of hazardous materials.

If the public works director or designee determines that discharges from a drainage facility are causing or contributing to a water quality problem, such as discharges that cannot be adequately addressed by nonstructural best management practices, including, but not limited to, areas with recurrent spills such as discharges from vehicle maintenance shops or gas stations, then the director may require the responsible party to undertake more stringent or additional best management practices. These best management practices may include structural best management practices or other action necessary to cease causing or contributing to the water quality problem. Structural best management practices include but shall not be limited to constructed facilities such as detention tanks, wet ponds, oil/water separators, grassed swales, roofing and berming of container storage areas, and revised piping systems.

B. Spill Prevention Required. All responsible parties shall take measures to prevent spills or other accidental introduction of illicit discharges into a public drainage control system. Such measures shall include:

1. Establishment and implementation of plans and procedures to prevent spills and other accidental releases of materials that may contaminate storm water;

2. Implementation of procedures for immediate containment and other appropriate action regarding spills and other accidental releases to prevent contamination of storm water; and

3. Provision of necessary containment and response equipment on site, and training of personnel regarding the procedures and equipment to be used.

The provisions of this subsection may be satisfied by a storm water pollution prevention plan prepared in compliance with the NPDES industrial storm water permit for the site.

The responsible parties shall make the plans and procedures required by this subsection available to the public works director or designee when requested.

C. Release Notification Requirements. A responsible party must, at the earliest possible time, but in any case within 24 hours of discovery, report to the public works department a spill, release, dumping, or other situation that has contributed or is likely to contribute pollutants to a public drainage control system. This reporting requirement is in addition to, and not instead of, any other reporting requirements under federal, state or local laws.

D. Natural Drainage Patterns. Natural drainage patterns shall be maintained.

E. Obstruction of Watercourses. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, sediment, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. Watercourses shall not be obstructed. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.090 Storm water, drainage, and erosion control requirements.

A. Stormwater Management Manual Adopted. The city of Burlington hereby adopts as a technical reference manual, hereafter referred to as the "storm water manual," the 2019 State Department of Ecology Stormwater Management Manual for Western Washington, as amended by Sections 1 through 7 of Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit. The C~~c~~ity hereby further adopts the thresholds, definitions, minimum requirements, and exceptions, adjustments and variance criteria found in Appendix 1 and Appendix 10 of the Western Washington Phase II Municipal Stormwater Permit as the city of Burlington's minimum storm water regulations.

B. Thresholds for Minimum Technical Requirements for Storm Water Control.

1. All new development, redevelopment, and construction sites, regardless of type and regardless of whether or not a permit is required, that meet or exceed the threshold conditions set forth in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit must comply with the minimum technical requirements of

said Appendix 1, including the mandatory incorporated provisions of the 2019 Ecology Stormwater Management Manual for Western Washington.

2. The city of Burlington requires that all projects, even those that result in land disturbance of less than one acre, adhere to the minimum requirements for erosion and storm water control set forth in Appendix 1 and Appendix 7 of the Western Washington Phase II Municipal Stormwater Permit.

3. For those projects meeting the review thresholds set forth in this section, the applicant shall submit a site assessment and analysis along with a drainage control plan or storm water site plan pursuant to requirements in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

4. The city of Burlington allows applications for an erosivity waiver as specified in Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit.

C. Standards and Definitions. Unless otherwise specified in this chapter, all standards, definitions, and requirements shall be in accordance with the storm water manual.

D. Flood Prone Areas. Sites within flood prone areas must employ measures to minimize the potential for flooding on the site and for the project to increase the risk of floods on adjacent or nearby properties. Flood control measures shall include those set forth in other titles of the Burlington Municipal Code and rules promulgated thereunder, including but not limited to the critical areas code, chapter 14.15 BMC, and in rules promulgated by the public works director to meet the purposes of this subsection.

E. Natural Drainage Patterns. Natural drainage patterns shall be maintained.

F. Obstruction of Watercourses. Watercourses shall not be obstructed.

G. Low Impact Development. The city requires a site analysis and technical evaluation to ensure that all sites meeting the minimum qualifications shall utilize low impact development (LID) best management practices (BMPs), as an alternative to conventional storm water management systems that rely on detention ponds and closed conveyances, when such measures are feasible. Low impact development is intended to manage runoff close to the source of generation and to mimic predeveloped hydrologic condition of a site. Low impact development is accomplished through minimizing the impervious surface coverage and loss of vegetation and by managing runoff through dispersion, infiltration, evapotranspiration, or a combination of these approaches. Use of LID BMPs may reduce or eliminate the need for conventional detention facilities but does not remove the obligation to comply with the minimum requirements of the storm water manual. A variety of BMPs to minimize impervious surfaces and to manage storm water have been developed and tested for use in Western Washington. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.100 Scope of drainage control review and application requirements.

A. Scope of Review. Where drainage and approval are required by BMC 14.05.090, the scope of this review shall at least include the following:

1. Applications for Building and Other Permits. The public works director shall review any application for a building permit or other permit, other than land use permit applications, for compliance with BMC 14.05.090 and to determine whether improvements to the public drainage control system shall be required.

2. The public works director shall review all storm water plans for proposed development activities in accordance with the site planning process and best management practice selection and design criteria as set forth in the storm water manual.

B. Application and Approval Requirements. Drainage control plans for projects subject to review under BMC 14.05.090 shall be reviewed by the public works director or designee. The public works director or designee may approve those plans which comply with the provisions of this title and rules promulgated hereunder, and may place conditions upon the approval in order to assure compliance with the provisions of this title. Submission of the required drainage control application information shall be a condition precedent to the processing of any of the above-listed permits. Approval of drainage control shall be a condition precedent to issuance of any of the

above-listed permits. A storm sewer permit shall be issued to construct on-site and off-site drainage control facilities based on the approved plans. See BMC 14.05.240, Storm sewer permits required.

The public works director may disapprove plans which do not comply with the provisions of this title and rules promulgated hereunder. Disapproved plans shall be returned to the applicant, who may correct and resubmit the plans.

C. Submittal Requirements.

1. Applications shall be prepared and submitted in accordance with provisions of this section, with this chapter (public storm sewers) and with associated rules and regulations adopted by the public works director.

2. The public works director or designee may require additional information necessary to adequately evaluate applications for compliance with the requirements and purposes of this title and other laws and regulations, including the critical areas code, chapter 14.15 BMC. The public works director or designee may also require appropriate information about adjoining properties which may be related to, or affected by, the drainage control proposal in order to evaluate effects on the adjacent property. This additional information may be required as a precondition for permit application review and approval.

3. Where an applicant simultaneously applies for more than one of the permits listed in subsection (A) of this section for the same property, the application shall comply with the requirements for the permit which are the most detailed and complete. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.110 Drainage control plan registry.
The public works director shall maintain a permanent file of all approved drainage control plans. Each plan shall be cataloged according to the property address, legal description of the property and the storm sewer permit number for which the plan is required. See BMC 14.05.240, Storm sewer permits required. Where a drainage control plan covers more than one property, the approved plan shall be cataloged for each property covered by the plan. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.120 Installation of drainage control facilities.
All privately owned and operated drainage control facilities or systems, whether or not they discharge to a public drainage control system, shall be considered storm sewers and shall be subject to this title, the public works department director's rules promulgated under this title, and the public works department's design and installation specifications and permit requirements for storm sewer and drainage control systems.

Storm sewer permits and inspections shall be required for construction, capping, alterations, or repairs of privately owned and operated drainage control systems as provided in this title. When the work is ready for inspection, the permittee shall notify the public works director. If the work is not in accordance with plans approved under this title and in accordance with the department of community development design and installation specifications adopted by administrative rule, the public works director may order the work stopped by written notice to the persons engaged in performing the work or causing the work to be done, and may require modifications as provided in this title. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.130 Modifications of drainage control facilities during construction.
During construction the public works director may require, or the applicant may request, that the construction of drainage control facilities and associated project designs be modified if physical conditions are discovered on the site which are inconsistent with the assumptions upon which the approval was based, including but not limited to unexpected soil and/or water conditions, weather-generated problems, or changes in the design of the improved areas. Modifications shall be submitted to the public works director for approval prior to implementation.

Any such modifications made during the construction of drainage control facilities shall be recorded on the final approved drainage control plan, a revised copy of which shall be filed by the community development director. (Ord. 1853 § 2 (Exh. B), 2018).

Part II. Storm Water and Surface Water Inspection and Maintenance

14.05.140 Scope.
BMC 14.05.140 through 14.05.200 are intended to:

A. Provide for the inspection and regulation of public or private storm and surface water system control or detention facilities in order to provide for a properly functioning city storm and surface water drainage system and to protect the public health, safety and welfare;

B. Authorize the storm and surface water utility to inspect storm and surface water system control and drainage control facilities and to require owners of such systems to maintain, operate and repair such systems in conformity with the code and the utility standards and regulations; and

C. Authorize the storm and surface water utility to investigate the source of suspected illicit discharges, dumping, and/or illicit connections. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.150 Compliance.
Each owner or person responsible for the maintenance, operation or repair of detention facilities within the city shall maintain, operate and repair said detention facilities in compliance with the requirements of this code and in compliance with the utility standards and regulations. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.160 Responsibility for inspection and maintenance.
Drainage control facilities required by this title and by the rules adopted hereunder shall be maintained by the owner or other responsible party. The owner or responsible party shall inspect permanent drainage control facilities at least annually, and shall inspect temporary drainage control facilities and other temporary best management practices or facilities on a schedule sufficient for the facilities to function at design capacity. When an inspection identifies a need for maintenance as defined by standards found in chapter 4 of Volume V of the storm water manual, maintenance shall be performed in accordance with the following schedule:

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

B. Within six months for catch basins.

C. Within two years for maintenance that requires capital construction of less than $25,000. The public works director may require the responsible party to conduct more frequent inspections and/or maintenance when necessary to ensure functioning at design capacity. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.170 Inspection program.
The public works director shall establish inspection programs to ensure compliance with the requirements of this title and accomplishment of its purposes. Inspection programs may be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspections of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; visual inspection of catch basins and detention/retention ponds; video inspection of pipe system; sampling discharges, surface water, ground water, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other best management practices. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.180 Entry for inspection and abatement purposes.
A. New Installations and Connections. When any new drainage control facility is installed on private property, and when any new connection is made between private property and a public drainage control system, or sanitary sewer, the property owner shall obtain approval from the public works director. The property owner shall grant the city the right to enter the property at reasonable times and in a reasonable manner pursuant to an inspection program established pursuant to BMC 14.05.170, and to enter the property when the city has a reasonable basis to believe

that a violation of this title is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this title.

B. The public works director or designee, whenever implementing the provisions of the utility's inspection program or whenever he/she has cause to believe that a violation of this code or the utility standards and regulations has been or is being committed, is authorized to inspect during regular working hours and at other reasonable times all drainage control facilities within the city to determine compliance with the provisions of this code and the utility standards and regulations. If a property owner has not granted right of entry under subsection (A) of this section, prior to making any inspection the director shall present identification credentials, state the reason for the inspection, and request entry.

1. If said property or any building or structure on said property is unoccupied, he/she shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portion thereof and request entry.

2. If, after reasonable effort, the public works director or designee is unable to locate the owner or such other person(s) having charge or control of the property, and he/she has reason to believe the condition of the detention facility creates an imminent hazard to persons or property, he/she may make entry.

3. Unless entry is consented to by the owner or person(s) in control of said property or portion thereof or unless conditions are reasonably believed to exist which create an imminent hazard, the public works director, prior to entry, shall obtain a search warrant as authorized by the laws of the state.

4. The public works director or designee may inspect the drainage control facility without obtaining a search warrant pursuant to subsection (B)(3) of this section if said inspection can be conducted while he/she remains on public property or on other property on which he/she has permission to be. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.190 Disposal of waste from maintenance activities.
Disposal of waste from maintenance of drainage and storm water control facilities shall be conducted in accordance with federal, state and local regulations, including the minimum functional standards for solid waste handling, chapter 173-304 WAC, guidelines for disposal of waste materials, and, where appropriate, dangerous waste regulations, chapter 173-303 WAC, including any subsequent amendments to these provisions. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.200 Records of installation and maintenance activities.
When a new drainage control facility is installed, the party having the facility installed shall obtain a copy of the as-built plans from the public works director. Responsible parties shall make records of the installation and of all maintenance and repair and shall retain the records for at least 10 years. These records shall be made available to the public works director during inspection of the facility and at other reasonable times upon request of the public works director. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.210 Exceptions to requirements.
A. General. The purpose of this chapter is to administer and enforce all requirements set forth in this title. Requests for exceptions to the requirements of this title shall be made according to this section and Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, Section 6. Exceptions shall include alternative requirements, waivers, reductions, or modifications of the requirements. An exception shall only be granted to the extent necessary to meet the criteria set forth in this section. An applicant is not entitled to an exception, whether or not the criteria allowing approval of an exception are met. The director may require an applicant to submit an engineer's report or analysis with a request for an exception. When an exception is granted, the director may impose new or additional requirements to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted.

B. Public Notice. Public notice of an application for an exception under the criteria set forth in this section shall comply with Appendix 1 of the Western Washington Phase II Municipal Stormwater Permit, Section 6. (Ord. 1853 § 2 (Exh. B), 2018).

Part III. Public Storm Sewers

14.05.220 Plans required.
Storm sewers and drainage improvements shall require a storm sewer permit with approved engineering plans with the following information:

A. Plan map properly dimensioned and drawn to scale showing the location of the proposed storm sewer, drainage ditches and sewer appurtenances within the street right-of-way. Sewers and drainage ditches shall be stationed and all manholes, catch basins, and appurtenances shall be numbered;

B. Location of existing above and below ground utilities in road right-of-way or adjacent easements;

C. Location and dimensions of utility and drainage easements and location of all existing watercourses, ditches, trunk storm sewers, ponds and retention facilities connected with or adjacent to the proposed drainage facilities;

D. Profiles of storm drains and drainage ditches with the following information:

1. Location and number of all manholes, catch basins and appurtenances,

2. Profile of existing and proposed ground surface and storm drain,

3. Size, slope and length of storm sewers between consecutive manholes, and

4. Sewer, manhole, and catch basin invert elevations;

E. Suitable title plate on each drawing with street or sewer name, name and address of the developer, scale, date and the name, address and telephone number and stamp of the registered engineer responsible for the plan preparation;

F. Structural details of any special manholes, catch basins, and appurtenances including drop manholes, retention control manholes, outlet structures, pumping stations, diversion structures, etc. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.230 Design criteria.
A. Storm sewers and drainage facilities shall be designed for a projected life span of 30 years without excessive maintenance. All trunk sewers and collector sewers shall be designed and stamped by a civil engineer registered in the state of Washington unless otherwise approved by the public works director. Accepted engineering practices shall be employed in the design of all drainage facilities.

B. Storm drainage facilities shall be designed per specifications in the storm water manual. All drainage facilities in public rights-of-way or easements shall have an outfall into an approved drainage system.

C. The minimum requirements for storm drainage facilities shall be as follows:

1. Catch basins or inlets shall be spaced a maximum of 200 feet apart along any street, alley or avenue;

2. The minimum catch basin lateral pipe size shall be 12 inches in diameter and the minimum storm main size shall be 12 inches in diameter;

3. Manholes on trunk sewers shall have a maximum spacing of 400 feet; and

4. Construction materials and methods shall be in accordance with Standards and Specifications for Municipal Public Works Construction prepared by the American Public Works Association, latest edition. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.240 Storm sewer permits required.
A. A storm sewer permit shall be obtained for the construction or alteration of all storm sewer systems, including on-site and off-site installations. Applications for storm sewer permits shall be processed as Type I decisions in accordance with the provisions of BMC Title 14A.

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

1. A detailed description of the work to be covered by the permit;

2. A description of the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed project or work;

3. Any plans, diagrams, computations and specifications, or other data as required in this title;

4. Any applicable fees in accordance with the fee schedule established by the city council; and

5. Applications must be signed by the applicant, or the applicant's authorized agent.

C. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the public works director. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the public works director finds that the work described in an application for a permit and the plans, specifications, and other data filed therewith conform to the requirements of this title and other pertinent laws and ordinances, and that the fees specified in the current fee resolution have been paid, the public works director shall issue a permit therefor to the applicant.

When the public works director issues the permit where plans are required, the public works director shall endorse in writing or stamp the plans and specifications "APPROVED." Such approved plans and specifications shall not be changed, modified or altered without authorization from the public works director, and all work regulated by this title shall be in accordance with the approved plans. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.250 Fees.
Fees for drainage control plan review, recordkeeping or other activities pursuant to this title shall, unless otherwise provided for in this title, be prescribed by resolution. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.260 Financial assurance and covenants.
As a condition precedent to issuance of any permit or approval provided for in this title, the director may require an applicant for a permit or approval to submit financial assurances as provided in this section.

A. Insurance.

1. The director may require the owner(s), or contractor to carry liability and property damage insurance against damage, naming the city as an additional insured. The amount shall be commensurate with the risks as determined by the director.

2. The director may also require the owner(s) to maintain a policy of general public liability insurance against personal injury, death, property damage and/or loss from activities conducted pursuant to the permit or approval, or conditions caused by such activities, and naming the city as an additional insured. The policy shall be in an amount which the director determines to be commensurate with the risks. It shall cover a period of not more than 10 years from the date of issuance of a certificate of occupancy or finalization of the permit or approval. A certificate evidencing such insurance shall be filed with the director before issuance of a certificate of occupancy or finalization of a permit for any single-family dwelling or duplex.

3. The insurance policy shall provide that the city will be notified of cancellation of the policy at least 30 days prior to cancellation. The notice shall be sent to the director who required the insurance and shall state the insured's name and the property address. If a property owner's insurance is canceled and not replaced, the permit or approval and any interrelated permit or approval may be revoked, including a certificate of occupancy or approval for occupancy.

B. Bonds, Cash Deposits or Instruments of Credit.

1. Surety Bond. The director may require that the owner or contractor deliver to the director for filing in the office of the city clerk a surety bond, cash deposit or an instrument of credit in such form and amounts deemed by the director to be necessary to ensure that requirements of the permit or approval are met. A surety bond may be furnished only by a surety company licensed to do business in the state of Washington. The bond shall be conditioned that the work will be completed in accordance with the conditions of the permit or approval, or, if the work is not completed, that the site will be restored if damaged or made unsafe by activities conducted pursuant to the permit or approval.

The bond will be exonerated one year after a determination by the director that the requirements of the permit or approval have been met.

For work under a building permit, issuance of a certificate of occupancy or approval for occupancy following a final inspection shall be considered to be such a determination. For grading, completion of the final grading inspection and submittal of required final reports in accordance with BMC 14.05.240 shall be such a determination.

2. Assurance in Lieu of Surety Bond. In lieu of a surety bond, the owner may elect to file a cash deposit or instrument of credit with the director in an amount equal to that which would be required in the surety bond and in a form approved by the director. The cash deposit or instrument of credit shall comply with the same conditions as required for surety bonds.

C. Covenants.

1. The director may require a covenant between the owner(s) of the property and the city. The covenant shall be signed by the owner(s) of the site and notarized prior to issuance of any permit or approval in a potential landslide area, potentially hazardous location, flood prone zone, or other area of potentially hazardous soils or drainage or erosion conditions. The covenant shall not be required where the permit or approval is for work done by the city. The covenant shall include:

a. A legal description of the property; and

b. A description of the property condition making this subsection applicable; and

c. A statement that the owner(s) of the property understands and accepts the responsibility for the risks associated with development on the property given the described condition, and agrees to inform future purchasers and other successors and assignees of the risks; and

d. The application date, type, and number of the permit or approval for which the covenant is required; and

e. A statement waiving the right of the owner(s), the owner's heirs, successors and assigns to assert any claim against the city by reason of or arising out of issuance of this permit or approval by the city for the development on the property, except only for such losses that may directly result from the negligence of the city.

2. The covenant shall be filed by the director with the Skagit County auditor's office, at the expense of the owner, so as to become part of the Skagit County real property records. (Ord. 1853 § 2 (Exh. B), 2018).

14.05.270 Date of initial enforcement.

The public works director shall not enforce provisions of this code which require existing discharges and land uses to adopt operational and nonstructural best management practices until six months after adoption of rules identifying the best management practices to be required. The director shall not enforce the provisions of this code which require existing discharges and land uses to install structural best management practices until one year after adoption of rules identifying the best management practices to be required. (Ord. 1853 § 2 (Exh. B), 2018).

Chapter 14.10

ENVIRONMENTAL POLICY

Sections:
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14.10.020 Application.
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14.10.040 Authority.
14.10.050 Basic requirements and adoption by reference.
14.10.060 Additional definitions.
14.10.070 Designation of responsible official.
14.10.080 Lead agency determination and responsibilities.
14.10.090 Transfer of lead agency status to a state agency.
14.10.100 Additional consideration in time limits applicable to the SEPA process.
14.10.110 Categorical exemptions and threshold determinations, purpose and adoption by reference.
14.10.120 Flexible threshold for categorical exemptions.
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14.10.160 Environmental impact statements (EIS) – Purpose and adoption by reference.
14.10.170 Preparation of EIS – Additional considerations.
14.10.180 Additional elements to be covered in an EIS.
14.10.190 Commenting, adoption by reference.
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14.10.220 Using existing environmental documents, purpose of this part and adoption by reference.
14.10.230 SEPA and agency decisions, purpose and adoption by reference.
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14.10.270 Notice/statute of limitations.
14.10.280 Definitions – Purpose of this part and adoption by reference.
14.10.290 Agency compliance, purpose and adoption by reference.
14.10.300 Form – Adoption by reference.

14.10.010 Title.

This chapter shall be called “Environmental Policy.” (Ord. 1853 § 2 (Exh. B), 2018).

14.10.020 Application.

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

Application of this chapter shall be implemented in a manner consistent with WAC 197-11-055. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.030 Purpose.

The purpose of this chapter is to establish uniform requirements for compliance with chapter 43.21C RCW and chapter 197-11 WAC, in a manner that is consistent with the provisions of WAC 197-11-020 and 197-11-030. (Ord. 1853 § 2 (Exh. B), 2018).

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

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

C. The SEPA rules, chapter 197-11 WAC, must be used in conjunction with this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

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

WAC

197-11-040 Definitions.

197-11-050 Lead agency.

197-11-060 Content of environmental review.

197-11-070 Limitations on actions during SEPA process.

197-11-080 Incomplete or unavailable information.

197-11-090 Supporting documents.

197-11-100 Information required of applicants.

197-11-158 SEPA/GMA project review – Reliance on existing plans, laws, and regulations.

197-11-210 SEPA/GMA integration.

197-11-220 SEPA/GMA definitions.

197-11-228 Overall SEPA/GMA integration procedures.

197-11-230 Timing of an integrated SEPA/GMA process.

197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.

197-11-235 SEPA/GMA integration documents.

197-11-238 SEPA/GMA monitoring.

197-11-250 SEPA/Model Toxics Control Act integration.

197-11-253 SEPA lead agency for MTCA actions.

197-11-256 Preliminary evaluation.

197-11-259 Determination of nonsignificance for MTCA remedial actions.

197-11-262 Determination of significance and EIS for MTCA remedial actions.

197-11-265 Early scoping for MTCA actions.

197-11-268 MTCA interim actions.

(Ord. 1853 § 2 (Exh. B), 2018).

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

A. “Department” means any division, subdivision or organizational unit of the city established by ordinance, rule or order.

B. “SEPA rules” means chapter 197-11 WAC adopted by the Department of Ecology.

C. “Ordinance” means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.

D. “Early notice” means the city’s response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant’s proposal (mitigated determination of nonsignificance (DNS) procedures). (Ord. 1853 § 2 (Exh. B), 2018).

14.10.070 Designation of responsible official.
A. For those proposals for which the city is the lead agency, the responsible official shall be the community development director.

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

C. The city shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.56 RCW. (Ord. 1853 § 2 (Exh. B), 2018).

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

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

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

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

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

F. When the city/county is lead agency for a MTCA remedial action, the Department of Ecology shall be provided with an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6). The city/county shall decide jointly with Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.090 Transfer of lead agency status to a state agency.

For any proposal for a private project where the city would be the lead agency and for which one or more state agencies have jurisdiction, the city's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the city shall be an agency with jurisdiction. To transfer lead agency duties, the city's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the city shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal. (Ord. 1853 § 2 (Exh. B), 2018).

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

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

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

B. Threshold Determinations.

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

2. For projects where the optional DNS process is used the city shall issue a threshold determination together with the notice of application required by BMC Title 14A.

3. If the optional DNS process provided for in WAC 197-11-355 is not used, the city will normally complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within 15 days of the date an applicant's completed application and completed checklist are submitted.

4. When the responsible official requires further information from the applicant or consultation with other agencies with jurisdictions:

a. The city will normally request such further information within 15 days of receiving a completed application and completed environmental checklist;

b. The city will normally wait no longer than 30 days for a consulted agency to respond;

c. The responsible official will normally complete the threshold determination within 15 days of receiving the requested information from the applicant or the consulted agency.

5. When the city must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the city will normally complete the studies within 30 days of receiving a completed application and a completed checklist.

6. The city will normally complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the application, within 15 days of receiving a completed application and completed checklist. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.110 Categorical exemptions and threshold determinations, purpose and adoption by reference.
This part contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference, as supplemented in this part:

WAC

197-11-300 Purpose of this part.

197-11-305 Categorical exemptions.

197-11-310 Threshold determination required.

197-11-315 Environmental checklist.

197-11-330 Threshold determination process.

197-11-335 Additional information.

197-11-340 Determination of nonsignificance (DNS).

197-11-350 Mitigated DNS (MDNS).

197-11-355 Optional DNS process.

197-11-360 Determination of significance (DS)/initiating of scoping.

197-11-390 Effect of threshold determination.

197-11-800 Categorical exemptions.

197-11-880 Emergencies.

197-11-890 Petitioning DOE to change exemptions.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.120 Flexible threshold for categorical exemptions.
Categorical exemptions are adopted by reference under BMC 14.10.110. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions:

A. For residential dwelling units in WAC 197-11-800(1)(b)(i): nine units;

B. For agriculture structures in WAC 197-11-800(1)(b)(ii): 10,000 square feet;

C. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): 4,000 square feet and 20 parking spaces;

D. For parking lots in WAC 197-11-800(1)(b)(iv): 20 parking spaces;

E. For landfills and excavations in WAC 197-11-800(1)(b)(v): 100 cubic yards;

F. Demolition of any structure or facility up to the maximum exempt level provided in WAC 197-11-800;

G. Replacement, addition of up to 20 percent of gross floor area, alteration or modification of an existing commercial structure, up to 12,000 square feet. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.130 Use of exemptions.

A. Upon receiving an application for a license or, in the case of governmental proposals, the department initiating the proposal, the city shall determine whether the license and/or the proposal is exempt. The city's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal.

B. In determining whether or not a proposal is exempt, the city shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the city shall determine the lead agency, even if the license application that triggers the city's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:

   a. Any nonexempt action; or

   b. Any action that would have an adverse environmental impact; or

   c. Any action that would limit the choice of alternatives; or

   d. Any combination of exempt activities which when considered together would not be exempt.

2. The city may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved.

3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

D. Proposed short subdivision of land that is adjacent to previous short subdivisions or adjacent to land on which a subdivision is pending shall not be exempt if adjacent subdivisions share any improvements or access easements. In such cases, the proposed short plat will be considered physically or functionally related regardless of ownership. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.140 Environmental checklist.

A. Except as provided in subsection (C) of this section, a completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; provided, that a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and if the city is the lead agency, for determining the responsible official and for making the threshold determination.

B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

C. For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.150 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the city is lead agency; and

2. Precede the city's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 15 working days. The response shall:

1. Be written;

2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the city to consider a DS; and

3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When the applicant submits a changed or clarified proposal along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within 15 days of receiving the changed or clarified proposal.

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS under WAC 197-11-340(2).

2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate whereas proposals to "muffle machinery to X decibel" or "construct 200-foot storm water retention pond at Y location" are adequate.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. A mitigated DNS is issued either under WAC 197-11-340(2), requiring a 14-day comment period and public notice, or under WAC 197-11-335, which may require no additional comment period beyond the comment period on the notice of application.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision ~~.~~and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the city. Failure to comply with the designated mitigation measures shall be grounds for suspension and/or revocation of any issued license or permit.

H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (Withdrawal of DNS).

I. The city's written response under subsection (B) of this section shall not be construed as a determination of significance. In addition, preliminary discussions of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.160 Environmental impact statements (EIS) – Purpose and adoption by reference.
This part contains the rules for preparing environmental impact statements. The city adopts the following sections by reference, as supplemented by this part:

WAC

197-11-400 Purpose of EIS.

197-11-402 General requirements.

197-11-405 EIS types.

197-11-406 EIS timing.

197-11-408 Scoping.

197-11-410 Expanded scoping (optional).

197-11-420 EIS preparation.

197-11-425 Style and size.

197-11-430 Format.

197-11-435 Cover letter or memo.

197-11-440 EIS contents.

197-11-442 Contents of EIS on nonproject proposals.

197-11-443 EIS contents when prior nonproject EIS.

197-11-444 Elements of the environment.

197-11-448 Relationship of EIS to other considerations.

197-11-450 Cost-benefit analysis.

197-11-455 Issuance of DEIS.

197-11-460 Issuance of FEIS.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.170 Preparation of EIS – Additional considerations.
A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the city under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by city staff, the applicant, or by a consultant selected by the city or the applicant. A consultant selected by the applicant requires written approval by the city to ensure compliance with the provisions of chapter 43.21C RCW and chapter 197-11 WAC. (See WAC 197-11-420(1) through (4).) If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or

that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.)

D. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document.

E. The applicant shall be responsible for reimbursing or compensating the city for all costs associated with the preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS). Work shall not proceed on such documents until arrangements for all associated costs have been made and approved in writing by the city. (See WAC 197-11-420 and 197-11-914.) (Ord. 1853 § 2 (Exh. B), 2018).

14.10.180 Additional elements to be covered in an EIS.
The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter:

A. Economy of the area;

B. Social policy analysis;

C. Cost-benefit analysis;

D. Such other elements as may be required by the responsible official. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.190 Commenting, adoption by reference.
This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented in this part:

WAC

197-11-500 Purpose of this part.

197-11-502 Inviting comment.

197-11-504 Availability and cost of environmental documents.

197-11-508 SEPA register.

197-11-510 Public notice.

197-11-535 Public hearings and meetings.

197-11-545 Effect of no comment.

197-11-550 Specificity of comments.

197-11-560 FEIS response to comments.

197-11-570 Consulted agency costs to assist lead agency.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.200 Public notice.
A. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city shall give public notice as required by chapter 14A.05 BMC.

B. Whenever the city issues a DNS or MDNS under WAC 197-11-355 the city shall combine the SEPA threshold determination notice and the notice of application required by BMC Title 14A and issue a single notice using the timelines and procedures prescribed by BMC Title 14A. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.210 Designation of official to perform consulted agency responsibilities for the city.
A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate city departments. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.220 Using existing environmental documents, purpose of this part and adoption by reference.
This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's own environmental compliance. The city adopts the following sections by reference:

WAC

197-11-164 Planned actions – Definition and criteria.

197-11-168 Ordinances or resolutions designating planned actions – Procedures for adoption.

197-11-172 Planned actions – Project review.

197-11-600 When to use existing environmental documents.

197-11-610 Use of NEPA documents.

197-11-620 Supplemental environmental impact statement – Procedures.

197-11-625 Addenda – Procedures.

197-11-630 Adoption – Procedures.

197-11-635 Incorporation by reference – Procedures.

197-11-640 Combining documents.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.230 SEPA and agency decisions, purpose and adoption by reference.
This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts the following sections by reference:

WAC

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.240 Substantive authority.

A. The policies and goals set forth in this chapter are supplementary to those set forth in chapter 43.21C RCW and chapter 197-11 WAC and those identified in subsection (D) of this section.

B. The city may attach conditions to a permit or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

2. Such conditions are in writing; and

3. The conditions or mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsection (D) of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that no reasonable mitigation measures are capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies identified in subsection (D) of this section and identified in writing in the decision document. (Chapter 43.21C RCW and chapter 197-11 WAC.)

D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:

1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural, and natural aspects of our national heritage;

e. Maintain, whenever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The city adopts by reference the policies in the following as they may be further amended:

a. Burlington Municipal Code~~;, including all chapters contained in BMC Title 15, Buildings and Construction, as may be further amended~~;

b. Burlington Comprehensive Plan ~~dated June 1994, and map, as may be further amended~~;

c. Shoreline Management Act~~, as may be further amended~~;

d. Growth Management Act~~, as may be further amended~~;

e. Forest Practice Act and regulations~~; as may be further amended. (Ord. 1853 § 2 (Exh. B), 2018).~~

f. Washington State Environmental Policy Act (SEPA) (Chapter 43.21C RCW);

g. Skagit County Countywide Planning Policies (CPPs).

14.10.250 SEPA appeals.

A. Any person may appeal the issuance of:

1. A determination of nonsignificance;

2. A determination of significance when issued in conjunction with a project permit; or

3. A final environmental impact statement.

The appeal of a SEPA decision not requiring a legislative decision, conditioning or denying a proposal, to the city council as set forth in RCW 43.21C.060, shall only be available where expressly provided for in this section.

B. An appeal must be filed in writing with the responsible official (WAC 197-11-680) within 14 calendar days of the date the decision becomes final. The appeal shall identify the decision, contain a summary of the grounds for the appeal and be accompanied by an appeal fee in an amount established by the adopted fee ordinance or applicable resolution. Following receipt of the appeal and the fee, the responsible official shall transmit a copy of the appeal to the hearing examiner, unless the decision is made by the hearing examiner, in which case an appeal shall go directly to city council or to whatever authority that has jurisdiction over the underlying action.

C. Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to the appeal of a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

D. Unless otherwise provided by this section:

1. Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.

2. Appeals of environmental determinations made or the lack thereof under this chapter shall be combined with and commenced within the time and in the manner required to appeal the governmental action which is subject to environmental review, pursuant to chapter 14A.05 BMC.

3. An appeal of a determination of significance may be filed as set forth above, prior to and separate from a final hearing and determination of a project action and a determination of nonsignificance of a nonproject action initiated by the city may also be made independent of the underlying action, in the manner set forth in subsection (B) of this section. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.260 Planned action.

A. A planned action, as provided for in subsection (B) of this section, does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.

B. 1. For purposes of this section, a "planned action" means one or more types of project action that:

a. Are designated planned actions by an ordinance or resolution adopted by a county, city or town planning under RCW 36.70A.040;

b. Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with (i) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or (ii) a phased project;

c. Are subsequent or implementing projects for the proposals listed in subsection (B)(1)(b) of this subsection;

d. Are located within an urban growth area, as defined in RCW 36.70A.030;

e. Are not essential public facilities, as defined in RCW 36.70A.200; and

f. Are consistent with the comprehensive plan adopted under chapter 36.70A RCW.

2. The city shall limit planned actions to development or specific geographical areas that are less extensive than the jurisdictional boundaries of the city and may limit a planned action to a time period identified in the environmental impact statement or the ordinance or resolution adopted under this subsection. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.270 Notice/statute of limitations.

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk, applicant or proponent pursuant to RCW 43.21C.080. (Ord. 1853 § 2 (Exh. B), 2018).

14.10.280 Definitions – Purpose of this part and adoption by reference.

This part contains uniform usage and definitions of terms under SEPA. The city adopts the following sections by reference, as supplemented by BMC 14.10.060:

WAC

197-11-700 Definitions.

197-11-702 Act.

197-11-704 Action.

197-11-706 Addendum.

197-11-708 Adoption.

197-11-710 Affected tribe.

197-11-712 Affecting.

197-11-714 Agency.

197-11-716 Applicant.

197-11-718 Built environment.

197-11-720 Categorical exemption.

197-11-721 Closed record appeal.

197-11-722 Consolidated appeal.

197-11-724 Consulted agency.

197-11-726 Cost-benefit analysis.

197-11-728 County/city.

197-11-730 Decision maker.

197-11-732 Department.

197-11-734 Determination of nonsignificance (DNS).

197-11-736 Determination of significance (DS).

197-11-738 EIS.

197-11-740 Environment.

197-11-742 Environmental checklist.

197-11-744 Environmental document.

197-11-746 Environmental review.

197-11-750 Expanded scoping.

197-11-752 Impacts.

197-11-754 Incorporation by reference.

197-11-756 Lands covered by water.

197-11-758 Lead agency.

197-11-760 License.

197-11-762 Local agency.

197-11-764 Major action.

197-11-766 Mitigated DNS.

197-11-768 Mitigation.

197-11-770 Natural environment.

197-11-772 NEPA.

197-11-774 Nonproject.

197-11-775 Open record hearing.

197-11-776 Phased review.

197-11-778 Preparation.

197-11-780 Private project.

197-11-782 Probable.

197-11-784 Proposal.

197-11-786 Reasonable alternative.

197-11-788 Responsible official.

197-11-790 SEPA.

197-11-792 Scope.

197-11-793 Scoping.

197-11-794 Significant.

197-11-796 State agency.

197-11-797 Threshold determination.

197-11-799 Underlying governmental action.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.290 Agency compliance, purpose and adoption by reference.
This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions which do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city adopts the following sections by reference:

WAC

197-11-900 Purpose of this part.

197-11-902 Agency SEPA policies.

197-11-916 Application to ongoing actions.

197-11-920 Agencies with environmental expertise.

197-11-922 Lead agency rules.

197-11-924 Determining the lead agency.

197-11-926 Lead agency for governmental proposals.

197-11-928 Lead agency for public and private proposals.

197-11-930 Lead agency for private projects with one agency with jurisdiction.

197-11-932 Lead agency for private projects requiring licensing from more than one agency, when one of the agencies is county/city.

197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

197-11-936 Lead agency for private projects requiring licenses from more than one state agency.

197-11-938 Lead agencies for specific proposals.

197-11-940 Transfer of lead agency status to a state agency.

197-11-942 Agreements on lead agency status.

197-11-944 Agreements on division of lead agency duties.

197-11-946 DOE resolution of lead agency disputes.

197-11-948 Assumption of lead agency status.

(Ord. 1853 § 2 (Exh. B), 2018).

14.10.300 Form – Adoption by reference.
The city adopts the following forms and sections by reference:

WAC

197-11-960 Environmental checklist.

197-11-965 Adoption notice.

197-11-970 Determination of nonsignificance (DNS).

197-11-980 Determination of significance and scoping notice (DS).

197-11-985 Notice of assumption of lead agency status.

197-11-990 Notice of action.

(Ord. 1853 § 2 (Exh. B), 2018).

Chapter 14.15

CRITICAL AREA REGULATIONS

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14.15.370 Fish and wildlife habitat conservation area site assessment requirements.
14.15.380 Fish and wildlife habitat conservation area mitigation standards.

FREQUENTLY FLOODED AREAS

14.15.390 General.
14.15.400 Designation and mapping.
14.15.410 Flood development permits.
14.15.420 Development regulations.
14.15.430 Construction standards.
14.15.431 Habitat impacts and mitigation.
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Special Management Areas

14.15.436 General.
14.15.437 Development Standards

Commented [BJ2]: BJ – 4-20-2023 – Per WDFW letter codified special management area standards in code. Consistent with BAS report recommendations.

COMPLIANCE

14.15.440 Compliance with critical area regulations.
14.15.450 Construction.
14.15.460 Severability.
14.15.470 State Environmental Policy Act.
14.15.480 Liability disclaimer.

14.15.010 Title.
This chapter shall be known as “Critical Area Regulations.” (Ord. 1853 § 2 (Exh. B), 2018).

14.15.020 Application.
A. This chapter shall apply to land use, development, and platting located in the city limits of Burlington, within the geographical areas that meet the definitions and criteria for critical areas regulation as set forth in this chapter.

B. The following shall constitute critical areas:

1. Wetlands and riparian corridors, including Gages Slough. Wetlands serve many important ecological and environmental functions and help to protect public health, safety and welfare by providing flood storage and conveyance, erosion control, fish and shellfish production, fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research and other public benefits. It is the purpose of this chapter to protect these functions to prevent the continual loss of wetlands, and where practical to enhance or restore wetland functions and values;

2. Fish and wildlife habitat conservation areas. In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources. Many species serve as indicators of the condition of the environment and the quality of life that local residents have invested in, enjoy and respect. It is the purpose of this chapter to protect, restore where practical, and enhance fish and wildlife populations and their associated habitats;

3. Frequently flooded areas. It is the purpose of this chapter to promote the public health, safety, and general welfare, minimize public and private losses due to flood conditions, and protect the ecological and hydrological functions of the floodplain;

4. Geologically hazardous areas. Geologically hazardous areas include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human-caused geologic events. Some geologic hazards can be reduced or mitigated by engineering, design,

or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction within identified geologically hazardous areas shall be prohibited. (Ord. 1903 § 2 (Exh. A), 2021; Ord. 1853 § 2 (Exh. B), 2018).

5. Special management areas, including:

a. Burlington Hill;

b. Gages Slough Corridor;

c. Skagit River Corridor.

14.15.030 Purpose.

A. This chapter is adopted to assist in orderly development, conserve the value of property, safeguard the public welfare, and provide protection for defined critical areas.

B. It is the purpose of this chapter to prevent contamination and depletion, avoid exorbitant cleanup costs, hardships and potential physical harm to people.

C. The ordinance codified in this chapter was developed under the directives of the Growth Management Act to conserve and protect critical areas pursuant to RCW 36.70A.172. “Critical areas” are defined as wetlands, aquifer recharge areas, flood hazard areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. Some of these areas, such as geologic hazards and flood hazard areas, are critical because of the hazard they represent to public health. Others, such as fish and wildlife habitats and wetlands, are critical because of their public value.

D. Maps are useful primarily as an indicator of the distribution and extent of critical areas. Maps will be used wherever possible as part of the screening process for evaluating individual permit applications. Although a number of map resources are utilized in this chapter, regulatory measures such as buffer requirements are based upon the identification of critical areas during the permit, development authorization, or other approval processes.

E. Critical areas will be designated by definition and then classified through site assessments so that they can be identified using scientifically based criteria and protected. The use of site assessments to confirm the actual presence and classification of critical areas is central to the management approach developed under this chapter.

F. The ordinance codified in this chapter was drafted to provide regulatory structure for identification, designation and protection of critical areas. This chapter allows staff to provide site visits, preliminary reviews, and preapplication meetings to assist in the identification of critical areas.

G. These regulations are intended to:

1. Protect human life, property, and the public health and safety of the citizens of Burlington;

2. Minimize the expenditure of public money;

3. Maintain the city’s flood insurance eligibility while avoiding regulations which are unnecessarily restrictive or difficult to administer;

4. Ensure that wetland and other critical area functions and values are protected to provide public benefits. ~~(Ord. 1853 § 2 (Exh. B), 2018).~~;

5. Implement the Burlington Comprehensive Plan.

14.15.040 Authority.

The ordinance codified in this chapter is adopted under the authority of chapters 36.70 and 36.70A RCW, and Article II of the Washington State Constitution. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.050 Jurisdiction and coordination.

A. Relationship to Other Federal, State and County Jurisdictional Agencies' Regulations. Many state, federal and regional regulations apply to projects conducted within critical areas. Uses otherwise allowed by local codes do not eliminate other agency regulatory requirements.

1. Federal regulations include:

   a. Clean Water Act, Section 401, 404;

   b. Coastal Zone Management Act;

   c. Endangered Species Act;

   d. Federal Water Pollution Control Act;

   e. Food Security Act – Swampbuster;

   f. National Environmental Policy Act;

   g. National Floodplain Insurance Program;

   h. River and Harbor Act, Section 10.

2. State regulations include:

   a. Chapter 43.21C RCW, State Environmental Policy Act;

   b. Chapter 75.20 RCW, Construction Projects in State Waters;

   c. Chapter 76.09 RCW, Forest Practices Regulations;

   d. Chapter 77.12 RCW, Powers and Duties;

   e. Chapter 78.44 RCW, Surface Mining Act;

   f. Chapter 86.16 RCW, Floodplain Management (Formerly flood control zones by state);

   g. Chapter 90.03 RCW, Water Code;

   h. Chapter 90.48 RCW, Water Pollution Control Act;

   i. Chapter 90.58 RCW, Shoreline Management Act of 1971.

3. Local regulations include:

   a. Chapter 14.10 BMC, Environmental Policy;

   b. Chapter 14.05 BMC, Surface Water Management;

   c. Skagit County shoreline management program.

B. Jurisdictional Substitution. In cases where other agencies possess jurisdictional control over critical areas and it is determined by the director that the permit conditions satisfy the requirements of this chapter, those requirements may substitute for the requirements of this chapter. Such requirements shall be a condition of critical area approval and be enforceable under this chapter. Such agencies may include, but are not limited to, the United States Army Corps of Engineers, Environmental Protection Agency, and Fish and Wildlife Service, the Swinomish Tribe, and the Washington State Department of Ecology, Department of Natural Resources and Department of Fish and Wildlife. The applicant shall be notified in writing when any such substitution is made. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.060 Resource information and maps.

A. Critical areas defined and identified in this chapter shall be mapped whenever possible. These maps shall be advisory and used by the director to provide guidance in determining applicability of the standards to a property. All sites which contain or include critical areas, whether mapped or not, shall be subject to the provisions of this chapter.

B. Critical area maps, with the exception of the flood insurance rate map used to designate certain flood hazard areas, are provided only as a general guide to alert the user to the possible distribution, location and extent of critical areas. Map identification of critical areas provides only approximate boundaries and locations. The actual locations and boundaries of critical areas, as well as their quality and quantity, shall be based upon the presence of the features applicable to each critical area element in this chapter. Maps shall not be considered a regulatory standard or substitute for site-specific assessments. The application of definitions, methodologies and performance standards pursuant to the site-specific assessment requirements provided in this chapter is the controlling factor in determining the actual presence and extent of critical areas.

C. Critical area maps maintained by the department shall utilize the best information currently available and should be updated on a continual basis.

D. Critical areas mapped under the site assessment requirements of this chapter should be compiled in a database and incorporated into critical area maps. This map information shall be utilized to facilitate tracking of compliance with the requirements of this chapter to ensure long-term protection of critical areas.

E. The city will make interpretations where needed as to exact location of the boundaries of the areas of special flood hazard (e.g., where there appears to be a conflict between a mapped boundary and actual field conditions). If there is a disagreement about the location of the boundary, additional information from a licensed surveyor may be needed, and the application shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the rules and regulations of the National Flood Insurance Program (44 CFR 59-76). (Ord. 1853 § 2 (Exh. B), 2018).

14.15.070 General requirements and authorizations required.

A. In addition to any other requirements identified in this chapter, or otherwise imposed by the Burlington Municipal Code, all development occurring in critical areas, or critical area buffers, shall meet the following general requirements:

1. Site. Complete stabilization of all portions of a site which are disturbed or impacted by the proposed development, including all development coverage and construction activity areas, shall be required. Complete stabilization of all portions of a site refers to the process and actions necessary to ensure that existing and proposed site improvements are stabilized, and that all on-site areas and adjacent properties which are disturbed or impacted are stabilized. The proposed development shall be limited and controlled to avoid adverse impacts and potential harm and ensure safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to solve site stability problems may be required by the director.

2. Adjacent Site, Surrounding Area, and Drainage Basin. The proposed development shall ensure safe, stable and compatible development which avoids adverse environmental impacts and potential harm to adjacent sites, the surrounding neighborhood, and the drainage basin. Detailed analysis of impacts of the development upon wetlands, riparian corridors, native vegetation and wildlife habitats, water quality, natural water temperature, slope and soil conditions, and surface water drainage may be required at the request of the director when site and area conditions indicate the need for this analysis. Supplemental technical reports may be required by the director to specify measures to preserve, protect, and maintain adjacent sites and the drainage basin and ensure safe, stable and compatible development.

B. With the exception of activities identified as exempt under BMC 14.15.120, any land use activity that can impair the functions and values of critical areas or their buffers through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation shall require critical areas review and written authorization pursuant to this chapter. Vegetation destruction or removal, other than the normal maintenance of existing landscaping identified as exempt under BMC 14.15.120, shall be prohibited within a critical area or its required buffer, unless there is an approved buffer management plan pursuant to the requirements of the particular

critical area that demonstrates there will be no adverse impact to the critical area with the proposed vegetation removal and disturbance of the soil or water and includes any mitigation or buffer enhancement necessary to address critical areas impacts. Authorizations required under this chapter overlay other permit and approval requirements of the Burlington Municipal Code. Regardless of whether a development permit or approval is required, any proposed alteration that can adversely affect a critical area or its standard buffers' functions must comply with the substantive and procedural requirements of this chapter. Critical areas review pursuant to this chapter shall be conducted as part of the underlying permit or approval, where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain authorization prior to commencing such activities. In some cases, the typical thresholds that trigger review and permits have been reduced to zero for any development activity located within a critical area or its required buffer.

C. Procedures. No land use development permit, land division, development approval, or other authorization required shall be granted until the applicant has demonstrated compliance with the applicable provisions of this chapter.

1. The applicant shall demonstrate that the proposal submitted conforms to the purposes and standards of this chapter, assesses impacts an the critical area from activities and uses proposed, and identifies protective mechanisms adequate to meet the requirements of this chapter.

2. Each proposal shall be reviewed by the director for consistency with the applicable regulations identified in this chapter and to ensure the protective mechanisms proposed are sufficient to protect the critical area, public health, safety and welfare. ~~If not, c~~Conditions of approval shall be specified as necessary to ensure compliance with the provisions of this chapter. If there are no conditions under which the proposal could be approved, then the proposal shall be denied.

D. All land use actions and development activities shall be conditioned as necessary to mitigate impacts to critical areas as required by this chapter and any project that cannot adequately mitigate its impacts to critical areas shall be denied. In all cases mitigation sequencing shall be applied and no net loss of critical areas functions and values shall be permitted.

Commented [BJ3]: BJ – 4-20-2023 – added to address WDFW comment

E. Conflicts with Other Provisions. If any provision of this chapter conflicts with any other applicable code provision, the more restrictive shall apply unless specifically accepted in this chapter.

F. Satisfaction of the requirements of this chapter shall also be sufficient to satisfy the requirement for critical areas analysis and mitigation pursuant to chapter 43.21C RCW, State Environmental Policy Act, and chapter 14.10 BMC, Environmental Policy.

G. SEPA Compliance. The goals, policies and purposes set forth in this chapter shall be considered policies of the State Environmental Policy Act. When applicable the applicant must meet SEPA requirements.

H. Other Permits Required. It is recognized that many local, state, and/or federal permit conditions may apply to the proposed action, and that compliance with the provisions of this chapter may not necessarily constitute compliance with other such requirements. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.080 Public notice and records.
Public notice for projects subject to the provisions of this chapter shall be provided pursuant to the requirements of BMC Title 14A, land use permit process. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.090 Application submittal requirements.
In addition to the application submittal requirements specified in other codes, a complete application for development subject to this chapter shall include the following additional information:

A. Surveyed Site Plan. A surveyed site plan shall be prepared by a state of Washington licensed surveyor and shall include the following, when required by the community development director:

1. Existing topography at two-foot contour intervals on site, within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;

2. Terrain and drainage flow characteristics within the site, within 25 feet of the site's abutting boundaries, and within the full width of abutting public and private rights-of-way and easements;

3. Proposed location and boundaries of all required undisturbed fenced areas and buffers on site and on adjacent lands;

4. Location of all vegetation, including location and description of all trees over six inches in diameter measured five feet above the base of the trunk, shrubs over eight feet tall or six feet wide, and noting their species;

5. Location and boundaries of all existing and proposed site improvements on the site and within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements. This shall include the limits of development coverage, impervious surfaces and construction activity areas (noting total square footage and percentage of site occupied);

6. Location of all grading activities in progress or proposed, and all drainage control facilities or systems in existence, in progress or proposed within 25 feet of the site's property boundaries, and the full width of abutting public and private rights-of-way and easements;

7. Location of all existing and proposed utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on site, on adjacent lands within 25 feet of the site's property lines, and in the full width of abutting public rights-of-way, and proposed methods and locations for the proposed development to hook up to these services;

8. Such other additional site plan information as necessary to complete review of a project or waive specific submittal requirements when not necessary for project review.

B. Technical Reports. Technical reports shall be prepared and submitted as required by this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.100 Administration.

A. The director shall be responsible for the administration of this chapter, including:

1. Review applications for land use actions to verify compliance with this chapter, issue permit decisions, or make recommendations to the hearing examiner in accordance with the permit processing procedures identified in BMC Title 14A;

2. Review applications for land use actions to assure that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required;

3. Recording and maintaining records of:

a. As-built elevation above mean sea level of the lowest floor including basement of all new and substantially improved structures requiring a floodplain approval and whether same structure contains a basement,

b. Certification by registered professional engineer or architect as required by this chapter,

c. Floodplain approvals and other actions pursuant to the administration of this chapter;

4. Notification to adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse with copy to FEMA, and maintenance within the altered or relocated portion of said watercourse so that flood-carrying capacity is not diminished;

5. When base flood elevation data has not been provided, obtaining, reviewing, and reasonably utilizing any base flood elevation and floodway data that should become available from a federal, state or other source in order to administer standards and floodways;

6. Issuance of development permits pursuant to BMC Title 14A, Land Use Decisions, and chapter 15.04 BMC, Uniform Codes, before construction or development begins within the city limits.

B. This chapter shall be administered in accordance with chapter 86.16 RCW and chapter 508-60 WAC. This chapter shall be revised as necessary to conform with any changes in state rules pertaining to flood control zones which may be adopted by the State Department of Ecology subsequent to the effective date of delegation of the state's permit program to the city.

C. The administrative procedure for critical areas review shall be as follows:

1. ~~Determination that an Activity Requires Standard Review~~Preliminary screening. ~~All applications for approval of activities requiring written authorization pursuant to BMC 14.15.070 shall require the submission of a critical areas checklist completed and filed by the applicant on the forms provided by the planning department. If not otherwise required, all applications for critical areas review shall include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical area indicators. Upon receipt of the application, a determination shall be made as to whether or not the proposed activity fits within any of the exempt activities found in BMC 14.15.120. If the proposed activity is classified as exempt, and meets the associated conditions for such an allowance, no other critical areas review shall be required, except as necessary to ensure that any conditions for such an allowance are met in practice. This determination shall be made in writing and included in the application file.~~

~~Proposed activities identified under BMC 14.15.120 that do not meet the conditions for such an allowance or that may result in significant adverse impacts to a critical area or its buffer shall be subject to standard critical areas review.~~Unless explicitly exempted from review under this chapter, all development proposals shall be screened for the presence of critical areas indicators, critical areas, and critical area buffers at the time of application. The City may employ the following preliminary screening methods:

~~2. Method for Initial Determination of Critical Areas. Upon determination that the proposed activity requires detailed critical areas review, and upon receipt of a completed critical areas checklist, the following method shall be used to determine whether critical areas or their required buffers will possibly be affected by the proposed activity:~~

a. Review ~~the~~ a critical areas checklist ~~together with the maps and other critical areas resources identified in the relevant sections of this chapte~~prepared by the applicant~~r~~; ~~and~~

b. ~~Complete the critical areas staff checklist; and~~Review maps, critical area reports, permit records, or previous critical area studies;

c. Inspect the site;

~~and~~

d. ~~Complete the critical areas field indicator form.~~Review aerial photography, imagery, or remote sensing data;

e. Review studies, inventories, mapping, and data compiled by state, federal and local government agencies;

f. Other methods consistent with best available science;

~~3. Determination that Critical Areas Are Not Affected. If critical area indicators are not present within 200 feet of the proposed activity or within a distance otherwise specified in this chapter, then the review required pursuant to this chapter is complete, except as necessary to ensure that the proposed activity is undertaken as~~

~~described in the application and as shown on the site plan. This determination shall be noted in the application file and provide written authorization shall be provided for the project or activity to proceed as proposed in the application or, where applicable, with any specific conditions of approval. This determination shall not constitute approval of any use or activity or its compliance with the requirements of this chapter, outside the scope of that stated in the application. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this chapter. The applicant shall acknowledge in writing that the determination regarding the apparent absence of critical area indicators and the likelihood that critical areas will not be affected is not intended as an expert certification regarding the presence or absence of critical areas and that the critical areas review process is subject to possible reopening if new information is received as described in subsection (C)(4) of this section. If the applicant wants greater assurance of the accuracy of any such critical area indicators determination, the applicant shall hire a qualified critical areas expert to provide such assurances.~~

~~4. Reopening of Review Process.~~

~~a. If at any time prior to completion of the public input process on the associated permit or approval, the city receives new evidence that a critical area may be present within 200 feet of the project area or within a distance otherwise specified in this chapter, then the critical areas review process shall be reopened pursuant to this chapter and shall require whatever level of critical areas review and mitigation as is required by this chapter.~~

~~b. Once the public input process on the associated permit or approval is completed and the record is closed, then the city's determination regarding critical areas pursuant to this chapter shall be final; provided, however, that the critical areas review process may be reopened if it is determined that incomplete or incorrect information was provided by the applicant in the application or checklist. For the purposes of this subsection, "incomplete or incorrect information" means information regarding the nature and/or location of the proposed activity as presented in the application or regarding the presence of a critical area or critical area indicators on the subject property which the applicant knew or should have known was relevant at the time of the submittal of the checklist. Prior to reopening a critical areas review under this subsection, the city shall conduct a site visit. No critical areas review shall be reopened under this section unless it is determined, after the site visit, that incomplete or incorrect information was provided.~~

5. Determination that Critical Areas may be ~~present~~present~~Are Affected~~. If the city determines that critical area indicators, critical areas, or critical area buffers are present within 3~~2~~00 feet of the proposed activity or within a distance otherwise specified in this chapter, then the determination shall be recorded in the project file and the applicant shall provide a critical areas site assessment as specified in this chapter. Development of a site assessment may precede a site visit; provided, that no disturbance of vegetation or land surface occurs prior to authorization.

6. Critical Areas Determination and Conditions of Approval. Based on the critical areas site assessment report and other available critical areas information, the city shall make a determination on the proposed activity. A determination to approve a proposed activity shall include designation of protected critical areas (PCAs) pursuant to this chapter and stipulation of binding conditions and required mitigation, monitoring, maintenance or other conditions of approval pursuant to this chapter. If there are no conditions under which the proposed activity could be approved, then the community development director shall deny the proposal. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.110 Critical areas checklist, site assessment and conditions of approval.

A. ~~Critical Areas Checklist~~Site Assessment Required. Every application for an activity that might alter or adversely affect a critical area or critical area buffer shall include a critical area ~~checklist on a form provided by the director~~site assessment. ~~The checklist shall identify all critical area indicators and/or all known critical areas within 200 feet of the proposed activity or within a distance otherwise specified in this chapter. The checklist shall be signed by the applicant and shall inform the applicant that if the information on the checklist is later determined incorrect, then any permit or approval issued based on information provided may be rescinded and the site restored to its original, predevelopment, condition.~~

~~B. Site Assessment Required. If, after a site visit, the city determines that the proposed activity area is within 200 feet, or within a distance otherwise specified in this chapter, of an area that may contain critical area indicators, or if the city determines that the proposed activity will adversely impact a critical area or its associated buffer, then a complete critical areas site assessment shall be required.~~ Critical areas site assessments, as described in more detail in the various sections for each type of critical area, shall be submitted as part of a complete application for a development permit, or other approval of land use activities having the potential to impact critical areas or their buffers, by a qualified expert.

C. Site Assessment Preparation. The critical area site assessment shall be prepared by a qualified expert for the type of critical area or areas involved and shall contain the information specified for each type of critical area. In general, the site assessment shall include critical area inventory, assessment of impacts and, where applicable, proposed mitigation, land use restrictions and landowner management, maintenance and monitoring responsibilities. The city may require peer review or review by personnel from state and federal agencies with expertise. The cost of any required peer review shall be borne by the applicant in accordance with the City's adopted fee schedule.

D. Any site plans required by this chapter may be combined into a single site plan wherever possible.

E. Critical Areas Determination and Conditions of Approval. After receiving a complete site assessment report, the city shall determine whether or not the proposed activity meets the requirements of this chapter and under what conditions. This determination shall utilize the information provided in the site assessment report and all other resource information available.

G. Critical area determinations shall be made in writing, contain findings addressing the requirements of this chapter, and shall identify any conditions of approval, land use prohibitions, and mitigation, management, monitoring and maintenance requirements. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.120 Application of standards.

This chapter shall apply to all public and private land use actions and development including, but not limited to, new structures, additions, land divisions, grading, and filling located on either public or private property. The development activities listed below ~~Projects~~ may be exempted from the detailed critical area review requirements of this chapter, provided that any development in a floodplain management area constituting a substantial improvement or substantial repair shall be subject to review. Exemption from review and permitting shall not be construed to constitute an exemption from the substantive requirements of this chapter. No land use action or development activity shall result in a net loss of critical area functions and values. ~~when the following situations and/or conditions apply:~~

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A. Emergencies that threaten the public health, safety and welfare. An emergency is an unanticipated and imminent threat to the public health or safety or to the environment which requires immediate action within a period of time too short to allow full compliance with this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods that can address the emergency but also that have the least possible impact to the critical area or its buffer. The responsible party (property owner or agent) shall restore the critical area and buffer after the emergency to the extent feasible. The person or agency undertaking such action shall notify the director within one working day or as soon as practical following commencement of the emergency activity. Following such notification, the director shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the director determines that the action taken or any part of the action taken was beyond the scope of allowed emergency actions, then the enforcement provision shall apply.

B. Normal and routine maintenance or repair of existing structures, utilities, sewage disposal systems, potable water systems, drainage facilities, ponds, or public and private roads and driveways associated with preexisting residential or commercial development, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical areas and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

C. Normal maintenance, repair, or operation of existing structures, facilities, and improved areas accessory to a single-family residential use, provided any maintenance or repair activities shall use reasonable methods with the least amount of potential impact to the critical area and any impact to a critical area or its buffer shall be restored after the maintenance to the extent feasible.

D. Modification of an existing single-family residence that does not change the use from residential, does not expand the building footprint or increase septic effluent, and does not adversely impact critical areas or their buffers.

E. Modification of other than a single-family use which does not expand the building footprint, alter the use or increase septic effluent, pursuant to the requirements of the nonconforming use and structure provisions, and does not adversely impact critical areas or their buffers.

F. Outdoor recreational activities which do not adversely impact critical areas or their buffers.

G. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling soil, planting crops, or changing existing topography, water conditions or water sources; and provided further, that the activity does not adversely impact critical areas or their buffers.

H. The operation and maintenance, construction and reconstruction of diking and drainage systems which protect life and property along the Skagit River.

I. Education and scientific research activities which do not adversely impact critical areas or their buffers.

J. Construction or modification of navigational aids and channels markers.

K. Site investigation work necessary for land use applications such as surveys, soil logs, percolation tests and other related activities which do not adversely impact critical areas or their buffers. In every case, critical area impacts shall be minimized and disturbed areas shall be immediately restored.

L. Maintenance activities such as mowing and normal pruning; provided, that such maintenance activities are limited to existing landscaping improvements and do not expand into critical areas or associated buffers, do not expose soils, do not alter topography, do not destroy or clear native vegetation, and do not diminish water quality or quantity.

M. Fish, wildlife, wetland and/or riparian enhancement activities not required as mitigation; provided, that the project is approved by the U. S. Department of Fish and Wildlife, the Washington State Department of Fish and Wildlife or the Washington State Department of Ecology.

N. For d~~D~~evelopments in floodplain management areas ~~other than the following~~:

1. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, ~~and accessways~~roads, paths, and sidewalks;

2. Maintenance and minor repair of existing improvements, provided such activities do not constitute "substantial repair" or "substantial improvement" as defined by this chapter.

O. All such activities shall be carried out in ways that cause the least impact to critical areas and their buffers. If any damage is caused to a critical area or buffer in connection with such activity, the critical area and its buffer must be restored to the extent feasible. To be exempt does not give permission to destroy a critical area or ignore risk. An exemption from permit requirements is not an exemption from complying with the other requirements of this chapter. Proponents of such activities shall be responsible for notifying the community development director if any damage occurs and shall provide all necessary restoration or mitigation. For information on identifying, protecting or mitigating adverse impacts to critical areas, refer to sections in this chapter on wetlands, aquifer recharge areas, geologically hazardous areas, fish and wildlife habitat conservation areas, and flood hazard areas. (Ord. 1903 § 2 (Exh. A), 2021; Ord. 1853 § 2 (Exh. B), 2018).

14.15.130 General construction and maintenance standards.

All land use actions and development activities located in critical areas or critical area buffers shall be subject to the following general construction and maintenance standards:

A. All buffer areas and other designated protected areas shall be fenced with a highly visible and durable protective barrier during construction to prevent access and protect critical areas.

B. All disturbed areas on the site, including development coverage and construction activity areas, shall be controlled in a manner sufficient to control drainage and prevent erosion during construction, and revegetated to promote drainage control and prevent erosion after construction. In cases where erosion potential is severe, a vegetation and revegetation report prepared by a qualified professional with landscaping, plant ecology and botany education and experience may be required. All revegetation shall consist of native, non-invasive trees, shrubs, and ground cover that is suitable for the location and does not require permanent irrigation systems for long-term survival.

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C. When development is proposed in a critical area or critical area buffer, grading activities shall be strictly limited to areas located on the most environmentally suitable portion of the site.

D. All drainage associated with the development shall be managed using an approved drainage control system in accordance with the provisions of this title.

E. Land use actions and development shall comply with the seismic design requirements identified in the building code adopted by, or referenced in, BMC Title 15.

F. All grading in critical areas shall not occur prior to March 31st and shall be stabilized by October 31st unless demonstrated to the satisfaction of the director based on approved technical analysis that no environmental harm or safety issues would result from grading between November 1st and March 31st.

G. Construction activities shall adhere to a prepared schedule approved by the city prior to issuance of a building or development permit.

This schedule shall include, but not be limited to, a schedule for compliance with project conditions, limits of construction and work activities, equipment to be used, start and duration of each phase, and work sequencing.

H. Dumping or filling is prohibited in wetlands and special flood risk areas. Dumping is prohibited in all critical areas. Dumping includes deposit of yard waste, trash, litter, refuse, dirt, concrete, asphalt, rocks or similar materials, but shall not include work authorized by approved plans and permits. (Ord. 1853 § 2 (Exh. B), 2018).

Commented [BJ6]: BJ – 4-20-2023 – added to address WDFW comment

14.15.140 Reasonable use exception.

If the application of this chapter would result in denial of reasonable and economically viable use of a property, then a landowner may seek a reasonable use exception from the standards of this chapter, except for the flood hazard critical area where no exceptions are allowed. Reasonable use exceptions shall only apply to legal lots of record established prior to the effective date of this chapter. Reasonable use exceptions are intended as a “last resort” when no plan for mitigation can meet the requirements of this chapter and allow the applicant a reasonable economically viable use of their property. Reasonable use exceptions may only be granted under the following conditions:

A. The application of this chapter would deny all reasonable and economically viable use of the property and there is no reasonable and economically viable use with a lesser impact on the critical area than the use proposed; and

B. The proposed development does not pose a threat to the public health and safety; and any proposed modification to a critical area will be evaluated through consideration of a site assessment and mitigation plan prepared by the applicant’s qualified consultant pursuant to the requirements of this chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property; and

C. Reasonable use determinations may be issued with conditions of approval, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers. Mitigation requirements may also be imposed to ensure that all impacts are mitigated to the maximum extent feasible. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.150 Critical area and buffer mitigation requirements – General provisions.

A. Buffers.

1. As described in more detail in each relevant section, buffers have in some cases been determined necessary and appropriate to protect critical areas and their functions or to prevent risk from a critical area hazard. In those sections of this chapter where specific buffers are identified, those buffers are deemed “required” or

"standard" buffers. If a project or activity does not propose any alteration of those buffers or of the associated critical area and the city determines that these buffers are adequate to protect the critical area or to prevent risk of a hazard from the critical area, then subject to the provisions of this section, no additional mitigation will be required. Once the critical area and its buffer have properly been delineated through a critical areas assessment and any conditions of approval have been established to ensure protection of the critical area function, no further critical areas mitigation assessment is required, except as necessary to ensure that long-term protection of critical areas and buffers is met in practice through compliance with the provisions of this section. The applicant shall ensure the protection of critical area by performing a site assessment on the entire parcel.

2. If, however, based on a site assessment by a qualified expert, unique features of the particular critical area or its buffer or of the proposed development, the qualified expert determines that additional buffers and/or mitigation measures beyond these buffers are necessary to adequately protect the function of the critical area or to prevent risk of a hazard from the critical area, such additional mitigation requirements may be imposed, provided the qualified expert can demonstrate, based on best available science, why that additional mitigation or buffering is required to adequately protect the critical area function or to prevent hazard from a critical area.

3. If the applicant proposes to reduce buffers or to alter the critical area or its required buffer, then the applicant shall demonstrate, based on best available science, why such buffer and/or critical area modification, together with such alternative mitigation proposed in the critical areas assessment, is sufficient to provide equal or better protection of the critical area function or provide no increased risk of a hazard from the critical area.

4. The critical areas assessment and the conditions of approval shall make adequate provision for long-term protection related to critical areas and buffers, and shall fully address the requirements of this chapter.

However, critical areas and/or buffers identified as protected critical areas (PCAs) as defined in this chapter do not require any provisions for public access, and appropriate restrictions may be included in the easement or title documents. Critical areas and/or buffers identified as PCAs are, however, subject to periodic inspection by the director, upon prior notification to the landowner, to ensure long-term protection.

5. Protected Critical Areas (PCAs).

a. For proposed land divisions, critical areas and their associated buffers identified through the site assessment and city review process shall be designated as PCAs and placed in separate tracts or easements and protected through protective covenants shown on the face of the recorded plat. (See BMC 14.15.160, Protected critical area (PCA) requirements.)

b. For development projects or land use activities not involving a new land division, the critical area and its associated buffer identified through the site assessment process shall instead be identified as a PCA by either easement, open space designation or permit conditions, all including restrictive covenants and recorded with the auditor on a site plan to ensure long-term protection. Critical areas and/or buffers identified as PCAs are subject to periodic inspection, upon prior notification to the landowner, to ensure long-term protection.

6. Open Space – Protected Area. If a portion of a parcel contains a proposed development project that triggers a development permit, and has not had its critical areas and associated buffers delineated because it was outside the project or area affected by the project, then further critical areas assessment may be required in the future prior to any change of use, or new development permit for that portion of the site.

B. Mitigation. All proposed alterations to critical areas or associated buffers shall require mitigation sufficient to provide for and maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the reasonable economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, or other conditions appropriate to avoid or mitigate identified adverse impacts.

C. Preferred Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated critical areas or their buffers. The preferred sequence of mitigation is defined below:

1. Avoid the impact altogether by not taking a certain action or parts of an action;

2. Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

3. Rectify the impact by repairing, rehabilitating or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;

4. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;

5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments;

6. All proposed mitigation shall be included in the critical areas assessment. The critical areas mitigation shall include the following:

a. Description of proposed mitigations (critical areas lost/critical areas gained);

b. Analysis of avoidance, minimization, reduction, and compensation;

c. Functional analysis of mitigation/analysis of prevention of risk hazard;

d. Proposed applicant or landowner monitoring or inspection measures and schedule, including specification of method and frequency of submittal of reports on results; and

e. Contingency plan.

D. Mitigation requirements shall be identified in written conditions of approval and shall be included in an approved mitigation plan.

E. Financial Assurance. The approved mitigation plan shall be completed prior to final approval of the development permit. For all projects with an estimated mitigation cost of $4,000 or over, the financial assurance may be required to assure compliance with the mitigation plan if the complete mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city attorney, shall be in the amount of 125 percent of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of the city of Burlington. The term of the financial assurance shall remain in place until the required mitigation is complete.

F. Monitoring of Critical Areas Mitigation. On a regular basis, but no less frequently than once every two years, the city shall survey a sampling of projects and activities for which critical area site assessments were required, including mitigation plans, potentially impacting fish-bearing streams and/or Category I, II or III wetlands. The sample shall be taken from permits or approvals issued more than 10 months prior to the sampling date. The selected sites shall be inspected for critical area and buffer size and condition and for compliance with any required mitigation or other conditions of approval. Results of such sampling shall be included in the permanent record for the project or activity, shall be reported to the city council, and shall also be utilized for enforcement purposes. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.160 Protected critical area (PCA) requirements.

A. PCA Identification and Recording.

1. PCA Identification. Approval of development projects which trigger a development permit and other land use activities that can cause adverse impacts to critical areas and/or their buffers shall require the identification and designation of PCAs by the community development director. This section is intended to apply to unique critical area elements such as buffers or wellhead protection areas that can cause adverse impacts; location in the floodplain unless adjacent to a wetland or riparian corridor does not require recording of a PCA. PCAs shall

include all critical areas and associated buffers on the proposed project site which have been identified through the site assessment process.

2. PCA Recording. All PCAs shall be recorded with the county auditor in accordance with the procedures established under this section. The applicant shall be responsible for all fees and other costs associated with recording of PCAs.

3. For each project or activity that requires recording of PCAs, the following information shall be recorded with the auditor and be readily available to the public upon request:

a. Recorded documents signed by the landowner and the director which stipulates any special conditions of approval, protective covenants, binding conditions, or other requirements such as use restrictions, required mitigation, and/or landowner maintenance or monitoring requirements established at the time of approval;

b. Required final plat map or site plan clearly showing the locations of PCAs, existing vegetation and permanent buffer edge markers;

c. Additional information necessary to document the critical areas inventory at the time of approval, including descriptions of identified critical areas, their locations, functions and values, and existing critical areas or buffer vegetation;

d. Identification of any local responsibilities beyond those required by this chapter;

e. Reference to the file containing the complete record of information pertaining to approval of the project or activity.

4. Permanent Buffer Edge Markers. Permanent edge markers and fencing along ~~Except as provided under subsection (A)(4)(a) of this section, t~~the outer edges of ~~all~~ PCAs, with the exception of aquifer recharge areas, may be required~~. , and if required shall be clearly marked on site by the applicant or landowner with permanent rebar stakes and critical area markers. Critical area markers may be either approved critical area signs or inexpensive steel posts painted a standard color approved by the director that is clearly identifiable as a critical area marker. Installation of permanent markers shall be the responsibility of the landowner~~The Director shall have the authority to specify the size, spacing, and other required characteristics of any critical area markers or fencing and may require that critical areas, buffers, and PCAs be surveyed~~.~~

~~a. The director may waive or modify the requirement for permanent buffer edge markers; provided, that any such decision shall be based on a site-specific determination that future verification of PCA locations will not be substantially more difficult without the placement of permanent markers and that such waiver or modification will not result in reduced long-term protection of critical areas. The determination shall be included in the permanent record.~~

~~b. Where such permanent markers are required, the director shall specify their frequency of placement and general location. Permanent markers shall be placed to locate the edge of the PCA to an approximate accuracy of within five percent of the specified buffer width or within five feet, whichever is larger. The spacing intervals of the markers shall be such as to provide comparable accuracy of line-of-sight determination of buffer edges. The locations of all required stakes/markers shall be shown on the plat map or site map recorded with the auditor.~~

B. Protected Critical Area (PCA) Designations for New Land Divisions.

1. For land divisions where site assessments have occurred pursuant to this chapter, all PCAs shall be placed into separate tracts or easements, whose uses shall be regulated by the provisions of this chapter and any conditions of approval, including protective covenants and binding agreements as provided for under subsection (A) of this section. Area within a PCA can be included in total acreage for development purposes end may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the

lot of which they are a part or transferred to the homeowners association or land trust. Wetlands and buffers in the Gages Slough corridor may be donated to the city in exchange for park impact fee credit.

2. Recording. PCA designations shall be recorded with the auditor as part of the plat approval process.

The auditor file number referencing the agreement shall be on the face of the plat and its provisions shall run with the land.

3. PCA Descriptions. The location of PCAs shall be clearly identified on site plans and on preliminary and final plat maps. PCAs shall be labeled using the letters A through Z, or another labeling system approved by the community development director. Where more than one lot is involved, each lot shall carry independent labeling as described in subsection (D)(1) of this section.

4. Ingress, Egress and Use. Owners of PCAs shall grant ingress and egress by the community development director or his or her agent for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation. As part of an approved land division, the use limitations required of a designated and regulated critical area according to the provisions of this chapter, including the conclusions of the critical areas site assessment report and any conditions of approval, protective covenants and other binding conditions, shall be clearly stated on the face of the recorded plat.

C. PCAs on Preexisting Lots.

1. For development proposals and other land use activities that can adversely impact critical areas on preexisting lots, not part of a proposed land division or other form of multiple lot development, PCAs shall be identified on a scaled site plan showing the location of the PCA, structures (existing and proposed) and their distances from the PCA and lot lines to show relative location within the subject parcel(s). The project or activity shall be conditioned for critical area protection and the resulting information recorded with the auditor as defined under subsection (A) of this section. The site plan may be prepared by the applicant and all distances and locations of structures may be measured from the established PCA boundary to within plus or minus five feet.

2. Ingress and Egress. The city shall be granted access to PCAs for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

D. PCA Mapping, Labeling, and Area Calculations.

1. All PCAs shall be mapped. The area shall be delineated on the final plat map or on a site plan to an accuracy of plus or minus five feet horizontal and monumented in the field by a qualified expert. The delineated boundaries of critical areas, critical area buffers, and mitigation sites shall be surveyed. The director may waive this requirement for simple small scale projects or where access considerations make a complete survey infeasible.

2. During construction phases of development, clear temporary marking using flagging and staking shall be maintained along the outer limits of the delineated PCA or the limits of the proposed site disturbance outside of the PCA. Prior to the start of construction activity, and as necessary during construction, temporary markings shall be inspected and approved by the community development director or designee. The person responsible for inspecting the temporary flagging shall provide written confirmation to be included in the record as to whether or not the flagging has been installed consistent with the permit requirements prior to commencement of the permitted activity.

3. All PCAs shall include the necessary labeling to show calculated area (in square feet or acreage), and type and/or class of critical area within each lot. This information shall be noted on the face of the approved plat or site plan.

4. Sign, Marker and Fence Maintenance. It is the responsibility of the landowner to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. Maintenance includes any necessary replacement. Removal of required signs, markers or fences

without prior written approval of the director shall be considered a violation of this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.170 Incentives.

The following incentives are intended to minimize the burden to individual property owners from application of the provisions of this chapter and assist the city in achieving the goals of this chapter:

A. Open Space. Any property owner on whose property a critical area or its associated buffer is located and who proposes to put the critical area and buffer in a separate open space tract may apply for current use property tax assessment on that separate tract pursuant to chapter 84.34 RCW.

B. Conservation Easement. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property by naming a qualified designee under RCW 64.04.130 as beneficiary of the conservation easement. This conservation easement can be used in lieu of the creation of a separate critical areas tract to qualify for open space tax assessment described in subsection (A) of this section.

The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the qualified designee. (Ord. 1853 § 2 (Exh. B), 2018).

WETLANDS

14.15.180 Wetlands identification and rating.

A. Identification and Delineation. Identification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the city meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this chapter. Wetland delineations are valid for five years; after such date the city shall determine whether a revision or additional assessment is necessary.

B. Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, effective January 2015) or as revised and approved by Ecology, which contains the definitions and methods for determining whether the criteria below are met.

1. Category I. Category I wetlands are: (a) relatively undisturbed estuarine wetlands larger than one acre; (b) wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; (c) bogs; (d) mature and old-growth forested wetlands larger than one acre; (e) wetlands in coastal lagoons; (f) interdunal wetlands that score eight or nine habitat points and are larger than one acre; and (g) wetlands that perform many functions well (scoring 23 points or more). These wetlands: (a) represent unique or rare wetland types; (b) are more sensitive to disturbance than most wetlands; (c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or (d) provide a high level of functions.

2. Category II. Category II wetlands are: (a) estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; (b) interdunal wetlands larger than one acre or those found in a mosaic of wetlands; or (c) wetlands with a moderately high level of functions (scoring between 20 and 22 points).

3. Category III. Category III wetlands are: (a) wetlands with a moderate level of functions (scoring between 16 and 19 points); (b) can often be adequately replaced with a well-planned mitigation project; and (c) interdunal wetlands between 0.1 and one acre. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

4. Category IV. Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that we should be able to replace, or in some cases to improve. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands

may provide some important functions, and should be protected to some degree. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.185 Wetland buffers.

A. Standard Wetland Buffer Widths. The standard buffer widths in Table 14.15.185-1 have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State wetland rating system for western Washington.

1. Buffer Conditions.

a. These buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

b. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

c. Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this chapter to the extent feasible. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

d. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

e. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the required maintenance and monitoring timeline, which ranges from five to 10 years depending on location.

Table 14.15.185-1. Width of buffers needed to protect wetlands in western Washington considering impacts of proposed land uses.

Category of Wetland	~~Land Use with Low Impact*~~	~~Land Use with Moderate Impact*~~	~~Land Use with High Impact*~~Required Buffer
IV	~~25 ft~~	~~40 ft~~	50 ft
III	~~75 ft~~	~~110 ft~~	150 ft
II	~~150 ft~~	~~225 ft~~	300 ft
I	~~150 ft~~	~~225 ft~~	300 ft

~~* See Table 14.15.185-2 below for types of land uses that can result in low, moderate, and high impacts to wetlands.~~

Table 14.15.185-2. Types of proposed land use that can result in high, moderate, and low levels of impacts to adjacent wetlands.

Level of Impact from Proposed Change in Land Use	Types of Land Use Based on Common Zoning Designations
High	• Commercial • Urban • Industrial • Institutional • Retail sales • Residential (more than 1 unit/acre) • Conversion to high-intensity agriculture (dairies, nurseries, greenhouses, growing and harvesting crops requiring annual tilling and raising and maintaining animals, etc.) • High-intensity recreation (golf courses, ball fields, etc.) • Hobby farms
Moderate	• Residential (1 unit/acre or less) • Moderate-intensity open space (parks with biking, jogging, etc.) • Conversion to moderate-intensity agriculture (orchards, hay fields, etc.) • Paved trails • Building of logging roads • Utility corridor or right-of-way shared by several utilities and including access/maintenance road
Low	• Forestry (cutting of trees only) • Low-intensity open space (hiking, bird-watching, preservation of natural resources, etc.) • Unpaved trails • Utility corridor without a maintenance road and little or no vegetation management

B. Increased Wetland Buffer Widths. Buffer widths shall be increased on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

1. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or

2. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or

3. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

C. Decreased Wetland Buffer Widths. Buffer widths shall be decreased on a case-by-case basis as determined by the city. This determination shall be supported by appropriate documentation showing that it still protects the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

1. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower-rated area.

b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.

c. The total area of the buffer after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either three-quarters of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

2. Buffer averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.

b. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical areas report from a qualified wetland professional.

c. The total buffer area after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either three-quarters of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever category is applicable.

D. Allowed Buffer Uses. The following uses may be allowed within a wetland buffer in accordance with the review procedures of this chapter; provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

1. Conservation and Restoration Activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

2. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:

a. Walkways and trails; provided, that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer 25 percent of the wetland buffer area, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nontreated pilings may be acceptable.

b. Wildlife-viewing structures.

3. Educational and scientific research activities.

4. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way; provided, that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.

5. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water source.

6. Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary; provided, that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column is disturbed.

7. Enhancement of a wetland buffer through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Revegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

8. Storm water management facilities. Storm water management facilities are limited to storm water dispersion outfalls and bioswales. They may be allowed within the outer 25 percent of the buffer of Category III or IV wetlands only; provided, that:

a. No other location is feasible; and

b. The location of such facilities will not degrade the functions or values of the wetland; and

c. Storm water management facilities are not allowed in buffers of Category I or II wetlands; and.

d. The hydro-period of the wetland is not alternated.

9. Nonconforming Uses. Repair and maintenance of nonconforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

E. Signs and Fencing of Wetlands and Buffers.

1. Temporary Markers. The outer perimeter of the wetland buffer and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary “clearing limits” fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the community development director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

2. Permanent Signs. As a condition of any permit or authorization issued pursuant to this chapter, the city may require the installation of permanent signs along the boundary of a wetland or buffer.

a. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. The signs shall be worded as follows or with alternative language approved by the community development director:

Protected Wetland Area

No Dumping - Do Not Disturb

Thank you

b. The provisions of subsection (E)(2)(a) of this section may be modified as necessary to assure protection of sensitive features or wildlife.

3. Fencing.

a. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on sitePermanent fencing shall be required around wetland buffers. The Director may waive this requirement for large sites or situations where the installation of fencing is not feasible due to topography, a lack of access, or other site constraints..

b. Fencing installed as part of a proposed activity or as required in this subsection shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat. (Ord. 1853 § 2 (Exh. B), 2018)The Director shall have the authority to specify appropriate standards for buffer fencing consistent with the requirements of this chapter.

14.15.190 Wetlands initial project review.

A. If the preliminary screening indicates the potential presence of wetland indicators, wetlands, or wetland buffers aA site visit shall be conducted professional site assessment shall be conducted to identify anyconfirm the presence of wetland indicators listed in the critical areas checklist or identified on critical areas map references as being

within 300 feet of a proposed project or activity. ~~A positive confirmation by the community development director that site indicators are present or that the proposed project may impact the wetland area will then require a professional site assessment.~~

B. The following map references shall be used to assist in making a determination:

1. Wetlands mapped under the National Wetland Inventory by the U. S. Department of Interior, Fish and Wildlife Service;

2. Areas mapped as hydric soils under the Soil Survey of Skagit County Area, Washington, by the United States Department of Agriculture, Soil Conservation Service;

3. A water of the state as defined under WAC 222-16-030 and maintained in the Washington State Department of Natural Resources Stream Type Maps; and

4. Wetlands previously identified through the methodology specified under this title for another project. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.200 Wetlands site assessment requirements.
If a wetlands site assessment is required, it shall meet the following requirements:

A. A wetland reconnaissance shall be performed by a qualified wetlands professional. The reconnaissance shall identify the presence of wetlands within 300 feet of the project or activity area. If this wetland reconnaissance demonstrates no wetlands within 300 feet of the activity area, then no further study is required.

B. A wetland delineation shall be performed as part of a site assessment where a wetland reconnaissance confirms the presence of a wetland or the applicant chooses to perform delineation instead of a wetland reconnaissance. The delineation shall be performed by a qualified wetland professional trained in conducting delineations in accordance with the methodology specified under this title.

C. If the site of a proposed development includes, is likely to include, or is ~~adjacent to~~within 300 feet of a wetland, a wetland report, prepared by a qualified professional, shall be required. The expense of preparing the wetland report shall be borne by the applicant.

D. Minimum Standards for Wetland Reports. The written report and the accompanying plan sheets shall contain the following information, at a minimum:

1. The written report shall include at a minimum:

a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

b. A statement specifying the accuracy of the report and all assumptions made and relied upon.

c. Documentation of any fieldwork, performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.

d. A description of the methodologies used to conduct the wetland delineations, rating system forms, or impact analyses including references.

e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas off site of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.

f. For each wetland identified on site and within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per wetland ratings of this title; required buffers;

hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

g. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.

h. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development.

i. A description of reasonable efforts made to apply mitigation sequencing pursuant to mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas.

j. A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.

k. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.

l. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

m. An evaluation of flood and storm-water storage capacity, water quality functions, and an analysis of how the proposed development may impact these functions and values.

2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:

a. Maps (to scale) depicting delineated and surveyed wetland and required buffers on site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; areas of proposed impacts to wetlands and/or buffers (include square footage estimates).

b. A depiction of the proposed storm water management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.210 Alteration of wetlands.

A. A regulated wetland or its required buffer can only be altered if the wetlands site assessment shows that the proposed alteration does not degrade the quantitative and qualitative functioning of the wetland, or any degradation can be adequately mitigated to protect the wetland function. Any alteration approved pursuant to this section shall include mitigation necessary to mitigate the impacts of the proposed alteration on the wetland as described in BMC 14.15.220, Wetland mitigation standards.

B. Storm water discharges to wetlands shall be controlled and treated to provide all known and reasonable methods of prevention, control, and treatment as mandated in the State Water Quality Standards, chapter 173-201A WAC, as required by state law and implemented in chapter 14.05 BMC, Surface Water Management. (Ord. 1853 § 2 (Exh. B), 2018).

C. Wetland alterations shall not result in a net loss of flood or storm-water storage capacity within the Burlington Urban Growth Area.

14.15.220 Wetland mitigation standards.

A. Mitigation Sequencing. Before impacting any wetland or its buffer, an applicant shall demonstrate that the following actions have been taken. Actions are listed in the order of preference:

1. Avoid the impact altogether by not taking a certain action or parts of an action.

2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.

3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.

4. Reduce or eliminate the impact over time by preservation and maintenance operations.

5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.

6. Monitor the required compensation and take remedial or corrective measures when necessary.

B. Requirements for Compensatory Mitigation.

1. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation ~~plans~~ requirements shall be consistent with ~~Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1 (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication No. 09-06-32, Olympia, WA, December 2009)~~Washington State Department of Ecology, U.S Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10 (2021) *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 2)* (Ecology Publication #21-06-003), or as revised. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State: Part 2 – Developing Mitigation Plans Version 1, March 2006, Publication #06-06-011b, or as revised.

2. Mitigation ratios shall be consistent with subsection (G) of this section.

3. Mitigation requirements may also be determined using the credit/debit tool described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised) consistent with subsection (H) this section.

C. Compensating for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:

1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or

2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.

D. Preference of Mitigation Actions. Mitigation for lost or diminished wetland and buffer functions shall rely on the types below in the following order of preference:

1. Restoration (reestablishment and rehabilitation) of wetlands:

a. The goal of reestablishment is returning natural or historic functions to a former wetland. Reestablishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

b. The goal of rehabilitation is repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.

2. Creation (establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative species. Establishment results in a gain in wetland acres. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.

a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland scientist that:

i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;

ii. The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;

iii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, storm water runoff, noise, light, or other impacts); and

iv. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement should be part of a mitigation package that includes replacing the altered area and meeting appropriate ratio requirements. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Applicants proposing to enhance wetlands or associated buffers shall demonstrate:

a. How the proposed enhancement will increase the wetland's/buffer's functions;

b. How this increase in function will adequately compensate for the impacts; and

c. How all other existing wetland functions at the mitigation site will be protected.

4. Preservation. Preservation of high-quality, at-risk wetlands as compensation are generally acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being altered and the quality of the wetlands being preserved.

Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:

a. The area proposed for preservation is of high quality. The following features may be indicative of high-quality sites:

i. Category I or ll wetland rating (using the wetland rating system for western Washington).

ii. Rare wetland type (for example, bogs, mature forested wetlands, estuarine wetlands).

iii. The presence of habitat for priority or locally important wildlife species.

iv. Priority sites in an adopted watershed plan.

b. Wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA listed species.

c. There is no net loss of habitat functions within the watershed or basin.

d. Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost.

e. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by a land trust, or land in public ownership.

f. The impact area is small (generally less than one-half acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland).

All preservation sites shall include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

E. Location of Compensatory Mitigation. Compensatory mitigation actions shall be conducted within the same subdrainage basin and on the site of the alteration except when all of subsections (E)(1) through (4) of this section apply. In that case, mitigation may be allowed off site within the subwatershed of the impact site. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu fee program, or advanced mitigation.

1. There are no reasonable opportunities on site or within the subdrainage basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the subdrainage basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity).

2. On-site mitigation would require elimination of high-quality upland habitat.

3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the altered wetland.

4. Off-site locations shall be in the same subdrainage basin unless:

a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or

b. Credits from a state-certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument; or

c. Fees are paid to an approved in-lieu fee program to compensate for the impacts.

5. Wetland mitigation banks and off-site mitigation sites located outside of the City of Burlington's Urban Growth Area shall only be used if necessary to accommodate an essential public facility and only when no feasible alternatives exists.

The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not

match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.

F. Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. At the least, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The community development director may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay. An appropriate rationale would include identification of the environmental conditions that could produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, or general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that include implementation of the compensatory mitigation plan. The justification must be verified and approved by the city.

G. Wetland Mitigation Ratios[1]:

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage Site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Forested I: Based on Functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

H. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance "Wetland Mitigation in Washington State Parts I and II" (Ecology Publication No. 06-06-011a and b, Olympia, WA, March 2006), the community development director may allow mitigation based on the "credit/debit" method developed by the Department of Ecology in "Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report" (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised).

I. Compensatory Mitigation Report. The report must include a written report and plan sheets that must contain, at a minimum, the following elements. Full guidance can be found in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006, or as revised).

1. The written report must contain, at a minimum:

a. The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the compensatory mitigation report; a description of the proposal; a summary of the impacts and proposed compensation concept; identification of all the local, state, and/or federal wetland-related permit(s) required for the project; and a vicinity map for the project.

b. Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands.

c. Description of the existing wetland and buffer areas proposed to be altered. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorpbic classification, and wetland rating, based on wetland ratings of this chapter.

d. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions.

e. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation including a description of the targeted functions, hydrogeomorphic classification, and categories of wetlands.

f. A description of the proposed mitigation construction activities and timing of activities.

g. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands).

h. A bond estimate for the entire compensatory mitigation project, including the following elements: site preparation, plant materials, construction materials, installation oversight, maintenance twice per year for up to five years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.

i. Proof of establishment of notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas.

j. Identify flood and storm-water storage impacts, water quality impacts, and floodplain habitat impacts effecting ESA listed species. The mitigation report shall demonstrate how the proposed mitigation measures will prevent a net loss of floodplain habitat, water quality, and flood and storm-water storage functions and values.

2. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:

a. Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.

b. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be altered, and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation.

c. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions.

d. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.

e. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter.

f. A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, timing of installation.

g. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, and maintenance schedule and actions by each biennium.

J. Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

K. Protection of the Mitigation Site. The area where the mitigation occurred and any associated buffer shall be located in a critical area tract or a conservation easement or land in public ownership.

L. Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for 10 years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

M. Wetland Mitigation Banks.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

a. The bank is certified under state rules;

b. The city determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

c. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument;~~.~~

d. The proposed development activity involves an essential public facility and there are no feasible mitigation alternatives to the use of wetland mitigation bank credits.

2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

N. In-Lieu Fee. To aid in the implementation of off-site mitigation, the city may develop an in-lieu fee program. This program shall be developed and approved through a public process and be consistent with federal rules, state policy on in-lieu fee mitigation, and state water quality regulations. An approved in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transfered to the in-lieu program sponsor, a governmental or nonprofit natural resource management entity. Credits from an approved in-lieu fee program may be used when subsections (N)(1) through (6) of this section apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.

2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu fee program instrument.

3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu fee program instrument.

4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.

5. Projects using in-lieu fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu fee program.

6. Credits from an approved in-lieu fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu fee instrument.

O. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, state policy on advance mitigation, and state water quality regulations.

P. Exceptions to Mitigation Requirements. Requirements for mitigation do not apply under the following circumstances:

1. When a wetland alteration is intended exclusively for the enhancement or restoration of an existing regulated wetland and the proposal will not result in a loss of wetland function and value, subject to the following conditions:

a. The enhancement or restoration project shall not be associated with a development activity.

b. An enhancement or restoration plan shall be submitted for site plan review. The restoration or enhancement plan must include the information required under this title.

2. When a wetland is a part of a development activity that is permitted by the Corps of Engineers NWP permitting crossing of wetlands as part of road construction. (Ord. 1853 § 2 (Exh. B), 2018).

AQUIFER RECHARGE AREAS

14.15.230 Aquifer recharge areas.

A. Intent. This section establishes areas determined to be critical in maintaining both ground water quantity and quality. This section specifies regulatory requirements to be enacted when development within these areas is proposed to occur and provides a methodology by which the level of review and any mitigation required is determined. The intent of this section is to:

1. Define minimum regulatory requirements to protect ground water quality and quantity for existing and future use; and

2. Identify the practices, alternatives, or mitigations that can minimize the adverse impacts of proposed projects; and

3. Ensure adequate design, construction, management, and operations to protect ground water quality and quantity.

B. Existing and future beneficial uses of ground water shall be maintained and protected and degradation of ground water quality that would interfere with or become injurious to beneficial uses shall be avoided or minimized.

C. Wherever ground waters are determined to be of a higher quality than the criteria established for said waters under this section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that:

1. An overriding consideration of the public interest will be served; and

2. All contaminants proposed for entry into said ground water(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.

D. It is the intent of this regulation to be consistent with and implement the requirements of chapters 90.48 and 90.54 RCW, and chapters 173-160, 173-200, 173-201A, 246-290 and 246-291 WAC, as the same may hereafter be amended. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.240 Aquifer recharge area designations.

Two categories are designated for aquifer recharge areas. These categories are designated to assist the city in determining the level of assessment necessary to evaluate specific proposed land use actions. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use with consideration given to hydrogeologic vulnerability. All designated areas are subject to change as data and information are updated or become available.

A. Designation Categories.

1. Category I areas are those so designated because of the need to provide them special protection due to a specific preexisting land use, or because they are identified by the local, state or federal government as areas in need of special aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability.

Category I includes areas served by ground water which have been designated as a "Sole Source Aquifer Area" under the Federal Safe Drinking Water Act; areas identified within a "closed" or "low-flow" stream watershed designated by the Department of Ecology pursuant to chapter 90.22 RCW; areas identified by the Department of Ecology as sea water intrusion areas; and areas designated as "Wellhead Protection Areas" pursuant to WAC 246-290-135(4) and the ground water contribution area in WAC 246-291-100(2)(e). Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with either Group A public water supply wells, those Group B wells with a wellhead protection plan filed with the Skagit County health department, or plats served by five or more individual wells where the average lot size is equal to or less than two acres for which a wellhead protection plan has been completed and filed with the Skagit County health department. Category I areas are shown on the Aquifer Recharge Area map.

2. Category II is designated as areas not identified as Category I areas.

3. When any portion of the proposed project area lies partly within a Category I area, the proposed project shall be subject to the level of scrutiny provided for Category I area. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.250 Aquifer recharge applicability and prohibited activities.

A. Applicability. All development projects are subject to the provisions of this section except for the following:

1. Existing activities that currently and legally exist at the time this chapter became effective. However, expansions or changes in use are subject to this section and the review process contained herein.

2. ~~Single-family residential building permits, including accessory building permits~~The construction of a single detached dwelling, duplex, or related accessory uses on an existing legally established lot located~~, which are~~ outside Category I areas.

~~3. Residential short plats outside Category I areas where each lot is two and one-half acres or greater.~~

3~~4~~. Single-family residential building permits where a site assessment report was required to be completed for the land division, in which case, to meet the conditions of this exemption, the applicant must comply with the recorded plat notes and the applicable mitigations contained in the site assessment report.

B. Prohibited Activities. The following activities are prohibited in Category I areas due to the probability and/or potential magnitude of their adverse effects on ground water:

1. Landfill activities as defined in chapters 173-304 and 173-351 WAC.

2. Class V injection wells, including:

a. Agricultural drainage wells;

b. Untreated sewage waste disposal wells;

c. Cesspools;

d. Industrial process water and disposal wells; and

e. Radioactive waste disposal.

3. Radioactive disposal sites. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.260 Aquifer recharge initial project review.

A. General Procedures. Applicants for all development projects not allowed under this title shall be required, through a site assessment report prepared pursuant to this title, to evaluate potential impacts to aquifer recharge areas, and appropriate mitigation measures to reduce or eliminate the potential for adversely impacting aquifer recharge areas shall be identified. The level of study and report detail required will be determined by the city based on the type of land use being proposed, the designated aquifer recharge area category, and the vulnerability of the underlying aquifer(s) to contamination. The goal of this section is to require applicants to identify and characterize vulnerability only to the level necessary to determine appropriate mitigation measures necessary, to either reduce potential adverse impacts to established parameters or eliminate potential adverse impacts to underlying aquifer(s).

B. Scoping. The level of study which will be required shall be based on an initial project review that may include staff from the county health department, State Health Department, State Department of Ecology, and a hydrogeologist.

Elements for the report that are required at a minimum and other elements that may be required as part of the scope for the study are listed in this title. Subsequent findings from the study or other information made available after the initial project review may obligate the applicant to additional evaluation, development of a mitigation plan, and/or development of a ground water monitoring plan. The following outlines the review process:

1. The required scope of the site assessment report shall be determined by the city following consultation with the county health department and appropriate state agencies. The scope of site assessment required may be conveyed to the applicant and/or his or her representative in writing.

2. The site assessment report shall be submitted and renewed by city. The city may consult with the county health department and appropriate state agencies as necessary and may approve the site assessment report as submitted, require additional evaluation, or require development of a mitigation plan. If additional information is required beyond the initial site assessment report, the applicant may be notified in writing.

3. When, to the satisfaction of the city, all information is provided and appropriate mitigation measures have been identified in accordance with the requirements of this chapter, the permit review process may move forward. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.270 Aquifer recharge site assessment report.

A. The scope of the site assessment report shall be based on the initial project review specified in this title. The scope of the report may be reduced by utilizing appropriate mitigation measures, or if the water quality or quantity issue(s) are already known.

B. The site assessment report shall be prepared by or under the direction of and signed by a professional engineer, licensed in the state of Washington, trained and qualified to analyze geologic, hydrologic, and ground water flow systems; or by a geologist or hydrogeologist who earns his or her livelihood from the field of geology and/or hydrogeology and has received a degree in geological sciences from an accredited four-year institution of higher education and who has relevant training and experience analyzing geologic, hydrologic, and ground water flow systems.

C. Site Assessment Report Requirements. A site plan shall be prepared in accordance with the requirements of this code. In addition, a site assessment report shall include:

1. A description of the project including those activities, practices, materials, or chemicals that have a potential to adversely affect the quantity or quality of underlying aquifer(s).

2. Identification of appropriate mitigation measures and description of how they will prevent degradation of underlying aquifer(s).

3. A site plan or another appropriately scaled map showing the approximate location of known or geologically representative well(s) (abandoned and active), spring(s), and surface watercourses within 1,000 feet of the subject project property. All well logs available through the health department for identified wells within 1,000 feet of the project property shall be included.

4. A description of the site-specific hydrogeologic characteristics regarding impact to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth to and static water level of known underlying aquifer(s), and depiction of ground water flow direction and patterns on the appropriate map.

5. Identification of the initial receptors of potential adverse impacts located hydraulically downgradient from the project within 1,000 feet or as otherwise required by the scoping process identified above.

D. Additional Site Assessment Elements. After the initial project review, one or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeologic conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors. One or more of these additional elements may also be required if the applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically downgradient receptors.

1. Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units (includes soil types) including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.

2. Delineation of identified structural features such as faults, fractures, and fissures.

3. Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage, hydraulic conductivity, porosity, and estimate of ground water flow direction, velocity and patterns for the affected aquifer(s).

4. Estimate of precipitation, evaporation, and evapotranspiration rates for the project area.

5. Preparation of appropriate hydrogeologic cross sections depicting at a minimum underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.

6. Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s). Includes consideration of advection, dispersion, and diffusion of contaminants in the ground water.

7. Delineation of areas potentially affected by contaminant migration on the ground surface and/or through the affected aquifer(s).

8. Determination of background or existing ground water quality underlying the project area.

9. Development of a ground water monitoring program to measure potential impacts of the development to underlying aquifer(s).

10. Development of a spill plan and/or contingency plan describing the specific actions, which will be taken if a release of a contaminant(s) occurs, or if ground water monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).

11. The degree of continuity between ground water and nearby surface water including potential impact to "closed" or "low-flow" streams (as described in this title) from proposed ground water withdrawals, and potential impacts to surface water quality from site runoff or contaminated ground water discharge.

12. In conjunction with the Department of Ecology seawater intrusion policy and subsequent policies or ordinances, applicable projects shall be required to determine appropriate pumping rates and schedules that maintain dynamic drawdown levels above mean sea level.

13. Applicable projects such as special use permits, short plats, or long plats shall test existing and/or test wells for nitrate levels and where appropriate calculate the nitrate loading rate at full build-out of the project. If the calculated nitrate loading in the intended water supply equals or exceeds five mg/L nitrate as nitrogen, the proposal will need to develop a mitigation plan. The point of compliance shall be determined based on project specifics. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.280 Aquifer recharge area mitigation.

A. The city in consultation with the county health department shall review development proposals to assess aquifer(s) vulnerability and establish needed mitigation. Where determined to be necessary through the site assessment process, development approvals shall include conditions designed to prevent significant degradation of water quality or reduction in water quantity in aquifer recharge areas. The project shall not cause degradation of the ground water quality below the standards described in chapter 173-200 WAC or Department of Ecology's seawater intrusion policy.

B. Wellhead Protection Mitigation. Where a wellhead protection plan that addresses the project area exists, the city and/or health officer shall use the recommendations contained in the wellhead protection plan as a basis for formulating mitigations. In the absence of such a mitigation plan, the county health department and Public Utility District No. 1 shall jointly develop recommended mitigations, for review by the city, a summary of which shall be signed by the applicant and recorded with the applicant's property title. All new development shall be required to connect to the Public Utility District No. 1 Water System. (Ord. 1853 § 2 (Exh. B), 2018).

GEOLOGICALLY HAZARDOUS AREAS

14.15.300 Geologically hazardous area designation.

A. Geologically hazardous areas include erosion hazards, landslide hazards, mine hazards, volcanic hazards and seismic hazards, and shall be designated consistent with the definitions provided in WAC 365-190-080(4).

B. Geologically hazardous areas shall be classified as "known or suspected risk," or "unknown risk." (Ord. 1853 § 2 (Exh. B), 2018).

14.15.310 Geologically hazardous area initial project review.

A site visit shall be conducted by the ~~director~~ City to determine whether: (A) "Areas of known or suspected risk" identified below are or may be present within 300 feet of the project or activity; (B) the proposed project or activity is or may be within a distance from the base of an adjacent landslide hazard area equal to the vertical relief of said hazard area; (C) the proposed activity may result in or contribute to an increase in hazard; and (D) whether the project or hazard areas pose a risk to life, property, or other critical areas on or off the project area sufficient to require a site assessment. The City may require that the site visit be conducted by a licensed geotechnical professional. Areas of known or suspected risk:

Commented [BJ7]: BJ – 4-20-2023 – added to address DNR comment

A. Erosion Hazard Indicators.

1. Those project areas located within 300 feet of map unit delineations No. 51 Dystic Xerorthents, No. 99 Mundt and No. 117 Saxon or mapped as moderate to severe, severe or very severe erosion hazard or as having severe rill and inter-rill erosion hazard as identified in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit County Area, WA (1989) or most currently adopted.

2. Those project areas that fall within any soil sloping greater than or equal to 30 percent.

3. The project area falls within areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two Skagit County (1978 or most currently adopted) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide).

4. Those project areas that may be considered to have an erosion hazard as a result of rapid stream incision or stream bank erosion.

B. Landslide Hazard Indicators.

1. The project area falls within or 300 feet from areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978 or most currently adopted) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide);

2. The project area falls within or 300 feet from slopes having the following characteristics: gradients of 15 percent or greater intersecting geologic contacts with permeable sediments overlying low permeability sediment or bedrock and springs or ground water seepage are present;

3. The project area falls within or 300 feet from any area having a 40 percent slope or steeper and with a vertical relief of 10 feet or more;

4. The project area falls within or 300 feet from any areas of historic failure such as areas designated as quaternary earth slumps, earthflows, mudflows, lahars, debris flows, rock slides, landslides or other slope failures on maps or technical reports published by the U.S. Geological Survey such as topographic or geologic maps, or the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies;

5. The project area falls within or 300 feet from any areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action shall be addressed as a flood hazard consistent with this chapter;

6. Areas that have shown movement during the Holocene epoch or which are underlain or covered by wastage debris of that epoch;

7. The project area falls within or 300 feet from any slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;

8. The project area falls within or 300 feet from any slopes with a gradient greater than 80 percent and subject to rock fall during seismic shaking;

9. The project area falls within or 300 feet from any areas that show evidence of or are at risk from snow avalanches.

C. Seismic Hazards. Seismic hazard areas shall include areas that are subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

1. The project includes structures (as defined in the International Building Code) proposed to be located in any of the areas described in subsection (A) or (B) of this section or located in areas to have a potential for soil liquefaction and soil strength loss during ground shaking as identified on the U.S. Geologic Survey Relative Slope Stability Map of the Port Townsend Quadrangle, Puget Sound Region, Washington (1985 or most currently adopted), or as identified in the field. A geologic hazard site assessment is not required for soil liquefaction and soil strength loss resulting from seismic activity unless other criteria provided in this section apply. The building official shall require evaluation using the provisions set forth in the adopted building code.

2. The structures or critical facilities are proposed to be located on a Holocene fault line. (No critical facilities shall be located on a Holocene fault line as indicated on investigative maps or described in studies by the United States Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources or other documents authorized by government agencies, or as identified in the field.) All

developments on a Holocene fault line shall require a disclosure statement indicating the property is located on an active fault and may be geologically hazardous.

D. Volcanic Hazards. The project area is located in a volcanic hazard zone for Glacier Peak, Washington (Open-File Report 95-499); or in a volcanic hazard area of Mount Baker, Washington (Open-File Report 95-498). A site assessment is not required for volcanic hazard areas unless other criteria provided in this section apply.

E. Other Geologic Hazard Indicators.

1. The project area falls within or 300 feet from an alluvial fan as designated on the Skagit County Alluvial Fan Study Orthophoto Maps;

2. The project area falls within or 300 feet from a mine hazard area as designated on the Department of Natural Resources Map: Coal Measures of Skagit County (1924) or within 300 feet of any other current or historic mine operations determined to be geologic hazards as described in this title, geologically hazardous areas;

3. Areas of Unknown Geologic Hazards. As part of any development application where no current information is available to confirm that the items identified in this section are present on the project area, the critical areas review required by this chapter shall provide a description of the known and visible site features and be used by the city in evaluating whether a geologically hazardous area site assessment is required pursuant to this section. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.320 Geologically hazardous area site assessment requirements.

A. Site Visit Determination. A determination shall be made as follows:

1. No Site Assessment. Where the city determines that the project or activity area has no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off site, no additional site assessments shall be required prior to approval under the provisions of this chapter.

2. Site Assessment Required. If the city determines during the site visit that the proposed development activity falls within 300 feet of an "Area of Known or Suspected Risk" and the geologic condition may pose a risk to life and property on or off the project area, then a geologically hazardous area site assessment of the project area by a qualified professional as described in subsection (B) of this section shall be required as part of the complete development permit application.

3. Burlington Hill Special Management Area. A site assessment report shall be prepared for all proposed development activities within the Burlington Hill Special Management Area.

Commented [BJ8]: 3-7-2023 – As documented in the BAS Report all of Burlington Hill qualifies as a geologically hazardous area. There is no need to conduct a site visit. This clarifies that a report is required allowing the first step to be skipped.

B. Geologically Hazardous Area Site Assessment. Site assessment reports shall be prepared by a ~~qualified~~ geotechnical professional. ~~Portions of the report relating to recommended design or mitigation shall be prepared under supervision of a licensed professional engineer. A qualified professional shall mean an engineer, licensed in the state of Washington, with training and experience analyzing geologic, hydrologic, and ground water flow systems in Washington State; or by a geologist who earns his or her livelihood from the field of geology and/or geotechnical analysis, with training and experience analyzing geologic, hydrologic and ground water flow systems in Washington State, who has received a relevant degree from an accredited four-year institution of higher education.~~

The geologically hazardous area site assessment report shall classify the type of hazard in accordance with this title. The site assessment report shall include the following as appropriate:

1. A site plan must be prepared in accordance with the development permit requirements. The site plan shall depict the height of slope, slope gradient and cross section of the site. The site plan shall indicate the location of all existing structures, proposed structures and any significant known geologic features on the subject site. The site plan shall also include the location of springs, seeps, or other surface expressions of ground water. The site plan shall also depict any evidence of surface water or storm water runoff;

2. A detailed description of the project, its relationship to potential geologic hazard(s), and its potential impact upon the hazard area(s), the subject property and adjacent properties. The description shall make a determination if a geologically hazardous area(s) is present on the subject site.

The narrative shall include a full discussion of the geologic factors and conditions on the subject site resulting in the qualified professional's conclusions;

3. An assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties. Soils analysis shall be accomplished in accordance with the Unified Soil Classification System;

4. A description of load intensity including surface water and ground water conditions, public and private sewage disposal systems, fills and excavations and all structural development;

5. An assessment describing the extent and type of vegetative cover to include tree attitude;

6. For potential landslide hazards: estimate slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure. Quantitative analysis of slope stability or slope stability modeling may be required by the city;

7. Additional site assessment standards may be required if necessary to demonstrate compliance with this chapter.

C. Site Assessment Conclusions.

1. Where the ~~qualified~~ geotechnical professional determines that a geologically hazardous condition is not present on the subject site and/or will not occur as a result of the proposed project, will have no potential for impacting adjacent ownership and property, other types of critical areas, public property (such as roads and other facilities) or living quarters of any kind, including any existing or proposed off site, no additional site assessments shall be required prior to approval under the provisions of this chapter. The qualified professional shall be required to certify that a geologic hazard is not present on the subject parcel.

2. Properties containing geologically hazardous conditions shall require a geologically hazardous area mitigation plan. Essential public facilities shall not be sited within designated geologically hazardous areas (Exception: volcanic hazard areas). No residential structures shall be located in geologically hazardous areas or their buffers that cannot be fully mitigated. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.330 Geologically hazardous area mitigation standards.

The mitigation plan shall be prepared by a geotechnical professional ~~professional engineer or geologist under supervision of a professional engineer~~ and include a discussion on how the project has been designed to avoid and minimize the impacts. The plan shall also make a recommendation for the minimum building setback from any bluff or slope edge and/or other geologic hazard shall be based upon the geotechnical analysis required under this title. Mitigation plans shall include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/or restoration plan and/or other means for maintaining long-term stability of geologic hazards. The plan shall also address the potential impact of mitigation on the hazard area, the subject property and affected adjacent properties. The mitigation plan must be approved by the city and be implemented as a condition of project approval.

Commented [BJ9]: BJ – 4-20-2023 – added to address DNR comments

Within designated geologic hazards, mitigation plans shall address the appropriate items listed below as required by the site assessment. One or more of the following mitigation standards shall be included as components of a mitigation plan pursuant to the requirements of this title, site assessment report. Other mitigation standards, other than those listed below, may be required depending on the geologic hazard and the site conditions.

A. Mitigation Standards.

1. A temporary erosion and sedimentation control plan prepared in accordance with the requirements of this title, surface water management, as amended.

2. A drainage plan for the collection, transport, treatment, discharge and/or recycle of water in accordance with the requirements of this title, surface water management, as amended.

3. All proposals involving excavations and placement of fills shall be subject to structural review under the appropriate provisions as found in the International Building Code.

4. Critical facilities shall not be sited within designated geologically hazardous areas. (Exception: volcanic hazard areas.)

5. Surface drainage shall not be directed across the face of a landslide hazard (including ravines). If drainage must be discharged from the hazard area into adjacent waters, it shall be collected above the hazard and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge.

6. All infiltration systems such as storm water detention and retention facilities, and curtain drains utilizing buried pipe or French drain, are prohibited in geologically hazardous areas and their buffers unless a site assessment report indicates such facilities or systems will not affect slope stability and the systems are designed by a licensed civil engineer. The engineer shall also certify that the system and/or facilities are installed as designed.

7. Vegetation Removal and Replanting. Removal of vegetation in landslide hazard, erosion hazard and coastal bluff hazard areas shall be minimized. Any replanting that occurs shall consist of trees, shrubs, and ground cover that is compatible with the existing surrounding vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival.

8. A minimum buffer with a width of 30 feet shall be established from the top, toe and all edges of all landslide hazardous areas. Existing native vegetation shall be maintained in accordance with mitigation recommendations within the buffer area. Any modifications to the buffer requirement shall be based on the report and recommendations of the professional geologist under supervision of a licensed professional engineer. The buffer may be reduced to a minimum of 10 feet when an applicant demonstrates to the director that the reduction will adequately protect the proposed development, adjacent developments and uses and the subject critical area. The buffer may be increased by the community development director for development adjacent to a ravine which is designated as unstable on the Coastal Zone Atlas, Washington, Volume Two Skagit County (1978 or most current edition) or where a larger buffer is necessary to prevent risk of damage to proposed and existing development (as in the case where the area potentially impacted by a landslide exceeds 30 feet). Normal nondestructive pruning and trimming of vegetation for maintenance purposes, or thinning of limbs of individual trees to provide a view corridor, shall not be subject to these buffer requirements.

9. Seismic Hazard Areas. Structural development proposals shall meet all applicable provisions of the International Building Code.

The city shall evaluate documentation submitted including the site assessment report, and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions on approvals shall be based on known, available, and reasonable methods of prevention, control and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal.

B. Alterations of the Buffer and/or Geologically Hazardous Area. Alterations of the buffer and/or geologically hazardous area may occur for development meeting the following criteria:

1. No reasonable alternative exists; and

2. A site assessment report is submitted and certifies that:

a. There is a minimal hazard as proven by evidence of no landslide activity in the past in the vicinity of the proposed development and a qualitative analysis of slope stability indicates no significant risk to the development proposal and adjacent properties; or the geologically hazardous area can be modified or the

development proposal can be designed so that the hazard is eliminated or mitigated so that the site is as safe as a site without a geologically hazardous area;

b. The development will not significantly increase surface water discharge or sedimentation to adjacent properties beyond predevelopment conditions;

c. The development will not decrease slope stability on adjacent properties; and

d. Such alterations will not adversely impact other critical areas.

C. Noncompliance and Failed Mitigation Plans.

1. Projects found to be in noncompliance with the mitigation conditions issued as part of the development approval are subject to enforcement actions necessary to bring the development into compliance with this chapter.

2. Mitigation plans which do not fulfill the performance required based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this chapter shall be revised and the subject development brought into compliance with the revised mitigation plan.

3. Mitigation Plan Certification. Upon completion of the project, a qualified professional shall certify that the mitigation plan has been properly implemented. The certification shall be required prior to final approval of the project by the director. (Ord. 1853 § 2 (Exh. B), 2018).

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

14.15.350 Fish and wildlife habitat conservation area designations.

A. Fish and wildlife habitat conservation areas (HCAs) shall be designated and classified as provided for in the definition section of this chapter. The map and species references indicated are intended to serve only as a guide during development review. In all cases, actual presence or absence for the listed species or habitat shall prevail.

B. In addition to the HCAs, additional species and habitats of local importance may be designated by the community development director based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.

C. In order to nominate an area or a species to the category of habitats and species of local importance, an individual or organization must:

1. Demonstrate a need for special consideration based on:

a. Declining population,

b. Sensitivity to habitat manipulation, or

c. Commercial or game value or other special value, such as public appeal.

2. Propose relevant management strategies considered effective and within the scope of this chapter; and

3. Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the community development director and forwarded to the Departments of Fish and Wildlife, Natural Resources, and/or other county and state agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies. A public hearing will be held for proposals found to be complete, accurate, and potentially effective and within the scope of this chapter. Approved nominations will become designated “Habitats/Species of Local Importance” and will be subject to the provisions of this chapter.

D. The following species and habitats have been designated on a site-specific basis according to the official Species and Habitats of Local Significance Map:

1. Great blue heron nest sites;

2. Vaux's swifts communal roosts;

3. Pileated woodpecker nest sites;

4. Osprey nest sites;

5. Townsend big-eared bat communal roosts;

6. Cavity nesting ducks breeding areas;

7. Trumpeter swan concentrations;

8. Harlequin duck breeding areas;

9. Waterfowl concentrations~~. (Ord. 1853 § 2 (Exh. B), 2018).~~;

10. Special Management Areas.

14.15.360 Fish and wildlife habitat conservation areas initial project review.
A. A site visit shall be conducted to determine whether HCAs identified on a critical area checklist or on available map resources or whether HCAa not previously identified are present within ~~3~~2~~2~~00 feet of the project or activity site.

B. Habitat conservation areas are designated by definition in this title and are referenced as follows:

1. An area with which anadromous fish, endangered, threatened or sensitive species have a primary association and/or their habitat such as those designated and mapped by the Washington State Department of Fish and Wildlife, Priority Habitats and Species Program;

2. A water of the state as defined under WAC 222-16-030;

3. A Critical Biological Area as designated and mapped by the Department of Ecology Coastal Zone Atlas dated June 1978 and/or the maps;

4. Designated species and habitats of local importance including, but not limited to the Gages Slough, Burlington Hill, and Skagit River Corridor special management areas;

5. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat;

6. Lakes, ponds, streams, and rivers planted with game fish by a government or tribal entity;

7. Areas with which anadromous fish species have a primary association; and

8. State Natural Area~~m~~ Preserves and Natural Resource Conservation Areas.

C. If the director determines through the site visit described in subsection (A) of this section that a fish and wildlife habitat conservation area (HCA) may be present within 300 feet of the proposed project or activity area, then a site assessment/habitat management plan shall be required as part of the complete application. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.370 Fish and wildlife habitat conservation area site assessment requirements.
Site assessment/habitat management plans shall be prepared by a qualified fish and wildlife biologist with experience assessing the relevant species and habitats and include, at a minimum, the following requirements:

A. Site plan prepared in accordance with the permit requirements indicating all fish and wildlife habitat conservation areas falling within 300 feet of the subject property. This site plan may be prepared by the applicant subject to review by the qualified fish and wildlife biologist;

B. Project narrative describing the proposal including, but not limited to, associated grading and filling, structures, utilities, adjacent land uses, description of vegetation both within and adjacent to the habitat conservation area, and when deemed necessary by the administrative officer, surface and subsurface hydrologic analysis;

C. Impact analysis identifying and documenting the presence of all habitat conservation areas and discussing the project's effects on the fish and wildlife habitat conservation areas;

D. Regulatory analysis including a discussion of any federal, state, tribal, and/or local requirements or special management recommendations which have been developed for species and/or habitats located on the site;

E. Mitigation report including a discussion of proposed measures of mitigating adverse impacts of the project and an evaluation of their potential effectiveness. Measures may include but are not limited to: establishment of buffer zones, preservation of critically important plants, and trees, limitation of access to habitat area, seasonal restrictions of construction activities, establishment of a timetable for periodic review of the plan and/or establishment of performance or maintenance bonds;

F. Management and maintenance practices including a discussion of ongoing maintenance practices that will assure protection of all fish and wildlife habitat conservation areas on site after the project has been completed. This section should include a discussion of proposed monitoring criteria, methods and schedule;

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this title. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.380 Fish and wildlife habitat conservation area mitigation standards.

Fish and wildlife habitat conservation areas shall be protected in accordance with local determination of appropriate conditions considering the site-specific recommendations from agencies with jurisdictions over the specific area, which may include but not be limited to the Washington State Department of Fish and Wildlife (WDFW), Department of Ecology, federally recognized Indian tribes located within Skagit County, WDFW Management Recommendations for Washington Priority Habitats and Species, and site-specific information supplied by the applicant.

Development proposals shall be reviewed for potential impacts to fish and wildlife habitat conservation areas. The determination of potential impacts shall be dictated by site conditions and be made in consultation with the Washington State Departments of Ecology, Fish and Wildlife and Natural Resources and federally recognized Indian tribes located in Skagit County. If it is determined that a proposed project may have an adverse effect on a fish and wildlife habitat conservation area, the applicant shall implement a habitat management plan including mitigation measures in conformity with the performance standards outlined below.

A. Riparian Performance Standards. Riparian buffer areas shall be established from the ordinary high water mark. The intent of riparian buffers is to protect five basic riparian forest functions that influence in-stream and near-stream habitat quality. These are:

1. Recruitment of large woody debris (LWD) to the stream: LWD recruitment creates habitat structures necessary to maintain salmon/trout productive capacity and species diversity.

2. Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout.

3. Bank Integrity (Root Reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and instream hiding cover for salmon and trout.

4. Runoff Filtration. Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) helps maintain water quality.

5. Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.

B. Standard Riparian Buffers. ~~Riparian areas have the following standard buffer requirements~~ Appropriate management zones or buffers shall be applied to all stream types. Management zone boundaries and required buffer widths shall be established using the following Washington State Department of Fish and Wildlife guidelines: (Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia.) ~~(~~Note: Riparian areas do not extend beyond the toe of the slope on the landward side of existing dikes or levees unless specifically exempt from Federal Vegetation Management requirements):

Commented [BJ10]: BJ – 4-20-2023 – revised to address WDFW comments and reflect current BAS from WDFW.

~~Water Type~~	~~Riparian Buffer~~
~~Type 1 and 2~~"S"	~~200 feet~~
~~Type 3~~"F"	~~100 feet~~
~~Type 4 and Ns"~~	~~50 feet~~

Once buffers are established, they shall not be altered except as allowed below. Riparian buffers not currently meeting the minimum standards shall be restored; provided, that such restoration does not conflict with other provisions of this chapter. In implementing buffer widths other than the standard riparian buffers identified above, the director shall provide opportunity for review and comment from appropriate federal, state or tribal natural resource agencies to ensure the use of best available science. These comments shall be included in the public record along with the basis and rationale for requirement or approval of any such nonstandard buffers.

1. Increasing Buffer Widths. The city may increase the standard buffer widths on a case-by-case basis, or to establish nonriparian buffer widths, when such buffers are necessary to protect priority fish or wildlife (e.g., great blue heron nesting colonies, osprey or cavity nesting ducks) using the HCA. This determination shall be supported by appropriate documentation from the Departments of Ecology and Fish and Wildlife, showing that the increased buffer width is reasonably related to the protection of the fish and/or wildlife using the HCA.

2. Decreasing Buffer Widths. Decreasing standard buffers will be allowed only if the applicant demonstrates that all of the following criteria are met:

a. A decrease is necessary to accomplish the purposes of the proposal and no reasonable alternative is available; and

b. Decreasing width will not adversely affect the fish and wildlife habitat functions and values; and

c. If a portion of a buffer is to be reduced, the remaining buffer area will be enhanced, using native vegetation, artificial habitat features, vegetative screening and/or barrier fencing as appropriate to improve the functional attributes of the buffer and to provide equivalent or better protection for fish and wildlife habitat functions and values; and

d. The buffer width shall not be reduced below ~~50~~ 25 percent of the standard buffer width unless no other ~~reasonable alternative~~feasible options exist~~s~~ and that no net loss of HCA riparian functional values will result, based on a functional assessment provided by the applicant utilizing a methodology approved by the city.

C. Allowed Uses in HCAs or Buffers.

l. Docks. Docks designed to facilitate low-impact uses, such as education and/or private, noncommercial recreation may be permitted within fish and wildlife HCAs under the following conditions:

a. The activity will have minimum adverse impact to the fish and wildlife habitat conservation area;

b. The activity will not significantly degrade surface water or ground water;

c. The intrusion into the fish and wildlife habitat conservation area and its buffers is fully mitigated; and

d. An opportunity for review and comment by federal, state and tribal natural resource agencies shall be provided.

2. Limited park or recreational access to a fish and wildlife habitat area or its required buffer; provided, that all of the following are satisfied:

a. The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function;

b. The access is limited to the minimum necessary to accomplish the recreational function;

c. The access and the balance of the development is consistent with other requirements of the Burlington Municipal Code and the Burlington shoreline master program; and

d. The proponent obtains a written approval from the city council for the limited access and associated mitigation.

3. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved; provided, that such activity shall not result in a decrease in riparian functional values and shall not prevent or inhibit the buffer's recovery to at least prealtered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails, viewing platforms, and storm water dispersion outfalls and bio-swales. ~~management facilities such as grass-lined swales.~~

4. In the riparian buffer, removal of hazard trees ~~ous~~ that pose a threat to life, property, or public safety as determined by a certified arborist~~, diseased or dead trees and vegetation when necessary to control fire, or to halt the spread of disease or damaging insects consistent with the State Forest Practices Act, chapter 76.09 RCW, or when the removal is necessary to avoid a hazard such as landslides or pose a threat to existing structures~~ may be permitted with prior written approval. Any removed tree or vegetation shall be replaced with appropriate species. In undeveloped buffer area downed trees and snags should be retained to improve habitat conditions. Replacement shall be performed consistent with accepted restoration standards for riparian areas within one calendar year. The community development director may approve alternative tree species to promote fish and wildlife habitat.

Prior to commencement of tree or vegetation removal and/or replacement, the landowner must obtain written approval from the director.

Commented [BJ11]: BJ – 4-20-2023 – added to address WDFW comment.

~~**Performance-Based Riparian Standards***~~

~~**(These standards must be exceeded before additional activity can be permitted within the riparian zone)**~~

~~Watertype Performance standards~~

~~Type 1 & 2~~

~~(Fish Bearing)~~

~~Maintain 95 percent of total LWD recruitment expected to enter the stream from a mature stand; and~~

~~Maintain 85 percent of the trees which are greater than 24-inch DBH within 100 feet of stream; and~~

~~Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge)~~

~~The applicant may further request some limited timber harvest of up to 30 percent of the merchantable timber within the outer 100 feet of any 200-foot required buffer provided the harvest:~~

~~a. Does not reduce the LWD and canopy requirements; and~~

~~b. The applicant will increase the total buffer size by 50 feet to mitigate for the limited timber harvest in the required buffer to provide additional wildlife habitat. The additional 50-foot buffer shall retain a minimum of 50 percent of the total number of trees with 25 percent of the total trees left having a diameter at breast height (DBH – 4 1/2 feet) greater than 12 inches; and~~

~~c. No more than 50 percent of the dominant trees in the outer 100 feet may be harvested.~~

~~Type 3~~

~~(Fish Bearing)~~

~~Maintain 85 percent of total LWD recruitment expected to enter the stream from a mature stand; and~~

~~Maintain 85 percent of the trees which are greater than 18-inch DBH within 100 feet of stream; and~~

~~Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge).~~

~~Type 4 & 5~~

~~(Non-fish Bearing)~~

~~Maintain 50 percent of total LWD recruitment expected to enter the stream from a mature stand; and~~

~~Maintain 85 percent of the trees which are greater than 24-inch DBH within 50 feet of stream; and~~

~~Maintain an average of 75 percent canopy cover (based on canopy densitometer readings at stream edge).~~

~~*Note: Applicants electing to employ performance based mitigation in accordance with the above matrix shall include appropriate analysis and justification in their site assessment/habitat management plan.~~

D. Bald eagle habitats shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292); a cooperative habitat management plan shall be developed in coordination with the Department of Fish and Wildlife whenever activities that alter habitat are proposed near a verified nest territory or communal roost.

E. Wetlands that are identified as a fish and wildlife habitat conservation area shall be protected according to the provisions in this title, referencing increasing buffer widths. If the wetland buffer widths, standard buffer widths conflict with this section, the buffer widths providing the greatest protection shall apply.

F. All other fish and wildlife habitat conservation area, including habitats/species of local significance, shall be protected on a case-by-case basis by means of a habitat management plan based on the PHS program, initial project review and site assessment/habitat management plan.

G. Approval of any activity that can adversely affect fish and wildlife habitat conservation areas shall conform to the requirements set forth in this title. (Ord. 1853 § 2 (Exh. B), 2018).

FREQUENTLY FLOODED AREAS

14.15.390 General.

A. Purpose and Intent. The purpose of this section is to promote the public health, safety, and general welfare, and to protect the ecological functions of floodplains and riparian areas by managing, restricting, and regulating development in areas of the city designated as floodplains and in other areas which are important to maintaining the ecological and hydrologic functions of floodplains. Specifically, this section is intended to accomplish the following objectives:

1. Protect human life, health and property from the dangers of flooding;

2. Minimize the need for publicly funded and hazardous rescue efforts to save those who are isolated by floodwaters;

3. Minimize expenditure of public money for costly flood damage repair and flood control projects;

4. Minimize disruption of commerce and governmental services;

5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in the floodplain;

6. Maintain a stable tax base by providing for the sound use of ~~floodprone~~flood prone areas so as to minimize future flood blight areas;

7. Encourage that those who occupy areas subject to flooding and channel migration assume responsibility for their actions;

8. Ensure the city's residents and property owners can obtain flood insurance through participation in the National Flood Insurance Program;

9. Maintain or improve the quality, availability, and ecological functions of rivers, streams, lakes, wetlands, ground water, estuaries, and other water resources;

10. Retain the natural channel, shoreline, and floodplain creation processes and other natural floodplain functions that protect, create, and maintain habitat for threatened and endangered species;

11. Prevent or minimize loss of hydraulic, geomorphic, and ecological functions of floodplains and stream channels.

B. Applicability. Except as explicitly exempt, this chapter shall apply to all development as follows:

1. Floodplain Management Areas. This chapter shall apply to all areas mapped as or meeting the definition of a floodplain management area.

2. Other Areas. For areas outside of, or not otherwise meeting the definition of, a floodplain management area, all new buildings, and substantial improvements to existing buildings, shall comply with the requirements of BMC 14.15.430 (Construction standards). (Ord. 1903 § 2 (Exh. A), 2021).

14.15.400 Designation and mapping.

A. Designation. The following areas and features are designated as floodplain management areas:

1. Flood hazard area. The flood hazard area, or floodplain, is the land subject to inundation by the base flood. Flood hazard areas are designated on flood insurance rate maps with the letters "A" or "V" including AE, AO, AH, A1-99, and VE.

2. Protected area. Includes lands that lie within the boundaries of a floodway, riparian habitat zone, or channel migration area.

3. Riparian habitat zone. The water body, and adjacent land areas, likely to support aquatic and riparian habitat. For purposes of administering this section, the riparian habitat zone shall be any water body capable of being classified as a type "S," "F," "Np," or "Ns" water body, together with its associated riparian buffer, as described in this chapter.

4. Floodway. Within the city of Burlington the floodway consists of the Skagit River and all areas riverward of the toe of the dikes and levees along the Skagit River.

5. Chanel migration zone. Within the city of Burlington the channel zone shall be limited to the Skagit River and all areas riverward of the toe of the dikes and levees along the Skagit River.

6. Special flood risk zone. The special flood risk zone includes the following floodplain areas:

a. Gages Slough, including wetlands and deep water habitat areas; or

b. Areas with a ground elevation three feet or more below the base flood elevation that are hydraulically connected to Gages Slough through a channel, watercourse, or other topographical feature that provides a continuous path capable of conveying floodwaters with an elevation three feet or more below the base flood elevation; or

c. Areas within 300 feet of the landward toe of dikes and levees along the Skagit River, excluding floodways.

7. Other areas. Other areas may be designated as floodplain management areas if the director determines, based on credible evidence, they are at equivalent risk of flooding to mapped floodplain areas. In making such determinations the director shall consider elevation, survey, or hydrologic data affecting the potential of the area for flooding. Only information prepared by a licensed surveyor, or engineer, or otherwise meeting the criteria for best available science in chapter 365-195 WAC shall be considered.

B. Mapping. The director shall be responsible for maintaining the city's floodplain maps and data. The following maps, data sources, and procedures shall be used to identify floodplains and floodplain management areas:

1. Valid, adopted, and up-to-date flood insurance rate maps (FIRM). Presently the following maps provide information on the city of Burlington:

a. The flood insurance rate map (FIRM) for the city of Burlington dated January 3, 1985, and identified by community panel number 530153 0001 B;

b. The flood insurance rate map (FIRM) for Skagit County dated January 3, 1985, and identified by community panel number 530151 0250 C;

c. The flood insurance rate map (FIRM) for Skagit County dated September 29, 1989, and identified by community panel number 530151 0235 D.

2. Any other valid, adopted, and up-to-date FIRM depicting areas within the city of Burlington may be used for purposes of complying with this chapter.

3. The flood insurance study (FIS) for the city of Burlington, Washington, Skagit County, dated July 3, 1984, and the flood insurance study for Skagit County, Washington Unincorporated Areas dated September 29, 1989. In the event an updated FIS depicting areas within the city of Burlington is adopted it may be used for purposes of complying with this chapter.

4. The director shall make interpretations where needed as to the exact location and boundaries of the floodplain management area and floodplain. Interpretations may be necessary where there appears to be a conflict between the mapped location of the floodplain management area or floodplain, and the actual field conditions based on ground elevations or base flood elevations.

5. Any approved FEMA "letter of map amendment" or "letter of map revision."

6. The base flood elevation for floodplain areas within the city of Burlington delineated as a "zone AH" or "zone AO" shall be the corresponding elevation (or depth) identified on the applicable FIRM. Where base flood depths are not available for areas identified as a "zone AO" the base flood elevation shall be considered to be two feet above the highest grade adjacent to the structure.

7. The flood protection elevation (FPE) shall be determined as follows:

a. New structures and developments and substantial improvements to existing structures or developments: base flood elevation plus one foot of additional elevation;

b. New critical facilities and substantial improvements to existing structures or developments: base flood elevation plus three feet of additional elevation.

8. The floodways shall be delineated as shown on the applicable FIRM. In all cases the floodway shall, at a minimum, include the Skagit River and all areas riverward of the toe of the dikes and levees along the Skagit River.

9. Where base flood elevation and floodway data have not been provided in floodplain areas, the director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or, in the absence of information from a federal or state agency, another relevant source provided such information is consistent with the criteria for best available science in chapter 365-195 WAC.

C. New Regulatory Data and Map Revisions.

1. All requests to revise or change floodplain mapping or hazard data, including requests for a letter of map revision and a conditional letter of map revision, shall be subject to the following:

a. Community acknowledgment forms shall not be signed for requests based on filling or other development, unless the filling or development was conducted in full compliance with the requirements of this chapter and all other applicable regulatory requirements;

b. Requests to revise or change a floodway delineation shall not be approved until FEMA has issued a conditional letter of map revision approving the change.

2. Site-specific base flood elevation data shall be generated for subdivision proposals involving more than 50 lots or five acres, whichever is less, if no applicable base flood elevation data or mapping is available.

3. If areas are added to the city of Burlington through annexation that are adjacent to the Skagit River, and if such areas do not meet the definition of a disconnected migration area as defined in WAC 173-26-221(3)(b), the floodway associated such areas shall include the Skagit River and one-half the mapped floodplain at any point.

4. All new hydrologic and hydraulic flood studies conducted pursuant to this section shall consider future conditions and the cumulative effects from anticipated land use changes in accordance with Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act, FEMA Region 10, 2012.

5. In weighing conflicting official information sources regarding channel migration zones, floodways, future flood conditions, and the location of riparian habitat areas, the most restrictive data available at the time the decision is rendered shall be used.

D. All floodplain mapping, data, studies, regulations, and other information shall be maintained by the community development director and shall be available during regular city business hours, 833 South Spruce Street. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.410 Flood development permits.

A. Permit Required. Unless explicitly identified as exempt, a flood development permit shall be required for all development in a floodplain management area. An exemption from having to obtain a permit shall not be construed as an exemption from other applicable requirements. All development in a floodplain management area shall be subject to the requirements of this chapter unless explicitly exempt.

B. Exempt Development. The following development shall not require a flood development permit:

1. Routine maintenance of landscaping that does not involve grading, excavation, or filling;

2. Removal of noxious weeds and hazard trees and replacement of non-native vegetation with native vegetation;

3. Normal maintenance of structures, such as re-roofing and replacing siding, provided such work does not qualify as a substantial improvement;

4. Normal maintenance of above-ground utilities and facilities, such as replacing downed power lines and utility poles;

5. Normal street and road maintenance, including filling potholes, repaving, installing signs and traffic and traffic lights, but not including the expansion of existing paved areas;

6. Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility are allowed in the regulatory floodplain without need for a floodplain development permit. Normal maintenance does not include repair from flood damage, expansion of the prism, expansion of the face or toe or addition for protection on the face or toe with rock armor;

7. Plowing and other normal farm practices (other than structures or filling) on farms in the floodplain management areas and in existence as of the effective date of the ordinance codified in this chapter do not require a floodplain development permit. Clearing additional land for agriculture after the date of the ordinance codified in this chapter will require a flood plain development permit; and

8. The placement or storage of a recreational vehicle on a lot or site for less than 180 days provided:

a. Recreational vehicles shall be used only for travel and recreational purposes. Recreational vehicles shall not be used as a dwelling unit or a place of permanent habitation and shall under no circumstances be occupied for periods of 30 days or more;

b. All recreational vehicles shall be fully licensed and ready for highway use, on their wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions.

C. Application Requirements. Applications for flood development permits 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 chapter and BMC Title 14A. A complete application shall, at a minimum, include:

1. One or more site plans, drawn to scale, showing:

a. The location, boundaries, dimensions, and elevations of the development site;

b. Names and location of all lakes, water bodies, watercourses, wetlands, rivers and drainage facilities within 300 feet of the development site;

c. The elevations of the 10-, 50-, 100-, and 500-year floods, where the data are available;

d. The boundaries of the floodplain, special flood risk area, floodway, riparian habitat zone, and channel migration area;

e. The proposed drainage system including, but not limited to, storm sewers, overland flow paths, detention facilities, and roads;

f. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials;

g. All wetlands;

h. Designated fish and wildlife habitat conservation areas, and habitat areas identified for conservation or protection under state or federal or local laws or regulations (e.g., Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Growth Management Act, Shorelines Management Act, Priority Habitat and Species List);

i. Existing native vegetation, significant trees, and any proposed revegetation, planting, or mitigation areas.

2. If the development involves grading, excavation, or filling, the site plan shall include post-development elevation contours at one-foot intervals.

3. If the proposed development involves a new structure, substantial improvement to an existing structure, or repairs to a substantially damaged structure that will be elevated, the application shall include site elevation data and the following additional elevations. All elevation data shall be provided in relation to mean sea level and shall be prepared using the datum and methods prescribed by FEMA. Elevation data shall be submitted on an approved elevation certificate form consistent with the requirements of this chapter.

a. The top of bottom floor (including basement, crawlspace, or enclosure floor).

b. The lowest elevation of any machinery, equipment, mechanical equipment, or HVAC systems servicing the structure.

4. If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure that will be dry floodproofed, the application shall include the FPE for the building site and the elevation to which the structure will be dry floodproofed. A certification prepared by a registered professional engineer or licensed architect shall be submitted and shall document that the dry floodproofing methods employed are consistent with the floodproofing criteria and requirements in this chapter.

5. The proposed project must be designed and located so that new structural flood protection is not needed.

6. The application shall include a description of the extent to which a stream, lake, watercourse, or other water body, including its shoreline, will be altered or relocated as a result of the proposed development.

7. The application shall include documentation that the applicant will apply for all necessary permits required by federal, state, or local law. The application shall include written acknowledgment that the applicant understands that the final inspection or certificate of occupancy will be issued only if the applicant provides copies of the required federal, state, and local permits or letters stating that a permit is not required. The floodplain permit is not valid if those other permits and approvals are not obtained prior to any ground-disturbing work or structural improvements.

8. The application shall include acknowledgment by the applicant that representatives of any federal, state or local unit of government with regulatory authority over the project are authorized to enter upon the property to inspect the development.

9. Any other information requested by the director necessary to demonstrate compliance with the requirements of this chapter, other Burlington Municipal Code requirements, or any other applicable state or federal regulatory requirements.

D. Approval Criteria. Flood development permits shall be subject to the approval criteria and development regulations identified in this section. The city shall have the authority to condition floodplain permits in order to ensure full compliance with this section and to ensure all development is reasonable safe from flooding. No permit shall be issued or approved unless the proposal is consistent with the following requirements.

E. Review Process. Unless otherwise stated in this section, flood development permits shall be processed in accordance with the review procedures prescribed in BMC Title 14A.

F. Appeals. Flood development permit decisions may be appealed in accordance with the procedures prescribed in BMC Title 14A.

G. Time Limits. Flood development permits shall be subject to the following time limits:

1. Flood development permits associated with a building or grading permit shall be subject to the time limit and expiration date applicable to the building or grading permit.

2. Flood development permits associated with a land use permit or platting decision shall be subject to the time limit and expiration date applicable to the land use permit or platting decision.

3. For flood development permits not associated with another permit type, the development authorized by the permit shall begin within 180 days and all development shall be completed within two years. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.420 Development regulations.

A. Applicability. The provisions of this section shall apply to all development in the floodplain.

~~1. Flood development permit applications shall be subject to compliance with the floodplain development regulations in this section unless:~~

~~a. All of the proposed development is outside the protected area; and~~

~~b. All of the proposed development is higher than the flood protection elevation.~~

~~2. If, based on the criteria above, a proposed development is exempt from compliance with the flood development regulations, written findings establishing why the development is exempt shall be included in the project file and the applicant shall be informed that the development may still be subject to flood insurance purchase requirements unless a letter of map amendment is approved by FEMA.~~

B. General Regulations.

1. All utilities providing services such as sanitary sewer, gas, electricity, and potable water shall located, designed, and constructed to prevent or minimize flood damage;

2. New development requiring potable water shall be connected to a public water supply system;

3. Private water systems and wells shall not be used as a source of potable water for new development. All wells within the floodplain management area shall be subject to the following:

a. Wells shall be located outside the floodway; and

~~b. Wells shall be designed and constructed to prevent floodwaters from entering the well; and~~

c. Wells and associated water system components shall be protected to the flood protection~~proof~~ elevation to prevent floodwaters from entering the well;

4. New development that generates, or has the potential to generate, wastewater shall be connected to the municipal sewer system. New on-site waste disposal systems are prohibited in the floodplain;

5. Development shall not create a threat to public health, safety, or negatively affect water quality;

6. No construction, development, or substantial improvements shall be permitted if the cumulative floodwater displacement effect of the proposed development, combined with all other existing and proposed development, would cause the base flood elevation to increase by more than one foot at any location in the city. A

Commented [BJ12]: 3-8-2023 – BJ – revised to address DOE concern about applicability of flood regulations.

displacement analysis, prepared by a licensed engineer, demonstrating compliance with this provision shall be submitted for any construction, development, or substantial improvement in flood zones A1-30 and AE.

C. Land Division. The following development regulations shall apply to all land divisions including short plats, subdivisions, and binding site plans:

1. Land divisions shall employ site design, engineering, or construction practices to minimize flood damage.

2. Applications for preliminary subdivision or binding site plan approval shall include a habitat assessment and mitigation plan consistent with the requirements of this chapter.

3. The layout and development density of proposed subdivisions and binding site plans must be consistent with the restrictions and mitigation measures identified in the habitat assessment and mitigation plan. The cluster development provisions identified in BMC Titles 16 and 17 shall be used when necessary to mitigate impacts to floodplain ecology and hydrology.

4. All final plats, short plats, and binding site plans shall include a note stating that the plat contains property within a floodplain management area. Notes shall also be included identifying any restrictions placed on the use or development of lots within the plat or BSP.

5. Stormwater management and drainage systems shall be provided consistent with the requirements of BMC Title 14 and shall incorporate LID measures in accordance with the requirements of BMC Titles 16 and 17.

6. For land divisions involving five acres or more or the creation of 50 or more lots site specific base flood elevation data shall be generated if base flood elevation data for the development site is not available from an authorized source.

D. Riparian Habitat Zone. The following regulations shall apply to all development in a riparian habitat zone or within 300 feet of a stream or river:

1. All development in the riparian habitat zone shall comply with the standards and regulations set forth in this chapter for fish and wildlife habitat conservation areas.

2. The site plan shall depict the location of the stream or river and the extent of the associated riparian buffer.

E. Site Design. The following site design regulations shall apply to all development on existing lots:

1. Structures and other development shall be located to avoid flood damage.

2. If a lot has a buildable area outside of the floodplain management area, all new structures shall be located in that area to the maximum extent possible.

3. If a lot does not have a buildable area outside of the regulatory floodplain, all new structures, pavement, and other development must be sited in the location that has the least impact on habitat by locating the structures as far from the water body as possible or placing the structures on the highest land on the lot.

4. A minimum setback of 15 feet from the protected area shall be required for all structures.

5. Unless the development is explicitly exempt from habitat assessment and mitigation requirements a habitat impact assessment, and if necessary a mitigation plan, shall be prepared in accordance with the requirements of this chapter.

6. All new development shall be designed and located to minimize the impact on flood flows, flood storage, water quality, and habitat.

7. Stormwater and drainage features shall incorporate low impact development techniques in accordance with the requirements of BMC Title 17.

8. If the development will create new impervious surfaces so that more than 10 percent of the portion of the lot in the regulatory floodplain is covered by impervious surface, the applicant shall demonstrate that there will be no net increase in the rate and volume of the stormwater surface runoff that leaves the site or that the adverse impact is mitigated, as required by this chapter.

9. The site plan shall account for surface drainage to ensure that:

a. Existing and new buildings on the site will be protected from stormwater runoff; and

b. The project will not divert or increase surface water runoff onto neighboring properties.

F. Hazardous Materials. These regulations shall apply to all development involving the storage, handling, disposal, processing, or production of hazardous materials.

G. Critical Facilities.

1. New critical facilities shall not be located in a floodplain management area unless:

a. No feasible site exists outside the floodplain management area; or

b. The critical facility is necessary to provide flood protection or drainage services.

2. If no feasible site exists outside the floodplain management area, than critical facilities may be established within the floodplain management area subject to the following:

a. Critical facilities shall have the lowest floor elevated four feet above the base flood elevation or to the height of the 500-year flood, whichever is higher. If no applicable 500-year flood data exists, information shall be developed by a qualified professional in accordance with FEMA mapping guidelines and included with the permit application.

b. Access to and from the critical facility shall be protected to the elevation of the 500-year flood to the extent feasible.

H. Floodway Development. The following regulations shall apply to all development in the floodway:

1. All development shall be prohibited in the floodway except as follows:

a. Utility outfall structures authorized by the Corps of Engineers; and

b. The construction and maintenance of dikes and levees for flood control purposes; and

c. Bridges and other river crossings for transportation or utility purposes as minimally necessary for purposes of permitting an essential public facility; and

d. Development which is explicitly exempt from floodplain development permit requirements by BMC 14.15.410.

2. The following information shall be included with any application for a permit for development in the floodway. All information shall be prepared by a licensed engineer~~:~~

a. A thorough hydraulic and hydrologic analysis prepared by a licensed engineer, in accordance with standard engineering practices, that the proposed development will not result in any increase in flood levels during the occurrence of the base flood discharge; and

b. A projection of anticipated changes to hydraulic and hydrologic conditions over the life of development. The required analysis shall be based on the best available science and shall address changes attributable to climate change and projected floodplain development. For the purpose of interpreting these requirements the term “life of the development” shall mean a period of at least 100 years;

c. An analysis of any impacts to flood protection structures such as dikes, levees, and outfalls;

d. An analysis of potential upstream and downstream flooding impacts;

e~~b~~. Plans prepared by a licensed engineer for the structure or development in accordance with the hydraulic and hydrologic analysis required above;

f. any other information requested by the Director in order to demonstrate compliance with this Chapter and ensure the development is reasonably safe from flooding~~.~~

3. Approval criteria. Floodway development shall not result in any increase in flood levels during the occurrence of the base flood discharge. In addition above ground structures in the floodway shall be subject to the following:

a. The lowest horizontal element shall be three feet or more above the base flood elevation or the base flood elevation projected for the life of the development, whichever is greater;

Commented [BJ13]: BJ – 4-20-2023 – Note – WDFW agrees this supported by BAS requested this provision be retained.

b. The development shall not compromise flood protection improvements such as dikes and levees;

c. The structure shall allow for the unimpeded passage of floodwater and debris flows;

d. The structure shall be designed and constructed to minimize the number of vertical supports and fill placed in the floodway.

I. Alteration of Watercourses. Developments involving the alteration or relocation of a watercourse shall be subject to the following regulations:

1. The following documentation shall be provided with the flood development permit application:

a. A letter from FEMA stating that the proposed development does not require a conditional letter of map amendment; or

b. An approved conditional letter of map amendment.

2. If an approved conditional letter of map amendment is provided, any conditions, restrictions, or mitigation measures identified in the letter shall be included as conditions in the approved flood development permit.

3. Notification shall be provided to adjacent communities, the Washington State Department of Fish and Wildlife, the Washington State Department of Natural Resources, and the Washington State Department of Ecology prior to approving development, and shall submit evidence of such notification to FEMA.

4. Maintenance shall be provided within the portion of the watercourse that is altered or relocated so that the flood carrying capacity is not diminished. If the maintenance program does not call for cutting of native vegetation, the system shall be oversized at the time of construction to compensate for vegetation growth or any other natural factors that may necessitate future maintenance.

J. Development in the Special Flood Risk Zone. Development in the special flood risk zone shall be subject to the following regulations:

1. Development other than the following is prohibited in the special flood risk zone; provided, that nothing in this section shall be construed as authorizing construction or fill in wetlands:

a. Minor structures and additions for which a building permit is not required and which create no new residences;

b. Minor fills and excavations of less than 12 cubic yards or which will not raise the level of land above that of the surrounding area;

c. Normal maintenance, resurfacing and rebuilding at comparable grade of bridges, streets and access ways;

d. Underground improvements;

e. Maintenance, repair, alteration and like replacement of existing improvements;

f. Other minor development which causes no significant impoundment or displacement of floodwaters, such as signs and small unenclosed structures;

g. Elevated structures which allow floodwaters to flow underneath and which meet the following criteria:

i. All structures shall be elevated so that the lowest supporting member is located no lower than one foot above the 100-year flood elevation, with all space below the lowest supporting member open so as not to impede the flow of water, except for breakaway walls as provided below.

ii. Solid walls are prohibited below the base flood elevation to keep the area free of obstruction unless they are designed to break away. A breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot.

iii. All structures shall be securely anchored on piling, columns, or foundation walls oriented to the axis of the flow path. Said support elements shall be certified by a registered professional engineer or architect as capable of withstanding all applied loads of the 100-year flood flow.

iv. There shall be no fill used for structural support.

2. Regardless of method of construction, operation, development, substantial improvement, or expansion of residential health care facilities is prohibited in the special flood risk zone.

3. New multifamily residential structures are prohibited in the special flood risk zone.

4. Land divisions, including short plats, subdivisions, and binding site plans, shall be subject to the following:

a. No lot shall be created through a subdivision or short subdivision which lacks an adequate building site outside the floodway or special flood risk area, unless restrictive notes are included on the face of the plat permanently prohibiting development of the lot, or restricting the use of the lot to flood control structures and improvements; and

b. Land within a floodway or special flood risk zone shall be placed within a separate tract or easement if required by BMC 14.15.200(B) and BMC Title 16.

5. New structures shall not be located within a special flood risk zone but yards and other nonstructural improvements that fully comply with all other applicable requirements identified in this chapter may extend into a special flood risk zone.

6. New structures shall be located so that the proposed project will not affect the hydrologic or hydraulic characteristics of a flooding source and must be certified by a registered professional engineer.

7. Proposed structures with an estimated value greater than $250,000 shall be subject to the following:

a. The proposed structure shall not have a significant adverse impact on flood hazards; and

b. There are no other physically feasible alternatives available.

8. Development for which a floodplain permit is required shall not be permitted riverward of a dike or levee or within 100 feet of the landward toe of a dike or levee except as follows:

a. Improvements to dikes, levees, and flood control improvements; and

b. Interim uses involving no fill, asphalt, stockpiling of material, or permanent structures; and

c. Utility outfall structures authorized by the Corps of Engineers; and

d. The construction and maintenance of dikes and levees for flood control purposes; and

e. Bridges and other river crossings for transportation or utility purposes as minimally necessary for purposes of permitting an essential public facility.

f. Prior to authorizing any development riverward of a dike or levee or within 100 feet of the landward toe of a dike or levee the city shall consult with the dike district and shall incorporate conditions as necessary to protect the structural integrity of dikes, levees, and other flood control improvements and as necessary to permit emergency flood fighting efforts. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.430 Construction standards.

A. General. The following development activities shall be subject to the floodplain construction standards in this section:

1. Construction or placement of a new structure;

2. Reconstruction, rehabilitation, or other improvements the meet the definition of a "substantial improvement";

3. Repairs to an existing building that has been substantially damaged;

4. Placing a manufactured home on a lot or site;

5. Placing a recreational vehicle or travel trailer on a lot or site for more than 180 days;

6. Additions to existing structures. -

Commented [BJ14]: 3-8-2023 – added to address frequent confusion about additions.

B. Residential Construction.

1. All new structures, additions, and substantial improvements shall have the lowest floor, including basement, elevated at or above the FPE.

2. The structure shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

3. All materials below the FPE shall be resistant to flood damage and firmly anchored to prevent flotation. Materials harmful to aquatic wildlife, such as creosote, are prohibited below the FPE.

4. Electrical, heating, ventilation, duct work, plumbing, and air-conditioning equipment and other service facilities shall be elevated above the FPE. Water, sewage, electrical, and other utility lines below the FPE shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding.

5. Fully enclosed areas below the lowest floor that are subject to flooding, including garages attached to residential structures where the floor slab is below the base flood elevation, shall be used only for parking, storage, or building access and shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a registered professional engineer or licensed architect and/or meet or exceed the criteria below:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

6. In zones V, V1-30 and VE, new structures and substantial improvements shall be elevated on pilings or columns so that:

a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated above the FPE.

b. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

c. The areas below the lowest floor that are subject to flooding shall be free of obstruction.

d. The structure or improvement shall be located landward of the reach of mean high tide.

e. The use of fill for structural support of a structure or addition is prohibited.

f. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting these provisions.

C. Nonresidential Construction.

1. The structure shall not located in zones V, V1-30, or VE;

2. New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the lowest floor, including basement, elevated at or above the flood protection elevation, or the elevation required by ASCE 24, whichever is greater. Mechanical equipment and utilities shall be waterproofed or be installed at or above the flood protection elevation or the elevation required by ASCE 24, whichever is greater;

3. Fully enclosed areas below the lowest floor that are subject to flooding shall be used only for parking, storage, or building access and shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a registered professional engineer or licensed architect and/or meet or exceed the criteria below:

a. A minimum of two openings with a total net area of at least one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters;

4. As an alternative to the elevation and venting requirements identified in subsections (C)(2) and (3) of this section, new construction and substantial improvements may be dry floodproofed in accordance with the following standards:

a. All portions of the structure below the flood protection elevation, or the elevation required by ASCE 24, whichever is greater, shall be dry floodproofed with watertight walls substantially impermeable to the passage of water;

b. The structural components shall be capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. A registered professional engineer or licensed architect shall stamp the building plans and certify that the design and methods of construction are in accordance with accepted standards of practice for meeting

provisions of this subsection based on their development and/or review of the structural design, specifications and plans; and

d. A permit condition shall be included notifying the permit applicant that flood insurance premiums be determined based on an elevation that is one foot below the floodproofed elevation. For example, if the dry floodproofed elevation is one foot above the base flood elevation, flood insurance rates will be assessed as if the building is located at the base flood elevation; and

5. Mechanical equipment, HVAC systems, and utilities shall either be installed at or above the flood protection elevation, waterproofed, or located in an area that has been dry floodproofed in accordance with the requirements of this chapter.

D. Manufactured Homes. The placement of manufactured homes on a site or lot, substantial improvements to existing manufactured homes shall be subject to the following regulations:

1. A permanent foundation shall be provided; and

2. The foundation shall be elevated in accordance with the requirements of this section; and

3. The manufactured home shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to other applicable anchoring requirements for resisting wind forces.

4. Only manufactured homes meeting the definition of a “manufactured home” in BMC Title 17 shall be used as a dwelling unit or a place of permanent habitation. Recreational vehicles shall not be used as a dwelling unit or a place of permanent habitation.

E. Crawlspaces. Buildings utilizing crawlspace construction, where any portion of the crawlspace is below the grade on all sides, shall meet the following requirements:

1. Crawlspace construction is not permitted in the V zones;

2. Crawlspace construction is not permitted in zones AO and A1-A30 where floodwater velocities could exceed five feet per second, unless it can be shown through an engineering analysis that the structural components will resist flotation, collapse, and lateral movement from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

3. The interior grade of the crawlspace shall not be more than two feet below the lowest adjacent grade;

4. The height of the crawlspace, measured from the interior grade of the crawlspace to the top of the foundation wall, shall not exceed four feet at any point and the height, measured from the crawlspace grade to the top of the next highest floor, shall not exceed five feet at any point;

5. An adequate drainage system shall be provided to remove floodwaters from the crawlspace in a reasonable amount of time after a flood event.

F. Accessory Structures. Accessory structures shall comply with all of the requirements in this section, except that accessory structures shall be exempt from elevation requirements provided they are:

1. Used only for parking or storage; and

2. Constructed and placed on the site or lot so as to offer minimum resistance to the flow of floodwaters; and

3. Anchored to prevent flotation which may result in damage to other structures; and

4. Constructed of flood-resistant materials below the flood protection elevation.

G. Certificate of Occupancy. No final inspection or occupancy shall be approved unless all of the following requirements have been met:

1. An elevation or floodproofing certificate, consistent with the requirements of this chapter, shall be submitted;

2. For projects subject to floodplain habitat mitigation plan requirements, all of the required mitigation activities and work identified in the mitigation plan shall be completed and inspected;

3. Copies of all other required federal, state, and local permits shall be submitted;

4. The project fully complies with the requirements of this chapter. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.431 Habitat impacts and mitigation.

A. Applicability. A habitat assessment, and if necessary a mitigation plan, shall be provided with all applications for a flood development permit unless the development activity is explicitly identified as being exempt below.

B. Exempt Development. The following development activities shall be exempt from the habitat assessment and mitigation requirements of this section:

1. Repairing or remodeling an existing structure provided the work does not constitute a substantial improvement or a repair to substantial damage.

2. Additions to existing structures provided the addition or expansion does not increase the footprint of the structure by more than 10 percent, or constitute a substantial improvement. For purposes of determining compliance with this requirement, measurements shall be counted cumulatively from the effective date of the ordinance codified in this chapter or September 22, 2011, whichever is earlier. If the structure is in the floodway, there shall be no change in the dimensions perpendicular to flow.

3. Development undertaken for the sole purpose of creating, restoring or enhancing the natural functions of floodplains, streams, watercourses, fish and wildlife habitat, and riparian areas; provided, that:

a. The project complies with all other applicable federal, state, and local permit requirements and regulations;

b. The development activities do not include the placement of fill or the creation of additional impervious surface areas.

4. Development of open space and recreational facilities, such as parks, trails, and play fields, that do not include structures, fill, impervious surfaces or the removal of more than five percent of the native vegetation within the floodplain management area.

5. Other development activities consistent with all of the following:

a. Native vegetation within the riparian habitat zone shall not be removed; and

b. Native vegetation removal outside of the riparian habitat zone does not exceed 35 percent of the surface area of the portion of the site within the floodplain management area. If the site contains a riparian habitat zone, the vegetation within the riparian habitat zone may be counted towards this requirement; and

c. The development does not involve the storage, handling, processing, disposal, transport, or production of significant quantities of chemicals, explosives, gasoline, propane, buoyant materials, animal wastes, fertilizers, flammable liquids, pollutants, or other materials that are hazardous, toxic, or a threat to water quality; and

d. The development is not riverward of a dike or levee; and

e. The development does not reduce the effective flood storage volume of the floodplain management area, or the development provides compensatory storage consistent with all of the following:

i. The compensatory storage is provided at an equivalent volume and at equivalent elevations to the flood storage capacity being displaced. For purposes of interpreting this requirement "equivalent elevation" shall mean an elevation with a similar relationship to the ordinary high water and the best available 15-, 50-, and 100-year flood surface water profiles; and

ii. The compensatory storage is hydraulically connected to the source of flooding; and

iii. Flood development permit applications for projects involving compensatory mitigation shall include grading plans and calculations prepared by a licensed engineer demonstrating compliance with the compensatory mitigation requirements.

C. Habitat Impact Assessment. Unless the proposal involves development activities explicitly identified above as exempt, all flood development permit applications shall include a habitat assessment prepared consistent with the requirements of this section.

1. Requirements. All habitat assessments shall include the following information, analysis, and materials:

a. A biological evaluation or biological assessment developed per 50 CFR 402.12 to initiate federal interagency consultation under Endangered Species Act Section 7(a)(2); or

b. Documentation that the activity fits within Section 4(d) of the Endangered Species Act; or

c. Documentation that the activity fits within a habitat conservation plan approved pursuant to Section 10 of the Endangered Species Act, where any such assessment has been prepared or is otherwise made available; or

d. An assessment prepared in accordance with Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA Region 10, 2010. The assessment shall determine if the project would adversely affect:

i. Species that are federal, state or local listed as threatened or endangered;

ii. The primary constituent elements for critical habitat, when designated;

iii. Essential fish habitat designated by the National Marine Fisheries Service;

iv. Fish and wildlife habitat conservation areas;

v. Other protected areas and elements necessary for species conservation.

D. Habitat Mitigation Plan. If the habitat assessment provided with the flood development permit application concludes the development is expected to have an adverse effect on water quality, aquatic or riparian habitat, or habitat functions, the applicant shall provide a habitat mitigation plan. The following requirements shall apply to habitat mitigation plans and to all developments requiring a habitat mitigation plan:

1. Habitat mitigation plans shall be prepared in accordance with standards and procedures identified in the "Regional Guidance for Floodplain Habitat Assessment and Mitigation" published by FEMA Region 10.

2. If the project is located outside the protected area, the mitigation plan shall include such avoidance, minimization, restoration, or compensation measures so that indirect adverse effects of development in the floodplain (effects to stormwater, riparian vegetation, bank stability, channel migration, hyporheic zones, wetlands, large woody debris, etc.) are mitigated such that equivalent or better habitat protection is provided.

3. New stream crossings are not allowed outside the protected area unless the crossing has been explicitly approved consistent with the requirements of this chapter.

4. For development within the protected area, the mitigation plan shall stipulate avoidance measures as are needed to ensure that there is no adverse effect during any phase of the project.

5. The plan's habitat mitigation activities shall be incorporated into the design of development. The floodplain development permit shall be based on the redesigned project and its mitigation components.

6. If the NMFS or USFWS issues an incidental take permit under Section 10 ESA, Biological Opinion under Section 7, ESA; it can be then it can be used as a mitigation plan to meet the requirements of this section. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.432 Records and documentation.

Certificates, forms, studies, and other documents required by this chapter shall be consistent with the following requirements and shall be maintained by the city and made available for public review:

A. The finished construction elevations required by this chapter shall be recorded on a current FEMA elevation certificate. All elevation certificates shall be prepared, stamped, and signed by a professional land surveyor licensed in the state of Washington.

B. Base flood elevation data, in relationship to the datum of the effective FIRM, shall be recorded on a current FEMA floodproofing certificate. All floodproofing certificates shall be prepared, stamped, and signed by a professional engineer licensed in the state of Washington.

C. Flood development permits, documents included with flood development permit applications, elevation certificates, floodproofing certificates, and certificates of occupancy shall be maintained by the city and shall be available for public review.

D. Maps, studies, reports and other sources of information used in the administration of this section shall be maintained by the director and shall be available for public review.

E. The city shall maintain, and make available for public review, any other documents or studies required by this chapter including, but not limited to, floodplain habitat assessments, improvement and damage calculations, inspection records, approved permits, and completed application forms. (Ord. 1903 § 2 (Exh. A), 2021).

14.15.433 Penalties and enforcement.

Failure to obtain a flood development permit or any other violation of any of the regulations identified in this section shall be subject to the penalty and enforcement provisions identified in chapter 1.34 BMC and any other applicable enforcement provisions authorized by Burlington Municipal Code. (Ord. 1903 § 2 (Exh. A), 2021).

Special Management Areas

14.15.436 Special Management Area Regulations.

A. Application. The standards in this section shall apply to development in the Special Management Areas. The standards in this section are not intended to apply to residential landscaping or other minor construction activities within the boundaries of a legally existing residential home site.

B. Purpose. Special Management Areas have been designated to manage development in specific geographic areas. The Special Management Areas designated in this chapter are characterized by unique features, locally important habitat values, or the presences of severe natural hazard risks. Special Management Areas may also include areas with multiple, overlapping, or widespread critical areas and natural hazards.

C. Designation. The following Special Management Areas have been designated by this chapter:

1. Burlington Hill

2. Gages Slough

3. Skagit River Corridor

D. Development Standards. Development in Special Management Areas shall be consistent with the applicable policies in the Burlington Comprehensive Plan (Special Management Areas, section 4.5).

COMPLIANCE

14.15.440 Compliance with critical area regulations.

No permit for a development proposal shall be issued unless it also complies with the regulations of this chapter. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.450 Construction.

In any case where the provisions of this chapter conflict with the provisions of the underlying zoning, the provisions of this chapter shall apply. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.460 Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person, owner, or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons, owners or circumstances. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.470 State Environmental Policy Act.

This chapter establishes minimum standards which are to be applied to specific land use and platting actions in order to prevent further degradation of critical areas in the city, and is not intended to limit the application of the State Environmental Policy Act (SEPA). Projects subject to SEPA shall be reviewed and may also be conditioned or denied. (Ord. 1853 § 2 (Exh. B), 2018).

14.15.480 Liability disclaimer.

Since floods more severe than the 100-year flood occur on rare occasions, reliance on this chapter will not altogether guarantee freedom from flood damage, nor shall this chapter create liability on the part of the city for such damage. It is further noted that other data regarding 100-year floodplain elevations may exist which indicate a more severe threat than the data established by FEMA. Information on these other data sources shall be kept and made available at Burlington City Hall. (Ord. 1853 § 2 (Exh. B), 2018).

[1] Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or reestablishment. See Table 1a, Wetland Mitigation in Washington State – Part 1: Agency Polices and Guidance – Version 1 (Ecology Publication No. 06-06-011a, Olympia, WA, March 2006 or as revised). See also subsection (D)(4) of this section for more information on using preservation as compensation.

Title 14A

LAND USE DECISIONS

Chapters:

14A.01 General Provisions
14A.05 Processing Land Use Actions – Decision Making Framework

Chapter 14A.01

GENERAL PROVISIONS

Sections:

14A.01.010 Title.
14A.01.020 Application.
14A.01.030 Purpose.
14A.01.040 Authority.
14A.01.050 Adoption by reference.
14A.01.060 Definitions.
14A.01.070 Liability.
14A.01.080 Severability.

14A.01.010 Title.
This title shall be called "Land Use Decisions." (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 decision~~s~~ 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 D~~d~~evelopment D~~d~~irector" 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 Cc~~c~~ommunity Dd~~d~~evelopment Dd~~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 my 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.
14A.05.020 Application.
14A.05.030 Purpose.
14A.05.040 Authority.
14A.05.050 Project permit applications – Consideration – Requirements.
14A.05.060 Classification of land use actions.
14A.05.070 Applications – Generally.
14A.05.080 Review criteria for decisions.
14A.05.090 Notice requirements, type and content of notice – General.
14A.05.100 Notice of application requirements and comment period.
14A.05.110 Public hearing requirements.
14A.05.120 Notice of decision requirements and content of notice.
14A.05.130 Standards to ensure performance and compliance with conditions.
14A.05.140 Conditional use applications, when required, submittal requirements, review criteria and conditions of approval.
14A.05.150 Variance applications, when required, submittal requirements, review criteria and conditions of approval.
14A.05.160 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.

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

14A.05.060 Classification of land use actions.
Land use actions governed by this title are classified into four categories as set forth below. Projects requiring more than one type of decision should, whenever possible, be consolidated under the higher classification.

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

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 application~~s.

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

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.

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 spaces~~Construction of a building containing three or more dwelling units;

2. Construction of three or more dwelling units on a single lot, provided that no site plan review shall be required for the construction of an accessory dwelling unit(s);

32. ~~All development requiring the preparation of a landscaping plan; or~~Construction 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 pervious site plan review;

73. 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 an ~~closed~~ open 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.

Commented [BJ7]: BJ – 4-20-2023 – address concern highlighted by hearing examiner. Not providing at least one opportunity for an open record hearing could create due process issues.

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 ~~closed~~ 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 [BJ8]: 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).

Title 15

BUILDINGS AND CONSTRUCTION[1]

Chapters:

15.01 General Provisions
15.04 Uniform Codes
15.06 Requirements for Building Permit Applications
15.08 Fire Code
15.10 Addresses
15.12 Transportation, Parks, and Fire Impact Fees
15.14 Overnight Lodging Establishments

[1] Prior legislation: Ords. 668, 969, 970, 1039, 1040, 1211, 1293, 1294, 1296, 1309, 1347, 1397, 1403, 1404, 1495, 1504, 1508, 1523, 1533, 1554, 1555, 1578, 1611, 1625, 1627, 1635, 1650, 1651, 1654, 1669, 1680, 1683, 1695, 1707, 1708, 1716, 1718, 1724, 1734, 1739, 1746, 1754, 1764, 1767, 1776, 1777, 1783, 1785, 1795, 1800, 1808, 1815, 1817, 1830 and 1842.

Chapter 15.01

GENERAL PROVISIONS

Sections:

15.01.010 Title.
15.01.020 Application.
15.01.030 Purpose.
15.01.040 Authority.
15.01.050 Adoption by reference.
15.01.060 Definitions.
15.01.070 Liability.
15.01.080 Minimum requirements.
15.01.090 Violations and penalty.
15.01.100 Appeal.
15.01.110 Severability.

15.01.010 Title.
This title shall be known as "Buildings and Construction." This chapter shall be called "General Provisions." (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.01.020 Application.
This title shall be applicable as is set forth in the following chapters. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.01.030 Purpose.
The purpose of this title is as follows:

Commented [BJ1]: BJ – 3-14-2023 – provided more detail about the purpose of this section to support regulations and tie to the comp plan.

1. ~~to i~~Identify the international, uniform, and fire codes adopted by the C~~c~~ity;
2. E~~to e~~stablish regulations for the construction, maintenance, and operation of buildings and structures;
3. ~~to e~~Establish a uniform system of addressing and ensure coordination with regional emergency response communication and dispatch systems; ~~and to e~~
4. Establish provisions for the collection and assessment of transportation, park, and fire impact fees. ~~(Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).~~
5. Ensure buildings and structures provide environments that are safe, healthy, accessible, and energy efficient;
6. Facilitate emergency response services;
7. Implement and enforce the provisions of the Washington State Building Code, Title 51 WAC, and chapters 19.27, 19.27A, and 70.92 RCW;
8. Implement the Burlington Comprehensive Plan and the requirements of Chapter 36.70A RCW.

15.01.040 Authority.
The provisions of this title are authorized pursuant to chapters 19.27 and 36.70A RCW, RCW 82.02.050 through 82.02.090 and other applicable laws and regulations as well as the authority identified in the chapters contained within this title. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.01.050 Adoption by reference.
Statutes, codes or regulations identified or adopted herein shall be the existing version of that statute, code or regulation and any subsequent amendment to the same, unless expressly stated otherwise. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.01.060 Definitions.
The words listed in this title shall have the following meanings unless the context clearly indicates otherwise. Terms relating to pollutants and to hazardous wastes, materials, and substances, where not defined in this title, shall be as defined in chapters 173-303 and 173-340 WAC, the International Building Code or Fire Code. Words used in the singular include the plural, and words used in the plural include the singular. For the purpose of reviewing permit applications or conducting plan review or inspections under the uniform codes adopted by Chapter 15.04 BMC the definitions in the applicable uniform codes shall control in the event of a conflict with this section.

Commented [BJ2]: BJ – 3-14-2023 in some cases there are conflicts between these definitions, which are used for a variety of purposes, and the definitions in the adopted fire and building codes, which are used for specific plan review and inspection purposes. This allows the building official and fire marshal the authority to address conflicts.

"A"

"Act" means the Growth Management Act, as codified in chapter 36.70A RCW, as now in existence or as hereafter amended.

"B"

"Boundary line adjustment" or "lot boundary adjustment" shall have the same meaning as set forth in BMC Title 16.

"Building official" means the building official who is responsible for the enforcement of the building code, residential code, mechanical code, fuel gas code, plumbing code, energy conservation code, housing code, abatement of dangerous buildings code, all special hazards codes which may now or hereafter be adopted, of the city. Building official shall also be known as a department head.

"Building permit" or "construction permit" means an official document or certification ~~which is~~ issued ~~by the building official~~under the City's adopted uniform codes ~~and~~ which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure.

Commented [BJ3]: BJ – 3-14-2023 – expansive term that includes a variety of permits types issued under this title including fire, building, plumbing, mechanical, etc.

"Burlington Hill special management area" means those portions of Burlington Hill with a ground elevation 40 feet or more above sea level as shown on the most current USGS 7.5 minute topographic quadrangle map.

"C"

"Capital facilities" means streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools. "Capital facilities" also means any buildings, structures, equipment, and physical improvements necessary to provide public services.

"Capital facilities plan" means the capital facilities element of the city's comprehensive plan. The capital facilities plan (CFP) is a general plan for providing the facilities and services necessary to serve the projected population and employment growth identified in the land use element of the comprehensive plan and is used as the basis for the development, and annual revision of, the capital improvement plan (CIP).

"Capital improvement plan" (CIP) means the detailed six-year financing plan required by WAC 365-196-415(1)(d). The capital improvement plan is a component of the comprehensive plan and is revised and updated annually as a means to address changing budgetary conditions and is used to implement the capital facilities plan.

"Certificate of occupancy" means a written document issued by the ~~governing authority~~City in accordance with the provisions of the building permit. The certificate of occupancy indicates that~~, in the opinion of the building official,~~ the project ~~has~~ has been inspected for compliance with applicable uniform and development code requirements. ~~been completed in accordance with the building and zoning codes. This document gives the owner permission from the authorities to occupy and use the premises for the intended purpose.~~ The certificate of occupancy give permission to use or occupy the premises for the approved proposed use.

"City" means the city of Burlington.

"City Aadministrator" means the duly appointed city administrator or his/her designee under the authority of the mayor.

"City Eengineer" or "Public Works Director" means the official~~ly~~ appointed and acting as the public works director for the city.

~~, also referred to herein as a department head.~~

"Community development director" means the official appointed and acting as the Community Development Director~~city administrator or designee~~.

Commented [BJ4]: BJ – 3-14-2023 – revised to reflect current city administrative structure.

"Council" means the city council of the city of Burlington.

"County" means Skagit County.

"D"

"Developer" means an individual, group of individuals, partnership, corporation, state agency, or other person undertaking development activity, and their successors and assigns.

Development or Development Activity. "Development" means any activity that results in a use or modification of land or its resources. Development activities include, but are not limited to: dredging, drilling, dumping, filling, earth movement, grading, clearing or removal of vegetation; storage of materials or equipment; building or construction; the placement of manufactured homes; land division, boundary line adjustments, lot segregations, subdivisions and short subdivisions; binding site plans; land use permit approvals; variances; shoreline development or substantial development; and activities or uses allowed through conditional use permits; or any change in use of land that creates additional demand and need for public streets and roads, publicly owned parks, open space and recreational facilities, and fire protection facilities.

"Development approval" means any written authorization from the city, other than a building permit, which authorizes the commencement of a development activity, including, but not limited to, plat approval, binding site plan approval, boundary line adjustment, and a conditional use permit.

"Director" means the community development director.

"Dwelling unit" means a building, or a portion of a building, providing complete housekeeping facilities for one family or housekeeping unit. Dwellings are differentiated from transient accommodations by providing a permanent, non-transient, residence or place of habitation. ~~means any building or portion thereof which contains complete living facilities, including provisions for sleeping, cooking, eating, and sanitation for not more than one family.~~

Commented [BJ5]: BJ – 3-14-2023 – consistency with state law and other chapter of the code including the definition in title 17.

"E"

"Encumbered" means to reserve, set aside, or otherwise earmark the impact fees in order to pay for commitments, contractual obligations, or other liabilities incurred for public facilities.

"F"

"Family" means a person, or two or more persons, related by blood or marriage or law living together as a single housekeeping unit in a single dwelling. In addition, the following shall be included in the definition of "family" pursuant to the requirements of state and/or federal law:

1. Adult family homes licensed pursuant to RCW 70.128.150;

2. Foster homes for the placement of the disabled, or expectant mothers in a residential setting including, but not limited to, foster family homes licensed pursuant to chapter 74.15 RCW, community group care facilities licensed pursuant to chapter 74.15 RCW and crisis residential centers pursuant to chapter 13.32A RCW;

3. Consensual living arrangements of the disabled protected pursuant to the Federal Fair Housing Act amendments; and

4. A housekeeping unit as defined by chapter 17.01 BMC.

"Feepayer" is a person, corporation, partnership, an incorporated association, or any other similar entity, or department or bureau of any governmental entity or municipal corporation, commencing a development activity which creates the demand for planned facilities, and which requires development approval and/or the issuance of a building permit. "Feepayer" includes an applicant for an impact fee credit.

"Fire impact fee" means the impact fee designated to pay for a proportionate portion of fire protection facilities identified in the capital improvement plan.

"Fire marshal" or "fire code official" means the official responsible for enforcing and administering the city's adopted fire code, fire safety requirements, and other related codes and requirements.

"G"

"Grading permit" means a permit authorizing the clearing, grading, fill, excavation, or the construction of site improvements or infrastructure such as utilities, streets, and storm-water infrastructure. Grading permits are processed as a type of building permit but are subject to an additional level of review for compliance with the requirements of titles 12, 13, and 14 BMC.

Commented [BJ6]: BJ – 3-14-2023 – revised to reflect city process of using grading permits as the vehicle for reviewing all manner of site improvements and civil plans.

"H"

"Hearing examiner" means the official designated under the provisions of chapter 17.120 BMC.

"I"

"Impact fee" means a payment of money imposed by the city on development activities pursuant to this chapter as a condition of granting development approval and/or a building permit in order to pay for the planned facilities needed to serve new growth and development activity. "Impact fee" does not include a reasonable permit fee, an application fee, the administrative fee for collecting and handling impact fees, the cost of reviewing independent fee calculations, or the administrative fee required for an appeal pursuant to this chapter.

"Impact fee account" or "account" means the account or accounts established for the planned facilities for which impact fees are collected. The accounts shall be established pursuant to this chapter, and comply with the requirements of RCW 82.02.070.

"Independent fee calculation" means the impact calculation and/or economic documentation prepared by the feepayer to support the assessment of an impact fee other than by the use of the impact fees adopted herein and on file in the office of the finance director, or the calculations prepared by the public works director/city engineer in the case of traffic impact fees, the parks and recreation director in the case of park impact fees and/or the fire chief in the case of fire impact fees, where none of the impact fee categories or impact fee amounts in this chapter accurately describe or capture the impacts of the development activity on public streets and roads, publicly owned parks, open space and recreational facilities, and fire protection facilities. All independent fee calculations shall be prepared by the respective department director(s) as specified above, and shall be submitted to the city administrator/community development director for review and recommendation to city council for final determination.

"Interest" means the average interest rate earned by the city of Burlington in the last fiscal year, if not otherwise defined.

"L"

"Land use permit" is a consolidated development approval or permit issued pursuant to BMC Title 14A.

"Legally existing" or "legally established" means a use or structure which was established in compliance with all applicable rules, regulations, and laws in effect at the time of its establishment, including the requirement to obtain permits, authorizations, or approvals.

"Level of service (LOS)" means the quantity and quality of service which the city council has determined to be appropriate and desirable for the city. A measure of the LOS may include, but is in no way limited to, maximum levels of congestion on city streets and roads, maximum commute times, maximum wait at stops, maximum fire department response time, minimum fire suppression capabilities, minimum park space per capita for a variety of types of parks, minimum distance from residences to parks, and any other factors the city council may deem appropriate.

"M"

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

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

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

Commented [BJ7]: 3-8-2023 – BJ – Regulation not definition.

"Modular home" means factory built housing as defined by RCW 43.22.450(3) which has been approved by the Department of Labor and Industries in accordance with RCW 43.22.455.

"O"

"Owner" means the owner of record of real property or a person with an unrestricted written option to purchase property; provided, that if the real property is being purchased under a recorded real estate contract, the purchaser shall be considered the owner of the real property.

"P"

"Parks director" means the parks and recreation director of the city parks and recreation department, also referred to herein as a department head.

"Parks impact fee" means the impact fee designated to pay for publicly owned parks, open space and recreation capital facilities, projects and equipment listed within the capital facilities element of the comprehensive plan (adopted annually by resolution of city council in the form of the six-year CIP).

"Peak p.m. hour" means the consecutive 60-minute periods during the 4:00 p.m. to 6:00 p.m. peak period during which the highest volume of trips on the city's street system occurs.

"Planned facilities" shall mean public streets, roads and associated transportation equipment, facilities and infrastructure, publicly owned parks, open space, parks and recreation equipment and facilities, and fire protection equipment and facilities included in the capital facilities element of the comprehensive plan, capital facility plan, and/or six-year capital improvement plan (CIP) for Burlington.

"Project improvements" means site improvements and facilities that are planned and designed to provide service for a particular development project or users of the project, that are necessary for the use and convenience of the occupant or users of the project, and are not listed in the capital facilities plan or capital facilities element of the comprehensive plan (six-year city capital improvement plan (CIP)) adopted by resolution of the city council annually and used in the fee calculation.

"Public services" means fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

~~"Public works director/city engineer" means the director of the department of public works/city engineer or his/her designee.~~

Commented [BJ8]: 3-8-2023 – BJ – moved under city engineer

"R"

"Residential structure" means a house, apartment, mobile home, manufactured home or modular home containing one or more dwelling units.

"S"

"Square footage" means the square feet of the gross floor area of a development or structure.

"State" means the state of Washington.

"System improvements" means planned facilities that are designed to provide service to the community at large, in contrast to project improvements. In the instance of transportation impact fees, "system improvements" are those public facilities that are included in the city of Burlington's capital facilities plan or capital improvement plan, and form the basis of calculating the city's traffic/transportation impact fees.

"T"

"Traffic/transportation impact fees" means the impact fee designated to pay for public streets and roads, capital facilities and equipment identified in the city's capital facilities plan or capital improvement plan.

"Transient accommodations" means the provision of lodging units, room, board, or sleeping space to guests on a short-term basis for periods of less than 30 days. This term does not include multifamily dwellings or boarding houses as defined in Title 17 BMC.

Commented [BJ9]: BJ – 3-14-2023 – implements hotel regulations previously adopted.

"U"

"Uniform codes" means the codes adopted by reference under Chapter 15.04 BMC.

"V"

"Voluntary agreement" means an agreement between the developer and the city or as authorized by RCW 82.02.020.

"W"

"Way-of-travel" means a roadway of whatever sort, including, but not limited to, avenues, boulevards, courts, drives, lanes, loops, places, tracts and ways, which is capable of carrying vehicular traffic.

Ways-of-travel include:

1. Alley.
2. Avenue.

3. Boulevard.

4. Court.

5. Designate.

6. Drive.

7. Lane.

8. Road.

9. Street.

10. Way.

11. “Alley” means a public or private way-of-travel 16 feet or less in width not designated or improved for general travel and used as a secondary means of access to the rear of residential, business or other property.

12. “Avenue” means a way-of-travel which runs generally east and west.

13. “Boulevard” means a way-of-travel that extends north and south through the commercial and industrial district.

14. “Court” means a way-of-travel under two grid blocks long.

15. “Designate” means to name a way-of-travel whether by name or number.

16. “Drive” means a way-of-travel.

17. “Lane” means a way-of-travel one block long.

18. “Place” means a way-of-travel.

19. “Road” means a way-of-travel which heretofore has been designated a road.

20. “Street” means a way-of-travel which generally runs north and south.

21. “Way” means a way-of-travel. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.01.070 Liability.
It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. Nothing contained in this title is intended to be or shall be construed to create or form the basis for liability on the part of the city of Burlington officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, to comply with the provisions of this title, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code by the city of Burlington officers, employees or agents. This title is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.01.080 Minimum requirements.
The requirements of this title are minimum requirements. They do not replace, repeal, abrogate, supersede or effect any other more stringent requirements, rules, regulations, covenants, standards, or restrictions. Where this title imposes requirements which are more protective of human health or the environment than those set forth elsewhere, the provisions of this title shall prevail.

Approvals and permits granted under this title are not waivers of the requirements of any other laws. Compliance is still required with all applicable federal, state and local laws and regulations, including rules promulgated under authority of this title. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.01.090 Violations and penalty.

All acts or omissions in violation of any provision contained within this title, or acts or omissions that cause or contribute to a violation of any provision contained within this title, are hereby determined to be detrimental to the public health, safety and general welfare and shall constitute a public nuisance. Further, as specified in chapter 1.24 BMC, such acts or omissions shall be subject to fines and abatement under chapter 8.12 BMC, criminal penalties as set forth in chapter 1.24 BMC, penalties for civil infractions as set forth in chapter 1.34 BMC, or civil violations as set forth in chapter 1.44 BMC. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.01.100 Appeal.

~~Appeal of any land use decision made by the community development director pursuant to this title may be appealed to the hearing examiner or in some cases the city council as identified in the manner set forth in BMC Title 14A. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).~~ Appeals of decisions made pursuant to this title shall be filed and processed in accordance with the applicable procedures identified in BMC Title 14A.

Commented [BJ10]: BJ – 3-14-2023 – consistency appeal language throughout the code connects to procedures in title 14a bmc

15.01.110 Severability.

If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

Chapter 15.04

UNIFORM CODES

Sections:
15.04.010 Title.
15.04.020 Application.
15.04.030 Purpose.
15.04.040 Authority.
15.04.050 Codes and standards designated – Adopted by reference.
15.04.060 Electrical standards and inspection – State responsibility.
15.04.070 Administration and enforcement of chapter provisions.
15.04.080 Uniform codes – Copies on file.
15.04.105 Premises identification.
15.04.110 Violations and penalty.

15.04.010 Title.
This chapter shall be known as "Uniform Codes." (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.04.020 Application.
This chapter shall be applicable to all development activities including, but not limited to, the erection, construction, enlargement, alteration, repair, moving, improvement, removal, converting, ~~or~~ demolishing, equipping, using, occupying, or maintaining any building or structure ~~in the city, or cause the same to be done, in violation of any of the provisions of this chapter~~. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.04.030 Purpose.
The purpose of this chapter is to establish uniform codes governing the activities set forth in BMC 15.04.020 to protect the general health, safety and welfare. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018)~~.~~

15.04.040 Authority.
The provisions of this chapter are authorized pursuant to chapter 19.27 RCW, c~~hapter 51-51 WAC~~ Title 51 WAC, and other applicable laws and regulations. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.04.050 Codes and standards designated – Adopted by reference.
As amended by the provisions of this chapter and the Washington State Building Code Council under Title 51 WAC, the following codes are adopted by reference.

A. International Building Code, 2018 Edition~~;, published by the International Code Council, together with all supplements thereto, mandated amendments and subject to modifications set forth by the state of Washington in chapter 51-50 WAC;~~

B. International Residential Code, 2018 Edition~~;, published by the International Code Council, together with all supplements thereto, excluding Appendix F and subject to the modifications set forth by the state of Washington in chapter 51-51 WAC;~~

C. International Mechanical Code, 2018 Edition~~, published by the International Code Council, together with all supplements thereto, and subject to the modifications set forth by the state of Washington in chapter 51-52 WAC~~;

D. Uniform Plumbing Code, 2018 Edition~~, published by the International Association of Plumbing and Mechanical Officials, together with all supplements and amendments thereto, and subject to the modifications set forth by the state of Washington in chapters 51-56 and 51-57 WAC~~;

E. International Fuel Gas Code, 2018 Edition, published by the ~~International Code Council~~National Fire Protection Association, together with standards NFPA 58 and NFPA 54;

F. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials;

Commented [BJ11]: BJ – 3-14-2023 – by law the city must use the codes adopted by the state. Sometimes there is a lag between when the state adopts something and when we can implement it.

G. Appendix chapter J, Grading, of the International Building Code, 2018 Edition~~, published by the International Code Council~~;

H. The Washington State Energy Code, 2018 Edition, and Reference Standard 29 developed by the Washington State Building Code Council, and set forth in chapters 51-11C and 51-11R WAC, as may be further amended;

I. Installation of Factory Built Housing and Commercial Structures, RCW 43.22.460, together with WAC 296-150C-0540, 296-150F-0540 and the installation of manufactured and mobile homes, RCW 43.22.440 and WAC 296-150M-0650;

J. International Existing Building Code, 2018 Edition~~, published by the International Code Council~~;

K. International Property Maintenance Code, 2018 Edition;~~, published by the International Code Council. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018)~~.

L. The City shall have the authority to enforce any provision, amendment, update, or requirement identified in the State Building Code or adopted by the State Code Council under Title 51 WAC.

Commented [BJ12]: 3-8-2023 – BJ – Ensures city code requirements are always consistent with state law. It's best to reference them specifically but not always possible.

15.04.060 Electrical standards and inspection – State responsibility.
The city relinquishes to the state all responsibilities for electrical construction standards and electrical inspection, heretofore assumed by the city under the provisions of laws of the state, chapter 19.28 RCW. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.04.070 Administration and enforcement of chapter provisions.
A. The building official ~~as appointed by the mayor~~ shall administer and enforce the provisions of this chapter.

B. The building official shall use the edition of the Building Safety Journal/Building Valuation Data Tables as published by the International Code Council that is referenced in the fees Resolution No. 08-2014 or alternative methods such as architect and design engineer's estimates, contractor bids or other established methods to establish the valuation of all construction as authorized by city council.

C. When submittal documents are required ~~by International Building Code~~ for plan review, a plan review fee shall be paid at the time ~~the permit is issued~~at the time of submittal consistent with the City's adopted fee resolution.~~ Such plan review fee shall be 65 percent of the building permit fee~~. The plan review fees specified in this section are separate fees from the building permit fee, and are in addition to the building permit fee. Additional plan review fees and fee deferrals shall be subject to the following:

Commented [BJ13]: BJ – 3-14-2023 – revised the language in this section to address fee collection problems identified by the building official

1. When submittal documents are revised so as to require additional plan review or when the project involves deferred submittal items as defined by International Building Code, an additional plan review fee ~~shall~~ may be charged.

2. Plan review fees for planning and engineering reviews shall be based on the ~~fee schedule as adopted by~~City's adopted fee resolution ~~of the city council~~. Permit applicants shall be responsible for the payment of plan review fees regardless of whether a building permit is issued.

3. Payment of plan review fees may be deferred and paid prior to permit issuance with the approval of the Building Official.

4. A deposit may be may be charged in lieu of the full plan review fee if the full review amount is not known at the time of submittal. Any plan review deposit shall be applied toward the total plan review fee owned. The actual permit fees and related plan review fee shall be determined upon the completion of the plan review and the balance owning shall be paid at the time of permit issuance.

D. Payment of Permit Fees. Upon notification by the city that a permit application has been approved, the applicant shall submit payment to the city for all permit fees for which approval has been received prior to permit application expiration. All permit applications shall expire 180 days from the date the application was submitted. The applicant

shall promptly advise the city of any changes that would limit or otherwise hinder the city in contacting the applicant.

E. ~~Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.~~ Permit Expiration and Extensions. Every permit issued shall expire two years from the date of issuance except that extensions and renewals may be granted as follows:

1. An extended expiration date may be approved when a construction schedule is provided by the applicant and approved prior to permit issuance.

2. Permits may be granted a single extension of not more than one year beyond the original expiration date provided a renewal request is submitted, in writing, prior to the original permit expiration date. Significantly revised permits and plans shall not be renewed.

3. A permit renewal fee shall be charged consistent with the City's adopted fee resolution. A single extension of up to 30 days may be granted with no additional fee when only the final building inspection is remaining and all other work has been inspected and approved. If the work required for a final inspection approval is not completed within the 30-day extension period the permit shall expire.

Commented [BJ14]: BJ – 3-14-2023 – provides more clarity with respect to building permit timelines and renewal procedures.

F. Where a plan review has been conducted, and no building permit is issued, it shall be the applicant's responsibility to pick up all submitted plans and documents within three weeks following payment of the plan review fees. Following such three-week period, the plans and documents may be discarded or destroyed by the city.

G. The community development director may authorize a refund of any fee paid pursuant to the provisions of this chapter which was erroneously paid or collected. The C~~c~~ommunity D~~d~~evelopment D~~d~~irector may authorize a refund of not more than 80 percent of the building permit fee paid when no work ~~bas~~ has been done under a permit issued in accordance with this chapter. Any refund shall be reduced by the actual costs incurred in reviewing the application. The community development director shall not authorize the refunding of any fee paid except upon the written application filed by the original permittee. Plan review fees are not refundable. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.04.080 Uniform codes – Copies on file.
At least one copy of the adopted codes will be kept on file in the ~~office of the building official and is~~Community Development Department and made available for public inspection during business hours. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.04.105 Premises identification.
Section 502, Premises Identification, of the International Building Code is hereby amended to read as follows:

Approved numbers or addresses shall be ~~provided for~~ displayed on all new buildings in such a position as to be plainly visible and legible from the street or road fronting the property, and shall conform to the standards of Burlington Municipal Code Chapter 15.10.

Commented [BJ15]: BJ – 3-14-2023 – resolves confusion about the city "providing" the numbers.

(Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.04.110 Violations and penalty.
A. It shall be unlawful for any person, firm or corporation to conduct development activities or erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the city, or cause the same to be done, in violation of provisions contained within or adopted by this chapter or any of the provisions of this chapter.

B. The owner or tenant of any building, structure, premises, or part thereof, or any architect, builder, contractor, agent, or other person who commits, participates in, assists in or maintains such violation may each be found in violation of this chapter. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

Chapter 15.06

REQUIREMENTS FOR ~~BUILDING~~ CONSTRUCTION PERMIT APPLICATIONS

Sections:

15.06.010 Title.
15.06.020 Application.
15.06.030 Purpose.
15.06.040 Authority.
15.06.050 ~~Building~~ Construction permit application – Consideration – Requirements.

15.06.010 Title.
This chapter shall be known as "Requirements for ~~Building~~ Construction Permit Applications." (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.06.020 Application.
This chapter shall be applicable to all building and grading permit applications. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.06.030 Purpose.
The purpose of this chapter is to identify the application requirements for building and grading permits. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.06.040 Authority.
The provisions of this chapter are authorized pursuant to chapter 19.27 RCW and other applicable laws and regulations. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.06.045 Permit Required. Unless explicitly identified as exempt, a construction permit shall be required for all development consistent with the City's adopted uniform codes. An exemption from having to obtain a permit shall not be construed as an exemption from other applicable requirements. This section shall not apply if a permit is required by other provisions of the Burlington Municipal Code.

Commented [BJ16]: BJ – 3-14-2023 – revised at the request of the building official to clarify what needs a permit and what is exempt.

A. Exempt Development. The following development shall not require a construction permit:

1. Decks. Decks and associated platforms and stairs when accessory to residential buildings constructed under the provisions of the IRC which are not more than 30 inches above the adjacent grade plane and not over any basement or story below.

2. Minor Alterations. Alternations of buildings regulated by the IRC for which the total cost of fair market value of the alteration does not exceed $1,500 in any consecutive six-month period. This exemption shall not otherwise exempt the alteration from the substantive standards of the City's adopted uniform codes. This exemption also does not apply to electric, plumbing, or mechanical devices.

3. Roof Replacements. Roof replacements shall be exempt from permit requirements under the following circumstances:

a. For one and two family dwellings and townhouses if no changes are made to the building envelope other than adding or replacing insulation, and the insulation value is equivalent or better than the existing structure; or

b. Where less than 500 square feet of roof sheathing or insulation is exposed within any six-month period. Permits shall be required for structural changes and replacement of sheathing of any size. See energy code sections R503.1.1, C503.1, and C503.3 for insulation requirements for existing buildings.

4. Solar Panels. Roof-mounted photovoltaic solar panels for one and two family dwellings that have a total dead load not exceeding four pounds per square foot and are not more than 18 inches above the roof or the highest roof point on which they are mounted.

15.06.050 ~~Building permit application—Consideration—Requirements~~Application Requirements.

A. A valid and fully complete building permit application for a structure that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use controls in effect on the date of application.

B. The requirements for a fully completed application shall consist of the elements required by RCW 19.27.095 (State Building Code Act), Sections 107.1 through 107.3.4 of the International Building Code, subsection (F) of this section, and all of the following:

1. The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

2. The property owner's name, address, and phone number;

3. The prime contractor's business name, address, phone number, and current state contractor registration number; and

4. Either:

a. The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

b. The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than 50 percent of the total amount of the construction project;

5. Applications for permits to construct a building which requires potable water shall include evidence of an adequate water supply for the intended use of the building consistent with RCW 19.27.097;

6. Any information requested by the city under the provisions of BMC Title 14A for purposes of determining consistency with applicable land use, engineering, zoning, development, or environmental regulations and controls;

7. Any applicable fees established by the fee schedule adopted by the city council;

8. Applications for building permit approval shall be submitted on forms provided by the community development director and shall include any additional information required by the form.

C. The information required on the building permit application by subsections (B)(l) through (4) of this section shall be set forth on the building permit document which is issued to the owner, and on the inspection record card which shall be posted at the construction site.

D. The information required by subsection (B) of this section and information supplied by the applicant after the permit is issued under subsection (E) of this section shall be kept on record in the office where building permits are issued and made available to any person on request. If a copy is requested, a reasonable charge may be made.

E. If any of the information required by subsection (B)(4) of this section is not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting under subsection (A) of this section. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

F. The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW (the State Environmental Policy Act).

G. In addition to the information required by subsection (B) of this section, applications for clearing, grading, excavation, or filling, and applications to construct, modify, expand, or repair civil infrastructure, utilities, streets, storm-water improvements, or sidewalks shall include:

1. A complete set of plans showing plan and profile of all existing and proposed development to a scale acceptable to the city engineer and stamped by a civil engineer licensed in the state of Washington;

2. The plans shall show all utilities, sidewalks, curbs and gutters, typical cross-sections, construction notes and any other details that are necessary to properly build the project;

3. The submittal shall also include a drainage control plan that meets the minimum technical requirements set forth in BMC Title 14;

4. The plans shall contain all of the information required by, and shall comply with, the applicable provisions of BMC Titles 12, 13, and 14.

H. Except as explicitly modified by this chapter or BMC Title 14A, building and grading permit applications shall be processed as Type I decisions in accordance with the provisions of BMC Title 14A. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

Chapter 15.08

FIRE CODE

Sections:
15.08.010 Title.
15.08.020 Application.
15.08.030 Purpose.
15.08.040 Authority.
15.08.050 International Fire Code adopted by reference.
15.08.060 Bureau of fire prevention established – Enforcement authority.
15.08.070 Storage of explosives and fireworks.
15.08.080 Storage of flammable/combustible liquids and liquefied petroleum gas.
15.08.090 Liquefied petroleum gas storage – District limit establishment.
15.08.100 Explosives and blasting agents – Vehicle transportation route establishment.
15.08.110 Hazardous materials – Vehicle transportation route establishment.
15.08.120 Premises identification.
15.08.130 Automatic sprinkler systems.
15.08.140 Fire flow and access requirements.
15.08.150 Violations.

15.08.010 Title.
This chapter shall be known as the "Fire Code." (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.020 Application.
This chapter shall be applicable to all development activities including, but not limited to, the erection, construction, enlargement, alteration, repair, moving, improvement, removal, converting or demolishing, equipping, using, occupying, or maintaining any building or structure in the city, or causing the same to be done, in violation of any of the provisions of this chapter. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.030 Purpose.
The purpose of this chapter is to establish international codes governing the activities set forth in BMC 15.08.020 to protect the general health, safety and welfare. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.040 Authority.
The provisions of this chapter are authorized pursuant to chapter 19.27 RCW, chapter 51-51 WAC, and other applicable laws and regulations. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.050 International Fire Code adopted by reference.
The International Fire Code, 2018 Edition, published by the International Code Council, including Appendix chapters B through N, but excluding Appendix chapter L, mandated state amendments and local administrative rules, and subject to modifications as set forth by the state of Washington in chapter 51-54 WAC, is adopted as the official fire code of the city of Burlington. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.060 Bureau of fire prevention established – Enforcement authority.
~~A.~~ The fire code shall be enforced by the Ffire Mmarshal. ~~or fire marshal's designee.~~=

~~B. The fire marshal may, with the approval of the chief of the fire department, detail members of the fire department as inspectors when necessary, within the limits of the fire department's annual budget appropriations.~~
~~C. The fire marshal shall provide a report annually to the mayor containing such information and recommendations as the fire marshal considers necessary to properly advise the city on matters concerning fire prevention. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).~~

15.08.070 Storage of explosives and fireworks.
The storage of explosives, fireworks and blasting agents is prohibited in all areas of the city except those areas designated CI-2~~M-1~~ on the Burlington zoning map and meeting the approval of the fire marshal. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.080 Storage of flammable/combustible liquids and liquefied petroleum gas.
The bulk storage, as defined by the fire code, of flammable or combustible liquids and of liquefied petroleum gas in aboveground tanks is prohibited in all areas of the city except areas designated ~~M-1~~CI-2 on the Burlington zoning map and meeting the approval of the fire marshal. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.090 Liquefied petroleum gas storage – District limit establishment.
Reserved. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.100 Explosives and blasting agents – Vehicle transportation route establishment.
Vehicles transporting explosive materials shall be routed, where practicable, to avoid congested traffic and heavily populated areas. The fire marshal is authorized to designate such routes of travel and the times of use. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.110 Hazardous materials – Vehicle transportation route establishment.
Vehicles transporting hazardous materials shall be routed, where practicable, to avoid congested traffic and heavily populated areas. The fire marshal is authorized to designate such routes of travel and the times of use. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.120 Premises identification.
Section 505, Premises Identification, of the International Fire Code is hereby amended to read as follows:

> Approved numbers or addresses shall be ~~provided for~~affixed to all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property or building and shall conform to the standards of Burlington Municipal Code Chapter 15.10.
>
> (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.08.130 Automatic sprinkler systems.
Automatic sprinkler systems shall be provided in accordance with the applicable sections of the adopted fire and building codes except that at all new residential buildings located within the Burlington Hill Special Management Area shall be equipped with an approved NFPA 13D or 13R automatic sprinkler system.

Commented [BJ17]: BJ – 3-14-2023 – revised to clarify we don't provide.

Commented [BJ18]: BJ – 3-14-2023 – revised language for better clarity. Same requirements.

~~as follows:~~
~~A. All new detached dwellings and duplex buildings located within the Burlington Hill special management area shall be equipped with an approved NFPA 13D or 13R automatic sprinkler system.~~
~~B. Except for detached dwellings and duplexes, all new residential buildings located within the Burlington Hill special management area shall be equipped with an approved NFPA 13R automatic sprinkler system. (Ord. 1906 (Exh. A), 2021).~~

15.08.135 Fire alarms.

An approved fire alarm system shall be provided in accordance with the applicable sections of the adopted fire and building codes except that an approved fire alarm system shall also be provided as follows:

A. For all new non-residential buildings and structures 1,000 square feet or larger;

B. Existing non-residential buildings and structures 1,000 square feet or larger where a change of use occurs resulting in a more hazardous occupancy classification or an increased occupancy load as determined by the Building Official.

C. For occupancy classifications A, B, E, F, H, M, and S encompassing 1,000 square feet or more, full alarm and notification appliances shall be provided whenever a new alarm system is installed or whenever an existing alarm system is upgraded or modified.

Commented [BJ19]: BJ – 3-9-2023 – Added to address concerns noted by Fire Marshal regarding gaps in adopted uniform codes.

15.08.140 Fire flow and access requirements.

All new development shall comply with the fire flow and access requirements identified in the applicable sections of the adopted fire and building codes except as follows:

A. For the construction of a detached dwelling or accessory dwelling unit on an existing legally established lot within the boundaries of the plat of Tinas Coma recorded under Auditor's File Number 200008110004, existing legally established streets and roads shall be deemed sufficient for purposes of fire flow and access.

B. Except for the construction of a detached dwelling or accessory dwelling within the boundaries of the plat of Tinas Coma, all development within the Burlington Hill special management area shall fully comply with fire flow and access requirements of the adopted fire and building codes and all new lots shall have frontage on public street that fully complies with fire flow and access requirements and the design requirement of BMC Title 12. (Ord. 1906 (Exh. A), 2021).

15.08.150 Violations.[1]

It is unlawful for any person, firm or corporation to conduct development activities or erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure in the city, or cause the same to be done, or to transport or store any material or substance, contrary to or in violation of any of the provisions of this chapter. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018. Formerly 15.08.130).

[1] Code reviser's note: This section has been editorially renumbered to accommodate the new sections added by Ord. 1906.

Chapter 15.10

ADDRESSES

Sections:
15.10.010 Title.
15.10.020 Application.
15.10.030 Purpose.
15.10.040 Authority.
15.10.050 Community development department to assign address numbers.
15.10.060 Numbering system prescribed.
15.10.070 Way-of-travel names.
15.10.080 Building owner to post and maintain address signs.
15.10.090 Enforcement.

15.10.010 Title.
This chapter shall be known as “Addresses.” (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.10.020 Application.
This chapter shall be applicable to all buildings and structures used or constructed within the city of Burlington. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.10.030 Purpose.
The purpose of this chapter is to establish a uniform methodology for assigning way-of-travel names and building address numbers under the administration of the planning department and permit center, and to establish the authority to retroactively remedy incorrect addresses, and improve signage for existing building and premises identification. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.10.040 Authority.
The provisions of this chapter are authorized pursuant to chapter 19.27 RCW, chapter 51-51 WAC, the codes adopted by this chapter, and other applicable laws and regulations. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.10.050 Community development department to assign address numbers.
A. The community development department shall determine the address of any property in the city in accordance with the numbering system established in this chapter.

B. Addresses for new buildings, premises, and tenant spaces shall be assigned as part of the building permit review process. If no associated building permit exists, an address shall be assigned using a Type I review process in accordance with the provisions of BMC Title 14A.

C. Applications for address assignment shall be made on forms provided by the community development director and shall include all of the information required by the form. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.10.060 Numbering system prescribed.
A. The numerical designation of all doorways and entrances to buildings, lots, yards and grounds fronting upon the several ways, avenues, streets, drives and places of the city are established in accordance with the following system:

1. Except where otherwise specified, 100 numbers are allotted to each block, the city of Burlington addressing grid map, to be spaced evenly along the grid with 50 numbers on each side of the street or way in each grid line. The grid has been adjusted in areas of the city where the blocks differ in length. Even numbers shall be used on the southerly side of avenues or ways extending in an easterly and westerly direction and on the easterly side of streets or ways extending in a northerly and southerly direction; odd numbers shall be used on the northerly side of avenues or ways extending in an easterly and westerly direction and on the westerly side of streets or ways extending in a northerly and southerly direction.

2. In the case of irregular drives, places, streets, ways or avenues, the frontages shall be numbered as near as may be possible, according to the uniform series of block numbers with which they most nearly correspond.

B. For new buildings, a site plan showing the footprint of the building, all front door entrances, location and name of adjoining street or way and a north arrow is required. The number for new buildings is assigned according to this section as follows:

1. If the project is multifamily with multiple entrances, each building receives an address and numbering is assigned for that building with the first floor having the 100 series, the second floor 200 series, the third floor 300 series.

2. A single entrance for a multiple tenant building receives one common number, with each tenant receiving a separate suite number. Separate entrance doors receive a separate address.

C. New addresses are added to the address database, mapped and copies distributed to emergency service agencies, utilities, the post office and city departments.

D. Whenever the irregularity of plats, the changing direction of streets, avenues, or other highways, the interruption of the continuity of highways or any other condition causes doubt or difference of opinion as to the correct number of any piece of property or any building thereon, the number shall be determined by the department. The planning department shall be guided by the specific provisions of this chapter as far as they are applicable, and on the recommendations of the fire and police departments. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.10.070 Way-of-travel names.

A. The city council shall designate all public or private ways-of-travel, now existing or hereafter created; provided, that a name shall be designated that is different than any existing way-of-travel name currently in the address system and that will not be easily confused with an existing name.

B. The baseline for ways-of-travel shall be Fairhaven Avenue and shall bear the suffix “E” (east) on the east side of Burlington Boulevard and the suffix “W” (west) on the west side of Burlington Boulevard.

C. The meridian line for ways-of-travel running generally north-south shall be Burlington Boulevard and shall bear the suffix “N” (north) on the north side of Fairhaven Avenue and the suffix “S” (south) on the south side of Fairhaven Avenue. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.10.080 Building owner to post and maintain address signs.

A. The owner of any building or other structure shall maintain the street number of each building and structure in a conspicuous place over or near the principal street entrance, or in other conspicuous places so that the address may be easily seen from the street.

B. It shall be the responsibility of the owner of any new building to obtain and post an approved sign as required by this chapter.

C. Exception. Where there are multiple buildings on a site, the department may waive the requirement for posting an address on appurtenant or accessory buildings where individual identification of each building is not essential. Where a property has frontage along more than one named street or for any other property where there may be confusion regarding the address of a building or structure, the department may require the complete address, including street number and street name, to be conspicuously posted.

D. Buildings served by a private road or a common driveway shall post their address number(s) at the head of the road or driveway in a manner that can be easily read from the intersecting street. This posting requirement shall be in addition to the requirement to post the number on the building itself. Where the existing street grid may not adequately allow for the assignment of street addresses which will promote the easy locating of such addresses, or for any other reason consistent with the intent of this chapter, the planning department may assign a name to the private road or common driveway which shall be used for addressing purposes. The city council shall assign a name to the private road or common driveway when there are four or more parcels served by it. In addition, one or more

property owners along the road or driveway may be required to post a sign displaying the assigned name at a location near the intersection of the road or driveway with a named public street.

E. Numbers and letters shall be of approved reflective material that is easily legible and shall have a high contrast with the background color. Letters and numbers shall be white reflective material and shall not be less than five inches (76 mm) in height. The sign background shall be blue reflective material. The department shall maintain a list of vendors approved to make address signs.

F. Approved address signs shall be posted prior to approval of a final building permit inspection or occupancy approval. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.10.090 Enforcement.

A. It shall be a violation of this chapter to post an address or number other than an address or number assigned by the city of Burlington in accordance with the requirements of this chapter.

B. It shall be a violation of this chapter to offer any unit, suite, tenant space, or building for sale, lease, or occupancy that has not been addressed in accordance with this chapter.

C. Should the department find that any building, structure or premises is not provided with numbers as herein required, or is not correctly numbered, the department shall notify the owner, agent or tenant of the correct street or unit number and shall require that the same shall be properly placed, in accordance with the provisions of this chapter, within 30 days unless additional time is provided for in writing by the department. Failure to respond to such notification shall be considered a violation of this chapter. (Ord. 1906 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

Chapter 15.12

TRANSPORTATION, PARKS, AND FIRE IMPACT FEES

Sections:
15.12.010 Title.
15.12.020 Application.
15.12.030 Purpose.
15.12.040 Authority.
15.12.060 Assessment of impact fees.
15.12.070 Exemptions.
15.12.080 Credits.
15.12.090 Tax adjustments.
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15.12.010 Title.

This chapter shall be called “Transportation, Parks, and Fire Impact Fees.” (Ord. 1855 § 2 (Exh. B), 2018).

15.12.020 Application.

This chapter shall apply to all building permits, applications for building permits and development authorized by the city. This includes, but is not limited to, the development of residential, commercial, retail, industrial and office land, including the expansion of existing uses that creates a demand for additional planned facilities, as well as a change in existing use that creates a demand for additional planned facilities. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.030 Purpose.

The city council of the city of Burlington (the “council”) hereby finds and determines that growth and development activity in the city will create additional demand and need for public streets and roads, publicly owned parks, open space and recreational facilities, and fire protection facilities in the city, and the council finds that growth and development activity should pay a proportionate share of the cost of such planned facilities needed to serve the growth and development activity and that concurrency requirements of chapter 36.70A RCW need to be complied with. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.040 Authority.

This chapter is authorized pursuant to chapter 36.70A RCW and RCW 82.02.050 through 82.02.090. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.060 Assessment of impact fees.

A. It is a policy of the city of Burlington to assess transportation, fire and park impact fees in compliance with this title. The city shall collect impact fees as listed in this chapter and based on the most currently adopted traffic/transportation, parks and fire impact fee formula or methodology resolution, from any applicant seeking a building permit from the city. This shall include, but is not limited to, the development of residential, commercial, industrial, retail, and office buildings and/or land, and includes the expansion of existing uses and/or structures that creates a demand for additional planned facilities, as well as a change in existing use that creates a demand for additional planned facilities.

B. Except as may be due to exemptions or credits provided pursuant to this chapter, pursuant to an independent fee calculation pursuant to this title, or impact fees imposed pursuant to this chapter, the city shall not issue a building permit(s) unless and until the impact fees set forth in the schedules in this title have been paid.

C. Impact fees may also be collected pursuant to the timeline provisions of an adopted development agreement as provided in BMC Title 14A.

D. Collection of impact fees associated with the construction of a single-family home may be deferred until the final building permit inspection if requested by a permit applicant; provided, that:

1. The permit applicant submits a written request to defer impact fees at the time of building permit application on a form provided by the community development director; and

2. Not more than 20 deferrals shall be granted to an applicant in a single calendar year. For purposes of interpreting this requirement, "applicant" shall mean a contractor as identified by his or her contractor registration number; and

3. Impact fees shall be based on the fee schedule in effect at the time a complete building permit application is submitted.

4. No final inspection shall be conducted and no certificate of occupancy shall be granted until all impact fees have been paid.

5. An applicant seeking an impact fee deferral must grant and record a deferred impact fee lien against the property in favor of the city in the amount of the deferred impact fee. The deferred impact fee lien shall be consistent with, and contain all of the required elements identified in, RCW 82.02.050. (Ord. 1910 § 2 (Exh. A), 2021; Ord. 1855 § 2 (Exh. B), 2018).

15.12.070 Exemptions.

A. The following shall be exempted from the payment of impact fees:

1. Replacement and reconstruction of legally existing residential structures. Legally existing residential structures may be replaced or reconstructed on the same site or lot; provided a valid building permit is obtained within 24 months of the demolition or destruction of the existing residential structure and no additional dwelling units are created.

2. Alterations, expansion, enlargement, remodeling, rehabilitation or conversion of a legally existing residential structure where no additional dwelling units are created and the use is not changed.

3. The construction of accessory structures that will not result in an increased use of planned facilities.

4. Miscellaneous appurtenant improvements, including but not limited to fences, walls, swimming pools, and signs.

5. Demolition or moving of a structure.

6. Expansion of a residential structure provided the expansion does not result in the creation of any additional dwelling units.

7. Alteration or replacement of an existing nonresidential structure that does not expand the usable space or change the existing land use.

8. Parking garages and building spaces that are constructed solely to park motor vehicles that are not for sale, lease or rent, or part of a stock in trade are exempt from the requirement to pay any impact fees. The conversion of parking garages or vehicle parking areas exempted by this subsection to other uses requires the payment of impact fees.

9. Temporary uses and structures authorized by this title. Temporary uses, or its successor, are exempt from the requirement to pay any impact fees.

10. Where the development activity is exempt from the payment of impact fees pursuant to RCW 82.02.100, or its successor, in that the property is part of a development activity that mitigated its impacts on all of the system improvements funded by impact fees under the State Environmental Policy Act (SEPA).

11. Developments owned and/or operated by the city of Burlington.

B. Any claim of exemption shall be made no later than the time of application for a building permit. If a building permit is not required for the development activity, the claim shall be made when the fee is tendered. Any claim not made when required by this section shall be deemed waived.

C. Developments that are not exempt from the requirement to pay impact fees may be entitled to an adjustment as set forth in BMC 15.12.150.

D. The community development director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section, in any other section, or under other applicable law. Determinations of the community development director shall be in writing and shall be subject to the appeals procedures set forth in BMC Title 14A. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.080 Credits.

A. Credit Available. After the effective date of the ordinance codified in this chapter, credit against the amount of the impact fees for developer dedications of land necessary for the construction of planned facilities included within the adopted city capital facility plan or for construction of infrastructure or capital facilities included within the adopted capital facilities plan shall be governed by this section. This section allows for the provision of reasonable credit(s) to a feepayer for the value of any dedication of land for, improvements to, or new construction of one or more projects included within the adopted city of Burlington capital facility plan (capital facility element of the comprehensive plan/six-year CIP), on file in the office of the city finance director, by a feepayer, pursuant to RCW 82.02.060(3), as further provided herein. The amount of the credit for a particular improvement or facility shall be limited to the cost of that improvement or facility as set forth in the capital facility plan (capital facility element of the comprehensive plan/six-year CIP), on file in the office of the city finance director, as now or hereafter amended. Credits shall be specific to the type of improvements or dedications made, such that dedications of land for, construction of or improvements to publicly owned parks, open space or recreational facilities shall be applicable only to the parks impact fee; dedications of land for, construction of or improvements to public transportation facilities shall be applicable only to the transportation impact fee; and dedications of land for construction of or improvements to fire protection facilities shall be applicable only to the fire impact fee. Credit shall not include increased housing density.

B. No credit shall be given for project improvements, or any other improvements or infrastructure required as part of approval of a development proposal or as mitigation for development related impacts.

C. Application for Credit – Determination of Suitability of Land, Improvements, Construction. The feepayer applying for credit (hereinafter, “the applicant”) shall direct the request for a credit or credits to the city administrator/community development director, who shall refer the request to the finance director, community development director, director of public works/city engineer, the fire chief and/or the parks and recreation director as applicable. The applicable department head shall first determine the general suitability of the land, improvements, and/or construction for city purposes. The finance director shall then evaluate whether the land, improvements, and/or the facilities constructed are included within the city’s adopted capital facilities plan and shall forward results of said evaluation to the city administrator/community development director. Recommendations regarding the appropriateness and amount of credit provided shall be submitted by the applicable director(s)/department heads to the city administrator/community development director for review. The city administrator shall make a recommendation to city council as to whether the proposed dedication of land and/or equipment or facility(ies) proposed are included within the capital facility plan and also shall recommend the appropriate amount of credit provided. In all cases, the city administrator/community development director shall inform the applicant and city council of his/her recommendation at the next available council meeting. City council shall render a decision as to the amount of credit, if any, provided to an applicant.

D. The value of credit for land provided under this section, including right-of-way and easements, shall be established on a case-by-case basis by an appraiser selected by, or acceptable to, the applicable department director.

E. The feepayer shall pay for the cost of the appraisal or request that the cost of the appraisal be deducted from any credit provided to the feepayer, in the event that credit is awarded.

F. Determination of Credit Amounts. For each request for credit the city shall first determine that the land, improvements, and/or construction would be suitable for city purposes, does not constitute a project improvement, and that the project is listed within the adopted capital facility plan. The value of a credit for structures, facilities or other improvements shall be established by original receipts provided by the applicant for one or more of the same system improvements for which the impact fee is being charged.

G. For donations of land, the applicable appraiser must be licensed and in good standing by the state of Washington for the category of the property appraised. The appraiser must possess an MAI or other equivalent certification and shall not have a fiduciary or personal interest in the property being appraised. A description of the appraiser's certification shall be included with the appraisal, and the appraiser shall certify that he/she does not have a fiduciary or personal interest in the property being appraised. The appraisal shall be in accord with the most recent version of the Uniform Standards of Professional Appraisal Practice.

H. The applicant shall be entitled to a credit for a reasonable value of the land, improvements, and/or construction that is made or dedicated, based upon the actual cost of improvements and/or construction, or the agreed upon or actual predevelopment value of land dedicated. In the event an appraisal is necessary to determine the value of land dedicated, an appraiser shall be designated by the city and the full cost of such appraisal shall be paid by the applicant. The city administrator/community development director shall then issue a credit certificate as approved by city council in the amount of the determination of value.

I. Use of Credits. The applicant, upon receipt of a credit certificate, shall have the right to use the certificate to offset any future impact fee assessed for any development activity that will be required to pay impact fees. The administration and application of the credit certificates will be as described in subsection (H) of this section. The application of any credit certificate will be specific to the transportation impact fee, the park impact fee, or the fire impact fee.

J. Credit Certificates – Administration. After city council makes a determination of the amount of the credit, the city administrator/community development director shall issue and provide the applicant with a document hereinafter known as a credit certificate, setting forth the dollar amount of the credit, the date of issuance of the credit certificate, the date of expiration of the credit and the credit certificate, the reason for the credit, the legal description of the property donated, and/or the improvement or construction for which was the basis the credit certificate is registered (the "credit holder"). The applicant must sign and date the credit certificate, and return such signed credit certificate to the city finance director for filing in the city's credit certificate registry before the credit will be awarded. The failure of the applicant to sign, date, and return the credit certificate within 60 calendar days shall nullify the credit. The original credit certificate shall be kept registered in the city's records, and the credit holder shall be provided a duplicate copy. The city finance director shall develop reasonable rules and regulations for the administration of the credit certificate program, including the calculation of credits, procedures for use of credits and application of credits to particular parcels of land which may be by recorded document, and the ability to levy an administrative fee in an amount sufficient to cover actual costs to the city.

K. Transfer of Credit – Partial Use of Credit. Credit certificates may be transferred or sold to third parties by the credit holder; provided, that in order to transfer credits to another party, the current credit holder shall register the transfer with the city finance director in accordance with the procedures for registration of credit transfers developed by the city finance director. Only the credit holder who is reflected on the city's registration system pursuant to the city's registration system may utilize the credit. Registration with the city of credit certificates shall be conclusive evidence of credit ownership. To the extent that a credit holder wishes to utilize only a portion of the credit reflected on the credit certificate against impact fees due on a particular project, the city finance director shall develop procedures for reducing the the amount of credit reflected on the credit certificate accordingly or issuing a new credit certificate with the remaining credit amount.

L. Limitations on Utilization of Credits. Utilization of credit against payment of impact fees must in all cases be made prior to payment of the impact fee. No reimbursement of impact fees will be made for credit not utilized at the time the impact fee was due. In no event shall the city be under any obligation to advise any applicant for a building permit or other development approval of the existence or possible existence of the availability of credits. The burden of investigating and determining if credits may be available shall rest solely with such applicant. Credit utilized shall never exceed the amount of the impact fee due.

M. Credit for Significant Past Tax Payments. For each request for a credit for significant past tax payments made for particular improvements or land acquisitions, the feepayer shall submit proof of payments and calculation of past tax payments earmarked for or proratable to the particular improvements or land acquisitions. The city finance director shall establish procedures for determining the amount of credit for significant past tax payment made for particular improvements or land acquisitions.

N. Appeals. Determinations made pursuant to this section shall be subject to the appeals procedures set forth in this chapter.

O. Expiration of Credits. Credits shall expire, and credit certificates shall become null and void, on a date 10 years from the date of issuance of the original credit certificate by the city administrator/community development director. Transfer of credits or partial use of credits which may involve reissuance of credit certificates shall in no event extend the expiration date of those credits. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.090 Tax adjustments.

Pursuant to and consistent with the requirements of RCW 82.02.060, the capital facilities plan has provided adjustments for future taxes to be paid by the developer which are earmarked or proratable to the planned facilities which will serve the development activity. The impact fees as adopted herein have been reasonably adjusted for taxes and other revenue sources which are anticipated to be available to fund particular planned facilities. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.100 Appeals.

A. Decisions regarding impact fee assessments may be appealed by any feepayer using the appeal procedures applicable to Type I decisions identified in BMC Title 14A.

B. Any feepayer may pay the impact fees imposed by this chapter under protest in order to obtain the development approval and/or a building permit. In such cases the feepayer shall provide written notification to the Community Development Director indicating that they are paying the fee under protest and shall subsequently file a timely appeal consistent with the timelines and procedures identified in Title 14A BMC.

C. No administrative fee shall be assessed for processing appeals involving the assessment of impact fees.

~~Any feepayer may pay the impact fees imposed by this chapter under protest in order to obtain the development approval and/or a building permit. Appeals regarding the impact fees imposed on any development activity may only be taken by the feepayer of the property where such development activity will occur. No appeal shall be permitted unless and until the impact fees at issue have been paid. The feepayer must first file an appeal with the city administrator/community development director, as follows:~~

Commented [BJ20]: BJ – 3-14-2023 – consistent with appeal procedures used throughout the code and title 14a

~~A. The appeal shall be in writing on the form provided by the city and shall specify the reasons for the appeal; and~~
~~B. The appeal shall be filed within 21 calendar days of the feepayer's payment of the impact fees at issue. The failure to timely file such a request shall constitute a final bar to alter seeking such review; and~~
~~C. No administrative fee will be imposed for said appeal; and~~
~~D. The city council shall review appeals to administrative decisions issued under this chapter and shall issue a determination in writing following conduct of a public hearing; and~~
~~E. In the case of appeal of a decision by city council pertaining to issuance of impact fee credits under this chapter and/or independent fee calculations under this chapter, appeals shall be made to Skagit County superior court, in Skagit County, Washington, within 21 days of receipt of a written city council decision. (Ord. 1855 § 2 (Exh. B), 2018).~~

15.12.110 Establishment of impact fee accounts.

A. The city shall establish separate impact fee accounts for the following: (1) transportation impact fees; (2) parks impact fees; (3) fire impact fees. The accounts shall be interest-bearing accounts.

B. Funds withdrawn from the impact fee accounts must be used in accordance with the provisions of this chapter. The interest earned shall be retained in each account and expended for the purposes for which the impact fees were collected.

C. On an annual basis, the city finance director shall provide a report to the council on the impact fee accounts, showing the source and amount of all moneys collected, earned, or received, and the planned facilities that were financed in whole or in part by impact fees.

D. Impact fees shall be expended or encumbered within 10 years of receipt, unless the city council identifies in written findings extraordinary and compelling reasons or reasons to hold the impact fees beyond the 10-year period. Under such circumstances, the council shall establish the period of time within which the impact fees shall be expended or encumbered. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.120 Impact fees.

The impact fees set forth in this chapter, and the supporting formula or methodology and analysis under which these impact fees have been developed, are adopted by resolution of the city council on file in the office of the finance director, are based upon the data and assumptions set forth therein, and the information and public input provided to the city council in considering adoption of the ordinance codified in this chapter. Except as otherwise provided in BMC 15.12.070, 15.12.080 or 15.12.160, all development activity in the city will be charged the impact fees set forth in this chapter. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.130 Refunds.

A. If the city fails to expend or encumber the impact fees within 10 years of when the impact fees were paid or, where extraordinary or compelling reasons exist, such other time periods as established pursuant to this chapter, the current owner of the property on which impact fees have been paid may receive a refund of such impact fees. In determining whether impact fees have been expended or encumbered, impact fees shall be considered expended or encumbered on a first-in, first-out basis.

B. The city shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants. A potential claimant or claimant must be the owner of the property.

C. Owners seeking a refund of impact fees must submit a written request for a refund of the impact fees to the community development director within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later.

D. Any impact fees for which no application for a refund has been made within this one-year period shall be retained by the city and expended on the appropriate planned facilities.

E. Refunds of impact fees under this section shall include any interest earned on the impact fees by the city, calculated at the average interest rate earned by the city on the impact fee account over the preceding fiscal year.

F. When the city seeks to terminate any or all components of the impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded

pursuant to this section. Upon the finding that any or all impact fee requirements are to be terminated, the city shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail at the last known address of the claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the city, but must be expended for the appropriate planned facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the impact fee account(s) being terminated.

G. The city shall also refund to the current owner of property for which impact fees have been paid all impact fees paid, including interest earned on the impact fees, if the development activity for which the impact fees were imposed did not occur; provided, that if the city bas expended or encumbered the impact fees in good faith prior to the application for a refund, the city can decline to provide the refund. If the same or subsequent owner of the property proceeds with the same or substantially similar development activity, the owner can petition the city for an offset. The petitioner must provide proof of payment of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof. The community development director shall determine whether to grant an offset. Determinations of the city shall be in writing and shall be subject to the appeals procedures set forth in this chapter. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.140 Use of funds.

A. Pursuant to this chapter:

1. Impact fees collected for public streets and roads, impact fees for publicly owned parks, open space and recreational facilities, and impact fees for fire protection facilities shall be used solely for those respective purposes, and only those that will reasonably benefit the development activity.

2. Impact fees shall not be imposed to make up for deficiencies in existing facilities serving existing developments.

3. Impact fees shall not be used for maintenance or operation.

B. Impact fees may be spent for planned facilities, including but not limited to planning, land acquisition, construction, engineering, architectural, permitting, financing, and administrative expenses, applicable impact fees or mitigation costs, capital equipment pertaining to planned facilities, and any other similar expenses which can be capitalized.

C. Impact fees may also be used to recoup city improvement costs previously incurred by the city to the extent that new growth and development activity will be served by the previously constructed improvements or incurred costs.

D. In the event that bonds or similar debt instruments are or have been issued for the advanced provision of city improvements for which impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities or improvements provided are consistent with the requirements of this section and are used to serve the development activity. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.150 Review.

The impact fee schedules adopted herein shall be reviewed by the council as it may deem necessary and appropriate in conjunction with the annual update of the capital facilities plan element of the city's comprehensive plan and/or six-year capital improvement plan.

The city's cost of administering the impact fee program shall be as set forth in the city's fee ordinance. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.160 Independent fee calculations.

A. If the public works director/city engineer as pertains to traffic impact fees, and/or the fire chief as pertains to fire impact fees, and/or the parks and recreation director as pertains to parks impact fees believes in good faith that none of the impact fee categories or impact fee amounts set forth in this chapter accurately describe or capture the impacts of a development activity on planned facilities, the applicable director may conduct independent fee calculation recommendations for review by the city administrator/community development director as per the procedures detailed for application of credits under this chapter. The city administrator/community development director may

recommend that city council act to impose alternative impact fees on a specific development activity based on these calculations. The alternative impact fees and the calculations shall be set forth in writing.

B. If a feepayer opts not to have the impact fee determined according to the schedules set forth in this chapter, then the feepayer shall prepare and submit to the applicable director(s) an independent fee calculation for the development activity for which final plat, binding site plan, or other development approval, or a building permit is sought. The documentation submitted shall show the basis upon which the independent fee calculation was made. The applicable department head(s) shall review the independent fee calculation and provide an analysis to the city administrator/community development director concerning whether the independent fee calculation should be accepted, rejected, or accepted in part. The city administrator/community development director shall after review of the materials submitted, make recommendation to city council, who may adopt, reject or adopt in part the independent fee calculation based on the analysis prepared by appropriate department head(s) and/or recommended by the city administrator/community development director, and based on the specific characteristics of the development activity, and/or principles of fairness. The impact fees or alternative impact fees and the calculations recommended by the city administrator/community development director shall be set forth in writing and shall be mailed to the feepayer.

C. Any feepayer submitting an independent fee calculation will be required to pay to the city of Burlington a fee to cover the cost of reviewing the independent fee calculation. The fee shall be the actual cost of any additional staff time not to exceed $500.00 spent in review plus the cost of consultant services if the city deems these services to be necessary; provided, however, for independent fee calculations for single residential lots where, in the sole discretion of the city administrator/community development director, the issues involved are easily handled and the fee is clearly excessive, the $500.00 maximum fee may be reduced.

D. While there is presumption that the calculations set forth in the city's capital facilities plan are valid, in making an independent fee calculation recommendation to city council, the city administrator/community development director shall consider the documentation submitted by the feepayer and the analysis prepared by the appropriate department heads, but is not required to accept such documentation or analysis which the applicable director and/or city administrator/community development director reasonably deems to be inaccurate or not reliable, and may, in the alternative, recommend to city council that it require the feepayer to submit additional or different documentation for consideration. The city council is authorized to adjust the impact fees on a case-by-case basis based on the independent fee calculation, the specific characteristics of the development activity, and/or principles of fairness. City council's decision regarding impact fees and the calculations shall be set forth in writing and shall be mailed to the feepayer.

E. An independent fee calculation determination made by the city council pursuant to this section may be appealed as per this chapter. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.170 Existing authority unimpaired.

Nothing in this chapter shall preclude the city from requiring mitigation of adverse environmental impacts of a specific development pursuant to the State Environmental Policy Act, chapter 43.21C RCW, based on the environmental documents accompanying the underlying development approval process, and/or chapter 58.17 RCW, governing plats and subdivisions; provided, that the exercise of this authority is consistent with BMC 15.12.040 and with RCW 43.21C.065 and 82.20.100. (Ord. 1855 § 2 (Exh. B), 2018).

15.12.180 Adoption of traffic/transportation, parks and fire impact fees.

Impacts fees shall be assessed ~~based on the rates identified in the City's adopted fees schedule.~~as follows:

A. Traffic/Transportation Impact Fee:

$2,665 per peak p.m. hour trip based on factors listed in the most current ITE Manual (Institute of Traffic Engineers); or based upon an independent fee calculation as specified in BMC 15.12.160.

B. Park Impact Fee:

Single-Family Residence:	$655/unit
Multifamily Residence:	$655/unit

Commercial/Industrial Development:	$0.50/square foot
C. Fire Impact Fee:	
Single-Family Residence:	$253.73/unit
Multifamily Residence:	$253.73/unit
Commercial/Industrial Development:	$0.219/square foot

(Ord. 1855 § 2 (Exh. B), 2018).

15.12.190 Authorization to adopt capital project, facility and equipment lists and impact fee calculation formula or methodology by resolution.

The city council is authorized to adopt by resolution specific capital project, facility and equipment lists and impact fee calculation formula or methodology in support of the fees adopted in this chapter as listed above or as amended in the future. The formula and methodology are attached to the ordinance codified in this chapter as Appendix A. (Ord. 1855 § 2 (Exh. B), 2018).

Chapter 15.14

OVERNIGHT LODGING ESTABLISHMENTS

Sections

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15.14.170 Effective date.

15.14.010 Title.
This chapter shall be known as “Overnight Lodging Establishments.” (Ord. 1855 § 2 (Exh. B), 2018).

15.14.020 Application.
This chapter shall be applicable to all overnight lodging establishments. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.030 Purpose.
This chapter shall provide for the licensing and inspection of all overnight lodging establishments, and the enforcement of violations of this chapter. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.040 Authority.
The ordinance codified in this chapter is adopted by the Burlington city council which authorizes the city to perform all or part of the licensing, inspection and enforcement duties. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.050 Definitions.
For the purposes of interpreting this chapter the following definitions shall be used unless the context clearly indicates otherwise. If a word or term is not defined in this section, but is defined in BMC Title 17, the definition in BMC Title 17 shall be used. Words used in the singular include the plural, and words used in the plural include the singular. The words “shall” and “must” are always mandatory and the words “may” and “should” denote the use of discretion in making a decision.

“Bed and breakfast” means a single-family dwelling, as defined in BMC Title 17, where up to two rooms or lodging units are let as temporary accommodations for travelers or guests by the owner or occupant of the single-family dwelling. Bed and breakfast establishments may provide limited food service to guests.

“Boarding house” or “rooming house” means a dwelling unit, other than a hotel, where meals and/or lodging are provided for compensation. This term does not include buildings meeting the definition of a hotel, bed and breakfast, single-family home, or multifamily dwelling. Boarding houses are differentiated from overnight lodging establishments by providing accommodations for periods of 30 days or more.

“Building code” means the codes identified in, or adopted by, chapter 15.04 BMC.

"Building official" means the building official for the city of Burlington designated pursuant to the provisions of BMC 2.34.030.

"City" means the city of Burlington, Washington.

"Clean" means without visible or tangible soil or residue including absence of dirt, grease, rubbish, garbage, rodents, pests, and other offensive, unsightly or extraneous matter.

"County" means the county of Skagit.

"Department" means the planning and community development department of the city of Burlington.

"Director" or "community development director" means the city administrator or designee.

"Fire code" means the codes identified in, or adopted by, chapter 15.08 BMC and WAC 246-360-220.

"Good repair" means free of corrosion, breaks, cracks, chips, excessive wear and tear, leaks, obstructions and similar defects so as to constitute a good and sound condition.

"Guest" means any individual occupying or registered to occupy an overnight lodging unit.

"Hearing examiner" means the hearing examiner for the city of Burlington as defined in BMC Title 14A, or if no hearing examiner is under contract with the city, the term "hearing examiner" shall mean the board of adjustment.

"Licensee" means an overnight lodging establishment operator to whom the city issues an overnight lodging license.

"Local health jurisdiction" or "health department" means the Skagit County public health department.

"Lodging unit" means one self-contained unit designated by number, letter or some other method of identification.

"Operator" means any person who operates an overnight lodging establishment either as owner, lessee, manager, agent or in any other capacity.

"Overnight lodging establishment" means transient accommodations, bed and breakfasts, and vacation rentals.

"Overnight lodging license" means a license issued by the city authorizing the use or operation of an overnight lodging establishment.

"Person" means individual, firm, partnership, corporation, limited liability corporation, company, association or joint stock association, and the legal successor thereof.

"State" means the state of Washington.

"State Department of Health" means the Washington State Department of Health.

"Transient accommodation" means any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to guests for periods of less than 30 days and may include food service operations in accordance with chapter 246-215 WAC. Only transient accommodations with a valid city license and State Department of Health approval are an authorized use.

"Vacation rental" means a dwelling unit, or a portion of a dwelling unit, used to provide lodging for guests for periods of less than 30 days. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.060 License required.

A. It is unlawful to operate an overnight lodging establishment without a current and valid overnight lodging license.

B. All licenses issued pursuant to this chapter are nontransferable and valid for a period of one year unless suspended or revoked.

C. Applications for license renewal shall be submitted to the city at least 30 days prior to the expiration of the overnight lodging license. All applications for renewal shall be submitted on forms provided by the director and shall include the applicable fee identified in the fee schedule adopted by the city council. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.070 Application requirements.

Applications for overnight lodging licenses shall be submitted on forms provided by the director. Applications shall include any information identified on the form and all of the following:

A. The name and address of the overnight lodging operator.

B. A floor plan depicting the general layout of the overnight lodging establishment. The floor plan shall clearly illustrate the location of all entrances and exits and the location and identifying number, letter, or name, of each lodging unit.

C. A copy of the certificate of occupancy for the building housing the overnight lodging establishment. If no certificate of occupancy is available, the building official shall verify the building housing the overnight lodging establishment was constructed or established in compliance with any applicable building code requirements in effect at the time of its establishment.

D. A copy of a current, valid transient accommodation license issued by the Washington State Department of Health pursuant to chapter 246-360 WAC, unless the overnight lodging establishment is specifically exempt from state licensing requirements.

E. The applicable fee identified in the fee schedule adopted by the city council. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.080 Approval criteria.

A. No overnight lodging license shall be issued or renewed unless all of the following criteria are met:

1. The overnight lodging establishment shall fully comply with the requirements of this chapter;

2. The overnight lodging establishment is in compliance with the building and property maintenance code requirements identified, or referenced, in chapter 15.04 BMC;

3. The overnight lodging establishment shall be in compliance with the fire code requirements identified, or referenced, in chapter 15.08 BMC and WAC 246-360-220;

4. The overnight lodging establishment shall be in compliance with the applicable standards, requirements, and regulations identified, or referenced, in BMC Title 17;

5. The overnight lodging establishment shall be in compliance with the applicable requirements identified in chapter 246-360 WAC;

6. The overnight lodging establishment shall have a current, valid license issued by the State Department of Health pursuant to the provisions of chapter 246-360 WAC, unless the overnight lodging establishment is explicitly exempt from such requirements.

7. The overnight lodging establishment shall be in compliance with chapters 8.04 and 8.06 BMC.

B. Prior to issuing or renewing a license for an overnight lodging establishment the director shall conduct an inspection of the establishment to ensure compliance with requirements of this chapter. This may include an examination of the guest registry to show compliance with this chapter. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.090 Review process.

A. Applications for overnight lodging licenses, and the renewal of existing overnight lodging licenses, shall be reviewed using a Type I process in accordance with the provisions of BMC Title 14A.

B. All decisions regarding the issuance or renewal of overnight lodging licenses shall be made in writing and shall be final and conclusive unless appealed.

C. When issuing or renewing an overnight lodging license the director shall provide the operator with a signed certificate including the following information:

1. The name and address of the overnight lodging establishment;

2. The name and address of the overnight lodging operator;

3. A statement indicating the establishment bas been reviewed and inspected for compliance with Burlington Municipal Code requirements;

4. The approval date of overnight lodging license;

5. The expiration date of the overnight lodging license. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.100 Maintenance and operations.

A. A current, valid overnight lodging license shall be displayed on the office or lobby wall inside the overnight lodging establishment so that it is clearly visible to any person or guest. If the overnight lodging establishment does not have an office or lobby, the license shall be displayed in an alternative location that is open, accessible, and visible to all guests.

B. All lodging units shall be equipped, arranged, and maintained as follows:

1. An occupancy level for each lodging unit shall be established based on the number of beds and their intended maximum usage and the maximum occupancy level shall not be exceeded.

2. Floors, ceilings, doors, walls, carpet, windows, electrical switches and fixtures, and locking mechanisms shall be in working condition, free from defects, clean, and in good repair.

3. Wall and ceiling mounted lighting fixtures shall be firmly secured, functional, and in good repair.

4. All wiring, lighting, appliances, and electrical fixtures shall be free from defects, functional, and in compliance with all applicable laws, regulations, and permitting requirements.

5. Each lodging unit shall be provided with heating and ventilation and all heating and ventilation equipment shall be functional, free from defects, and in good repair.

6. A functioning phone shall be provided in each lodging unit and shall be capable of allowing immediate communication with emergency services.

7. All lodging units shall be free from rodent or insect infestation.

8. All lodging units shall be free from chemical or biological hazards.

9. All lodging units shall be free from mold or mildew.

C. Overnight lodging operators shall maintain a record of all guests. The record shall be consistent with the following requirements:

1. A record of the arrival and departure of guests shall be maintained for at least one year from the date of departure. The record shall include the name, address, driver’s license or government issued ID type and number, and phone number of each guest, and shall indicate the lodging unit used by the guest. In the case of corporate, tour, or other group bookings, the name, address and phone number of the person responsible for the booking, and a rooming list of occupants and their assigned room numbers shall be included in the guest record.

2. The names and addresses of all guests shall be verified by requiring each guest to present a driver's license, passport, or other government-issued identification.

3. The overnight lodging operator shall permit law enforcement personnel to inspect the guest record where there is reasonable suspicion of criminal conduct, or as otherwise allowed by law.

D. No operator shall knowingly permit an overnight lodging establishment to be used for illegal purposes.

E. No operator shall knowingly provide a lodging unit to a person known to be in violation of a court order if said order is caused to be violated by his/her presence or activity at the overnight lodging establishment.

F. No operator shall permit a lodging unit to be occupied for a period longer than 30 days per BMC Title 17 and chapter 246-360 WAC. Consecutive 30-day periods are not permitted in one establishment.

G. Water, sewer, electrical power, and garbage service shall be provided to the overnight lodging establishment at all times and maintained in compliance with all applicable laws, regulations, and service provider policies. Failure to continuously maintain such services and utility connections shall constitute a violation of this chapter.

H. Utility accounts shall be in good standing. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.110 General requirements.

A. The following general requirements shall apply to all overnight lodging establishments, operators, overnight lodging licenses, and applications for overnight lodging licenses:

1. No person shall make any material false statement in the application or omit material information required on the application.

2. No license shall enable any person to engage in any dishonest, illegal act, practice or enterprise.

3. Overnight lodging establishments shall be established and maintained in compliance with all applicable zoning, building, fire, health, and sanitation laws and regulations.

4. Operators shall permit the director, building official, or fire marshal to conduct an inspection of the overnight lodging establishment at any time for the purpose of ensuring compliance with the requirements of this chapter, as well as fire, building, safety, health, and sanitation laws and regulations; provided, that prior to conducting an inspection reasonable notice shall be provided to the operator.

5. The director shall inspect all overnight lodging establishments prior to issuing or renewing an overnight license.

B. Failure to comply with the general requirements identified in this section shall be grounds for denial, suspension, or revocation of an overnight lodging license.

C. Prior to issuing or renewing a business license for an overnight lodging establishment the city may require the applicant to demonstrate compliance with this chapter and obtain an overnight lodging license. All overnight lodging establishments shall comply with this chapter and shall require an overnight lodging license. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.120 License suspension and revocation.

A. Grounds for Suspension or Revocation. The director may suspend or revoke an overnight lodging license for any violation of this chapter. The director should generally adhere to the following progressive enforcement steps, but may, at their discretion, suspend or revoke an overnight lodging license based the severity of the violation, the risk to public health and safety, or a record of previous violations by the operator:

1. Correction Notices. The director may issue correction notices in instances where minor violations of this chapter exist which do not constitute immediate threats to public health or safety. Correction notices shall be in writing, shall identify the issue requiring corrective action, and shall be provided to the operator in person or

mailed to the address indicated on the operator's license application. Correction notices shall also specify a date by which the violation shall be remedied or corrected.

2. Suspension. The director may suspend an overnight lodging license where immediate threats to public health or safety exist, or in instances where the operator has failed to address previous correction notices. Suspensions shall remain in effect until the violations which caused the suspension have been corrected. The director may also issue conditional suspensions which identify specific lodging units, or areas of the overnight lodging establishment, which shall not be available to guests during the period of suspension.

3. Revocation. The director may revoke an overnight lodging license when numerous immediate threats to public health or safety exist, or where the operator has failed to address previous correction notices or suspensions.

B. Notice of Suspension or Revocation. Prior to suspending or revoking an overnight lodging license the director shall provide the operator with a written notice. The notice shall be provided to the operator in person or mailed to the address indicated on the operator's license application, and shall include the following:

1. The specific violations or reasons for the suspension or revocation;

2. The date upon which the license will be suspended or revoked;

3. If the notice concerns a license suspension, a statement identifying the time period of the suspension;

4. If the notice concerns a conditional suspension, a statement identifying the specific lodging units, or areas of the overnight lodging establishment, which shall not be available to guests;

5. A statement indicating that if the license is suspended or revoked, continued operation of the business is a criminal offense (WAC 246-360-035/RCW 70.62.280); and

6. A statement indicating that future license applications, or renewal requests, may be denied if the operator's license has been suspended more than once in a given year, or revoked within the preceding five years.

C. It shall be unlawful to display a license which has been suspended or revoked. When a conditional suspension has been issued, the director shall provide the operator with a revised license indicating the conditions to which the license is subject and the operator shall display the revised license during the period of suspension.

D. When an overnight lodging license has been suspended or revoked, the director shall post notices on or near the entrances to the overnight lodging establishment stating that the establishment's license has been suspended or revoked and indicating that lodging units may not be occupied or provided to guests.

E. In addition to the reasons outlined in chapter 5.04 BMC, a business license for overnight lodging establishment may be revoked under chapter 5.04 BMC if gambling or lewd, boisterous, or disorderly conduct is permitted in or about any such overnight lodging establishment.

F. Repeated Violations. If an overnight lodging establishment's license has been suspended more than once in the preceding year, or has been revoked in the preceding five years, the director may deny subsequent applications for licenses or license renewals.

G. All decisions regarding the suspension or revocation of overnight lodging licenses shall be made in writing and shall be final and conclusive unless appealed in accordance with the provisions of BMC 15.14.130 and BMC Title 14A. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.130 Appeals.

A. Decisions regarding applications for overnight lodging licenses, or overnight lodging license renewals, may be appealed using the appeal procedures applicable to Type I decisions identified in BMC Title 14A.

B. Decisions regarding the suspension or revocation of an overnight lodging license may be appealed using the appeal procedures applicable to Type I decisions identified in BMC Title 14A. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.140 Existing overnight lodging establishments.
Within six months of the effective date of the ordinance codified in this chapter the operators of existing overnight lodging establishment shall apply for an overnight lodging license and shall be required to obtain a license with one year of the effective date of the ordinance codified in this chapter. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.150 Liability.
Whenever a license as provided for in this chapter is issued to a firm or corporation, any member of such firm or any managing officer, agent, or employee of such firm or corporation shall, upon conviction of a violation of the provisions of this title, be liable in the same manner and subject to the same penalties as the principal. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.160 Severability.
If any section, sentence, clause or phrase of this chapter should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, clause or phrase of this chapter. (Ord. 1855 § 2 (Exh. B), 2018).

15.14.170 Effective date.
The ordinance codified in this chapter shall be in full force and effect five days after its passage, approval and publication as provided by law. (Ord. 1855 § 2 (Exh. B), 2018).

Title 16

LAND DIVISIONS AND ADJUSTMENTS[1]

Chapters:

16.01 General Provisions
16.10 Preliminary Plat Review
16.20 Final Plat Review
16.30 Binding Site Plans
16.40 Survey and Design Standards
16.50 Alterations and Vacations
16.60 Boundary Line Adjustments
16.70 Innocent Purchaser and Testamentary Divisions

[1] Prior legislation: Ords. 1220, 1339, 1378, 1503, 1628, 1770, 1799, 1809 and 1839.

Chapter 16.01

GENERAL PROVISIONS

Sections:
16.01.010 Title.
16.01.020 Application.
16.01.030 Purpose.
16.01.040 Authority.
16.01.050 Exemptions from platting review.
16.01.060 Definitions.
16.01.070 Effect of noncompliance.
16.01.080 Liability.
16.01.090 Violations and penalties.
16.01.100 Appeal.
16.01.110 Severability.

16.01.010 Title.
A. Title. This title shall be called “Land Divisions and Adjustments.”

B. Chapter. This chapter shall be called “General Provisions.” (Ord. 1856 § 2 (Exh. B), 2018).

16.01.020 Application.
A. All land divisions, boundary line adjustments, and lot combinations shall be subject to the requirements of this title and the provisions of chapter 58.17 RCW.

B. Land divisions shall be classified as either “exempt” or “nonexempt.” A nonexempt division is a land division or adjustment subject to platting review. Nonexempt divisions include subdivisions and short subdivisions. Only those divisions and adjustments specifically classified by this title as exempt shall be considered exempt.

C. An exemption from platting review shall not be construed as an exemption from other applicable laws, regulations, and Burlington Municipal Code requirements. As specified in this title, some exempt land divisions and adjustments are subject to alternative review and approval requirements. (Ord. 1856 § 2 (Exh. B), 2018).

16.01.030 Purpose.
A. To ensure land divisions and adjustments comply with the requirements of chapter 58.17 RCW.

B. To implement the Burlington comprehensive plan and carry out the requirements of the chapter 36.70A RCW, the Growth Management Act.

C. To ensure the public interest will be served by subdivisions, short subdivisions, and dedications, and to ensure that appropriate provisions have been made for the public health, safety and general welfare, and for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, and sites for schools and school grounds. Subdivisions and short subdivisions meeting all of the requirements of this title shall be construed to serve the public interest and be consistent with the above purposes.

D. Provide a means of conveying information to property owners or prospective buyers regarding restrictions and limitations on the use of land within a subdivision or short subdivision. (Ord. 1856 § 2 (Exh. B), 2018).

16.01.040 Authority.
This title is adopted pursuant to chapters 36.70, 36.70A, 36.70B and 58.17 RCW as well as other applicable laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.01.050 Exemptions from platting review.
The following actions are classified as exempt and shall not require platting review:

A. Cemeteries and burial plots when used for that purpose;

B. Divisions made by testamentary provisions or the laws of descent, subject to compliance with chapter 16.70 BMC;

C. Binding site plans, when a binding site plan has been approved by the city and recorded with the auditor subject to compliance with chapter 16.30 BMC;

D. Divisions of land made for the sole purpose of providing sites for public and private utility facilities; provided, that any remaining lots are consistent with applicable zoning regulations, a record of survey depicting the division is recorded, and a covenant or deed restriction is recorded limiting the use of the utility site to utility purposes;

E. Boundary line adjustments which do not create any additional lot, tract, parcel, site, or division, or create a lot, tract, parcel, site, or division which does not comply with the minimum standards for area or dimension prescribed by the zoning code, subject to compliance with chapter 16.60 BMC;

F. Divisions of land due to condemnation, or sale under the threat of condemnation, by any agency or division of government, provided a record of survey depicting the division is recorded;

G. Existing parcels created by the establishment of public road rights-of-way prior to the adoption of applicable state platting laws or city platting regulations;

H. Existing parcels, created by the city or another municipal corporation prior to the effective date of this title, for port purposes, moorage, boat launches, parks, open space, critical area protection, conservation, or other public purposes;

I. Assessor's combinations and segregations for purposes of taxation only. Such parcels shall not be recognized as separate legal lots for purposes of sale, lease, transfer, building, or permitting. (Ord. 1856 § 2 (Exh. B), 2018).

16.01.060 Definitions.
For the purposes of interpreting this title the following definitions shall be used unless the context clearly indicates otherwise. If a word or term is not defined in this section, but is defined in BMC Title 17, the definition in BMC Title 17 shall be used. Words used in the singular include the plural, and words used in the plural include the singular. The word "shall" is always mandatory and the words "may" and "should" denote the use of discretion in making a decision.

"A"

"Auditor" or "auditor's office" means the Skagit County auditor.

"B"

"Binding site plan" means a detailed recorded plan that divides land into individual lots for the purpose of facilitating commercial, industrial, or mixed-use development, or for the purpose of creating condominiums or a manufactured home park. Binding site plans are subject to the provisions of chapter 16.30 BMC.

"Binding site plan alteration" means a modification or change to a recorded binding site plan. This term also includes the vacation, or elimination, of a recorded binding site plan, a portion of a binding site plan, or any easement, dedication, or feature created by, or shown on the face of a binding site plan.

"Binding site plan amendment" means a minor modification or amendment to an approved preliminary binding site plan. Binding site plan amendments are submitted after the preliminary approval, but prior to the recording.

"Block" means ~~a group of lots, tracts, or parcels within well-defined and fixed boundaries~~an area of land or a group of lots surrounded on all sides by intersecting streets.

"Block perimeter" means the distance to travel once completely around a block, ending at the starting point.

“Boundary line” or “property line” means a lot line as defined in BMC Title 17.

“Boundary line adjustment” or “lot line adjustment” means a division made for the purpose of adjusting boundary lines between platted or unplatted lots or both, which does not create an additional lot, tract, parcel, site, or division, or create a lot, tract, parcel, site, or division that does not comply with the minimum standards for area or dimension prescribed by the zoning code.

“C”

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

“City” means the city of Burlington.

“City engineer” means the Burlington director of public works or designee.

“Code” means the Burlington Municipal Code.

“Critical area,” for the limited purposes of interpreting this title, shall mean a wetland or fish and wildlife habitat conservation area as defined in chapter 365-190 WAC.

“Critical area buffer,” for the limited purposes of interpreting this title, shall mean the protective buffer or area required by BMC Title 14 for wetlands and fish and wildlife habitat conservation areas.

“D”

“Dedication” means the deliberate appropriation of land by an owner for any general and public uses reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.

“Director” means the city administrator or designee.

“F”

“Final plat” means the final drawing of a subdivision or short subdivision prepared for filing for record with the auditor and containing all elements and requirements set forth in this title and chapter 58.17 RCW.

“I”

“Illegal lot” means a lot created in violation of the platting or zoning regulations in effect at the time of its creation or subsequent adjustment.

“Innocent purchaser” means the owner of a lot created in violation of the requirements of this title or chapter 58.17 RCW that purchased the property for value and in good faith, and did not have knowledge of the fact that the lot was divided from a larger parcel, or adjusted, in violation of this title or chapter 58.17 RCW.

“L”

“Legal lot” means a lot created in compliance with all of the platting and zoning regulations in effect at the time of its creation or subsequent adjustment. This term shall also include lots which have been certified by the city as legal lots in accordance with provisions of chapter 16.70 BMC.

“Long plat” means the plat of a subdivision.

"Lot" means a single ~~fractional part of divided lands~~unit of land having fixed boundaries, no matter how legally described. This term shall also include the terms "parcel," "site," and "tract."

"N"

"Natural hazard," for the limited purpose of interpreting this title, shall mean a critical aquifer recharge area, geologically hazardous area, or frequently flooded area as defined in chapter 365-190 WAC.

"P"

"Plat" means a map or representation of a subdivision or short subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

"Plat alteration" means a modification or change to a recorded plat. This term also includes the vacation, or elimination, of a recorded plat, a portion of a plat, or any easement, dedication, or feature created by or shown on the face of a plat.

"Plat amendment" means a minor modification or amendment to an approved preliminary plat. Plat amendments are submitted after the approval of a preliminary plat, but prior to the recording of a final plat.

"Platting review" means the review process set forth in chapters 16.10 and 16.20 BMC for subdivisions and short subdivisions. Platting review shall consist of both a preliminary and final review process.

"Preliminary plat" means a complete and accurate drawing of a proposed subdivision or short subdivision showing the general layout of the streets, alleys, lots, blocks, and other elements of the proposed subdivision or short subdivision required by this title.

"Preliminary plat approval" means the review and approval process specified in chapter 16.10 BMC for subdivisions and short subdivisions.

"R"

"Record" means to file for recording with the Skagit County auditor.

"S"

"Short plat" means the plat of a short subdivision.

"Short subdivision" means the division, or redivision, of land into nine or fewer lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership. This term does not include the redivision of a lot within the boundaries of a short plat, within five years of the recording date, if the redivision would have the effect of creating more than nine parcels within the original short plat boundaries.

"Subdivision" means the division, or redivision, of land into 10 or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership. This term shall also include the redivision of a lot within the boundaries of a short plat, if the redivision occurs within five years of the date the short plat was recorded, and the redivision would have the effect of creating more than nine parcels within the original short plat boundaries.

"Surveyor" means a land surveyor licensed in the state of Washington.

"T"

"Testamentary division" means a division of land made by testamentary provisions, or the laws of descent. (Ord. 1856 § 2 (Exh. B), 2018).

"Through lot" means a lot bounded two streets that are parallel or roughly parallel and/or do not intersect at any of the lot corners.

"Tract" means a type of lot designated on a plat or binding site plan reserved for a specific purpose such as utilities, streets, storm-water management, parks, open space, or conservation.

16.01.070 Effect of noncompliance.
No building permit or other development permit shall be issued for any lot created, divided, or adjusted in violation of Washington State law, or this title, unless the city finds that the owner of the lot is an innocent purchaser and that the public interest will not be adversely affected in accordance with the provisions of chapter 16.70 BMC. (Ord. 1856 § 2 (Exh. B), 2018).

16.01.080 Liability.
It is the specific intent of this title to place the obligation of compliance upon the property owner or party subject to the provisions of the chapters contained within this title. Nothing contained in this title is intended to be or shall be construed to create or form the basis for liability on the part of the city of Burlington officers, employees or agents for any injury or damage resulting from the failure of the property owner or party subject to the provisions of the chapters contained within this title, to comply with the provisions of this title, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this code by the city of Burlington officers, employees or agents. This title is not intended to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by its terms. (Ord. 1856 § 2 (Exh. B), 2018).

16.01.090 Violations and penalties.
All acts or omissions in violation of any provision contained within this title, or acts or omissions that cause or contribute to a violation of any provision contained within this title, are hereby determined to be detrimental to the public health, safety and general welfare and shall constitute a public nuisance. Further, as specified in chapter 1.24 BMC, such acts or omissions shall be subject to fines and abatement under chapter 8.12 BMC, criminal penalties as set forth in chapter 1.24 BMC, penalties for civil infractions as set forth in chapter 1.34 BMC, or civil violations as set forth in chapter 1.44 BMC. (Ord. 1856 § 2 (Exh. B), 2018).

16.01.100 Appeal.
Appeals of decisions made pursuant to this title shall be filed and processed in accordance with the applicable procedures identified in BMC Title 14A. (Ord. 1856 § 2 (Exh. B), 2018).

16.01.110 Severability.
If any portion of this title is found to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other section of this title. (Ord. 1856 § 2 (Exh. B), 2018).

Chapter 16.10

PRELIMINARY PLAT REVIEW

Sections:
16.10.010 Title.
16.10.020 Application.
16.10.030 Purpose.
16.10.040 Authority.
16.10.050 Review process.
16.10.060 Application requirements.
16.10.070 Distribution of applications.
16.10.080 Approval process.
16.10.090 Critical areas and natural hazards.
16.10.100 Dedications.
16.10.110 Effect of preliminary plat approval.
16.10.120 Amendments.

16.10.010 Title.
This chapter shall be called “Preliminary Plat Review.” (Ord. 1856 § 2 (Exh. B), 2018).

16.10.020 Application.
This chapter shall apply to all applications for preliminary plat approval and shall apply to both subdivisions and short subdivisions. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.030 Purpose.
A. Provide a coordinated interdepartmental process for reviewing proposed land divisions and ensuring that subdivisions and short subdivisions comply with all applicable Burlington Municipal Code requirements and Washington State platting laws;

B. Identify the services, facilities, dedications, and improvements necessary to serve proposed subdivisions or short subdivisions;

C. Establish appropriate conditions, restrictions, and requirements for the use and development of the land within the boundaries of a subdivision or short subdivision. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.040 Authority.
This chapter is adopted pursuant to the provisions of chapters 36.70, 36.70A, 36.70B, and 58.17 RCW and other applicable laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.050 Review process.
A. Preliminary short subdivision applications shall be processed as Type II decisions in accordance with the provisions of BMC Title 14A.

B. Preliminary subdivision applications shall be processed as Type III decisions in accordance with the provisions of BMC Title 14A.

C. Unless the applicant requests otherwise, applications for preliminary subdivision or short subdivision approval shall be combined and processed together with any other applications associated with the proposed land division, such as zoning amendments, variances, or critical area approvals. In accordance with chapter 14A.05 BMC, combined applications shall be processed using the procedures applicable to the permit with the highest classification.

D. A preliminary plat shall be approved, disapproved or returned to the applicant for modification or correction within 90 days from date of filing unless the applicant consents to an extension of the time period. If an environmental impact statement is required as provided in RCW 43.21C.030, the 90-day period shall not include the

time required for environmental review. This period of time shall be extended by any period after the city has requested information and the applicant has not provided the same. For the purpose of interpreting this provision, "date of filing" shall mean the date the city determines the application is complete in accordance with BMC Title 14A. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.060 Application requirements.

Applications for preliminary subdivision or short subdivision approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with BMC Title 14A. A complete application shall include:

A. Any applicable fees in accordance with the fee schedule established by the city council;

B. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

C. A soils report;

D. A preliminary drainage report showing how storm water will be managed and identifying areas suitable for storm water infiltration, treatment, and low impact development features;

E. A SEPA checklist or other SEPA documentation and reports if required;

F. Critical areas information or reports, if required, in accordance with the requirements of chapter 14.15 BMC;

G. Written verification from the Skagit Public Utility District indicating they are able and willing to provide water service to the proposed subdivision or short subdivision;

H. A preliminary plat prepared by a land surveyor licensed in the state of Washington. The preliminary plat shall be consistent with the applicable standards and requirements identified in chapter 16.40 BMC. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.070 Distribution of applications.

Applications which have been deemed complete in accordance with the requirements of BMC Title 14A and BMC 16.10.060 shall be distributed and reviewed as follows:

A. The building official shall review the application for compliance with requirements of chapter 15.04 BMC and the flood development regulations identified in chapter 14.15 BMC;

B. The fire marshal shall review the application for compliance with the requirements of chapter 15.08 BMC;

C. The city engineer shall review the application for compliance with BMC Titles 12 and 13, and chapter 14.05 BMC.

D. Each official identified above shall review the preliminary plat application and, within 30 days, provide the director with a report; each report shall:

1. Document whether or not the application complies with the municipal code requirements, laws, and other regulations the official is charged with administering; and

2. Recommended conditions of approval. If the official concludes that conditions are necessary in order to ensure the proposal complies with applicable regulatory requirements, recommended conditions of approval shall be included in the report; and

3. Specify the extent and type of improvements, infrastructure, utilities, roads, and dedications necessary to serve the subdivision or short subdivision; and

4. Identify any permits or other regulatory approvals, such as grading permits, flood development permits, and right-of-way permits that will be required prior to beginning the construction phase. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.080 Approval process.

A. Short Subdivisions. Following the review process specified in BMC 16.10.070, the director shall prepare a report documenting, through written findings of fact, whether or not the proposed short subdivision complies with applicable municipal code requirements. If the director finds that the application complies with all applicable municipal code requirements, it shall be approved. If director finds that the application does not comply, or cannot comply, through the application of reasonable conditions of approval, it shall either be denied or returned to the applicant for corrections.

B. Subdivisions. Following the review process specified in BMC 16.10.070, the director shall schedule a public hearing before the hearing examiner. The director shall forward a report outlining the proposed subdivision's compliance with applicable municipal code requirements to the hearing examiner. Following the receipt of the director's report and recommendation, and a public hearing, the hearing examiner shall approve, approve with conditions, or deny the proposed subdivision as follows:

1. If the proposed subdivision complies with all applicable municipal code requirements it shall be approved; or

2. If, in the hearing examiner's opinion, the proposed subdivision can be made to comply with all applicable municipal code requirements through the application of reasonable conditions of approval, it shall be approved; or

3. If the proposed subdivision does not comply with all applicable municipal code requirements, or if in the hearing examiner's opinion, it cannot be made to comply through the application of reasonable conditions of approval, it shall be denied.

4. The hearing examiner's decision shall be in writing and shall be supported by written findings of fact.

C. Conditions of Approval. Preliminary subdivision or short subdivision applications may be approved with conditions if the conditions are necessary to ensure compliance with applicable municipal code requirements, chapter 58.17 RCW, or to identify specific improvements or actions which must be completed prior to final plat approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.090 Critical areas and natural hazards.

The following standards shall apply to all preliminary plat applications when critical areas, critical area buffers, or natural hazards are present within, or adjacent to, the proposed plat:

A. No lot shall be created through a subdivision or short subdivision which lacks an adequate building site outside of critical areas and critical area buffers, unless restrictive notes are included on the face of the plat permanently prohibiting development of the lot;

B. No lot shall be created through a subdivision or short subdivision which lacks an adequate building site outside the floodway or special flood risk area, unless restrictive notes are included on the face of the plat permanently prohibiting development of the lot, or restricting the use of the lot to flood control structures and improvements;

C. No lot shall be created through a subdivision or short subdivision which lacks an adequate building site unencumbered by natural hazards or natural hazard buffers unless the hazards can be mitigated to an acceptable level through the construction of protective improvements or other means consistent with provisions of chapter 14.15 BMC;

D. Under no circumstances shall a lot be created through a subdivision or short subdivision that necessitates subsequent critical area variances or reasonable use determinations. Restrictive notes shall be included on the face of all plats containing critical areas, critical area buffers, or natural hazards identifying the applicable development regulations and stating that no critical area variances or reasonable use determinations will be granted within the plat boundaries;

E. Critical areas and critical area buffers shall be identified on the face of the plat and placed within protective tracts or easements as required by chapter 14.15 BMC;

F. Natural hazards and any associated setbacks, restrictions, or buffers required by chapter 14.15 BMC shall be shown on the face of the plat;

G. Land within a floodway or special flood risk zone shall be placed within a separate tract or easement if required by chapter 14.15 BMC;

H. Plats shall be subject to any other applicable requirements identified in chapter 14.15 BMC shall be addressed. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.100 Dedications.
Dedications shall be shown on the preliminary plat in accordance with the requirements identified in chapter 16.40 BMC. Dedications proposed by the applicant that are not required by Burlington Municipal Code shall also be shown. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.110 Effect of preliminary plat approval.
A. Following preliminary approval, all improvements and infrastructure required as conditions of the preliminary approval shall be constructed or installed. No application for final plat approval shall be accepted until all of the required improvements and infrastructure have been completed.

B. All work done during the construction phase shall be consistent with the approved preliminary plat and any conditions of approval.

C. All required permits and approvals must be obtained prior to beginning the construction phase, and all subsequent work shall be in strict accordance with the approved permits.

D. A final plat meeting all of the requirements of this chapter shall be submitted to the city for approval within the following time periods:

1. Subdivisions. A final plat shall be submitted to the city for approval and recorded within the period of time specified in chapter 58.17 RCW.

2. Short Subdivisions. Preliminary short plat approvals shall be valid for a period of two years. A final short plat shall be submitted to the city for approval and recorded prior to the expiration of the preliminary approval.

E. If a final plat meeting the requirements of this title is not submitted to the city and recorded within the allowable period the preliminary approval shall be null and void and any subsequent application shall be subject to the regulatory requirements in effect at the time of reapplication. (Ord. 1856 § 2 (Exh. B), 2018).

16.10.120 Amendments.
Approved preliminary plats may be modified or amended subject to the following requirements:

A. Applications to amend an approved preliminary plat must be submitted before a final plat is recorded. Once a final plat has been recorded all subsequent modifications shall be subject to the plat alteration requirements identified in chapter 16.50 BMC.

B. Applications for plat amendments shall be processed as Type I decisions in accordance with the procedures identified in BMC Title 14A.

C. Applications for plat amendments shall be subject to the following approval criteria. No plat amendment shall be approved unless it is consistent with all of the following:

1. Except as explicitly authorized below, the conditions of preliminary approval shall not be eliminated or modified except to correct simple nonsubstantive spelling, grammatical, or mathematical errors;

2. The plat boundaries shall not be expanded and no additional parcels or land area shall be included except to address survey errors;

3. The number of lots in a short plat shall not be increased if the effect of the amendment would result in the creation of 10 or more lots;

4. The overall density permitted within the plat boundaries shall not be increased by more than 10 percent;

5. The amount of open space provided within the plat boundaries shall not be decreased by more than 10 percent;

6. The proposal shall not increase the amount of impervious surface coverage within the plat boundaries by more than 10 percent;

7. The amendment shall be consistent with this title and all other applicable Burlington Municipal Code requirements;

8. The amendments shall be consistent with any studies, reports, or environmental documents prepared in support of the original application.

D. Proposed changes which are not consistent with the criteria identified above shall require a new application for preliminary plat approval.

E. The approval of a plat amendment shall not affect or extend the timelines and expiration dates identified in BMC 16.10.110. Timelines and expiration dates shall be calculated from the date of preliminary plat approval even if a plat amendment is subsequently approved.

F. If multiple plat amendment applications are submitted, the cumulative effect of such amendments shall not violate the requirements of this section. (Ord. 1856 § 2 (Exh. B), 2018).

Chapter 16.20

FINAL PLAT REVIEW

Sections:
16.20.010 Title.
16.20.020 Application.
16.20.030 Purpose.
16.20.040 Authority.
16.20.050 Approval required.
16.20.060 Review process.
16.20.070 Application requirements.
16.20.080 Distribution of applications.
16.20.090 Approval process.
16.20.100 Effect of final plat approval.

16.20.010 Title.
This chapter shall be called “Final Plat Review.” (Ord. 1856 § 2 (Exh. B), 2018).

16.20.020 Application.
This chapter shall apply to all applications for final plat approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.20.030 Purpose.
The purpose of this chapter is to establish the procedures and requirements for reviewing applications for final plat approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.20.040 Authority.
This chapter is adopted pursuant to the provisions of chapters 36.70, 36.70A, 36.70B, and 58.17 RCW and other applicable laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.20.050 Approval required.
A. No plat shall be recorded prior to obtaining both preliminary and final plat approval.

B. Applications for final plat approval shall not be accepted without an approved preliminary plat.

C. No application for final plat approval shall be accepted until the construction phase is completed. (Ord. 1856 § 2 (Exh. B), 2018).

16.20.060 Review process.
A. Applications for final short plat approval shall be processed as Type I decisions in accordance with the procedures identified in BMC Title 14A.

B. Applications for final subdivision approval shall be processed as Type I decisions in accordance with the procedures identified in BMC Title 14A, except that city council approval shall be required.

C. Applications for final plat approval shall be submitted within the time periods prescribed by BMC 16.10.110. (Ord. 1856 § 2 (Exh. B), 2018).

16.20.070 Application requirements.
Applications for final plat approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with BMC Title 14A. A complete application shall include:

A. Any applicable fees in accordance with the fee schedule established by the city council;

B. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

C. A copy of the approved preliminary plat and the decision granting preliminary approval;

D. A statement from the city engineer indicating the construction phase is complete and all required utilities, infrastructure, streets, roads, sidewalks, and other improvements have been installed in accordance with the approved preliminary plat and any other applicable city requirements;

E. A statement from the Skagit Public Utility District indicating water service bas been extended to serve each lot in the plat, unless the lot is designated on the face of the plat for nonbuilding purposes;

F. A title report provided by a title insurance company licensed in the state of Washington, dated not more than 30 days prior to the application date, confirming that the title of the lands as described and shown on the face of the plat is in the name of the owners signing the certificate;

G. A full set of survey notes consistent with the requirements of chapter 16.40 BMC;

H. A final plat prepared by a land surveyor licensed in the state of Washington. The final plat shall be consistent with the applicable standards and requirements identified in chapter 16.40 BMC. (Ord. 1856 § 2 (Exh. B), 2018).

16.20.080 Distribution of applications.
Applications which have been deemed complete in accordance with the requirements of BMC Title 14A and BMC 16.20.070 shall be distributed and reviewed as follows:

A. The building official shall review the application to ensure that any conditions of preliminary plat approval relating to chapter 15.04 BMC and the flood development regulations identified in chapter 14.15 BMC have been met.

B. The fire marshal shall review the application to ensure that any conditions of preliminary plat approval related to chapter 15.08 BMC have been met.

C. The city engineer shall review the application with respect to accuracy, engineering standards, the survey and design requirements of chapter 16.40 BMC, and to ensure that any conditions of preliminary plat approval related to BMC Titles 12 and 13, and chapter 14.05 BMC have been met.

D. Each official identified above shall review the final plat application and provide the director with a report addressing all of the following:

1. Whether or not the application complies with the municipal code requirements, laws, and regulations the official is charged with administering; and

2. Whether or not the conditions specified in the preliminary approval have been satisfied; and

3. Verifying that all improvements, infrastructure, utilities, roads, and dedications required by the preliminary approval have been provided, constructed, or installed; and

4. Verifying that all required permits or other regulatory approvals such as grading permits, flood development permits, and right-of-way permits have been obtained. (Ord. 1856 § 2 (Exh. B), 2018).

16.20.090 Approval process.
A. Short Subdivisions. Following the review process specified in BMC 16.20.080, the director shall approve the final plat application, return it to the applicant for corrections, or deny it.

B. Long Subdivisions. Following the review process specified in BMC 16.20.080, the director shall forward the final subdivision plat to the city council. The city council shall, by ordinance, either approve the final plat application or deny it. If the city council approves the final plat, it shall inscribe and execute written approval on the face of the

plat and the original plat shall be transmitted to the auditor for recording. Copies of approved final plat shall also be transmitted to the director and city engineer.

C. Approval Criteria. Applications for final plat approval shall be approved, denied, or returned to applicant for corrections based on the following criteria. Applications for final plat approval which meet all of the following criteria shall be approved:

1. The final plat is consistent with the approved preliminary plat; and

2. All of the conditions of approval associated with the preliminary plat have been satisfied; and

3. All of the infrastructure and improvements required as a condition of preliminary plat approval have been constructed or installed; and

4. The city engineer has certified that the final plat is technically correct and accurate, complies with all applicable survey and mapping standards, and all lot corner markers and permanent control monuments have been installed; and

5. The title insurance report submitted with the final plat application confirms that title of the land and the proposed short subdivision is vested in the name of the owners whose signatures appear on the face of the plat certificate; and

6. All other applicable requirements of this chapter have been addressed.

D. Resubmission. Any final plat which is disapproved may, at the applicant's option, be resubmitted for approval consistent with the following:

1. The deficiencies of the final plat application which caused it to be rejected or returned shall be addressed;

2. The final plat shall be resubmitted prior to the expiration of the preliminary plat in accordance with the applicable timelines identified in BMC 16.10.110;

3. Final plats being resubmitted for approval shall be treated as new final plat applications, shall be subject to the same review fees as new applications, and must be consistent with all of the requirements identified in this chapter;

4. If the final plat application was denied with prejudice against resubmission, a new application for preliminary plat approval shall be submitted, in which case the application shall be considered a new and separate application and shall be subject to all of the applicable regulatory requirements in effect at the time of submittal;

5. Final plat applications may not be resubmitted after the expiration of the preliminary approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.20.100 Effect of final plat approval.

A. Once a final plat has been approved and recorded, development within the plat shall be governed by the terms of the approved plat, and the statutes, ordinances, and regulations in effect at the time of its approval for a period of five years from the date of recording unless the city council finds that a change in conditions creates a serious threat to the public health or safety.

B. Lots within a final plat that has been approved and recorded shall be considered legal lots.

C. Recorded plats may only be altered, modified, or vacated in accordance with chapter 16.50 BMC. (Ord. 1856 § 2 (Exh. B), 2018).

Chapter 16.30

BINDING SITE PLANS

Sections:
16.30.010 Title.
16.30.020 Application.
16.30.030 Purpose.
16.30.040 Authority.
16.30.050 Approval required.
16.30.060 Review process.
16.30.070 Preliminary application requirements.
16.30.080 Distribution of preliminary applications.
16.30.090 Approval criteria for preliminary applications.
16.30.100 Critical areas and natural hazards.
16.30.105 Effect of preliminary binding site plan approval.
16.30.110 Final application requirements.
16.30.120 Distribution of final applications.
16.30.130 Final binding site plan approval process.
16.30.140 Effect of final approval.

16.30.010 Title.
This chapter shall be called “Binding Site Plans.” (Ord. 1856 § 2 (Exh. B), 2018).

16.30.020 Application.
Land may be divided using the provisions of this chapter as an alternative to the platting review process for subdivisions and short subdivisions. Only the following land divisions shall be eligible for approval using the binding site plan approval process:

A. Commercial, Industrial, and Mixed-Use Developments. Land with a zoning classification allowing commercial, industrial or mixed-use development may be divided into two or more lots using the binding site plan process;

B. Manufactured Home Parks. Land may be divided using the binding site plan process for the purpose of lease when no residential structures other than manufactured homes or travel trailers are permitted to be placed upon the land, provided the site plan complies with all applicable manufactured home park regulations and the zoning code requirements;

C. Condominiums. Land may be divided using the binding site plan process for the purpose of creating condominiums, or sites for condominiums, in accordance with the provisions of chapters 65.32 and 65.34 RCW or other applicable state laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.030 Purpose.
The purpose of this chapter is to provide an alternative method of land division to enable the establishment of condominiums or manufactured home parks, or to create lots for lease or sale in commercial or industrial zones. This method may be employed as an alternative to the platting review process required for subdivisions and short subdivisions, provided the proposed land division is consistent with one of the applicable development types listed in BMC 16.30.020. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.040 Authority.
This chapter is adopted pursuant to chapters 36.70, 36.70A, 36.708, 58.17 RCW and other applicable laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.050 Approval required.
A. All binding site plans shall require city approval and shall be subject to the requirements of this chapter.

B. No binding site plan shall be recorded prior to obtaining both preliminary and final binding site plan approval.

C. Applications for final binding site plan approval shall not be accepted without an approved preliminary binding site plan.

D. No application for final binding site plan approval shall be accepted until the installation and construction of all required improvements is completed. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.060 Review process.
Binding site plans shall be subject to both a preliminary and final review process as follows:

A. Applications for preliminary binding site plan approval shall be processed as Type II decisions in accordance with BMC Title 14A.

B. Applications for final binding site plan approval shall be processed as Type I decisions in accordance with BMC Title 14A.

C. Unless the applicant requests otherwise, applications for preliminary binding site plan approval shall be combined and processed together with any other applications associated with the proposed land division, such as zoning amendments, variances, or critical area approvals. In accordance with chapter 14A.05 BMC, combined applications shall be processed using the procedures applicable to the permit with the highest classification. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.070 Preliminary application requirements.
Applications for preliminary binding site plan approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with BMC Title 14A. A complete application shall include:

A. Any applicable fees in accordance with the fee schedule established by the city council;

B. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

C. Soils report;

D. Preliminary drainage report showing how storm water will be managed and identifying areas suitable for storm water infiltration, treatment, and low impact development features;

E. SEPA checklist or other SEPA documentation and reports if required;

F. Critical areas information or reports in accordance with the requirements of chapter 14.15 BMC;

G. Written verification from the Skagit Public Utility District indicating they are able and willing to provide water service to the proposed binding site plan;

H. A preliminary binding site plan prepared by a land surveyor licensed in the state of Washington. The preliminary binding site plan shall be consistent with the applicable standards and requirements identified in chapter 16.40 BMC.

I. If the applicant or property owner owns or controls adjoining contiguous parcels the application shall be accompanied by a sketch showing how the proposed street system would be extended to serve the adjoining parcels in the future so the street system can be considered as a whole;

J. Binding site plans shall be prepared consistent with the survey and design standards identified in chapter 16.40 BMC. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.080 Distribution of preliminary applications.
Applications which have been deemed complete in accordance with the requirements of BMC Title 14A and BMC 16.30.070 shall be distributed and reviewed as follows:

A. The building official shall review the application for compliance with chapter 15.04 BMC and the flood development regulations identified in chapter 14.15 BMC;

B. The fire marshal shall review the application for compliance with chapter 15.08 BMC;

C. The city engineer shall review the application for compliance with BMC Titles 12 and 13, and chapter 14.05 BMC.

D. Each official identified above shall review the preliminary binding site plan application and, within 30 days, provide the director with a report; each report shall:

1. Document whether or not the application complies with the municipal code requirements, laws, and other regulations the official is charged with administering; and

2. Recommended conditions of approval. If the official concludes that conditions are necessary in order to ensure the proposal complies with applicable regulatory requirements, recommended conditions of approval shall be included in the report; and

3. The extent and type of improvements, infrastructure, utilities, roads, and dedications necessary to serve the subdivision or short subdivision; and

4. Any permits or other regulatory approvals, such as grading permits, flood development permits, and right-of-way permits, that will be required prior to beginning the construction phase. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.090 Approval criteria for preliminary applications.

A. Following the review process specified in BMC 16.30.080, the director shall prepare a report documenting, through written findings of fact, whether or not the proposed binding site plan complies with applicable municipal code requirements. If the director finds that the application complies with all applicable municipal code requirements, it shall be approved. If director finds that the application does not comply, or cannot comply, through the application of reasonable conditions of approval, it shall either be denied or returned to the applicant for corrections.

B. Preliminary binding site plan applications may be approved with conditions if the conditions are necessary to ensure compliance with applicable municipal code requirements, or to identify specific improvements or actions which must be completed prior to final approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.100 Critical areas and natural hazards.

The following standards shall apply to all applications where critical areas, critical area buffers, or natural hazards are present within, or adjacent to, the proposed binding site plan:

A. No lot shall be created through a binding site plan which lacks an adequate building site outside of critical areas and critical area buffers unless restrictive notes are included on the face of the binding site plan permanently prohibiting development of the lot;

B. No lot shall be created through a binding site plan which lacks an adequate building site outside the floodway or special flood risk area, unless restrictive notes are included on the face of the binding site plan permanently prohibiting development of the lot or restricting the use of the lot to flood control structures and improvements;

C. No lot shall be created through a binding site plan which lacks an adequate building site unencumbered by natural hazards or natural hazard buffers unless the hazards can be mitigated to an acceptable level through the construction of protective improvements or other means consistent with provisions of chapter 14.15 BMC;

D. Under no circumstances shall a lot be created through a binding site plan which necessitates subsequent critical area variances or reasonable use determinations. Restrictive notes shall be included on the face of all binding site plans containing critical areas, critical area buffers, or natural hazards identifying the applicable development regulations and stating that no critical area variances or reasonable use determinations will be granted within the binding site plan boundaries. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.105 Effect of preliminary binding site plan approval.

A. Following preliminary approval, all improvements and infrastructure required as conditions of the preliminary approval shall be constructed or installed. No application for final binding site plan approval shall be accepted until all of the required improvements and infrastructure have been completed.

B. All work done during the construction phase shall be consistent with the approved preliminary binding site plan and any conditions of approval.

C. All required permits and approvals must be obtained prior to beginning the construction phase, and all subsequent work shall be in strict accordance with the approved permits.

D. Preliminary binding site plan approvals shall be valid for a period of two years. A final binding site plan shall be submitted to the city for approval and recorded prior to the expiration of the preliminary approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.110 Final application requirements.

Following the approval of a preliminary binding site plan, and the installation or construction of any required improvements, an application for final binding site plan approval may be submitted. Applications for final binding site plan approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications including all of the information required by this section shall be deemed complete for purposes of complying with BMC Title 14A. A complete application shall include:

A. Any applicable fees in accordance with the fee schedule established by the city council;

B. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy;

C. A copy of the approved preliminary binding site plan and decision granting preliminary approval;

D. A statement from the city engineer indicating that the construction phase is complete and all required utilities, infrastructure, streets, roads, sidewalks, and other improvements have been installed in accordance with the approved preliminary binding site plan and any other applicable city requirements;

E. A statement from the Skagit Public Utility District indicating that water service has been extended to serve each lot in the binding site plan, unless the lot is designated on the face of the binding site plan for nonbuilding purposes;

F. A title report provided by a title insurance company licensed in the state of Washington, dated not more than 30 days prior to the application date, confirming that the title of the lands as described and shown on the face of the binding site plan is in the name of the owners signing the certificate;

G. A full set of survey notes consistent with the requirements of chapter 16.40 BMC;

H. A final binding site plan prepared by a land surveyor licensed in the state of Washington. The final binding site plan shall be consistent with the applicable standards and requirements identified in chapter 16.40 BMC. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.120 Distribution of final applications.

Applications which have been deemed complete in accordance with the requirements of BMC Title 14A and BMC 16.30.110 shall be distributed and reviewed as follows:

A. The building official shall review the application to ensure that any conditions of preliminary approval relating to chapter 15.04 BMC and the flood development regulations identified in chapter 14.15 BMC have been met;

B. The fire marshal shall review the application to ensure that any conditions of preliminary approval related to chapter 15.08 BMC have been met;

C. The city engineer shall review the application with respect to accuracy, engineering standards, the survey and design requirements of chapter 16.40 BMC, and to ensure that any conditions of preliminary approval related to BMC Titles 12 and 13, and chapter 14.05 BMC have been met.

D. Each official identified above shall review the final binding site plan application and provide the director with a report addressing all of the following:

1. Whether or not the application complies with the municipal code requirements, laws, and regulations the official is charged with administering; and

2. Whether or not the conditions specified in the preliminary approval have been satisfied; and

3. Verifying that all improvements, infrastructure, utilities, roads, and dedications required by the preliminary approval have bean provided, constructed, or installed; and

4. Verifying that all required permits or other regulatory approvals such as grading permits, flood development permits, and right-of-way permits have been obtained. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.130 Final binding site plan approval process.

A. Following the review process specified in BMC 16.30.120, the director shall approve the final binding site plan application, return it to the applicant for corrections, or deny it within 30 days after filing an application meeting the criteria below.

B. Approval Criteria. Applications for final binding site plan approval shall be approved, denied, or returned to applicant for corrections based on the following criteria. Applications for final binding site plan approval which meet all of the following criteria shall be approved:

1. The final binding site plan is consistent with the approved preliminary approval; and

2. All of the conditions associated with the preliminary approval have been satisfied; and

3. All of the infrastructure and improvements required by the preliminary approval have been constructed, installed, or provided; and

4. The city engineer has certified that the final binding site plan is technically correct and accurate, complies with all applicable survey and mapping standards, and that all lot corner markers and permanent control monuments have been installed; and

5. The title insurance report submitted with the final application confirms that title of the land and the proposed binding site plan is vested in the name of the owners whose signatures appear on the face of the binding site plan certificate; and

6. All other applicable requirements of this chapter have been addressed. (Ord. 1856 § 2 (Exh. B), 2018).

16.30.140 Effect of final approval.

A. Once a final binding site plan has been approved and recorded, development within the binding site plan shall be governed by the terms of the approved binding site plan, and the statutes, ordinances, and regulations in effect at the time of its approval for a period of five years from the date of recording unless the city council finds that a change in conditions creates a serious threat to the public health or safety.

B. Lots within a binding site plan that has been approved and recorded shall be considered legal lots.

C. Recorded binding site plans may only be altered, modified, or vacated in accordance with chapter 16.50 BMC. (Ord. 1856 § 2 (Exh. B), 2018).

Chapter 16.40

SURVEY AND DESIGN STANDARDS

Sections:
16.40.010 Title.
16.40.020 Application.
16.40.030 Purpose.
16.40.040 Authority.
16.40.050 Access standards.
16.40.060 Design of lots and blocks.
16.40.070 Utilities.
16.40.080 Survey requirements.
16.40.090 Preliminary plat and binding site plan requirements.
16.40.100 Final plat and binding site plan requirements.
16.40.110 Dedications.

16.40.010 Title.
This chapter shall be called “Survey and Design Standards.” (Ord. 1856 § 2 (Exh. B), 2018).

16.40.020 Application.
This chapter shall apply as follows:

A. Plats and binding site plans shall be subject to this chapter;

B. The design specifications identified in this chapter shall apply to the design and construction of streets, roads, drainage facilities, sidewalks and other improvements serving plats and binding site plans;

C. No plat or binding site plan shall be granted final approval unless the streets, roads, drainage facilities, sidewalks, and other improvements required by this chapter have been constructed, installed, or provided. (Ord. 1856 § 2 (Exh. B), 2018).

16.40.030 Purpose.
A. Ensure that plats and binding site plans include appropriate provisions for the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, sidewalks, and planning features that assure safe walking conditions for students traveling to and from school;

B. Establish uniform standards for the preparation of plats and binding site plans;

C. Ensure that plats and binding site plans are accurate and consistent with applicable laws and regulations;

D. Establish uniform design standards for the design and construction of streets, roads, drainage facilities, sidewalks, and other infrastructure or improvements within plats and binding site plans.

E. Ensure that streets, roads, drainage facilities, sidewalks, and other improvements serving plats and binding site plans are compatible with, and can be easily connected to, adjoining properties and developments, thereby creating a uniform and interconnected system of public improvements. (Ord. 1856 § 2 (Exh. B), 2018).

16.40.040 Authority.
This chapter is adopted pursuant to chapters 36.70, 36.70A, 36.70B, 58.17 RCW and other applicable laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.40.050 Access standards.
The design standards in this section shall apply to the design and construction of all plats and binding site plans. Vehicle and pedestrian access shall be provided as follows:

A. General.

1. Plats and binding site plans shall be served by one or more streets providing adequate ingress and egress.

2. The alignment of streets within plats and binding site plans shall conform to the city's street plan and allow streets adjoining the plat or binding site plan to be extended through the site.

3. Street intersections shall be as nearly at right angles as practicable and in no event shall the angle formed be less than 30 degrees.

4. Street networks shall conform to any applicable fire code requirements to ensure adequate access for emergency vehicles and equipment.

5. Unless warranted by special physical circumstances, the right-of-way for public streets shall be at least 60 feet wide.

6. Alleys shall be at least 16 feet wide plus such additional width as shall be necessary for an adequate turning radius.

7. Public streets, roads, alleys, and sidewalks shall conform to applicable standards identified in chapter 12.28 BMC.

8. Low impact development features such as bioretention areas, rain gardens, and permeable paving shall be incorporated into the design and construction of all streets unless demonstrated to be infeasible through an engineering analysis. In determining the feasibility of such low impact development features, an engineering analysis shall be submitted and reviewed by the city engineer. This analysis should consider site characteristics such as soil and ground water conditions, and anticipated traffic volumes. The analysis should be consistent with the Washington State Department of Ecology's "Stormwater Manual for Western Washington" and the design and site evaluation guidance in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound."

9. All streets, bridges, sidewalks, and pedestrian access facilities shall be designed and constructed in accordance with plans and specifications prepared or approved by the city engineer.

10. All dedicated streets shall be graded to their full width with adequate drainage provided prior to acceptance for public use. Grades shall be established by the city engineer and all streets shall be surfaced according to plans and specifications prepared or approved by the city engineer.

11. Land divisions shall create, and contribute to, a fully connected network of streets. Unless explicitly waived by these requirements streets shall be extended to connect with adjacent streets and stubbed out to abutting properties to facilitate future access.

B. Private Streets. Vehicle and pedestrian access should be provided by public streets dedicated to the city. However, private streets and shared driveways may, at the city's discretion, be authorized if all of the following criteria are met:

1. The goals of the zoning code to provide for adequate light, air and usable open space between structures would not be compromised; and

2. The dedication and improvement of a public street is not necessary to facilitate the provision of public utilities such as water, sanitary sewer, storm drainage; and

3. The dedication and improvement of a street is not necessary or desirable in order to provide on-street parking for overflow conditions; and

4. No potential safety hazards would result from multiple access points between existing and future developments onto a roadway without curbs and with limited sight lines; and

5. There is no potential for extending the street system to connect with existing streets, or to serve potential development sites adjacent to the plat or binding site plan; and

6. Private streets shall be designed and constructed in accordance with the applicable standards identified in chapter 17.85 BMC.

C. Sidewalks and Pedestrian Access.

1. Sidewalks and pedestrian access shall be designed and constructed in accordance with the applicable standards identified in chapter 17.85 BMC.

2. Sidewalks should be provided along both sides of streets unless ~~the street adjoins the boundary of the plat or binding site plan and there is no potential for future development along the opposite side of the boundary. (Ord. 1856 § 2 (Exh. B), 2018~~ this requirement is explicitly waived by the City's adopted standards for public or private streets).

16.40.060 Design of lots and blocks.

A. Blocks. To implement the Comprehensive Plan, minimize travel distances, and create a fully interconnected street network, developments must produce complete blocks bounded by a connecting network of streets in accordance with the following standards.

1. Blocks shall be designed and arranged to provide for the safe and efficient movement of vehicles and pedestrians.

2. Blocks shall be identified on the face of the plat or binding site plan by letters or numbers.

3. Designs standards for blocks in areas zoned RD, RA, MUR, or MUC-1:

a. Maximum block length: 600 feet

b. Maximum block perimeter: 1,600 feet

4. Design standard for blocks in areas zoned MUC-2, CI-1, or PFT-1:

a. Maximum block length: 600 feet

b. Maximum block perimeter: 2,000 feet

5. Design standards for blocks in areas zoned CI-2 or PFT-2: None

6. Design standards for blocks in areas zoned PC: None

7. General exceptions. An exception may be granted to standards for maximum block length or perimeter as minimally necessary due to severe topography, the presence of wetlands, or other significant critical area constraints, or for small sites. Exceptions may also be granted when street connections or stubs cannot feasibly be provided based on one or more of the factors listed in BMC 16.40.060.C.2. In such cases mid-block pedestrian paths may be required in order to provide adequate pedestrian circulation.

8. Partial blocks. Exceptions may be granted to the maximum permitted block perimeter in order to allow for the establishment of partial blocks bounded on one or more sides by a street(s) stubbed out to the site boundaries. When authorized, partial blocks shall comply with the applicable standard for block length and streets stubbed out to the site boundaries shall not be more than 150 feet in length, as measured from the nearest intersection.

B. Lots.

1. Lots shall either adjoin a street, or be served by a private access easement if permitted by this chapter and chapter 17.85 BMC.

2. Lots shall be numbered with reference to blocks. (Ord. 1856 § 2 (Exh. B), 2018).

3. The creation of through lots is prohibited in areas zoned RD.

C. Street connections.

1. Street connections shall be provided to all streets and street stub-ends that abut the boundary of the land division.

2. Streets shall be extended to the boundaries of the land division and stub-ends shall be provided to allow for future connections. Exceptions may be granted to this requirement as follows:

a. Where the abutting property is fully developed and there is little or no possibility of redevelopment occurring.

b. Where the abutting property is zoned PFT or PC.

c. Where the abutting property is located in unincorporated Skagit County and is zoned Ag-NRL.

d. Where the presence of significant critical area constraints make future street extensions infeasible.

e. Where the property abuts a railroad or limited access highway right-of-way that makes future street extensions infeasible.

16.40.070 Utilities.

A. Easements shall be provided for all utilities including storm water facilities.

B. All utility easements shall be designed and configured to allow access for inspection, maintenance, and repair purposes.

C. The design and configuration of easements for storm water and sanitary sewer facilities shall be reviewed and approved by the city engineer.

D. Low impact development techniques shall be incorporated into the design and construction of all plats and binding site plans in accordance with the provisions of chapter 17.70 BMC.

E. All storm water facilities shall be approved by the city engineer and shall be designed and constructed in accordance with the applicable standards identified in BMC Title 14.

F. Above ground utility installations, such as power and telephone lines, shall not be permitted unless the city engineer determines that topographic or geologic conditions make below ground installation infeasible.

G. Each lot in a plat or binding site plan shall be provided with a connection to a public water supply system. Lots used for nonbuilding purposes shall be exempt from this requirement provided a note is included on the face of the plat restricting the use of the lot to nonbuilding purposes.

H. Public water supply systems and connections shall be designed and constructed in accordance with any standards adopted by the Skagit Public Utility District.

I. Each lot in a plat or binding site plan shall be provided with a connection to the city's sanitary sewer system. Lots used for nonbuilding purposes shall be exempt from this requirement provided a note is included on the face of the plat restricting the use of the lot to nonbuilding purposes.

J. Sewer system components and connections shall be designed and constructed in accordance with any applicable standards adopted by the city of Burlington and shall be approved by the city engineer.

K. Service Mains and Fire Hydrants. Service mains and fire hydrants shall be installed and inspected by the City Engineer and Fire Marshal prior to final approval of plats and binding site plans. The design and construction of service mains and fire hydrants shall be consistent with all applicable standards and regulations, and all plans shall be approved by the city engineer and fire marshal. (Ord. 1856 § 2 (Exh. B), 2018).

16.40.080 Survey requirements.
Plats and binding site plans shall be based on a thorough survey and shall be prepared by a land surveyor licensed in the state of Washington. Plats and binding site plans shall be consistent with the following requirements:

A. The surveyor shall furnish the city engineer with a full set of survey notes which include:

1. The ties to each permanent monument;

2. At least three durable, distinctive reference points or monuments;

3. Sufficient data to determine readily the bearing and length of each line;

4. The base meridian referred to.

B. A traverse of the boundaries of the subdivision, short subdivision, or binding site plan and all lots and blocks shall close within one foot in 5,000 feet, as required by chapter 332-130 WAC.

C. Primary survey control points shall be referenced to section corners and monuments, and the corners of adjoining plats or binding site plans, or portions of plats or binding site plans, shall be identified and ties shown.

D. Prior to final plat or binding site plan approval, permanent control monuments shall be established at:

1. All controlling comers on the boundaries of the plat or binding site plan;

2. The intersections of centerlines of roads within the plat or binding site plan;

3. The beginning and ends of curves on centerlines;

4. All block corners.

E. Permanent control monuments may be placed on the offset lines. The position and type of every permanent monument shall be noted on all plats and binding site plans. Permanent control monuments shall be of a type approved by the city engineer.

F. Permanent control monuments within the streets shall be set after the streets are graded.

G. Each lot corner shall be marked by a three-quarter-inch galvanized iron pipe, 24 inches in length, or approved equivalent, driven into the ground, set with C cap per the requirements of RCW 58.19.120.

H. Prior to final plat or binding site plan approval the city engineer shall verify the required permanent control monuments and lot corner markers have been installed in accordance with the requirements of this chapter.

I. Property contiguous to water. If any land in a plat or binding site plan is contiguous to a body of water, a meander line shall be established along the shore at a safe distance back from the ordinary high water mark. Property lying below and beyond the meander line shall be defined by distance along the side property lines extended from the meander line. If the thread of a stream lies within a plat or binding site plan or forms the boundary of a plat or binding site plan, such thread shall be defined by bearings and distances as it exists at the time of the survey. (Ord. 1856 § 2 (Exh. B), 2018).

16.40.090 Preliminary plat and binding site plan requirements.
Preliminary plats and binding site plans shall be prepared by a land surveyor licensed in the state of Washington and shall include all of the following:

A. A complete survey of the parcel being divided;

B. The name of the proposed plat or binding site plan;

C. North point and scale;

D. The location of existing property lines, streets, buildings, watercourses, natural hazards, critical areas and critical area buffers, significant topographic features, and existing utilities;

E. A legal description of the land contained within the plat or binding site plan;

F. The names and addresses of all persons, firms and corporations holding interest in the lands, including easement rights and interest;

G. The proposed locations, dimensions, and names of streets, alleys, and roadways;

H. The location and dimensions of all proposed lots, lot lines, easements, common areas, storm water facilities, and dedications;

I. The locations, dimensions, and centerlines of all public and private streets, roadways, and access easements adjoining the proposed plat or binding site plan;

J. The approximate location of utilities adjoining the proposed plat or binding site plan;

K. The proposed location and routing of utilities necessary to serve lots within the proposed plat or binding site plan;

L. The names of adjoining plats or binding site plans;

M. The surveyor's signature, license stamp, name, and contact information;

N. The date of the survey;

O. All existing monuments and markers located by the survey;

P. The zoning classification applicable to the land within the plat or binding site plan;

Q. The conditions of or the limitations on dedications, if any, including slope rights;

R. Contour intervals as required, based upon city datum;

S. Any other information required by Burlington Municipal Code or deemed necessary by the director for purposes of demonstrating compliance with regulatory requirements. (Ord. 1856 § 2 (Exh. B), 2018).

16.40.100 Final plat and binding site plan requirements.

Final plats and binding site plans shall be prepared by a land surveyor licensed in the state of Washington and shall include all of the following:

A. A complete survey of the section or sections in which the plat, or replat, is located, or as many sections as may be necessary to properly orient the plat within the section or sections;

B. Complete field and computation notes as provided in BMC 16.40.080;

C. The final plat or binding site plan shall be printed on paper or other material acceptable to the Skagit County auditor and shall be 18 inches by 24 inches in size;

D. The accuracy and completeness of the final plat or binding site plan shall be the sole responsibility of the surveyor preparing the plat or binding site plan. The surveyor shall make field surveys and investigations as necessary to ensure the map is complete and accurate in every detail;

E. The final plat or binding site plan shall be presented at a scale not smaller than 100 feet to one inch;

F. The final plat or binding site plan shall include the following:

1. The name of the plat or binding site plan;

2. The lines, widths and names of all streets, avenues, places, parks or other public property, and the location of monuments marking the same;

3. The length and direction of all lot lines, also the angles made by the lot lines with the street lines;

4. The location of control points and monuments together with all ties;

5. The names of all adjoining plats and binding site plans;

6. The scale and north point;

7. The boundary of the tract as covered by the plat or binding site plan showing courses and distance on the plat;

8. The initial point;

9. All protective improvements and restrictions on uses;

10. All dedications and all conveyances to a homeowner's nonprofit maintenance corporation in lieu of dedication;

11. Any notes, restrictions, or information required by Burlington Municipal Code or as a condition of preliminary plat or binding site plan approval;

12. Inscriptions or notes on the face of the plat or binding site plan setting forth all limitations and conditions for the use of land;

13. Inscription or notes on the face of the plat or binding site plan requiring that any development of the subject property be in conformance with the plat or binding site plan;

14. Tracts shall be individually identified by letters or numbers and notes shall be provided indicating the purpose, intended ownership, and permitted or prohibited uses for each tract.

Commented [BJ1]: 3-9-2023 – BJ – addresses long standing problem of confusion about use limitations and ownership of tracts in plats.

G. Any additional information necessary to meet the standards for mapping set forth in chapter 332-130 WAC;

H. In the case of a plat alteration or binding site plan alteration, the lots, blocks, streets, alleys, easements and parks appearing on the original plat or binding site plan shall be shown by dotted lines in their proper position in relation to the new arrangement of the plat or binding site plan, and the new plat or binding site plan shall be shown clearly in solid lines to avoid ambiguity;

I. The following certificates and signature blocks shall be included on the face of the plat or binding site plan. The director may specify the specific content, or format, of the required signature blocks and certificates unless a specific format is prescribed by state law.

1. A dated surveyor's certificate including the surveyor's signature and license stamp;

2. A certificate giving a full and correct description of the lands divided as they appear on the plat or binding site plan, including a statement that the subdivision, short subdivision, or binding site plan has bean made with the free consent and in accordance with the desires of the owners. If the plat is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, an individual or individuals, religious society or societies or to any corporation, public or private as

shown on the plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land subdivided and recorded as part of the final plat;

3. A statement of approval from the city engineer as to the survey data, the layout of streets, alleys, and other rights-of-way, design of bridges, sewage and water systems, and other structures, and indicating the plat complies with BMC Titles 12, 13, and 14;

4. A statement of approval from the director indicating the plat or binding site plan complies with BMC Titles 15, 16, 17, and 18;

5. For subdivisions, a signature block indicating the city council's approval;

6. Be acknowledged by the person filing the plat before the auditor of the county in which the land is located, or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of said acknowledgment shall be enclosed or annexed to such plat or binding site plan and recorded therewith;

7. A certification from the Skagit County treasurer that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged;

8. A certification from the city treasurer that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged;

9. Be acknowledged by the person filing the plat before the Skagit County auditor or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of the acknowledgment shall be enclosed or annexed to the plat or binding site plan and recorded with it;

10. For binding site plans where a condominium or condominium conversion is proposed, the final plan drawing shall include a statement indicating that the plan is either for a "condominium development" or a "condominium conversion." (Ord. 1856 § 2 (Exh. B), 2018).

16.40.110 Dedications.

A. All subdivisions and short subdivisions shall include adequate provisions for the dedication of drainage ways, streets, alleys, easements, critical areas, parks, and other public open space areas as may be required by Burlington Municipal Code, Washington State law, or other applicable regulatory requirements.

B. All dedications shall be clearly and precisely indicated on the face of plat or binding site plan along with the intended purpose of the dedication and any associated restrictions on its use.

C. Protective improvements and easements allowing access, inspection, and maintenance of such improvements shall be dedicated to the city in accordance with applicable municipal code requirements.

D. City-owned and operated storm water facilities, infiltration areas, and conveyance or collection systems, as well as easements allowing access, inspection, and maintenance of such features shall be dedicated to the city in accordance with applicable municipal code requirements.

E. Easements being dedicated, and their intended purpose, shall be shown on the face of the plat or binding site plan and included in the certificate of dedication.

F. Convenient pedestrian and vehicular access to every lot shall be provided by a dedicated street unless a private street is authorized pursuant to BMC 16.40.050(B).

G. If the city concludes that the public interest will be served the city may, in lieu of requiring the dedication to the public of land in a subdivision for protective improvements, drainage ways, streets, alleys, sidewalks, parks and other open space, allow the land to be conveyed to a homeowner's nonprofit maintenance corporation. In such cases, prior to the time of filing a final plat or binding site plan for approval, articles of incorporation and bylaws of the grantee organization and evidence of the conveyance or of a binding commitment to convey shall be provided to the

city. The articles of incorporation shall provide that membership in the corporation shall be conditioned upon ownership of land in the plat or binding site plan, that the corporation is empowered to assess the land for costs of construction and maintenance of the improvements and property owned by the corporation, and that the assessment shall be a lien upon the land. The city attorney shall review and approve the articles of incorporation and bylaws as to compliance with this provision. The city council may impose other conditions as it deems appropriate to assure that property and improvements owned by the corporation will be adequately constructed and maintained.

H. Any dedication, donation or grant as shown on the face of the plat or binding site plan shall be considered, to all intents and purposes, as a quitclaim deed to the grantee or grantees, for his, her or their use for the purpose intended by the donors or grantors. (Ord. 1856 § 2 (Exh. B), 2018).

Chapter 16.50

ALTERATIONS AND VACATIONS

Sections:
16.50.010 Title.
16.50.020 Application.
16.50.030 Purpose.
16.50.040 Authority.
16.50.050 Approval required.
16.50.060 Review process.
16.50.070 Application requirements.
16.50.080 Approval criteria.
16.50.090 Effect of approval.

16.50.010 Title.
This chapter shall be called “Alterations and Vacations.” (Ord. 1856 § 2 (Exh. B), 2018).

16.50.020 Application.
This chapter shall apply to alterations, modifications, and vacations of recorded plats and binding site plans as follows:

A. Public Streets and Roads. The provisions of this section shall not apply to vacation requests that are strictly limited to vacating a public street or road. In such cases the procedures for street vacation are set forth in chapter 35.79 RCW.

B. All Other Vacations. The provisions of this section shall apply to all other alteration and vacation applications, and to proposals involving the vacation or alteration of a plat or binding site plan, or a portion of a plat or binding site plan, together with streets or roads within the plat or binding site plan. (Ord. 1856 § 2 (Exh. B), 2018).

16.50.030 Purpose.
The purpose of this chapter is to establish procedures and approval criteria for the alteration and vacation of recorded plats and binding site plans consistent with Washington State law (RCW 58.17.215 and 58.17.217). (Ord. 1856 § 2 (Exh. B), 2018).

16.50.040 Authority.
This chapter is adopted pursuant to chapters 36.70, 36.70.A, 36.70B, and 58.17 RCW and other applicable laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.50.050 Approval required.
No recorded plat or binding site plan shall be modified, vacated, or altered without city approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.50.060 Review process.
A. Short Subdivisions. Applications to alter a recorded short plat shall be processed in the same manner as new applications for short plat approval and shall require both preliminary and final approval.

B. Subdivisions. Applications to alter a recorded subdivision shall be processed in the same manner as new applications for subdivision approval and shall require both preliminary and final approval.

C. Binding Site Plans. Applications to alter a recorded binding site plan shall be processed in the same manner as new applications for binding site plan approval and shall require both preliminary and final approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.50.070 Application requirements.
In addition to any information normally required for preliminary or final approval, alteration applications shall be subject to the following additional requirements:

A. The application shall include the signatures of a majority of those persons having an ownership interest in the lots, tracts, parcels, sites, or divisions that would be modified or affected by the proposed alteration. If the subdivision, short subdivision or binding site plan is subject to restrictive covenants that were filed at the time the original plat or binding site plan was recorded, and if the proposed alteration would result in the violation of the covenants, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the proposed alteration;

B. Plats and binding site plans submitted for preliminary and final approval shall be titled "Alteration of (insert subdivision/short subdivision/binding site plan name)" and shall show the entire plat or binding site plan and the portion being altered. The final plat or binding site plan shall be prepared in such a way that the altered portions or features can be easily distinguished from the portions or features which will remain unaltered. The altered plat or binding site plan shall also include a note indicating the nature of the alteration;

C. If an easement created by the original plat or binding site plan will be altered or vacated the application shall include written approval from any person, utility, company, or other entity that has a vested interest in the easement. (Ord. 1856 § 2 (Exh. B), 2018).

16.50.080 Approval criteria.
A. General. The alteration shall not be used to create additional lots.

B. Short Subdivisions. Alterations of short subdivisions shall be subject to the same approval criteria applicable to new short subdivisions.

C. Subdivisions. Alterations of subdivisions shall be subject to the same approval criteria applicable to new subdivisions.

D. Binding Site Plans. Alterations of binding site plans shall be subject to the same approval criteria applicable to new binding site plans. (Ord. 1856 § 2 (Exh. B), 2018).

16.50.090 Effect of approval.
A. Lots modified by a recorded plat alteration shall be considered legal lots.

B. If an alteration vacates land dedicated to the public the land shall be deeded to the city unless the city determines that retaining title to the land would not serve the public interest.

C. Title to vacated property, other than land dedicated to the public, shall vest with the rightful owner as shown in the county records. If the vacated land is land that was dedicated to the public, and the city has found that retaining title to the land is not in the public interest, title to the vacated land shall vest with the property owners on each side of the dedication, as determined by the city.

D. When a public street is vacated title to the vacated street shall vest with the property owners on each side of the street. (Ord. 1856 § 2 (Exh. B), 2018).

Chapter 16.60

BOUNDARY LINE ADJUSTMENTS

Sections:
16.60.010 Title.
16.60.020 Application.
16.60.030 Purpose.
16.60.040 Authority.
16.60.050 Review process.
16.60.060 Application requirements.
16.60.070 Approval criteria.
16.60.080 Final approval.
16.60.090 Effect of boundary line adjustment approval.

16.60.010 Title.
This chapter shall be called “Boundary Line Adjustments.” (Ord. 1856 § 2 (Exh. B), 2018).

16.60.020 Application.
A. This chapter shall apply to the adjustment of boundary lines between platted or unplatted lots or both.

B. The elimination of lot lines or the combination of lots shall be subject to this chapter.

C. This chapter shall not apply to any action which creates an additional lot, parcel, site, or division. (Ord. 1856 § 2 (Exh. B), 2018).

16.60.030 Purpose.
This chapter is intended to create a process for reviewing boundary line adjustments and lot combinations for compliance with the requirements of this chapter, BMC Title 17, Washington State law, and other applicable regulatory requirements. (Ord. 1856 § 2 (Exh. B), 2018).

16.60.040 Authority.
This chapter is adopted pursuant to chapters 36.70, 36.70A, 36.70B and 58.17 RCW as well as other applicable laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.60.050 Review process.
A. Approval Required. City approval is required for all boundary line adjustments and lot combinations. Any lots created, combined, or reconfigured without city approval shall be considered illegal lots.

B. Applications for boundary line adjustments and lot combinations shall be processed as Type I decisions in accordance with BMC Title 14A. (Ord. 1856 § 2 (Exh. B), 2018).

16.60.060 Application requirements.
Applications for boundary line adjustment and lot combination approval shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications which include all of the information required by this section shall be deemed complete for purposes of complying with BMC Title 14A. A complete application shall include:

A. A site plan showing the existing lot configuration and a site plan showing the proposed lot configuration. The required site plans shall be prepared as follows:

1. All drawings shall be submitted on eight-and-one-half-inch by 11-inch or legal sized paper and shall be prepared by a land surveyor licensed in the state of Washington.

2. Margins shall be provided consistent with any requirements established by the Skagit County auditor for recorded documents.

3. Existing Site Plan. The site plan showing existing conditions and lot configuration shall include:

a. Layout and dimensions of all lots included in the adjustment or combination;

b. Assessor's parcel numbers for each lot;

c. North arrow;

d. Date of preparation;

e. Scale;

f. The area of each lot included in the adjustment or combination in square feet;

g. Each existing lot shall be assigned an identifying number or letter;

h. The location of all existing buildings, structures, utilities, driveways, sidewalks, and easements;

i. The location of all public and private roads abutting the lots included in the adjustment or combination;

j. Surveyor's license stamp, signature, and contact information.

4. Proposed Site Plan. The site plan showing proposed conditions and lot configurations shall include:

a. Layout and dimensions for the proposed lot configurations;

b. North arrow;

c. Date of preparation;

d. Scale;

e. The proposed area of each lot in square feet;

f. Each proposed lot shall be assigned an identifying number or letter;

g. The location of all existing buildings, structures, utilities, driveways, sidewalks, and easements in relation to the proposed lot lines;

h. The location of all public and private roads abutting the lots included in the adjustment or combination;

i. Surveyor's license stamp, signature, and contact information.

B. Names and contact information for each property owner involved in the adjustment or combination.

C. Name and contact information for the applicant.

D. Legal descriptions prepared by a title company or licensed land surveyor for the existing and proposed lot configurations.

E. Any applicable fees in accordance with the fee schedule established by the city council.

F. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy. (Ord. 1856 § 2 (Exh. B), 2018).

16.60.070 Approval criteria.
Boundary line adjustments shall not be approved unless consistent with all of the following:

A. No additional lots shall be created.

B. All of the lots included in the boundary line adjustment or lot combination shall be legal lots unless the purpose of the adjustment or combination is to remedy a zoning or platting violation.

C. The boundary line adjustment or lot combination shall not create a lot which lacks sufficient area to meet the minimum lot size requirements for the zone in which it is located. For boundary line adjustments involving nonconforming lots, the adjustment shall not cause a lot to become smaller, or less conforming, with respect to the applicable standards for area or dimension.

D. The boundary line adjustment shall not cause a building or structure to violate a required property line setback. For boundary line adjustments involving structures which are nonconforming with respect to setback requirements, the adjustment or combination shall not increase the degree of nonconformity.

E. The boundary line adjustment or lot combination shall not create a lot which lacks legal access.

F. All of the resulting lots shall comply with the Burlington Municipal Code standards for access.

G. The following statement shall appear on deeds or conveyance documents affecting the adjustment: “This boundary line adjustment is not for the purpose of creating an additional lot.”

H. The boundary line adjustment or lot combination shall not create a lot which is bisected by a zoning district or comprehensive plan designation boundary.

I. The boundary line adjustment or lot combination shall not create a lot which is bisected by an urban growth area boundary.

J. The boundary line adjustment or lot combination shall not create a lot which is bisected by the jurisdictional boundary between the city of Burlington, another city, or unincorporated Skagit County.

K. The boundary line adjustment shall not cause a lot, structure, or development to violate the Burlington Municipal Code. (Ord. 1856 § 2 (Exh. B), 2018).

16.60.080 Final approval.
A. Following the review process specified above, the director shall approve the final plat application, return it to the applicant for corrections, or deny it within the 30 days after filing an application meeting the criteria above.

B. Boundary line adjustments and lot combinations approved by the city shall be signed by the director and returned to the applicant for recording. One copy of the approved boundary line adjustment shall be retained by the city.

C. Approved boundary line adjustments shall be recorded within two years of the date of approval and a copy of the recorded boundary line adjustment shall be provided to the city. (Ord. 1856 § 2 (Exh. B), 2018).

16.60.090 Effect of boundary line adjustment approval.
Lots reconfigured by an approved boundary line adjustment or lot combination shall be considered legal lots. (Ord. 1856 § 2 (Exh. B), 2018).

Chapter 16.70

INNOCENT PURCHASER AND TESTAMENTARY DIVISIONS

Sections:
16.70.010 Title.
16.70.020 Application.
16.70.030 Purpose.
16.70.040 Authority.
16.70.050 Approval required.
16.70.060 Review process.
16.70.070 Application requirements.
16.70.080 Approval criteria.
16.70.090 Effect of approval.

16.70.010 Title.
This chapter shall be called “Innocent Purchaser and Testamentary Divisions.” (Ord. 1856 § 2 (Exh. B), 2018).

16.70.020 Application.
A. This chapter shall apply to all lots created through testamentary provisions and laws of descent.

B. Applications for innocent purchaser status shall be subject to this chapter. (Ord. 1856 § 2 (Exh. B), 2018).

16.70.030 Purpose.
A. To provide a means of ensuring that lots created through testamentary divisions comply with applicable zoning and development standards.

B. To provide a process for granting relief to innocent purchasers of lots created in violation of platting and zoning regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.70.040 Authority.
This chapter is adopted pursuant to chapters 36.70, 36.70A, 36.70B and 58.17 RCW as well as other applicable laws and regulations. (Ord. 1856 § 2 (Exh. B), 2018).

16.70.050 Approval required.
A. No lot created by a testamentary division shall be recognized as a legal lot without city approval.

B. No owner of an illegal lot shall be recognized as an innocent purchaser without city approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.70.060 Review process.
A. Testamentary Divisions. Applications for recognition of lots created through testamentary provisions shall be processed as Type I decisions in accordance with the provisions of BMC Title 14A.

B. Innocent Purchaser. Applications for innocent purchaser status shall be processed as Type II decisions in accordance with the provisions of BMC Title 14A. (Ord. 1856 § 2 (Exh. B), 2018).

16.70.070 Application requirements.
A. Testamentary Divisions. Applications for recognition of lots created through testamentary provisions shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications which include all of the information required by this section shall be deemed complete for purposes of complying with BMC Title 14A. A complete application shall include:

1. A completed application form;

2. Any applicable fees in accordance with the fee schedule established by the city council;

3. Documentation establishing the lots were created by testamentary provisions or the laws of descent;

4. A survey prepared by a land surveyor licensed in the state of Washington showing the area and dimensions of the lots;

5. Legal descriptions for each lot prepared by a title company or surveyor;

6. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy.

B. Innocent Purchaser. Applications for innocent purchaser status shall be made on forms provided by the director and shall include all of the information required by the form in addition to all of the items listed below. Only applications which include all of the information required by this section shall be deemed complete for purposes of complying with BMC Title 14A. A complete application shall include:

1. A completed application form;

2. Any applicable fees in accordance with the fee schedule established by the city council;

3. Documentation establishing the owner of the lot purchased the property for value and in good faith, and did not have knowledge of the fact that the property acquired was created in violation of this title;

4. A survey prepared by a land surveyor licensed in the state of Washington showing the area and dimensions of the lot;

5. Legal descriptions for each of the lots prepared by a title company or surveyor;

6. Additional copies of all required information. The director shall specify the required number of copies in order to ensure that each department, or official, charged with reviewing the application can be provided with a copy. (Ord. 1856 § 2 (Exh. B), 2018).

16.70.080 Approval criteria.

A. Testamentary Divisions.

1. Each lot shall meet the minimum standards for area and dimension prescribed by the zoning code;

2. Each lot shall adjoin or have legal access to a public road right-of-way or private road easement.

B. Innocent Purchaser.

1. Substantial evidence is provided that clearly indicates the property owner purchased the illegally created lot without notification or knowledge of the fact it was illegally divided from a larger parcel or adjusted without city approval;

2. The property in question shall comply with minimum standards for area and dimension prescribed by the zoning code. Lots that do not comply with the applicable standards for area and dimension may be eligible for recognition provided they are large enough to accommodate a building site outside of the setbacks required by the zoning code, critical areas, and critical area buffers. In such cases a survey shall be submitted showing the location and dimensions of the proposed building envelope. As a condition of approval the survey shall be recorded and shall include a notation indicating that subsequent variances or reasonable use determinations will not be granted for the purpose of authorizing development outside of the envelope shown on the survey;

3. If the property owner owns adjoining lots, and if combining the illegal lot with the adjoining lots would remedy the platting or zoning violation which caused the lot to be considered illegal, the lots shall be combined as a condition of approval. (Ord. 1856 § 2 (Exh. B), 2018).

16.70.090 Effect of approval.

A. Testamentary Divisions. Once recognized by the city lots created by a testamentary division shall be considered legal lots.

B. Innocent Purchaser. If the city recognizes the owner of an illegally created lot as an innocent purchaser the lot shall be considered a legal lot. (Ord. 1856 § 2 (Exh. B), 2018).

Title 17[BJ1]

COMPREHENSIVE ZONING ORDINANCE[1]

Chapters:

17.01 General Provisions
17.05 ~~District Establishment~~Land Use Zones, Maps and Boundaries
17.15 ~~R-1 Land Use Districts~~RD Zones – Residential Detached
17.20 ~~R-2 Two-Family Residence Districts~~RA-1 Zone – Residential Attached
17.25 ~~R-3 Multifamily Residence Districts~~RA-2 Zone – Residential Attached
17.30 ~~R-S Semi-Public District~~MUR-1 Zone – Mixed-Use Residential
~~17.35 OSP Open Space and Parks District~~[BJ2]
17.40 ~~MR-NB Medium Density Residential and Neighborhood Business District~~MUR-2 Zone – Mixed-Use Residential
17.45 ~~B-1 Business District~~MUC-1 Zone – Mixed-Use Commercial
17.50 ~~C-1 General Commercial District~~MUC-2 Zone – Mixed-Use Commercial
17.55 CI-1 Zone – Commercial & Industrial~~C-2 Heavy Commercial District~~
17.60 ~~M-1 Industrial District~~CI-2 Zone – Commercial & Industrial
~~17.65 BP Business Park District~~
17.66 PC-1 Zone – Parks & Conservation
17.67 PC-2 Zone – Parks & Conservation
17.68 PFT-1 Zone – Public Facilities and Transportation Zone
17.69 PFT-2 Zone – Public Facilities and Transportation Zone
17.70 ~~Supplemental~~ General Development Standards
17.80 (Repealed)~~Landscaping~~
17.81 Landscaping
17.85 Access, Parking, and Loading
17.90 Public Utilities, and Telecommunications
17.95 Signs
17.100 Nonconforming Structures, Lots and Uses
17.105 Essential Public Facilities
17.110 Agricultural Heritage Credit Program
17.115 Planning Commission
17.120 Hearing Examiner
17.125 Amendments to Comprehensive Plan and Development Regulations

[1] Prior legislation: Ords. 890, 979, 1108, 1136, 1158, 1162, 1187, 1199, 1200, 1206, 1221, 1227, 1230, 1233, 1237, 1252, 1260, 1271, 1284, 1291, 1304, 1318, 1320, 1322, 1327, 1333, 1340, 1344, 1345, 1356, 1361, 1363, 1365, 1382, 1388, 1396, 1431, 1451, 1454, 1470, 1473, 1502, 1532, 1535, 1547, 1584, 1630, 1666, 1668, 1670, 1694, 1706, 1717, 1720, 1725, 1737, 1763, 1782, 1784, 1788, 1798, 1799, 1819, 1839 and 1843.

Chapter 17.01

GENERAL PROVISIONS

Sections:

17.01.010 Title.
17.01.020 Application.
17.01.030 Purpose.
17.01.040 Authority.
17.01.050 Definitions.
17.01.060 Land use permit required.
17.01.070 Condition of ministerial errors.
17.01.080 Administrative interpretations.
17.01.090 Zoning for annexed land.
17.01.100 Relationship to other titles, chapters and codes.
17.01.110 Violation and penalties.
17.01.115 Duty to enforce.
17.01.120 Appeal.
17.01.125 Severability.

17.01.010 Title.

This title shall be called the "Comprehensive Zoning Ordinance." This chapter shall be called "General Provisions." (Ord. 1857 § 2 (Exh. B), 2018).

17.01.020 Application.

A. This chapter shall apply to all chapters in this title. The provisions of this title shall apply to both public and private use of all land within the corporate limits of the city of Burlington.

B. No use shall be conducted, and no development, building, structure, or appurtenance shall be initiated, erected, relocated, remodeled, reconstructed, altered, or enlarged unless in compliance with the provisions of this title and with the comprehensive plan, and then only after securing all permits and approvals required hereby. It shall be unlawful to build or use any building or structure, or to use premises in the city, for any purpose or use other than the uses listed as being permitted in the district in which such building, land, or premises is located.

C. In interpreting and applying the provisions of this title, they shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. Except when otherwise noted i~~I~~[BJ3]t is not intended by this title to interfere with, abrogate or annul any easements, covenants or other agreements between private parties. However, where this title imposes a greater restriction upon the use of land and/or building or in general requires higher standards than other ordinances, rules, or private agreements, the provisions of this title shall govern.

D. No division of land pursuant to BMC Title 16 shall occur unless in compliance with the provisions of this title.

E. Except as otherwise noted t~~T~~his title is not intended to regulate the erection, construction, or reconstruction of public streets, power poles, streetlights, utility lift stations, transmission lines, or other public uses within an existing improved, and maintained, city right-of-way necessary to serve local development and support the general public welfare and conducted, or carried out, by the city of Burlington, or agents of the city working under a contract or franchise. Private utilities, projects serving a regional, international, or state-wide need[BJ4], and infrastructure improvements, and public utilities located outside an improved public right-of-way, shall be subject to this title unless explicitly preempted by state or federal law. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.030 Purpose.

The provisions of this chapter shall be liberally construed to accomplish the following purposes:

A. This title is intended to address the requirements of chapter 36.70A RCW, the Growth Management Act, and shall be used to implement and enforce the provisions of city's comprehensive plan. This title is also intended to protect the health, safety, morals, convenience, comfort, prosperity, and general welfare of the city's population.

B. The specific zones and regulations herein are designed to facilitate adequate provisions of utilities, schools, parks and housing with essential light, air, privacy, and open space; to lessen congestion on streets and facilitate the safe movement of traffic thereon; to stabilize and enhance property values; to prevent the overcrowding of land; to facilitate adequate provisions for doing public and private business and thereby safeguard the community's economic structure upon which the prosperity and welfare of all depends and through such achievements help ensure the safety and security of home life, foster good citizenship, create and preserve a more healthful, serviceable and attractive municipality and environment in which to live.

C. To most effectively accomplish these purposes, this title divides the city into zones wherein the location, height and use of buildings, the use of land, the size of yards and other open space, and the provision of off-street parking and loading are regulated and restricted in accordance with the comprehensive plan for the city of Burlington. These zones and regulations are hereby deemed necessary and are made with reasonable consideration, among other things, as to the character of each zone and its particular suitability for specific uses, the need for such uses, the common rights and interests of all within the zone as well as those of the general public, and with the view of conserving and encouraging the most appropriate use of land throughout the city. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.040 Authority.
This title is created pursuant to the authority set forth in chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.050 Definitions.
For the purpose of this title, the words listed in this chapter shall have the following meanings unless the context clearly indicates otherwise. Words used in the singular include the plural, and words used in the plural include the singular. The word "shall" is always mandatory, the word "may" denotes a use of discretion in making a decision; the words "used" or "occupied" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied."

"A"

"Abandoned sign" means a sign structure that has ceased to be used, and the owner or lessor of the sign structure intends no longer to use the sign structure for the display of sign copy, or as otherwise defined by state law. It shall be a rebuttable presumption that a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product or activity, and/or for which no legal owner can be found, is an abandoned sign.

"Arborist" means a person accredited by the International Society of Arboriculture (ISA).

"Accessory building" or "accessory structure" means a subordinate building or structure, the use of which is incidental to the use of the main, or primary, building on the same lot.

"Accessory dwelling unit" or "accessory dwelling" see dwelling definitions.

"Accessory use" means a use incidental and subordinate to a principal use and located on the same lot or in the same building as the principal use.

"Adult entertainment use" means an adult motion picture theater or topless club as defined below:[BJ5]

1. "Adult motion picture theater" means a place of public assembly in which, in an enclosed building, motion picture films, video cassettes, cable television, or any other such visual media, are presented which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified anatomical areas" or "specified sexual activities," as defined herein.

~~1.~~2. "Topless club" means a public or private club employing persons exposing "specified anatomical areas" as defined herein.

"Affordable housing" [BJ6]means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed thirty percent of the monthly income of a household whose income is:

1. For rental housing, sixty percent of the median household income adjusted for household size for Skagit County as reported by the United States department of housing and urban development; or

2. For owner-occupied housing, eighty percent of the median household income adjusted for household size for Skagit County as reported by the United States department of housing and urban development.

"Agriculture"[BJ7] means the production of horticultural, viticulture, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock. Agriculture does not include community gardens or residential gardening.

1. "Agriculture, rural" means agricultural uses or activities other than urban agriculture. Rural agriculture specifically includes animal husbandry, the keeping of large domestic animals such as horses, cattle, goats, and hogs, commercial activities involving livestock and poultry, the keeping of roosters or more than four hens, and the construction or use of agricultural buildings such as barns or equipment sheds associated with an activity falling within the definition of rural agriculture.

2. "Agriculture, urban" [BJ8]means the commercial production of plants or crops, nurseries, apiaries and beekeeping, the keeping of up to four hens in residential areas, and the construction of greenhouses, potting sheds, chicken coups, and other structures associated with an activity falling with the definition of urban agriculture.

"Alley" means a public thoroughfare which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

"Alteration" means a change, rearrangement, expansion, or modification of an existing building, structure, use, development, or facility. Alterations also include moving buildings, structures, and uses from one location to another. In buildings used for business, commercial, industrial or other similar purposes the installation or rearrangement of interior partitions affecting more than one-third of a single floor area shall be considered an alteration.

"Animated sign" means a sign employing actual motion or the illusion of motion. Note that animation is prohibited by BMC 17.95.135(B)(2), except for temporary signs in BMC 17.95.125. Animated signs, which are differentiated from changeable signs as defined and regulated by this code, include the following types:

1. "Electrically activated" means animated signs producing the illusion of movement by means of electronic, electrical, or electro-mechanical input and/or illumination capable of simulating movement through employment of the characteristics of one or both of the classifications noted below:

a. Flashing. Animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as or less than the period of nonillumination. For the purposes of this chapter, "flashing" will not be defined as occurring if the cyclical period between on-off phases of illumination exceeds four seconds.

b. Patterned Illusionary Movement. Animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion.

2. "Environmentally active" means animated signs or devices motivated by wind, thermal changes or other natural environmental input, including spinners, pinwheels, pennant strings, and/or other devices or displays that respond directly to naturally occurring external motivation. Time or temperature displays shall not be construed as a direct response to the natural environment.

3. "Mechanically activated" means animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio frequency signals.

1. "Omnidirectional antenna" (also known as a "whip antenna") transmits and receives radio frequency signals in a 360-degree radial pattern. For the purpose of this title, an omnidirectional antenna is up to 15 feet in height and up to four inches in diameter.

2. "Directional antenna" (also known as a "panel antenna") transmits and receives radio frequency signals in a specific directional pattern of less than 360 degrees.

3. "Parabolic antenna" (also known as a "dish antenna") is a bowl-shaped device for the reception and/or transmission of radio frequency communications signals in a specific directional pattern.

"Area of sign," "surface area of sign," or "sign area" means the area of a sign excluding sign support structures, which do not form part of the sign proper or the display. Surface area shall be measured as follows:

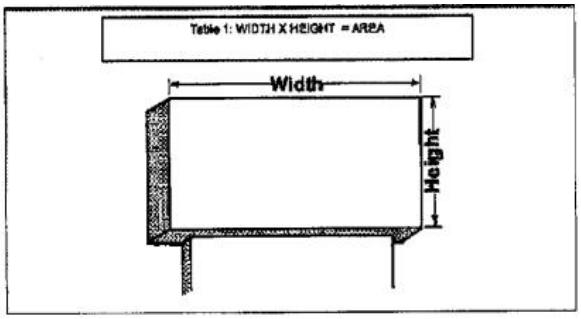
1. The surface area of the sign is determined by the height times the width of a typical rectangular sign or other appropriate mathematical computation of surface area for nonrectangular signs.

2. Surface area includes only one face of a double-faced sign where the faces of the sign are parallel. If any face is offset from parallel by more than five degrees, such face shall be counted as a separate surface area.

3. Surface area of a sign with more than two faces, such as a cube or pyramid, shall be calculated as the sum of the surface area of all faces, divided by two.

4. In the event of an irregular, three-dimensional object that serves as signage, where the surface area is not readily measurable, the surface area shall be calculated by the largest area of the three-dimensional object visible from any one viewing angle.

Figure 1. Sign Surface Area Calculation



"Attached wireless communication facility" means a wireless communication facility that is affixed to an existing structure and is not considered a component of the attached wireless communication facility.

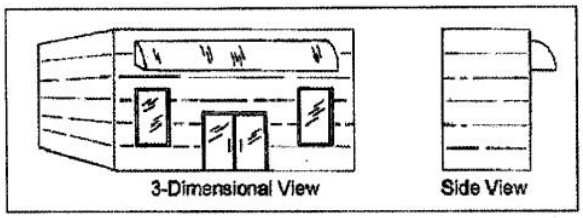
"Automobile wrecking yard": see "wrecking yard" definition. ~~means a salvage and recycling business establishment in which vehicles are dismantled or junked, or where one or more vehicles not in operable condition or used parts of motor vehicles are stored in an area outside an enclosed structure.~~[BJ9]

"Automotive parts and accessories sales" means an automotive retail sales and service use in which goods are rented or sold primarily for use in motorized vehicles, but excluding gas stations.

"Automotive retail sales and service" means a retail sales and service use in which goods are rented or sold primarily for use in motorized vehicles, but excluding gas stations.

"Awning" means a roof-like cover that projects from the wall of a building for the purpose of shielding a door or window from the elements.

Figure 2. Awning



"Awning sign" means any sign erected upon, or against, an awning.

"B"

"Banner" means a flexible substrate on which copy or graphics may be displayed, including blade banners.

"Banner sign" means a sign utilizing a banner as its display surface.

"Bed and breakfast" means a single-family dwelling where up to two rooms or lodging units are let as temporary accommodations for travelers or guests by the owner or occupant of the single-family dwelling. Bed and breakfast establishments may provide limited food service to guests.

"Billboard" means an outdoor advertising sign containing a message, commercial or otherwise, unrelated to the use or activity on the property on which the sign is located, and which is customarily leased for commercial purposes, but not including attached directional signs (not within the billboard face) as defined herein. Billboards are regulated in BMC 17.95.130(A).

"Boarding house" or "rooming house" means a detached dwelling unit~~, other than a hotel,~~ where ~~meals and/or lodging are provided for compensation~~two or more rooms are separately rented. This term does not include ~~buildings meeting the definition of a~~ hotels, bed and breakfasts, duplexes, or ~~multifamily~~ multiunit ~~dwelling~~buildings. Boarding houses are differentiated from hotels and bed breakfasts by providing accommodations for periods of 30 days or more. A boarding house does not constitute a duplex or multiunit building because the kitchen and other housekeeping facilities are shared by the building occupants. The individual rooms within a boarding house are not equipped with kitchens or complete housekeeping facilities.

1. "Boarding house, small" means a boarding house where up to four rooms are separately rented[BJ10].

~~1.~~2. "Boarding house, large" means a boarding house where five or more rooms are separately rented.

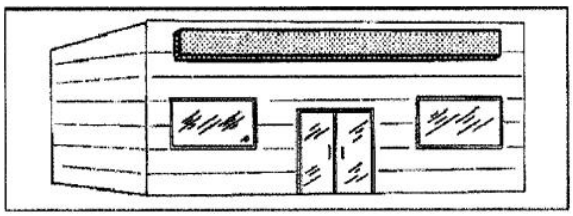
"Building" means a structure as defined in this chapter. ~~When separated by division walls without openings each portion so separated shall be considered a separate building~~For purposes of interpreting this title (Title 17) the term building shall mean all architecturally integrated components of the structure under a single roof or built upon a single foundation. The term building may be defined differently in other titles of the Burlington Municipal Code. [BJ11]

"Building area" means the total ground coverage of a building or structure which provides shelter measured from the outside of its external walls or supporting members ~~or from a point 18 inches in from the outside edge of a cantilevered roof~~.[BJ12]

"Building height" means the vertical distance measured from the finished grade to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs. If a structure has none of the above features then the height shall be measured from the finished grade to the highest portion of the structure.

"Building-mounted sign" means a single- or multiple-faced sign of a permanent nature, made of rigid material, attached to the facade of a building or the face of a marquee.

Figure 3. Building-Mounted (Wall) Sign



"Bulk material sales and storage" means the sale, storage, stockpiling, or blending of bulk materials including, but not limited to, sand, gravel, bark, topsoil, dirt, rock, and other similar materials. This definition does not include the following:[BJ13]

1. The sale of prepacked products or incidental quantities to consumers at nurseries, lumber yards, building supply stores, or similar establishments;

2. Temporary stockpiles associated with an authorized and ongoing construction project;

3. Rock crushing plants, concrete mixing and batching plants, ready-mix concrete facilities, or other similar uses.

"Burlington hill special management area" means those portions of Burlington Hill with a ground elevation 40 feet or more above sea level.[BJ14]

"C"

"Canopy" means a multi-sided overhead structure or architectural projection that provides protection from the elements to persons or property. The surface(s) or soffit may be illuminated by means of internal or external sources of light. This includes marquees.

"Canopy-mounted sign" means any sign or awning erected upon or against a canopy, including marquee-mounted signs.

"Capital improvement" or "capital facility" means major durable public investments in land, facilities or equipment such as streets, roads, sidewalks, paths, parks improvements, sanitary sewer facilities, public water systems, pedestrian safety and streetscape features, firefighting equipment, and City buildings.

"C[BJ15]apital improvement plan" or "CIP" means a component of the Burlington Comprehensive Plan providing a detailed list of planned capital improvements covering a six-year period and identifying the sources of money that will be used to pay for the planned improvements. The CIP serves as the six-year financing plan required by Chapter 36.70 RCW (GMA).

"Caretaker apartment" or "caretaker dwelling" mean an apartment or dwelling unit associated with, and subordinate to, a primary permitted use or development and used to provide housing for a person(s) employed to care for, or operate, the primary permitted use or development.

"Certificate of occupancy"[BJ16] means a written document issued by the City in accordance with the provisions of the building permit. The certificate of occupancy indicates that the project has been inspected for compliance with applicable uniform and development code requirements. The certificate of occupancy give permission to use or occupy the premises for the approved proposed use. ~~"Certificate of occupancy" means a written document issued by the governing authority in accordance with the provisions of the building permit. The certificate of occupancy indicates that, in the opinion of the building official, the project has been completed in accordance with the building and zoning codes. This document gives the owner permission from the authorities to occupy and use the premises for the intended purpose.~~

"Changeable sign" means a sign with the capability of content change by means of manual or remote input without reworking, repainting, or otherwise altering the physical composition of the sign, including signs which are:

1. Electrically Activated. A changeable sign whose message copy or content can be changed by means of remote electrically energized on-off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices; or it may be from an external light source designed to reflect off the changeable component display. See also "electronic message sign or center."

2. Manually Activated. A changeable sign whose message copy or content can be changed manually.

"Charging station" means equipment used to charge electric vehicles.[BJ17]

"Craft industries"[BJ18] means a use where arts or crafts are manufactured in a small scale facility using skilled labor. Craft industries include art studios, woodworking and cabinet shops, bakeries, kitchens, breweries, distilleries, wine making, and other similar activities. Craft industries are owner operated enterprises where the owner staffs, directly participates in, and manages, the day-to-day operations of the business. Craft industries may employ a small number of employees in addition to the owner and members of the owner's immediate family. Craft industries have a total floor area of 5,000 square feet or less and primarily operate during normal business hours.

"Co-location exists" means that more than one wireless communications provider mounts equipment on a single support structure (i.e., building, monopole, lattice tower).

"Commercial child day care center" means a building, or a portion of a building, used to provide early childhood education and learning services as defined in RCW 43.215.010.

1. "Commercial child daycare center, small", "mini commercial child day care center", or "mini commercial day care" means a commercial child day care center that provides services to not more than 12 children at any one time.

2. "Commercial child daycare center, large" or "commercial day care, large" means a commercial child day care center that provides services to more than 12 children at a time.[BJ19]

~~1.~~3. "Commercial child daycare center, public" or "child daycare, public" means a large or small daycare center owned, operated by, or located on land owned by a government agency.

"Commercial entertainment, indoors" means a use offering equipment, space, instruction, or facilities for recreation, entertainment, or games of skill and wholly enclosed in a building. Typical uses include arcades, athletic or health clubs, gyms, pool or billiard halls, indoor swimming pools, bowling alleys, skating rinks, climbing gyms, concert venues, and dance halls. This definition excludes public facilities.

1. Indoor commercial entertainment, minor means an indoor commercial recreation facility with a ground floor area of 2,500 square feet or less and a total floor area of 5,000 square feet or more.

2. Indoor commercial entertainment, major means an indoor commercial recreation facility with a ground floor area of more than 2,500 square feet or a total floor area in excess of 5,000 square feet.

"Commission" shall mean the planning commission of the city.

"Community development director" means the official appointed and acting as the Community Development Director.[BJ20]

~~"Community development director" means the city administrator or designee.~~

"Comprehensive Plan" means the plan adopted by the City of Burlington pursuant to the requirements of Chapter 36.70A RCW (The Washington State Growth Management Act). The City's comprehensive plan contains maps, illustrations, and descriptive text addressing a number of elements, or subjects, including, but not limited to, land use, housing, transportation, capital facilities, utilities, parks and recreation, and economic development. The comprehensive plan also includes a number of related functional or implementation plans that are either included within the body of the comprehensive plan, incorporated by reference, or incorporated by statue. These related

functional or implementation plans include, but are not limited to, the sewer plan, storm-water plan, capital improvement plan (CIP), and transportation improvement plan (TIP).

"Conditional use" means a use or development which may, through a discretionary approval process, be conditionally permitted in one or more zones. Conditional uses are those uses and developments which are either identified as conditional in a particular zone, or which are not listed as permitted or conditional in any zone. Conditional uses generally have the following characteristics:

1. The impacts associated with the use or development are difficult to predict or ascertain due to variabilities in the size, scale, and design of the use or development, or because the activities associated with, or the technological processes employed by, the use or development are untested, experimental, unproven, or poorly documented;

2. The exact location of the use or development may determine its impact on, and compatibility with, surroundings uses, public streets, improvements and facilities;

3. The use or development requires a high level of analysis to determine if it will be, or can be made to be, consistent with applicable comprehensive plan goals and policies, abutting and adjacent uses, and the character of the surrounding neighborhood;

4. The use or development requires detailed and specific conditions of approval in order to be compatible with surrounding uses, public streets, improvements, and facilities;

5. The use or development is not substantially similar in form, function, size, scale, or impact to another use listed as permitted in one or more zones.

"Contractor services" or "contractor offices" means a facility housing a business or entity engaged in a common trade or profession related to the maintenance or construction of buildings and grounds such as construction, plumbing, electrical, HVAC, or landscaping. This definition includes facilities where equipment or materials related to the contractor's business are stored or maintained as an accessory use.

"Corner lot": ~~means a lot at the junction of, and fronting on, two or more intersecting streets. A corner lot has a front lot line and a street side lot line~~see "lot" definitions.

"Council" or "city council" shall mean the city council of the city of Burlington.

"Coverage," "lot coverage," or "building coverage" means the area of a lot which is covered by a roofed structure.

"D"

"Density" means the ratio of dwelling units to lot area.

"Detached building" means a building surrounded on all sides by open space.

"Developed land area" means those parts of a lot, site, or area of land that have been extensively improved for an existing land use including building coverage, parking and loading areas, service yards, impervious surfaces, and landscaped areas.

"Development" means any activity that results in a use or modification of land or its resources. Development activities include, but are not limited to: dredging, drilling, dumping, filling, earth movement, grading, clearing or removal of vegetation; storage of materials or equipment; building or construction; land division, boundary line adjustments, lot segregations, subdivision and short subdivisions; binding site plans; land use permit approvals; variances; shoreline development or substantial development; and activities or uses allowed through conditional use permits.

"Development complex sign" means a free-standing sign identifying a multiple-tenant development, such as a shopping center or planned industrial park, which is controlled by a single owner or landlord.

"Development right" means one residential unit of credit. This is calculated for unincorporated Skagit County in the agriculture natural resource land zoning district (AgNRL) at the rate of one residential unit per 40 acres of farmland, or at the rate of one residential unit per county certified lot of record for development. ~~The farmland legacy program will accumulate Burlington heritage credits until a willing seller is identified and there is enough funding to acquire one or more development rights from agricultural resource land in the area specified on Map Exhibit A, attached to the ordinance codified in this chapter.~~[BJ21]

"Directional sign" means any sign that is limited to the purpose of providing direction and/or orientation for pedestrian or vehicular traffic. Directional signs typically indicate entrances, exits, one-way circulation, drive-up windows, or provide similar types of information.

"Director" means the community development director or designee.

"District" or "zone" means a zoning district as described in chapter 17.05 BMC or as shown on the city's adopted zoning map.

"Double-faced sign" means a sign with two faces, back to back.

"Drive Aisle" means a vehicle access path abutting, and providing access to, no more than two rows of parking spaces.

"Driveway" means an area improved with an all-weather driving surface providing vehicle access to a single dwelling unit from a public or private street or alley in accordance with applicable city standards and requirements. This term does not include public or private streets.

"Driveway, shared", or "Shared driveway" means an area improved with an all-weather driving surface providing primary vehicle access from a public or private street or alley in accordance with applicable city standards and requirements. A shared driveway may be serve up to four individual dwellings or provide access to no more than two drive aisles. This term does not include alleys or public or private streets. More information on driveways and access requirements is located in Chapter 17.85 BMC.

"Duplex": see "dwelling" definitions. ~~means a building containing two dwelling units. See "two-family dwelling."~~

"Dwelling" or[BJ22] "Dwelling unit" means a building, or a portion of a building, providing complete housekeeping facilities for one family or housekeeping unit. Dwellings are differentiated from transient accommodations by providing a permanent, non-transient, residence or place of habitation.~~"Dwelling unit" means a building, or a portion of a building, providing complete housekeeping facilities for one family or housekeeping unit.~~

1. "Dwelling, accessory", "accessory dwelling unit", or "ADU" means a building, or a portion of a building, used as a self-contained dwelling that is secondary and subordinate to a primary detached or horizontally attached dwelling. Accessory dwellings may be either attached or detached. An attached accessory dwelling is located within the primary dwelling. A detached dwelling is located in a detached accessory building located on the same lot as the primary dwelling.

2. "Dwelling, attached" or "attached dwelling unit" means a dwelling unit located in a building that contains other dwelling units or any structure where multiple dwellings share common walls or are located on top of, or below, one another. This term includes duplexes, horizontally attached dwellings, and multiunit buildings.

    a. "Duplex" means a building containing two attached dwelling units. The dwellings in a duplex may share common walls or one unit may be located above the other.

    b. "Dwellings, horizontally attached" means a building containing three or more dwelling units where the individual dwelling units are separated by common walls and where no unit is located above or below another unit. Horizontally attached dwellings include townhomes, row houses, and other similar residential buildings. This term shall have the same meaning as, and may be used interchangeably with, the terms "townhouse", "townhome", and "row house".[BJ23]

c. "Multiunit building" means a building, or a portion of a building, containing three or more dwelling units. A multiunit building contains dwellings located above or below one another. Examples of multiunit buildings include apartments, condominiums, and multifamily buildings. This term shall have the same meaning as, and may be used interchangeably with, the terms "multifamily building" and "multifamily dwelling(s)" but does not include horizontally attached dwellings or duplexes as defined in this chapter.

i. "Multiunit building, small" means a multiunit building containing up to four dwelling units.

ii. "Multiunit building, medium" means a multiunit building containing five to eight dwelling units.

iii. "Multiunit building, large" means a multiunit building containing more than eight dwelling units.

3. "Dwelling, cottage" or "cottage dwelling unit" means a small detached dwelling unit located in an approved cottage development.

4. "Dwelling, detached" or "detached dwelling unit" means a single dwelling unit occupying a single detached building. A detached dwelling may also include an attached accessory dwelling unit as defined in this chapter.

~~i.~~5. "Dwelling, small lot" means a small detached dwelling located in an approved small lot development.

"E"

"Eating and drinking establishment" means a retail sales and service use in which food and/or beverages are prepared and sold at retail for immediate consumption. Eating and drinking establishments may include onsite brewing, distilling, baking, and kitchen facilities.[BJ24]

1. "Eating and drinking establishment, small" means an eating and drinking establishment with a floor area of 1,000 square feet or less.

~~i.~~2. "Eating and drinking establishment, large" means an eating and drinking establishment with a floor area of more than 1,000 square feet.

"Electric sign" means any sign activated or illuminated by means of electrical energy.

"Electronic message sign or center" means an electrically activated changeable sign whose variable message capability can be electronically programmed. The electronic sign includes text and/or graphic messages that may change every few seconds. Advertising messages may contain words, phrases, sentences, symbols, trademarks and logos. See BMC 17.95.120 for requirements regarding electronic signs.

"Emergency housing" or "emergency shelter"[BJ25] means temporary housing or shelter provided by a governmental entity, or a private organization sanctioned by a governmental entity, to house those persons who would otherwise be without housing or suitable shelter due to natural disaster, personal circumstances, fire, economic calamity, disability, addiction, health issues, or other similar circumstances. Emergency housing is typically provided in a congregate setting for stays of limited duration and may include the provision of supportive services including, but not limited to, food service, counseling, and screening for benefits eligibility.

"Emergency services" means fire, police, and emergency medical service (EMS) stations and facilities.

"Enhanced pedestrian amenities" means convenience and safety improvements provided for the benefit of pedestrians that exceed the minimum requirements identified in the Burlington Municipal Code. Enhanced pedestrian amenities include plazas, raised crosswalks, benches, pedestrian lighting, street trees, pedestrian signage, wider sidewalks, and awnings or overhangs providing weather protection for pedestrians. Information on enhanced pedestrian amenities is located in Chapter 17.85 BMC.

“Essential public facility (EPF)” means any public facility or facilities owned or operated by a unit of local or state government, public or private utility, transportation company, or any other entity that provides a public service as its primary mission, and is difficult to site. EPFs include those facilities listed in RCW 36.70A.200.

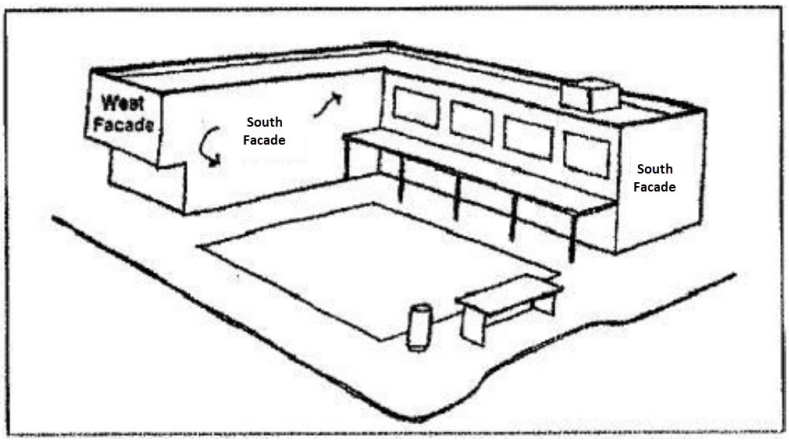
“Exterior lot” means a lot which directly abuts or adjoins at least one public or private street.

“Exterior sign” means any sign placed outside a building.

“F”

“Facade” means the exterior wall face of a building, extending from the ground to the top of the parapet or eaves, but not including any portion of the roof. Each side of a building (i.e., each architectural elevation) is considered one facade (see Figure 4). For buildings with more than one occupant, the facade for each occupant shall be that portion of the exterior wall face between the points where the interior walls between tenants intersect with the exterior wall.

Figure 4. Facade[BJ26]



“Family” means a person, or two or more persons, related by blood or marriage or law living together as a single housekeeping unit in a single dwelling. In addition, the following shall be included in the definition of family pursuant to the requirements of state and/or federal law:

1. Adult family homes licensed pursuant to RCW 70.128.150;

2. Foster homes for the placement of the disabled, or expectant mothers in a residential setting including, but not limited to, foster family homes licensed pursuant to chapter 74.15 RCW, community group care facilities licensed pursuant to chapter 74.15 RCW and crisis residential centers pursuant to chapter 13.32A RCW;

3. Consensual living arrangements of the disabled protected pursuant to the Federal Fair Housing Act amendments; and

4. A housekeeping unit as defined in this chapter.

Secure community transition facilities, as defined in chapter 71.09 RCW, are not included in the definition of “family.”

“Family day care home” means a residential dwelling used by a family day care provider to provide day care services in accordance with the provisions of RCW 36.70A.450 and 43.215.010.

“Family day care provider” means a child care provider who regularly provides early childhood education and early learning services for not more than 12 children in the provider’s home in the family living quarters.

Flashing Sign. See “animated sign, electrically activated.”

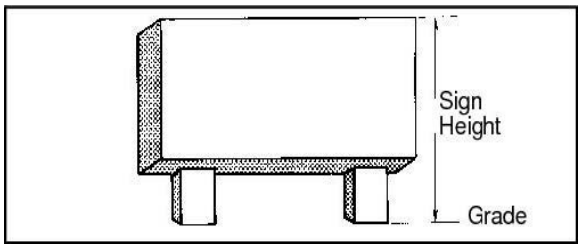
"Floor area" means the sum of the gross horizontal areas of the floors of a building or buildings, measured from the exterior faces of exterior walls and from the centerline of division walls. Floor area shall include: basement space, elevator shafts and stairwells at each floor, mechanical equipment rooms or attic spaces with headroom of seven feet, six inches or more, penthouse floors, interior balconies and mezzanines, enclosed porches. Floor area shall not include: accessory water tanks and cooling towers, mechanical equipment or attic spaces with headroom of less than seven feet, six inches, exterior steps or stairs, terraces, breezeways and open spaces.

"Footprint" means the area covered by a building or structure.

"Foster family home" means a dwelling unit used as a foster family home as defined in WAC 388-25-010 and chapter 74.13 RCW.

"Freestanding sign" means a sign principally supported by a structure affixed to the ground, and not supported by a building, including signs supported by one or more columns, poles or braces placed in or upon the ground. Freestanding signs include those signs otherwise known as pedestal signs, pole signs, pylon signs, and monument signs.

Figure 5. Freestanding Sign



"Frontage (building)" means the length of an exterior building wall or structure of a single premises oriented to the public way or other properties that it faces as determined by the community development director or designee.

"Fueling station" or "Gas station" means an automotive retail sales and service use where the primary use of the property is the sale of fuel for motorized vehicles or the provision of access to electric vehicle charging stations. This definition does not include charging stations associated with a primary permitted use, the addition of charging stations to a parking area serving a primary permitted use, or charging stations associated with publicly owned on-street or off-street parking areas.

"G"

~~"Gas station" means an automotive retail sales and service use in which fuel for motorized vehicles is sold, and in which accessory uses including, but not limited to, towing by no more than two tow trucks, minor automobile repair, or rental of vehicles under 10,000 pound gross vehicle weight may also be provided. Facilities for washing no more than one car at a time or for the collection of used motor oil shall also be considered accessory to a gas station.~~

"Government agency" means any state or local governmental body, commission, department, or officer, including, but not limited to, state agencies, cities, towns, counties, political subdivisions, public utility districts, public corporations, and special purposes districts. This term shall also include the United State government, federal agencies, and tribal governments unless doing so would conflict with federal preemption or tribal sovereignty.

"Guest cottage" or "guest house" means a detached accessory building secondary and subordinate to a dwelling unit used by the family occupying the dwelling unit for the purpose of housing members of the family or guests. A guest cottage does not contain a kitchen or cooking facilities and is not used as a separate dwelling unit. This term does not include accessory dwelling units as defined in this chapter which may contain kitchens or cooking facilities and which may be used as separate dwelling units.

"Guyed tower" means a wireless communication support structure which is usually over 100 feet tall, which consists of metal crossed strips or bars and is steadied by wire guys in a radial pattern around the tower. Guyed towers are often constructed in rural areas and are used to support antennas and related equipment.

"H"

"Health care facility," "medical service" or "outpatient clinic" means a building, or a portion of a building, containing offices for providing medical, dental, immediate care clinics, or psychiatric services not involving overnight housing of patients. This term does not include hospitals or nursing homes as defined in this chapter.

"Height of sign" or "sign height" means the vertical distance from the adjacent ground level to the highest point of a sign or, in the case of freestanding signs, to any vertical projection thereof including its supporting columns.

"Heliport" means an area or facility for the landing or takeoff of rotary-wing aircraft. This term does not include runways or facilities for fixed-wing aircraft.

"Holographic display" means any display that creates a three-dimensional image through projection.

"Home occupation" means an occupation or profession which is customarily incidental to or carried on in a dwelling unit and not one in which the use of the premises as a dwelling place is largely incidental to the occupation carried on, and which occupation is carried on by a member of the family residing within the dwelling place.

"Hospital" means a building designed and used for the medical and surgical diagnosis, treatment and housing of persons under the care of doctors and nurses. Rest homes, nursing homes, convalescent homes and clinics are not included.

"Hotel" or "motel" means a building, or a portion of a building, designed or used to provide transient accommodations in exchange for compensation and consisting of three or more lodging units. An eating and drinking establishment and accessory shops and services catering to the general public may be provided as accessory uses. This definition does not include institutions housing persons under legal restraint, ~~or~~ requiring medical attention or care, or facilities providing emergency housing.

"Housekeeping unit" means one household where all the members have common access to and common use of all living, kitchen, and eating areas within the dwelling unit, and household activities and responsibilities such as meals, chores, expenses, and maintenance of the premises are shared or carried out according to a household plan or other customary method. If the dwelling unit is rented, the household members must jointly occupy the unit under a single lease in order to be considered a housekeeping unit. This term does not include boarding or rooming houses as defined in this chapter where rooms within a dwelling unit are rented or leased to individuals under separate leases.

"I"

"Illegal sign" means a sign that does not meet the requirements of this chapter and has not received legal nonconforming status.

"Illuminated sign" means a sign characterized by the use of artificial light, either projecting through its surface(s) (internally illuminated); or reflecting off its surface(s) (externally illuminated).

"Impervious surface" means a hard surface which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops and eaves, walkways, patios, decks (both covered and open slat construction shall both be considered impervious), driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, rockeries and oiled macadam or other surfaces which similarly impede the natural infiltration of surface and storm water runoff. Open, uncovered storm water retention and detention facilities shall not be considered impervious surfaces for purposes of this definition. For purposes of calculating impervious surface coverage and demonstrating compliance with this title, the following impervious surfaces shall be included at a ratio of 50 percent:

1. "Permeable paving" means pervious concrete, porous asphalt, permeable pavers, grass grid, or other forms of pervious or porous paving material intended to allow the passage of water through the pavement section. Permeable paving often includes an aggregate base that provides structural support and acts as a storm water reservoir.

2. “Open slatted decking” means a deck surface constructed of boards with intermittent gaps that allow water to pass through to the surface below. Only open, uncovered decks installed over a permeable surface shall be included in impervious surface calculations at a 50 percent ratio. Covered decks, or decks installed over an impermeable surface, shall be considered an impervious surface and included in all coverage calculations accordingly.

3. “Green roof” or “vegetated roof” means a roof, or a portion of a roof, consisting of waterproofing material, growing medium or soil, and vegetation used in place of or over the top of a conventional roof. Green roofs provide storm water management by capturing, filtering, and evaporating rainfall.

“Industrial, minor” or “light industrial” means a use or activity involving the assembly of goods or products from pre-manufactured materials or components, the repair, servicing, or sale of goods or products, and the processing or preparation of food and beverage products for offsite consumption. Minor industrial activities can be performed with minimal adverse impact on, and pose no special hazard to, the environment or community. Minor industrial uses and activities are differentiated from major industrial activities by taking place entirely within an enclosed building and by not generating external emissions such as smoke, objectionable odors, noise, vibrations, or nuisances outside the building where the use or activity takes place. Minor industrial uses and activities may involve outdoor sales or storage but do not involve outdoor manufacturing, assembly, or material processing. Examples of minor industrial uses and activities include, but are not limited to:

1. Assembly, repair, and servicing of mechanical, automotive, marine, contractor’s or builder’s equipment and supplies (other than heavy vehicle and equipment repair);

2. Assembly, repair, and servicing of electrical and electronic equipment and products.

3. Commercial bakeries and kitchens not associated with an eating and drinking establishment;

4. Breweries and distilleries not associated with an eating and drinking establishment;

5. Commercial printers and publishing companies (not including retail photocopying and printing services);

6. Assembly, repair, and servicing of scientific, medical, and precision instruments and equipment;

7. Repair and servicing of bulky items including, but not limited to, small engines, lawn and garden equipment, appliances, commercial and industrial electronics and controls, pumps and hydraulic equipment, marine equipment and engines, passenger vehicles, boats, HVAC equipment, and tools;

8. Precision machine and mechanical work including rebuilding and servicing engines, transmissions, and similar mechanical components;

9. Cold storage plants.[BJ27]

“Industrial, major” or “heavy industrial” means a use or activity involving the transformation of materials and substances into new products including additive or subtractive processes, construction, testing, and assembly of component parts and the blending of materials such as lubricating oils, plastics, or resins. Major industrial uses and activities may generate external emissions such as smoke, objectionable odors, noise, vibrations, or nuisances which may be perceptible beyond the site boundaries but which can be mitigated to a level of non-significance through the application of appropriate permit conditions. Major industrial uses and activities may involve the use of large outdoor areas for manufacturing, assembly, or material processing. Such uses and activities include, but are not limited to:

1. Manufacturing, processing, blending, and packaging of lime, gypsum, abrasives, chalk, pumice, clay and cement products such as tile, pipe, brick etc.;

2. Manufacturing and assembly of automotive and aerospace vehicles;

3. Manufacturing paints, printing ink, and leather goods;

4. Basic wood processing including sawmills, planning mills, veneering and laminating woods, processing, or production of firewood, and the production of engineered wood products such as trusses, beams, and panels;

5. Commercial laundries;

6. Enameling, galvanizing, and electroplating;

7. Bulk material sales and storage;

8. Repair and servicing of heavy equipment and trucks;

9. Manufacturing, processing, blending and packaging of the following:

    a. Drugs, pharmaceuticals, toiletries, and cosmetics;

    b. Food and kindred products, such as confectionery products, chocolate, cereal breakfast food, bakery products, paste products, fruits and vegetables, beverages, prepared food specialties (such as coffee, dehydrated and instant food, extracts, spices and dressings) and similar products;

    c. Dairy products and byproducts such as milk, cream, cheese and butter, including the processing and bottling of fluid milk, and cream and wholesale distribution;

    d. Soaps, detergents, and other basic cleaning and cleansing materials;

    e. Mineral products,

"Industrial, high impact" means a use or activity that may generate significant emissions or impacts perceptible beyond the site boundaries that cannot be mitigated or are difficult or impractical to mitigate. High impact industrial uses and activities may also involve the production, processing, handling, storage, or disposal of hazardous or dangerous substances or materials. Such uses and activities include, but are not limited to:

1. Animal and food processing including slaughterhouses, the tanning and dressing of hides, curing, canning, and processing meat and seafood, or pickling and brining;

2. Bulk storage, processing, production, or refining of oil, gas, petroleum and petroleum products, butane, chemicals, shellac, varnish, turpentine, paper, pulp, rubber from crude material;

3. Rock crushing plants;

4. Concrete mixing and batching plants, including ready-mix concrete facilities;

5. Production, processing, or recycling of metal;

6. Disposal, processing, or storage of solid waste including transfer and recycling facilities;

7. Commercial composting and production of mulch, bark, or wood chips;

8. Truck stops.

"Informational sign" means a single- or double-faced sign intended primarily for the safety and convenience of the public or to ensure the orderly operation of the site, including but not limited to signs designating restrooms, address numbers, hours of operation, business directories, help wanted, public telephones, and instructions regarding parking.

"Inoperable vehicle" means a car, truck or van that cannot be started and moved under its own power. A vehicle that is not currently licensed, including a recreational vehicle or trailer that is designed for travel on the public roads, is also considered an inoperable vehicle.~~"Inoperable vehicle" means a car, truck or van that cannot be started and moved under its own power. A vehicle that is not currently licensed, including a recreational vehicle or trailer, that is designed for travel on the public roads, is also considered an inoperable vehicle.~~

"Internal access street" means a street providing vehicle and pedestrian access within a development or parking area. Internal access streets provide access to three or more drive aisles.

"Interior lot": see "lot" definitions. ~~means a lot which has no street frontage and which can only be accessed through a driveway or shared driveway.~~

"Interior sign" means any sign placed within a building, but not including window signs as defined by this chapter. Interior signs, with the exception of window signs as defined, are not regulated by this chapter.

"J"

"Junk storage" means the temporary or permanent storage outdoors of junk, waste, discarded, salvaged or used materials, wrecked or inoperable vehicles, or vehicle parts. This definition shall include, but not be limited to, the storage of used lumber, scrap, metal, tires, household garbage, furniture, and inoperable machinery, and as further defined in the current edition of the International Fire Code. See also chapter 8.12 BMC, Nuisances.

"Junk yard" means a lot, land or structure, or part thereof, used for junk storage, the collection, storage and sale of waste paper, rags, scrap metal or discarded material; or for the collecting, dismantling, storage, salvaging or sale of parts of machinery or vehicles not in running condition.

"K"

"Kennel": see "pet boarding" definition. ~~means a facility, structure, property, or development where more than four dogs and/or one litter of unweaned pups are kept.~~

"L"

"Land use" means the type of use activity occurring on a land parcel or within a building situated upon a land parcel.

"Land use permit" means a document issued by the city which documents or authorizes a particular use or development. A land use permit formally documents the city's land use decision and may establish, or document, the conditions and restrictions applicable to the use or development.

"Lattice tower" means a wireless communication support structure which consists of metal crossed strips or bars to support antennas and related equipment.

"Lodging unit" means a room, or a group of interconnected rooms, intended for sleeping, that is rented on a short-term basis to guest(s) to provide transient accommodation and is individually designated by number, letter, or other means of identification. Lodging units may contain cooking facilities; however, this definition does not include long-term, non-transient accommodations such as ~~multifamily~~ dwellings ~~and~~ or boarding houses.

"Lot" means a single unit of land having fixed boundaries, no matter how legally described.

1. "Lot, corner" means a lot at the junction of, and fronting on, two or more intersecting streets. A corner lot has a front lot line and a street side lot line.

2. "Lot, illegal" means a lot, tract, parcel, or site created in violation of applicable zoning and platting regulations.[BJ28]

3. "Lot, interior" means a lot other than a corner lot or a through lot.

4. "Lot, legal" means a lot, tract, parcel, or site created in compliance with the zoning and platting regulations in effect at the time of its establishment ore creation. This term also includes illegally created lots that are subsequently recognized by the city as separate lots consistent with the requirements of Title 16 BMC and Chapter 57.17 RCW.

~~"Lot" means a single tract of land, no matter how legally described, whether by metes and bounds and/or by lot or lots and block designation as in a recorded plat, that at the time of applying for a building permit is designated by its owner or developer as the tract to be used, developed or built upon as a unit of land under single ownership or control and assigned to the particular use for which the building permit is being secured. This definition includes only those lots, tracts, parcels, and sites which were created in compliance with the zoning and platting regulations in effect at the time of their establishment, or which are subsequently recognized by the city as separate lots consistent with applicable municipal code requirements and Washington State law.~~

"Lot area" means the area of a lot contained within the lot lines. Lot area includes areas within easements, submerged lands, and wetland areas. For purposes of determining compliance with this title the city may require that lot area(s) be calculated by a licensed land surveyor.

"Lot depth" means the mean dimension of the lot from the front lot line to the rear lot line.

"Lot line" means a line or boundary which separates a lot, tract, parcel, or site from another lot, tract, parcel or site, or from an adjoining public street or right-of-way. For purposes of compliance with this title the city may require that the location of lot lines be determined by a licensed land surveyor.

1. "Front lot line" means the lot line parallel to and abutting a public or private street. For interior lots, or lots with more than one street frontage, the front lot line shall be side which provides the primary means of access to the lot. If a lot has frontage on a street and an alley, the property line adjoining the alley shall not be considered a front lot line regardless of the point of access.

2. "Rear lot line" means the lot line which is opposite from and generally parallel to the front property line.

3. "Side lot line" means any lot line other than the front line or rear lot line. Generally a side property line is perpendicular to and connects the front and rear property lines.

4. "Street side lot line" means a lot line, other than a front lot line, which adjoins a public or private street.

"Lot width" means the dimension across the lot between the side lot lines at the front setback line.

"Low impact development" or "LID" means a storm water and land use management strategy that strives to mimic predisturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed storm water management practices that are integrated into a project design. Low impact development features, practices, and techniques include bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated or green roofs, minimum excavation foundations, and water reuse.

"M"

"Macro facility" means an attached wireless communication facility which consists of antennas equal to or less than 15 feet in height or a parabolic antenna up to one meter (39.37 inches) in diameter and with an area not more than 100 square feet in the aggregate as viewed from any one point.

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

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

"Marijuana processor" means a person licensed by the State Liquor and Cannabis Board to process marijuana into usable marijuana and marijuana-infused products, package and label usable marijuana and marijuana-infused products for sale in retail outlets, and sell usable marijuana and marijuana-infused products at wholesale to marijuana retailers.

"Marijuana producer" means a person licensed by the State Liquor and Cannabis Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

"Marijuana retailer" means a person licensed by the State Liquor and Cannabis Board to sell usable marijuana and marijuana-infused products in a retail outlet.

"Mean depth" of a lot is the depth of such lot measured on a line approximately perpendicular to the fronting street and midway between the side lines of such lot.

"Medical service" means a retail sales and service use in which health care for humans is provided on an outpatient basis including, but not limited to, offices for doctors, dentists, chiropractors, and other health care practitioners.

"Meeting facility" means an assembly use such as a church, community building, or fraternal organization where people gather for meetings, lectures, religious services, instruction, debates, ceremonies, or other similar events. Meeting facilities do not include "commercial entertainment" as defined in this chapter. Meeting facilities are differentiated from commercial entertainment by primarily providing meeting space for a membership group or association on a private, not for profit, basis.

1. "Meeting facility small" means a meeting facility with a ground floor area of 2,500 square feet or less and a total floor area of 5,000 square feet or less.

2. "Meeting facility large" means a meeting facility with a ground floor area of more than 2,500 square feet or a total floor area in excess of 5,000.

3. "Meeting facility, public" means a public facility intended to accommodate public meetings, events, and gatherings such as a city hall, court, hearing rooms, auditoriums, community center, or theatre.

"Mini commercial child day care center" or "mini commercial day care" means a commercial child day care center that provides services to not more than 12 children at any one time.

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

"Modular home" means factory built housing as defined by RCW 43.22.450(3) which has been approved by the Department of Labor and Industries in accordance with RCW 43.22.455.

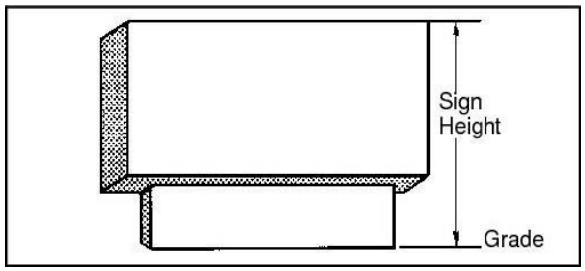
"Modulation" means an architectural technique for breaking up the apparent bulk of a structure's continuous exterior walls or façade. Modulation involves stepping back or projecting forward portions of the façade within specified intervals of width and depth.

"Monopole I" is a wireless communication facility which consists of a support structure, the height of which shall not exceed 60 feet.

"Monopole II" is a wireless communication facility which consists of a wireless communications support structure greater than 60 feet in height erected to support wireless communication antennas and connecting appurtenances.

"Monument sign" means a ground-mounted, fixed sign. The base (not included in the sign surface area calculation) is attached to the ground as a wide base of solid construction.

Figure 6. Monument Sign



"Multiunit building" or "Multifamily dwelling": see definition under "dwelling" ~~means a building containing three or more dwelling units~~.

"Multiple-tenant development" means a group of structures housing at least one retail business, office, commercial venture, or independent or separate part of a business or a single structure containing more than one business with separating walls and at least one outside access for each business which shares a common lot, access, and/or parking facility.

"N"

"Noncommercial public service sign" means a noncommercial sign devoted to religious, charitable, cultural, governmental, or educational messages including, but not limited to, the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations.

"Nonconforming lot" means a lot which was legally established but which does not conform to current zoning or development regulations including any applicable standards for width, depth, or area. For purposes of interpreting this definition, "legally established" means the lot was created in compliance with the zoning and platting regulations, if any, in effect at the time the lot was created. A lot may also be considered a legal nonconforming lot if it is subsequently recognized by the city as a separate lot consistent with applicable municipal code requirements and Washington State law.

"Nonconforming structure" means a structure which was lawfully established but which does not conform to current zoning or development regulations. A structure shall be considered lawfully established if it conformed to the applicable zoning and development regulations in effect at the time it was built or established. This includes the requirement to obtain city approvals or permits. A structure shall also be considered lawfully established if a permit for the structure has been granted and has not expired. Subsequent expansions or modifications of a legally established structure shall conform to all applicable zoning and development regulations in effect at the time of the modification or expansion. Specific regulations governing nonconforming structures can be found in chapter 17.100 BMC.

"Nonconforming use" means the use of land or a structure for a purpose which was lawful at the time the use was established or initiated but which does not now conform to currently applicable zoning or development regulations. A use shall be considered lawfully established if it was consistent with all of the applicable zoning and development regulations in effect at the time it was established or initiated. This includes the requirement to obtain city approvals or permits. A use shall also be considered lawfully established if a permit authorizing the use has been granted and has not expired. Subsequent expansions or modifications of a legally established use shall conform to all applicable zoning and development regulations in effect at the time of the modification or expansion. Specific regulations governing nonconforming uses can be found in chapter 17.100 BMC.

"Nuisance tree" means any tree which, in the opinion of an arborist, is causing or is likely to cause significant damage to a street, sidewalk, above or below ground utilities, or building, that cannot be mitigated without removal of the tree.

"Nursing home" or "convalescent home" means a facility licensed by the state of Washington providing 24-hour supervised nursing care, personal care, therapy, nutrition management, organized activities, social services, room, board, and laundry for persons requiring regular medical attention by reason of chronic illness or infirmity, but excluding surgical or emergency medical services. This definition excludes hospitals, multifamily dwellings, boarding houses, and hotels as defined in this chapter.

1. "Nursing home, small" means a nursing home with 8 beds or less.

~~a.~~2. "Nursing home, large" means a nursing home with more than 8 beds.

"O"

"Off-premises sign" means a sign which displays a message relating to a use of property or sale of goods or services at a location other than that on which the sign is located.

"Office" means a commercial use which provides administrative, contractors, professional or customer services to individuals, businesses, institutions and/or government agencies in an office setting.

1. "Administrative office" means an office use in which services are provided to customers primarily by phone or mail, by going to the customer's home or place of business, or on the premises by appointment; or in which customers are limited to holders of business licenses. Examples of services provided include, but are not limited to, general contracting, janitorial and housecleaning, legal, architectural, data processing, broadcasting companies, administrative offices or businesses, unions or charitable organizations, and wholesalers and manufacturer's representatives' office. Administrative offices may include accessory storage, but not the storage of building materials, contractor's equipment or items, other than samples, for wholesale sale.

2. "Customer service office" means an office use in which on-site customer services are provided in a manner which encourages walk-in clientele and in which generally an appointment is not needed to conduct business. Examples include branch banks, travel agencies, airline ticket offices, brokerage firms, real estate offices, and government agencies which provide direct services to clients.

3. "Professional office" means a small scale office used as a place of business by licensed professionals, or persons in other generally recognized professions, which use training or knowledge of a technical, scientific or other academic discipline as opposed to manual skills, and which does not involve outside storage or fabrication, or on-site sale or transfer of commodity. This term includes office space for lawyers, accountants, engineers, architects, consultants, and other similar professions.[BJ29]

"On-premises sign" means a sign which displays a message which is directly related to the use of the property on which it is located.

"Outdoor storage" means the keeping of materials, supplies, equipment, machinery, or the long term storage of vehicles outdoors or in a building without walls.

"Outdoor vending machine" shall mean a mechanical device located on the outside of a building that provides a product or service to the public for compensation, including but not limited to drink dispensers, food dispensers, movie rental or other product vending machines. The definition shall also include freestanding automated teller machines that are not on the same property as the financial institution. For purposes of this chapter, news boxes, pay phones, youth amusement rides, and bottled soda, juice or water machines shall not be deemed to be outdoor vending machines.

"P"

"Parking column" means two parking rows abutting one another and arranged back-to-back.

"Parking lot" or "parking area" means an area, or a portion of a development site, established for the purpose of accommodating parking spaces. Parking lots include both individual parking spaces and any associated drive aisles and circulation areas.

"Parking row" means a row of abutting parking spaces arranged alongside one another.

"Parking space" means a space used to temporarily park an operable motor vehicle and having access to a public street or alley. This term does not include a space used for the storage of a junk, wrecked, or inoperable vehicle.

"Pedestrian scale lighting" means outdoor lighting fixtures used to illuminate sidewalks and pedestrian paths with a scale an intensity suitable for pedestrians. Pedestrian scale lighting is mounted no higher than 14 feet above the surrounding grade and includes freestanding fixtures (pole lights), lighted bollards, and building mounted lights.

"Pet boarding" means any use or property where seven or more pets or more than four dogs are kept and any use where daytime or overnight care or boarding services are provided for household pets.

1. "Pet boarding, daycare" means a type of pet boarding where care is provided to household pets during the day and where pet training or grooming services may also be provided but does not include breeding or overnight boarding.

~~a.~~2. "Pet boarding, overnight" or "kennel" means a type of pet boarding where overnight care is provided to household pets and where pet training or grooming services may also be provided. This term also includes the breeding of household pets and the keeping of more than one litter of un-weaned pups.

"Parking space" means a space used to temporarily park a motor vehicle and having access to a public street or alley.

"Permitted use" means any use authorized or permitted alone or in conjunction with another use in a specific district and subject to the limitations of the regulations of such use district.

"Personal and household retail sales and service" see "retail" definition.~~means a retail sales and service use in which goods are rented or sold or services are provided primarily for household and personal use, rather than for business establishments, institutions, or governmental agencies, but excluding uses in which primarily building materials and/or heating fuel are sold. Examples of personal and household retail sales are bookstores, furniture stores, and grocery stores. Examples of personal and household services are shoe repair, hair cutting salons, and dry cleaning.~~

~~1. "General personal and household retail sales and service" means a personal and household retail sales and service use which is not a multipurpose convenience store, major durables sales and service or a specialty food store.~~

~~2. "Major durables sales, service, and rental" means a personal and household retail sales and service use in which large household items such as, but not limited to, furniture or appliances, are rented or sold.~~

~~3. "Multipurpose convenience store" means a personal and household retail sales and service use in which a wide range of items frequently purchased for household use are rented or sold. Examples of multipurpose convenience stores include, but are not limited to, grocery, hardware, drug, and variety stores.~~

~~4. "Specialty food store" means a personal and household retail sales and service use in which food such as salads, deli meats, desserts, baked goods, whole pizzas, and other ready-to-eat foods are prepared and sold, generally for consumption on other premises. Specialty packaged foods, and/or bulk items such as cheese, and aged foods may also be sold, and the square footage of any area used for seating for the immediate consumption of food shall be no more than 300 square feet. If more than 300 square feet are devoted to seating space, the entire use shall be considered an eating and drinking establishment rather than a specialty food store.~~

"Personal services" means a use where personal services are provided and goods accessory to the provision of such services may be sold. This term includes beauty salons, barber shops, consumer dry cleaning services and

laundromats, jewelry and watch repair, tailors, tattoo shops, small electronic device repair, pet grooming, and other similar businesses.

"Personal and household storage" means a building, group of buildings or other facility having compartments, rooms, spaces, containers or other type of units that are individually leased, rented, sold or otherwise contracted for by customers for the storage of personal or household goods or property, and where the facility owner/operator has limited access to the units. For purposes of this title, "self-service storage facility" shall be considered synonymous with self-storage warehouse, self-storage facility, mini-warehouse or mini-storage. This term does not include warehouses and freight distribution facilities.

"Placement of a recreational vehicle" means to store a wrecked, inoperable, or unlicensed recreational vehicle on a lot for a period of more than 30 days, or to store a wrecked, inoperable, or unlicensed recreational vehicle outdoors or on an unpaved surface.

~~"Portable sign" means a movable sign that is not permanently attached to a structure or the ground. Portable signs include A-frame signs and signs mounted on a portable base, but not portable readerboards.~~

"Primary residential building" or "principal residential building" means a building containing one or more dwelling units. This term does not include accessory dwelling units as defined in this chapter.

"Primary use (or principal use)" means the use for which a lot, structure or building, or the major portion thereof is designed or actually employed.

"Private passenger transportation services" means a use where transportation services are provided to paying customers. Private transportation services include bus and train terminals, taxi dispatch centers, and other similar uses. This term does not include publicly operated transportation services such as transit stops.

"Private school" means a privately operated school.

1. "Private school, small" means a privately operated school with a ground floor area no greater than 2,500 square feet and a total floor area of 5,000 square feet or less.

2. "Private school, large" means a privately operated school with a ground floor area greater than 2,500 square feet or a total floor area greater than 5,000 square feet.

~~"Professional office" means a small scale office used as a place of business by licensed professionals, or persons in other generally recognized professions, which use training or knowledge of a technical, scientific or other academic discipline as opposed to manual skills, and which does not involve outside storage or fabrication, or on-site sale or transfer of commodity. This term includes office space for lawyers, accountants, engineers, architects, consultants, and other similar professions.~~

~~"Projecting sign" means a building mounted sign which projects past the face of a building for the purpose of displaying the sign content in a direction other than parallel to the building facade.~~

"Public hearing" means a duly advertised public meeting called by the hearing examiner, council, or commission of the city for the purpose of taking formal public comment, both in favor and opposition to a proposed action.

"Public services" or "public facilities" means services, facilities, and uses owned, operated by, or operated on land owned by a government agency.

1. Public services, administrative and customer service means public offices, buildings and facilities that provide administrative or institutional services or involve direct customer interactions, such as an office, library, school, or city hall.

2. Public services, industrial means a use or facility used for minor industrial purposes or having characteristics similar to private uses categorized as industrial. Examples of such uses include storage buildings, equipment repair shops, maintenance facilities, storage and service yards, and sewage treatment plants.

"R"

"Reader-board" ~~means a sign or part of a sign on which the letters are replaceable by manual means, such as changing magnetic letters on a sign board~~see definition under "sign".

"Recreation facility, active" means areas, improvements, or structures dedicated to the enjoyment of physical activities and recreational activities, including but not limited to organized athletic events such as tennis, soccer, running, basketball and baseball; scheduled spectator sports requiring large improved land areas, fields, courts, or facilities; and bicycle tracks or courses. Active recreation facilities are differentiated from passive recreation facilities by the level of site alterations and improvements required to support the activity. Active recreation uses may require large parking areas, cleared and improved fields, large areas of impervious surfaces, outdoor lighting, sound systems, spectator seating, large buildings, and other related improvements.

"Recreation facility, passive" means areas or improvements dedicated to protecting or enhancing critical area functions and values; providing opportunities for the public to enjoy the natural environment or scenic landscapes; educational or research activities primarily related to the natural environment; recreational activities that require no significant site alterations or physical improvements such as trails, paths, viewing platforms, and interpretive signs. Passive recreation facilities may include minor accessory improvements such as benches, picnic tables, ornamental landscaping, community gardens, signage, and small parking areas.

"Receiving site" means the site in the recipient zoning district that will receive the increased density by purchasing Burlington heritage credits at a set fee or transferring development rights from the sending site. Receiving sites in the city of Burlington are further described in the MR-NB, B-1, C-1 and R-3 zoning districts.

"Recreational vehicle" or "RV" means a structure or vehicle containing living space intended to provide short-term transient accommodations for recreational purposes or travel and licensed for use on public roads, designed to be licensed for use on public roads, or capable of being licensed for use on public roads. This term includes trailers, campers, motor homes, park models, and other similar vehicles but does not include manufactured homes as defined in this chapter. A recreational vehicle shall not be considered, or used as, ~~a dwelling unit and shall not be used as~~ a permanent place of habitation, or as sleeping quarters for periods of 30 days or more.

"Residential small lot", "residential small lot development", or "small lot development" means a process by which lots, smaller than would normally be permitted, may be created through a short subdivision or subdivision process.

"Related equipment" is all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors.

""Retail", retail ~~Retail~~ sales and service", or "personal household retail sales and service" means a commercial use in which goods are rented or sold at retail to the general public for direct consumption and not for resale, or in which services are provided to individuals and/or households. Merchandise may be bought as well as sold and may be processed as long as the items processed are sold on the premises, and production is incidental or subordinate to the selling, rental or repair of goods. ~~See the following definitions: "personal and household retail sales and service," "medical services," "automotive retail sales and service," and "eating and drinking establishments."~~ This term does not include marijuana retailers.

1. "Retail sales and service, small scale" means a retail sales and service establishment with a floor area of 1,000 square feet or less.

2. "Retail sales and service, medium scale" means a retail sales and service establishment with a floor area greater than 1,000 square feet but less than 5,000 square feet.

3. "Retail sales and service, large scale" means a retail sales and service establishment with a floor area of 5,000 square feet or more.

"Residential zone", means an area zoned RD or RA.[BJ30]

"Rezone" means an amendment to the official land use map to change the zone classification of an area.

~~"Roof sign" means a sign or sign structure erected above a roof, parapet, canopy, or porte cochere of a building or structure.~~

"S"

"Sales and rental of motorized vehicles" means an automotive retail sales and service use in which motorized vehicles, such as cars, trucks, buses, recreational vehicles or motorcycles, or related nonmotorized vehicles, such as trailers, are rented or sold.

"School" means an institution of learning, whether public or private, which offers instruction in those courses of study required by the Washington Education Code or which is maintained pursuant to standards required by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school or any special institution of education, and also includes higher education institutions and vocational schools, but does include health and fitness clubs or facilities that solely provide artistic or musical instruction.

"Secure community transition facilities (SCTF)" means, under RCW 71.09.020, a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the Washington State Secretary of Social and Health Services or under contract with the Secretary.

"Sending site" means the site that is to be preserved as agricultural resource land by selling or transferring its residential development rights to the Skagit farmland legacy program or other entity approved by the Skagit farmland legacy program. Sending sites shall be maintained permanently as agricultural lands and no structures may be built on the land. Sending sites may not be in public ownership. If the sending site consists of more than one tax lot, the lots must be contiguous. For purposes of this section, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed. See Map Exhibit A, attached to the ordinance codified in this chapter, for land generally eligible as sending sites for the purpose of this chapter.

"Service yard" or "storage yard" means an accessory yard or outdoor area used to store functional equipment, operable vehicles, materials, or used for outdoor fabrication or processing of materials. This term does not include junk storage, junk yards, or wrecking yards.

"Setback" means the space or distance required between a lot line and a building, structure, or development. Required setback areas are intended to remain free of buildings and structures and open to the sky as specified in this title. Setbacks may also be required between different and incompatible uses.

1. "Front setback" means an open unoccupied space parallel and adjacent to the front property line and extending from one side property line to the opposite side property line. No building or structure shall be placed within or extend into a required front setback unless explicitly authorized by this title.

2. "Rear setback" means an open, unoccupied space parallel and adjacent to the rear property line and extending from one side property line to the opposite side property line. No building or structure shall be placed within or extend into a required rear setback except as explicitly authorized by this title.

3. "Side setback" means an open unoccupied space parallel and adjacent to a side property line and extending from the front property line to the rear property line. Buildings and structures shall not be placed within or extend into a required side setback except as explicitly authorized by this title.

4. "Street setback" means an open unoccupied space parallel and adjacent to a public or private street and extending from one side property line to the opposite side property line. No building or structure shall be placed within or extend into a required street setback unless explicitly authorized by this title. This definition does not include the front setback area as defined in this title and is intended to be applied to property lines which adjoin or abut streets when a lot has more than one street frontage.

"Shared driveway" ~~means an area improved with an all-weather driving surface providing vehicle access to two to four dwelling units from a public or private street in accordance with applicable city standards and requirements. This term does not include public or private streets.~~see definition under "driveway".

"Sign" means all surfaces/structures (permitted, exempt, or prohibited) regulated by this chapter that have letters, figures, designs, symbols, trademarks or devices intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever.

~~a.~~1. "Sign, off-premises" means a sign which displays a message relating to a use of property or sale of goods or services at a location other than that on which the sign is located.

~~b.~~2. "Sign, on-premises" means a sign which displays a message which is directly related to the use of the property on which it is located.

3. "Sign, s~~S~~ingle-faced ~~sign~~" means a sign with only one face, displaying content on only one side and in only one direction.

4. "Sign, portable" means a movable sign that is not permanently attached to a structure or the ground. Portable signs include A-frame signs and signs mounted on a portable base, but not portable reader-boards.

5. "Sign, projecting" means a building mounted sign which projects past the face of a building for the purpose of displaying the sign content in a direction other than parallel to the building facade.

6. "Sign, reader-board" means a sign or part of a sign on which the letters are replaceable by manual means, such as changing magnetic letters on a sign board.

7. "Sign, roof" or "roof mounted sign" means a sign or sign structure erected above a roof, parapet, canopy, or porte-cochere of a building or structure.

8. "Sign, traffic control" means a sign located in a public or private street right-of-way for the purposes of traffic safety and control. Common traffic control signs include stop signs, speed limits, and parking restrictions. Traffic control signs are not used for advertising or commercial purposes.

~~c.~~9. "Sign, wayfinding" means a sign consistent with, and approved under, the City's adopted wayfinding signage program.

"Single-family dwelling" ~~means a detached building used as a single dwelling unit. This definition does not include "accessory dwelling unit" as defined in this chapter~~see definition for "dwelling, detached".

"Site area" means the total horizontal area within the property lines excluding external streets.

"Small lot development" or "residential small lot" ~~means a subdivision or short subdivision process that allows lots to be created that are smaller than would be allowed under the normally applicable zoning requirements. Small lot development, construction on lots created through the small lot development process, and boundary line adjustments of lots created through the small lot development process are subject to the standards set forth in BMC 17.15.110~~see definition under "residential, small lot".

"Specified anatomical areas" means:

1. Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

2. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

"Specified sexual activities" means:

1. Human genitals in a state of sexual stimulation or arousal;

2. Acts of human masturbation, sexual intercourse or sodomy;

3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

"Story" means the part of a building lying between two floors or between the floor and ceiling of the highest usable level in the building.

"Street" means a public or private thoroughfare which is consistent with the classification scheme identified in chapter 12.28 BMC and which affords the principal means of access to abutting properties, dwelling units, or commercial premises. This term does not include "driveway" or "shared driveway" as defined in this chapter.

"Structure" means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are residential fences, retaining walls less than three feet in height, rockeries and similar improvements of a minor character.

"T"

"Telecommunication micro facility" means an attached wireless communication facility which consists of antennas equal to or less than four feet in height (except omnidirectional antennas which may be up to six feet in height) and with an area of not more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel) as viewed from any one point. The permitted antenna height includes the wireless communication facility support structure.

"Telecommunication mini facility" means an attached wireless communication facility which consists of antennas equal to or less than 10 feet in height or a parabolic antenna up to one meter (39.37 inches) in diameter and with an area of not more than 50 square feet in the aggregate as viewed from any one point.

"Topless club" ~~means a public or private club employing persons exposing "specified anatomical areas" as defined herein~~see definition under "adult entertainment use".

"Towing service" means[BJ31] the place of business of a tow truck operator as defined in Chapter 46.55 RCW where vehicles may be impounded, stored or sold, but not disassembled or junked. This term does not include wrecking yards, or hulk haulers.~~means an automotive retail sales and service use in which more than two tow trucks are employed in the hauling of motorized vehicles, and where vehicles may be impounded, stored or sold, but not disassembled or junked.~~

"Tract" means a lot, ~~usually several acres in area.~~created through a land division process that is designated and reserved for a particular use or function such as open space, park land, storm-water management, utilities, streets, access, or community buildings.

"Traffic control devices" means signs, signals, directional symbols, and similar devices specifically intended to direct traffic to, from, and within a site.

"Trailer park" or "RV park" means a facility designed to accommodate recreational vehicles on a temporary, transient, and recreational basis for periods of less than 30 days. This term does not include manufactured home parks or emergency housing as defined in this chapter.~~"Trailer park" means a facility designed to accommodate recreational vehicles or trailers no longer than 40 feet and capable of being pulled with a one-ton truck. Units shall at all times be prepared for evacuation in event of a flood warning. This term does not include manufactured home parks.~~

"Transient accommodations" means the provision of lodging units, room, board, or sleeping space to guests on a short-term basis for periods of less than 30 days. This ~~tam~~ term does not include multifamily dwellings or boarding houses as defined in this chapter.

"Transmission tower" is a freestanding structure, other than a building, on which communication devices are mounted. Transmission towers may serve either as a major or minor communication facility. Examples include, but are not limited to:

1. Monopoles;

2. Lattice towers;

3. Guyed towers.

"Two-family dwelling" or "duplex" ~~means a building containing two dwelling units~~see definition under "dwelling".

"Utilities" means utility lines and facilities related to the provision, distribution, collection, transmission or disposal of water, storm and sanitary sewage, oil, gas, power, and telephone cable, and includes facilities for the generation of electricity. This definition does not include wireless communication facilities, or solid waste disposal/recycling facilities.

1. "Utilities, small" means small scale facilities serving local areas within the City, including street lights, underground power lines, water, sewer, and storm water facilities, fiber optic cable, pump stations and hydrants, switching boxes, and other structures normally found in a street right-of-way and necessary to serve abutting properties. Small utilities are distinguished from medium and large utilities by being limited in scale and capacity sufficient only to serve abutting properties and immediately surrounding areas. Small scale utilities are not significantly larger than necessary to serve the forms and intensities of development permitted in the zones in which they are located.

2. "Utilities, medium" Moderate scale facilities with the capacity to serve the entire City or significant portions of the City, including sub-regional switching stations (115 kv and smaller), and municipal sewer, water, and storm water facilities that do not otherwise qualify as minor or major utilities.

~~a.~~3. "Utilities, large" Large scale facilities with either major above-ground visual impacts, or serving a regional need such as two hundred thirty (230) kv power transmission lines, natural gas transmission lines, regional water storage tanks and reservoirs, regional water transmission lines, sewer collectors and interceptors, and sewage and water treatment facilities.

"V"

"Variance" means a process for granting relief from certain provisions of this title. Variance approval criteria and procedures are more fully described in Title 14A BMC. ~~as authorized by the hearing examiner after determining that the criteria established for the granting of variances have been satisfied~~.

"Vehicle repair" means a use where motor vehicles are repaired or serviced.

1. "Vehicle repair, major" means an automotive retail sales and service use in which one or more of the following activities are carried out:

    a. Reconditioning of any type of motorized vehicle including any repairs made to vehicles over 10,000 pounds gross vehicle weight;

    b. Collision services, including body, frame, or fender straightening or repair;

    c. Overall painting of vehicles in a paint shop or major paint work;

    d. Dismantling of motorized vehicles in an enclosed structure.

2. "Vehicle repair, minor" means an automotive retail sales and service use in which general motor repair work is done as well as the replacement of new or reconditioned parts in motorized vehicles of 10,000 pounds or less gross vehicle weight, but not including any operation included in the definition of "major vehicle repair." Minor vehicle repair uses typically include service stations, detail shops, mechanics, oil change establishments, or business specializing in replacement of specific vehicle components such as batteries, breaks, and exhaust systems.

"Vehicle charging station" see definition under "charging station".

"W"

"Walking advertisers" means persons carrying or wearing portable advertising signs or costumes designed to advertise a business, event, sale or season/holiday with a permit describing location, supervision and public safety.

"Warehouse" means a structure, room, or rooms for the storage of merchandise or commodities. This term include freight terminals and distribution facilities but does not include to "personal storage" facilities.

"Wireless communication facility" is an unstaffed facility for the transmission and reception of low-power radio signals consisting of an equipment shelter or cabinet, a support structure, antennas (e.g., omnidirectional, panel/directional or parabolic) and related equipment.

"Wireless communication support structure" is the structure erected to support wireless communication antennas and connecting appurtenances. Support structure types include, but are not limited to, stanchions, monopoles, lattice towers, wood poles or guyed towers.

"Wrecking yard" or "junk yard" means the buying, selling, or dealing in vehicles for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of a vehicle, or the buying or selling of integral secondhand parts of component material thereof, in whole or in part, or the dealing in secondhand vehicle parts. This term also includes hulk haulers, as defined in Chapter 46.79 RCW, and the storage of inoperable, wrecked, or junk vehicles except where explicitly authorized in conjunction with a lawfully established vehicle repair facility.

"Wrecked vehicle" or "junk vehicle[BJ32]" means a vehicle which is disassembled or dismantled or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state. This term also includes any vehicle meeting the definition of a junk vehicle under RCW 46.79.010.

"Y"

Yard. See "setback."

"Z"

"Zone" or "zoning district" means a zoning district as described in chapter 17.05 BMC or as shown on the city's adopted zoning map. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.060 Land use permit required.
A land use permit issued pursuant to BMC Title 14A shall be required to establish or change use as provided by this title. Compliance with the procedural requirements set forth in BMC Title 14A shall be required. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.070 Condition of ministerial errors.
The director may at any time amend an administrative decision to correct ministerial errors clearly identifiable from the public record. Such a correction does not affect any time limit provided for in this chapter. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.080 Administrative interpretations.
A. The director shall be authorized to interpret the meaning of words, phrases and sentences which relate to the determining of uses permitted in the various districts, approval or disapproval of development plans, or other related zoning actions.

B. The director may permit a use in a zone that is not listed as permitted or conditional in the zone, if the director determines the use is consistent with the intent of the zone, the applicable goals and policies of the comprehensive plan, and has similar characteristics and impacts to the other uses listed as permitted or conditional in the zone; provided, that the use is not prohibited or listed as permitted or conditional in another zone.

C. An administrative interpretation may be appealed using the process set forth in BMC Title 14A.

D. Should a conflict occur between the provisions of this title or between this title and the laws, regulations, codes or rules promulgated by another authority having jurisdiction within the city, the most restrictive requirement shall be applied, except when constrained by federal or state law, or where specifically provided otherwise in this code.

E. In all cases this title shall be interpreted and applied in a manner which is consistent with, and best implements the comprehensive plan. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.090 Zoning for annexed land.
A. General At the time of any parcel of land being annexed to the city, the property shall be zoned consistent with the Burlington zoning districts and the comprehensive plan amended if necessary. Application for the rezone and necessary amendment may be done simultaneously with the request for annexation. (Ord. 1857 § 2 (Exh. B), 2018).

B. Urban Holding Overlay. If a specific zoning designation has not been assigned to an annexation area at the time of annexation the Urban Holding overlay zone shall apply to the annexation area.

C. Urban Holding Regulations. The following standards shall apply to all areas subject to an Urban Holding overlay.

1. Permitted uses.

    a. Detached dwellings on existing lots;

    b. Agriculture, all types.

2. Accessory uses. Any accessory use permitted in the RD-1 zone (BMC 17.15.070)

~~1.~~3. Development standards. The development standards applicable to the RD-1 zone shall apply (BMC 17.15.100) except that land divisions shall be prohibited. [BJ33]

17.01.100 Relationship to other titles, chapters and codes.
The administrative provisions of BMC Title 14A shall apply to requests for project permits under this title. (Ord. 1857 § 2 (Exh. B), 2018).

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

B. It is a violation of this title for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the city without first obtaining the permits or authorization required for the use by this title.

C. It is a violation of this title for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the city in any manner that is not permitted by the terms of any permit or authorization issued pursuant to this title; provided, that the terms or conditions are explicitly stated on the permit or the approved plans.

D. It is a violation of this title to remove or deface any sign, notice, complaint or order required by or posted in accordance with BMC Title 15 or this title.

E. It is a violation of this title to misrepresent any material fact in any application, plans or other information submitted to obtain any land use authorization.

F. It is a violation of this title for anyone to fail to comply with the requirements of this title. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.115 Duty to enforce.

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

B. Upon presentation of proper credentials, the director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued warrant, enter any building or premises subject to the consent or warrant to perform the duties imposed by the zoning code.

C. This title shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this title to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of this code.

E. No provision of or term used in this code is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.120 Appeal.

Appeals of decisions made pursuant to this title shall be subject to the procedures and regulations set forth in BMC Title 14A. (Ord. 1857 § 2 (Exh. B), 2018).

17.01.125 Severability.

If my 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. 1857 § 2 (Exh. B), 2018).

Chapter 17.05

~~DISTRICT ESTABLISHMENT~~LAND USE ZONES[BJ34], MAPS AND BOUNDARIES

Sections:

17.05.010 Title.
17.05.020 Application.
17.05.030 Purpose.
17.05.040 Authority.
17.05.050 ~~Districts~~ Land use zones established.
17.05.060 ~~District~~ Land use zone boundaries – Established.
17.05.070 ~~District~~ Land use zone boundaries – Shown on zoning map.
17.05.080 ~~District~~ Land use zone boundaries – Rules for interpretation.
17.05.090 Conformity with ~~district~~ zoning regulations required.
17.05.100 Adoption of ~~special planning areas map.~~overlay and supplemental maps.

17.05.010 Title.

This chapter shall be called "District Establishment, Maps and Boundaries." (Ord. 1857 § 2 (Exh. B), 2018).

17.05.020 Application.

This chapter shall apply to all zoning in the city and all zoning actions as specified in this title. (Ord. 1857 § 2 (Exh. B), 2018).

17.05.030 Purpose.

This chapter sets forth the zoning classifications for the city and general provisions applicable to such classifications. This chapter is also intended to describe how zoning boundaries and designations are identified and interpreted and describes the relationship between the City's comprehensive plan and zoning maps. (Ord. 1857 § 2 (Exh. B), 2018).

17.05.040 Authority.

This chapter is created pursuant to the authority set forth in BMC 17.01.040, chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.05.050 ~~Districts~~ Land use zones established.

The city is divided into a number of ~~zoning districts~~land use zones. ~~in order~~Land use zones are used to implement the ~~city's~~ comprehensive plan and to classify, segregate, and regulate the uses of land, buildings, and structures. Each zone ~~zoning district~~, and its corresponding comprehensive plan designation, is shown below.

Comprehensive Plan Designation	Zoning Designation
RD (Residential Detached)~~SF-D (Single-Family and Duplex)~~	~~R-1-6.0~~RD-1 ~~R-1-7.6~~RD-2 ~~R-1-8.4~~ ~~R-1-9.6~~ ~~R-2~~
~~M-F (Multifamily Residential)~~RA (Residential Attached)	RA-1~~R-3~~ RA-2
MUR (Mixed Use Residential)~~OSPA (Open Space, Parks, and Agriculture)~~	~~OSP~~MUR-1 MUR-2
~~C-B (Commercial Business)~~MUC (Mixed Use Commercial)	~~B-1~~MUC-1 ~~C-1~~MUC-2 ~~MR-NB~~ ~~R-S~~
~~HC-I (Heavy Commercial and Industrial)~~CI (Commercial & Industrial)	~~C-2~~CI-1 ~~M-1~~CI-2 ~~BP~~
PC (Parks & Conservation)	PC-1

Comprehensive Plan Designation	Zoning Designation
	PC-2[BJ35]
PFT (Public Facilities & Transportation)	PFT-1 PFT-2
UH (Urban Holding)	UH

(Ord. 1857 § 2 (Exh. B), 2018).

17.05.060 Land use zone~~District~~ boundaries – Established.

~~The~~ Land use zone boundaries ~~of such use districts as~~ are shown ~~upon any~~on the zoning maps adopted by this title, or amendments thereto, are adopted and approved and the regulations of this title governing the uses of land, buildings and structures, the height of buildings and structures, setbacks, and other matters as set forth in this title are hereby established and declared to be in effect upon all land included within the boundaries of each and every ~~use district~~land use zone shown upon each zoning map. (Ord. 1857 § 2 (Exh. B), 2018).

17.05.070 Land use zone~~District~~ boundaries – Shown on zoning map.

~~The~~ Land use zone boundaries ~~of use districts~~ shall be determined and defined or redefined from time to time, by the adoption of zoning maps covering the city and showing the geographical area and location of said land use ~~districts~~zones. Each zoning map shall be, upon its final adoption, a part of the zoning ordinance codified in this title, and said map, and all notations, references and other information shown thereon, thereafter shall be as much a part of this title as though all matters and information set forth on said map were fully described in this title. (Ord. 1857 § 2 (Exh. B), 2018).

17.05.080 Land use zone~~District~~ boundaries – Rules for interpretation.

When uncertainty exists as to the boundaries of any ~~use district~~zone shown on zoning maps, the following rules of construction shall apply:

A. Where zone~~district~~ boundaries are indicated as approximately following the centerline of a street, alley, highway, public right-of-way, or railroad the actual centerline shall be construed to be the boundary.

B. Where zone~~district~~ boundaries are indicated as running approximately parallel to the centerline of a street, alley, highway, public right-of-way, or railroad the boundary line shall be construed to be parallel to the centerline.

C. Where zones~~districts~~, or ~~district~~ zone boundaries, appear to follow both sides of, and thereby exclude from designation, a street, alley, highway, public right-of-way, or railroad the boundaries of the adjoining districts shall be construed to extend to the centerline. Where the same zoning designation is present on both sides of such a feature, that zoning designation shall be construed to extend across the feature. These provisions shall not apply in cases where the right-of-way has been designated as a public facilities and transportation zone on the zoning map.[BJ36]

D. Where zone~~district~~ boundaries are indicated on such map as approximately following the lot or tract lines, the actual lot or tract lines shall be construed to be the boundary of such use district.

E. Where a zone~~district~~ boundary on such zoning map divides a tract in unsubdivided property, the location of such use district boundary, unless the same is indicated by dimensions thereon, shall be determined by use of the scale appearing on such zoning map.

F. Where a public street or alley is officially vacated or abandoned, the regulations applicable to the abutting property to which the vacated portion shall revert shall apply to such vacated or abandoned street or alley.

G. In case uncertainty exists which cannot be determined by application of the foregoing rules, the hearing examiner upon application by the city or affected property owner shall recommend, and the city council shall determine, the location of such use district boundaries. (Ord. 1857 § 2 (Exh. B), 2018).

17.05.090 Conformity with ~~district~~ zoning regulations required.

Except as otherwise provided in this title:

A. All development within the city of Burlington shall be consistent with the requirements of this title. An exemption from a requirement to obtain a permit shall not be construed as an exemption from compliance with other applicable requirements.

B. No building or structure shall be erected and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land, building, structure or premises be used, or modified to be used for any purpose or in any manner other than a use listed in this title or amendments thereto or permitted in the ~~use district~~zone in which such land, building, structure or premises is located.

C. No building or structure shall be erected, nor shall any building or structure be moved, altered, enlarged or rebuilt, nor shall any open spaces surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the building site requirements and the area, setback and height regulations established by this title or amendments thereto for the ~~use district~~zone in which such building or structure is located.

D. No setback or other open spaces provided about any building or structure for the purpose of complying with the regulations of this title or amendments thereto shall be considered as providing a setback or open space for any other building or structure.

E. If a use is not listed as permitted or conditional in a district, but is listed as permitted or conditional in one or more other districts, it shall be considered a prohibited use in the district in which it is unlisted. If a use is not listed as permitted or conditional in any district it shall be considered a conditional use unless the director determines the use is substantially similar to and has the same characteristics, functions, and impacts as a use listed as permitted in the district in which it is being considered. (Ord. 1857 § 2 (Exh. B), 2018).

17.05.100 Adoption of overlay and supplemental maps~~special planning areas map~~.

A series of overlay maps, adopted as part of the Burlington comprehensive plan, are hereby adopted as part of the zoning code for the purpose of identifying the location and boundaries of areas where additional or alternative regulations apply:~~The special planning areas map, adopted as part of the Burlington comprehensive plan, is hereby adopted as part of the zoning code for the purpose of identifying the location of areas where there may be specific additional regulations under the applicable chapter of this code. See Exhibit A, attached to the ordinance codified in this section. The following descriptions apply to the special planning areas:~~

A. Subareas.

1. Commercial Core.
2. Downtown.
3. Northern Gateway.
4. North and South Burlington Industrial.
5. Urban Holding.
6. Western Gateway.
7. Westside Freeway Sales.

B. Special Management Areas.

1. Burlington Hill. Includes those portions of Burlington Hill with a ground elevation 40 feet or more above sea level as shown on the most current USGS 7.5 minute topographic quadrangle map.
2. Gages Slough. Includes the open water areas of Gages Slough together with all associated wetlands, deep-water habitat, wetland buffers, and special flood risk areas.

3. Skagit River. Includes the Skagit River and its associated floodway areas, all dikes, levees, flood control improvements, and a strip of land extending inland 300 feet from the landward toe of all dikes, levees, and flood control improvements. The Skagit River Special Management Areas also includes any properties owned or controlled by the dike district that are used for, or are planned to be used for, dikes, levees, or flood control improvements.

~~A. Downtown. This area encompasses the original downtown of Burlington and adjacent areas that are directly linked to the main street, Fairhaven Avenue. The intent is to implement the downtown plan, encourage new activity, and gradually retrofit the area to enhance the focus on customer service retail, office and restaurant, keeping medical uses east of Anacortes Street and north of Fairhaven Avenue.~~

~~B. North and South Entrance Areas. These areas are uniquely constrained by freeway interchanges and major interchanges including the Skagit River Bridge and, as a result, have traffic problems that may require study and mitigation. High traffic-generating uses are discouraged.~~

~~C. Retail Core. This area is the shopping and entertainment district that attracts regional traffic. Drive-ins are limited to tenant pads and signalized intersection, banks are limited to multiple-tenant buildings, gas stations, car washes and automobile sales are prohibited and vehicle repair is limited to side streets.~~

~~D. West Side Commercial Area. This area provides a wide array of uses, but the emphasis in terms of overall land use is on vehicle sales and related activities. (Ord. 1857 § 2 (Exh. B), 2018).~~

Chapter 17.15

~~R-1~~RD LAND USE ~~DISTRICTS~~ZONES

Sections:

17.15.010 Title.
17.15.020 Application.
17.15.030 Purpose.
17.15.040 Authority.
17.15.050 ~~District~~ Sub-zones ~~subdivisions~~ designated.
17.15.060 Permitted primary uses.
17.15.070 Permitted accessory uses.
17.15.080 Conditional uses.
17.15.090 Additional regulations.
17.15.100 Development standards.
17.15.105 Cluster developments.
17.15.110 Residential small lot.

17.15.010 Title.

This chapter shall be called "RD ~~-1~~ Land Use ~~Districts~~Zones." ~~(Ord. 1857 § 2 (Exh. B), 2018)~~.

17.15.020 Application.

This chapter shall apply to all uses and developments in areas ~~designated~~ zoned RD ~~-1. (Ord. 1857 § 2 (Exh. B), 2018)~~.

17.15.030 Purpose[BJ1].

~~The primary purpose of t~~The R ~~-1~~D ~~district~~ zone is intended to implement the RD comprehensive plan designation by accommodating ~~e~~ lower density residential development in areas that cannot support more intensive forms of development due to factors such as infrastructure constraints, natural hazards, access limitations, existing development patterns, or emergency response times ~~and compatible accessory uses~~. The primary uses permitted in this zone consist of small residential buildings, such as detached dwellings or duplexes, and related accessory uses. Other uses may also be permitted in limited circumstances when consistent with the goals and policies of the comprehensive plan ~~Development in the R-1 district should generally be limited to single-family dwellings and detached structures~~. The RD zone is intended to create and maintain a pattern of development characterized by small, low lying residential buildings surrounded by open space. ~~Other uses and structures may be appropriate in limited circumstances when not inconsistent with the primary purpose of the zone. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.15.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A and 36.70B RCW, and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.15.050 ~~District S~~subdivisions ~~u~~b-zones ~~designated.~~[BJ2]

~~District~~ The ~~R-1~~RD zone consists of two s~~is further subdivided into subdistricts~~ ubzones as follows ~~differing only in the requirements for minimum lot area~~:

A. RD-1. This subzone is a very low density designation that is generally applied to remote or peripheral areas that are difficult to access, suffer from poor emergency response times, or have infrastructure deficiencies that will not be remedied by planned improvements. The RD-1 zone is also appropriate in areas characterized by widespread or severe natural hazard or critical area constraints.

~~1.~~B. RD-2. The RD-2 subzone is applied to all areas designated "RD" on the comprehensive plan map that are not designated RD-1.

Subdistrict	Minimum Lot Area Per Dwelling Unit
R-1-6.0	6,000 sq. ft.
R-1-7.6	7,600 sq. ft.
R-1-8.4	8,400 sq. ft.
R-1-9.6	9,600 sq. ft.[BJ3]

In addition residential small lots with a minimum lot area of 3,000 square feet may be developed in any subdistrict in accordance with the standards and procedures set forth in BMC 17.15.110. The minimum lot area requirements and density limits identified in this chapter shall not be construed to prohibit accessory dwelling units. (Ord. 1857 § 2 (Exh. B), 2018).

17.15.060 Permitted primary uses.

Buildings, structures, and lots in the R-1D-1 and RD-2 district zones shall only be used for the following, unless otherwise provided for in this title:

AA. Single-familyDetached [BJ4]dwelling-sunits;

B. Duplex dwellings; provided, that no more than one single-family dwelling unit shall be permitted on a single lot[BJ5];

B. Municipal parks and playgrounds;

CC. Small bBoarding houses accommodating 10 persons or less. (Ord. 1857 § 2 (Exh. B), 2018).;

D. Small utilities.

17.15.070 Permitted accessory uses.

The following buildings, structures, and uses may be authorized as accessory uses. Accessory uses shall only be permitted when incidental and subordinate to a legally established primary use. [BJ6]

A. Normal residential appurtenances. The following uses and structures may be authorized as an accessory use in conjunction with a residential dwelling: garage, guest cottage, recreation room, storage shed, noncommercial greenhouse, swimming pool, decks, patios, driveway, on-site utilities and utility connections, fences, and solar panelsand swimming pool;

B. Keeping of not more than six household pets, four of which may be dogs, kept in the home. This limit shall not include birds, fish or suckling young of pets;

C. Family day care homesservices;

D. Foster family care homes accessory to a dwelling unitservices;

E. Accessory dwelling units associated with a single-family dwelling unit subject to the following approval criteria;

F. Home occupations; :

1. The general appearance and character of the single-family residence shall be maintained.

2. New entrances shall face the side or rear property lines.

3. Parking shall be provided in accordance with the applicable standards set forth in BMC 17.85.070.

~~4. Accessory dwelling units shall be contained within, or attached to, the existing single-family home. A detached accessory building may only be used as an accessory dwelling unit if the subject lot is 12,000 square feet or larger.~~

~~5. The primary dwelling or the accessory dwelling shall be occupied by the owner. The residence must have been owner occupied for at least three years since the construction date. A covenant or declaration regarding ownership requirements shall be recorded with the Skagit County auditor.~~

~~6. In all cases the accessory dwelling unit must be located on the same lot as the single-family dwelling it is associated with;~~[BJ7]

G~~F~~. Telecommunication micro facility, subject to the following requirements, except as limited by the Telecommunication Act of 1996 as amended:

1. Micro facility shall be located on existing buildings, poles or other existing support structures. A micro facility may locate on buildings and structures; provided, that the interior wall or ceiling immediately adjacent to the facility is not designated residential space.

2. Antennas equal to or less than four feet in height (except omnidirectional antennas which can be up to six feet in height) and with an area of not more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel as viewed from any one point) are exempt from the height limitation of the zone in which they are located. Structures which are nonconforming with respect to height may be used for the placement of omnidirectional antennas providing they do not extend more than six feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

3. The micro facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

4. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

5. Micro facilities for a specific wireless provided shall be separated by a distance equal to or greater than 1,320 linear feet from other micro facilities of the same wireless provider. (Ord. 1857 § 2 (Exh. B), 2018).

H[BJ8]. Private parks, playgrounds, open space areas, and community buildings established in conjunction with, and serving, a residential development permitted by this chapter;

I. Urban agriculture.

17.15.080 Conditional uses.

The following uses shall require a conditional use permit:

A. Horizontally attached dwellings;

B. Small multiunit buildings;

~~A. Mini-commercial child day care center;~~

C~~B~~. Small c~~C~~ommercial child day care center~~, if located on an arterial;~~;

~~C. Duplex on a corner lot in any residential zone; provided, that a duplex shall be located no closer than 300 feet from another duplex, measured along the right-of-way; except that when the blocks are more than 300 feet long, duplexes shall not be limited to the corner as long as they are located no closer than 300 feet to another duplex;~~

~~D. Government facilities, other than those listed as a permitted use;~~[BJ9]

~~E. Kennels;~~

~~F. Manufactured home park;~~

~~G. Neighborhood recreational buildings and facilities;~~

~~H. Private country clubs and golf courses, excluding driving ranges;~~[BJ10]

D~~I~~. Small meeting facilities~~Religious facilities and fraternal organizations~~;

D~~J~~. Small private s~~S~~chools;

F~~K~~. ~~Utility substations~~Medium utilities;~~. (Ord. 1857 § 2 (Exh. B), 2018).~~

G. Accessory buildings with a footprint greater than 800 square feet;

17.15.090 Additional regulations.

A. Manufactured H~~h~~omes. Manufactured homes may [BJ11]be placed on any lot in an ~~R-1~~RD zone and regulated in accordance with the same standards and requirements applicable to site built detached~~single-family~~ homes, except that the following additional regulations shall apply. These standards and requirements do not apply to legally established, nonconforming manufactured homes or manufactured homes placed within a manufactured home park.

1. The manufactured home shall be set upon a permanent foundation, as specified by the manufacturer, and the space between the bottom of the home and the ground shall be enclosed by concrete or an approved concrete product which may be either load bearing or decorative;

2. The manufactured home shall have been originally constructed with and shall now have a composition or wood shake or shingle, coated metal, or similar roof of nominal 3:12 pitch;

3. The manufactured home shall have exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences;

4. The placement of the manufactured home shall be consistent with all other regulatory requirements generally applicable to new homes.

~~B. Accessory Buildings.~~

~~1. All accessory buildings shall be located behind the primary structure, and individually, or cumulatively, shall not cover more than 50 percent of the required rear setback area for the primary structure; and~~

~~2. All accessory buildings shall comply with the setback, height, and size limits specified in BMC 17.15.100(E).~~

~~C. Horses, beef cattle or other domestic farm animals are permitted on the condition that the number of animals not exceed a ratio of one per one-half acre of fenced pasture area. The keeping of mink, goats, foxes or hogs is prohibited~~[BJ12]~~.~~[BJ13]

C~~D~~. No trailer, recreational vehicle, boat, camping trailer, fifth wheel, camper, van, car, or other similar type of mobile unit that is not a permanent structure attached to the ground, shall be used as a place of habitation or as a dwelling. Only site built structures which comply with all applicable building code requirements and manufactured or modular homes which meet applicable state or federal standards for use as a dwelling unit may be used as a place of habitation or as a dwelling.[BJ14]

~~E. All uses and developments shall comply with the parking requirements set forth in chapter 17.85 BMC.~~

E~~F~~. ~~Junk and inoperable vehicles shall not be stored outdoors unless~~Junk storage is only permitted outdoors when completely surrounded by a solid, site obscuring fence and not visible from an adjoining street or public right-of-way. Outdoor storage shall also be subject to the following additional restrictions and requirements:

1. Litter, trash, used appliances, used interior furnishings and discarded exterior furnishings and similar items are prohibited outdoors regardless of location.

2. Junk storage is further limited to piled used lumber, yard cleanup equipment and similar types of items; it is not intended to include the storage of any items that would be classified as a nuisance under chapter 8.12 BMC. ~~Whenever it is stated in writing by two or more persons having separate residences in a neighborhood that any person is violating the provisions of this subsection, the police chief or designee shall investigate, and, if appropriate, advise the person of the complaint and that such violations must cease. Failure to comply shall constitute a violation of this code.~~

F~~G~~. Where alley access is available, off-street parking spaces and garages shall be ~~located off~~accessed from the alley and no curb cuts shall be permitted. This requirement shall apply to all land divisions, the construction of new homes and accessory buildings, and requests for curb cuts to serve existing homes and accessory buildings.

~~H. Home occupations are allowed subject to compliance with BMC 17.70.090.~~

G~~H~~. Heat pumps or other noise-producing mechanical equipment shall ~~not be located~~only be permitted within 10 feet of a property line abutting another lot ~~and~~ if all equipment shall be equipped with a noise-baffling screen so that there shall be no audible sound at the property line.

H~~I~~. New subdivisions or developments that will result in 40 or more lots or dwellings shall include a common open space area for outdoor recreation. ~~New subdivisions with 40 or more lots shall provide common open space, a playground or a park. (Ord. 1857 § 2 (Exh. B), 2018).~~

I. Duplexes.[BJ15]

1. Each dwelling unit shall have its own exterior entrance and a covered porch or landing shall be provided. The covered area of the porch or landing shall have a minimum area of 20 square feet and a minimum depth of 3 feet;

2. For duplexes located on corner lots, the primary entrance of each dwelling unit shall face a different street frontage;

3. Flat roofs are prohibited. Roofs shall have a pitch of no less than 4:12;

4. If an attached garage is provided the building wall containing the garage door shall not extend past the building wall containing the dwelling;

4. Except as authorized as part of a cluster development, no duplex shall be permitted on a lot adjoining another lot containing a duplex. This restriction shall only apply to lots that share a common side property line.

5. Trim with a minimum depth of .75 inches and a minimum width of 3.5 inches shall be used to mark rooflines, windows, and doors.

J. Horizontally attached dwellings and small multiunit buildings.[BJ16]

1. Except as authorized as part of a cluster development, horizontally attached dwellings and small multiunit buildings may only be permitted on lots within 1,320 feet (travel distance) of a school, park, bus route, or commercially zoned parcel;

2. Buildings shall be designed by a licensed architect and detailed elevation drawings shall be provided with the conditional use permit application.

3. For horizontally attached dwellings, each unit shall have frontage on a public or private street and shall have its own exterior entrance. Each unit's primary exterior entrance shall face the street and direct pedestrian access to the street shall be provided;

4. Building entrances facing the street shall incorporate a covered porch or landing with a minimum area of 20 square feet and a minimum depth of three feet;

5. A consolidated garbage and recycling area shall be provided and shall be screened from view in accordance with the applicable landscaping standard;

6. The maximum building length shall not exceed 100 feet;

7. Except as authorized as part of a cluster development, buildings shall be limited to two floors or stories;

8. No more than four horizontally attached dwellings shall be permitted in a single building;

9. Horizontally attached units shall incorporate design features that clearly identify each dwelling unit as individual residences such as a change in materials, color, articulation, rooflines, gable orientation, or other similar architectural techniques;

10. Each building shall include architectural design elements, materials, and features that break up the mass of the building and provide greater compatibility with the scale and appearance of surrounding detached residential structures. At a minimum buildings must incorporate at least three of the following design elements:

a. Modulations along the front building wall at intervals of no more than 30 feet. Each modulation shall step the building wall back or forward by at least four feet;

b. Changes in the roofline at intervals of no more than 30 feet, such as variations in roof pitch, overhangs, projections, or extended eves;

c. Include at least two dormers with a minimum width of three feet;

d. Include at least two balconies on front building wall. Balconies shall have a minimum depth of 6 feet between the building wall and the balcony railing;

e. For buildings with a second floor, reduce the area of the second floor so that its area is less than that of the first floor. To receive credit for this design element, the front building wall on the second floor shall be stepped back from the first floor a minimum of two feet. The portion of second floor stepped back from the first floor shall have a minimum width of eight feet. Uncovered, or covered unenclosed, balconies can be used to receive credit for this design element provided they satisfy the minimum dimensional requirements of this provision.

f. Include trim with a minimum depth of .75 inches and a minimum width of 3.5 inches to mark rooflines, windows, and doors.

K. Accessory Dwelling Units. The following standards shall apply to the accessory dwelling units (ADUs).[BJ17]

1. Type. ADUs may be attached to the primary dwelling or be located in an accessory building;

2. Number. One accessory dwelling unit is permitted for each primary dwelling;

3. Maximum floor area:

a. Detached: 1,000 square feet, exclusive of any area used as a garage, carport, or covered patio. In all cases detached ADUs shall comply with the size limits applicable to accessory buildings identified in this chapter;

b. Attached: 1,000 square feet or 30 percent of the floor area of the primary dwelling, whichever is less, provided that in all cases at least 500 square feet may be permitted;

4. Design standards.

a. Entrances and addressing: Separate entrances shall be provided for the primary dwelling and the ADU. The ADU entrance shall be oriented so that it faces a different direction than the entrance to the primary dwelling. ADUs shall be assigned their own addresses.

b. Setbacks: Detached ADUs shall comply with the setback standards applicable to accessory buildings identified in in this chapter.

c. Access: Direct pedestrian access shall be provided between the ADU and a street or alley.

5. Tenure and ownership. The ADU must be located on the same lot as the primary dwelling it is associated with and may not be separately sold.

L. Nonresidential uses. The following standards shall apply to schools, meeting facilities, and commercial day care centers, and other nonresidential uses other than utilities:

1. Schools, meeting facilities, and commercial day care centers shall be located on a corner lot and adjoin an arterial street;

2. The total building footprint shall not exceed 2,500 square feet;

3. Parking areas shall not be located between the building and the street and shall be completely screened from view with landscaping and fencing;

4. Outdoor play areas shall be screened from adjacent streets and residences with landscaping and fencing;

5. The lot on which the nonresidential use will be located shall have an area of at least 10,000 square feet;

6. Flat roofs are prohibited. Roofs shall have a pitch of no less than 4:12;

7. The primary exterior entrance shall face the street and direct pedestrian access shall be provided between the entrance and the street.

17.15.100 Development standards.

A. Lot Area and Dimension. The following requirements shall apply to land divisions and boundary line adjustments in the RD ~~R-1~~ zones. Small lot and cluster developments shall be subject to the applicable standards in this chapter.~~except that small lot development shall be subject to the standards and requirements set forth in BMC 17.15.110 and cluster developments shall be subject to the standards in BMC 17.15.105.~~

1. Minimum Lot Area.[BJ18]

a. ~~R-1 6.0~~RD-1: 10,000~~6,000~~ square feet.

b. ~~R-1 7.6~~RD-2: 6,000~~7,600~~ square feet.

~~c. R-1 8.4: 8,400 square feet.~~

~~d. R-1 9.6: 9,600 square feet.~~

2. Minimum lot width: 30 feet.

3. Minimum lot depth: 80 feet.

B. Minimum Setback Requirements.

1. Front: 17 feet.

2. Street side: ~~20~~ 17 feet.[BJ19]

3. Side: five feet. Provided, that the total of the two side ~~yards~~ setbacks shall ~~not~~ be at least~~s~~ ~~than~~ 15 feet.

4. Rear: 20 feet.

5. Setback Exceptions:~~.~~

a. Accessory buildings, small lots, and cluster developments shall be subject to the setback requirements outlined in the applicable sections of this chapter;

~~s: see subsection (E) of this section.~~b. When authorized pursuant to this chapter, no property line setback shall apply to the common walls of zero lot line structures or horizontally attached dwellings;[BJ20]

c. For lots adjoining streets on more than two sides, the street side setback shall be five feet and the total of the two side setbacks need not be more than 10 feet;[BJ21]

d~~b~~. All other buildings and structures: see BMC 17.70.080.

6. ~~6.~~ Minimum Building Separation.

a. Primary structures: 10 feet~~. All detached structures shall be subject to a minimum building separation of 10 feet~~, except that when authorized pursuant to this chapter, no separation requirement shall apply between zero lot line structures or horizontally attached dwellings that share a common wall.

~~a.~~b. Accessory structures: 5 feet.[BJ22] ~~.~~[BJ23]

C. Maximum Building and Impervious Surface Coverage.

1. Building coverage: 35 percent.

2. Impervious surface coverage: 40 percent.

3. For new plats building and impervious surface coverage limits may be averaged across lots within the plat boundaries. When coverage limits are averaged restrictive notes shall be included on the face of the plat identifying the coverage limits applicable to each lot.

D. Maximum Building Height: 35 feet.~~ Buildings and structures in the R-1 zones shall be subject to the following maximum height limits, except that spire, fleche, campanile or high nave, a dome and lantern, or a clock tower may exceed these limits if authorized by a conditional use permit.~~[BJ24]

~~1. Primary structures: 35 feet.~~

~~2. Accessory structures: 20 feet, see table in subsection (E) of this section.~~[BJ25]

E. Accessory buildings and structures shall ~~not cover more than 50 percent of the required rear yard setback and shall comply with the following requirements~~comply with all of the requirements of this chapter except as follows:

1. Maximum Height: 25 feet;

2. Maximum Building Footprint: 800 square feet, provided that open uncovered decks and patios shall not be subject to this limit and larger buildings may be permitted with a conditional use permit;

3. Maximum rear yard coverage: Accessory buildings and structures shall not cover more than 50 percent of the required rear yard setback area;

4. Minimum Setback Requirements:

a. Side: 5 feet

b. Street side: 17: feet

c. Rear: 5 feet

d. Alley: 0 feet

~~Lot Size~~	~~Maximum Building Size~~	~~Setback~~	~~Maximum Eave Height at Minimum Setback Line~~
~~Up to 9,600 square feet~~	~~640 square feet~~	~~5 feet~~	~~12 feet~~
~~9,601 – 10,890 square feet (1/4 acre)~~	~~960 square feet~~	~~7 feet~~	~~12 feet~~
~~10,891 – 21,780 square feet (1/2 acre)~~	~~1,200 square feet~~	~~10 feet~~	~~12 feet~~
~~21,781 – 43,560 (1 acre)~~	~~1,600 square feet~~	~~12 feet~~	~~12 feet~~
~~> 43,560 (1 acre)~~	~~2,000 square feet~~	~~15 feet~~	~~15 feet~~

F. Maximum Density. One primary residential building per lot excluding accessory dwelling units. Consistent with the requirements of this chapter, an accessory dwelling unit may be permitted on any lot in addition to a primary residential building. Cluster developments shall be subject to the density limits identified in section BMC 17.15.105.

~~(Ord. 1857 § 2 (Exh. B), 2018).~~

17.15.105 Cluster developments.

Cluster developments may be permitted through a subdivision or short subdivision process. ~~For such developments,~~A variety of building types and site layouts may be authorized and alternative standards~~the normally applicable requirements~~ for lot width ~~and lot width at the building line~~, lot depth, lot area, building and impervious surface coverage, and property line setbacks may be ~~reduced or altered~~employed. Cluster developments shall comply with all of the requirements of this chapter except as follows:~~; provided, that:~~

A. Permitted h~~H~~ousing types may include, but are not limited to, [BJ26]~~single-family~~ detached dwellings,[BJ27] ~~townhouses~~duplex dwellings, horizontally attached dwellings, ~~zero lot line, multifamily~~multiunit buildings, cottage housing, zero lot line development, or a combination of housing types; provided, that no structure or building shall contain more than eight dwelling units.

B. The maximum allowable density of a cluster development may be averaged across the entire site. The maximum permitted density shall not exceed the following limits.~~The maximum number of dwelling units permitted within the boundaries of the subdivision or short subdivision shall~~ Accessory dwelling units shall be excluded from maximum density calculations

~~a.~~ .

1. RD-1: 7 dwellings per acre

2. RD-2: 11 dwellings per acre [BJ28]

C. When the building or impervious surface coverage of individual lots exceeds the permissible limits for the zone in which the development is located, additional open space areas shall be set aside so that the total coverage of development is consistent with the coverage limits prescribed by the underlying zone.

D. The resulting subdivision or short subdivision design shall clearly retain a substantial area of continuous, publicly accessible open space, wetlands, areas adjacent to wetlands, steep slopes, geologically hazardous areas, wildlife habitat areas, or other critical areas. ~~Cluster developments may also be authorized if the resulting o~~Open space areas may also~~(s)~~ be~~is~~ used for nonstructural low impact development features, such as bio-retention areas, which mimic natural environmental and hydrologic processes. All such low impact development features shall be extensively landscaped using native vegetation. The following minimum open space requirements shall apply to cluster developments:

1. Special management areas: 75 percent;

~~a.~~2. All other locations: 30 percent.[BJ29]

~~E. Lot size reductions shall be limited to 20 percent of the minimum lot size required by the zoning district in which the subdivision or short subdivision is located. For example, if the underlying zoning has a minimum lot size of 9,600 square feet, the maximum reduction in lot size is 1,920 square feet, or a minimum lot size of 7,680 square feet.[BJ30]~~

E~~F~~. ~~When deviations from lot size and dimension requirements are granted, r~~Restrictive plat notes shall be included identifying the approved building types and densities.~~estrictive plat notes shall be included prohibiting future divisions or adjustments if such divisions or adjustments would have the effect of increasing the overall density of the subdivision or short subdivision.~~

F~~G~~. Open space areas created through a cluster development shall be placed within separate tracts.

G~~H~~. Restrictive notes shall be included on the face of the plat, or short plat, limiting future use and development of open space tracts to uses and developments that are consistent with the intended purpose of the open space tracts. (Ord. 1857 § 2 (Exh. B), 2018).

17.15.110 Residential small lot.

Residential small lots may be created in any ~~R-1~~RD zone through a subdivision or short subdivision process. Small lot developments shall comply with all of the requirements of this chapter except as follows: ~~if the following requirements are met:~~

A. Minimum lot area: 3,000 square feet.

B. Maximum height limit: 25~~0~~ feet.

C. ~~All structures placed on a residential small lot shall have a pitched~~ Minimum roof ~~as follows~~pitch:

1. Structures with finished living space on only one floor shall have a minimum roof pitch of 4:12.

2. Structures with finished living space on more than one floor shall have a minimum roof pitch of 12:12.

D. Maximum ~~structure dept~~building footprint~~h~~: 80~~6~~0 square feet, excluding bay windows and ~~. Garages~~uncovered ~~,~~ decks, patios, and balconies~~, and bay windows shall be excluded from measurement for the purposes of this provision~~.

E. Maximum interior floor area: 1,000 square feet, excluding garages, carports, and covered patios or decks.

E. Setback Requirements.

1. Front:

a. For lots with no alley access or where curb cuts are permitted: 17 feet

b. For lots with alley access or where curb cuts are prohibited by plat notes: 10 feet~~: 17 feet. The front setback for residential small lots may be reduced to 10 feet through the subdivision or short subdivision process if alley access is provided and setback requirements are noted on the face of the plat.~~

2. Street side: ~~20~~ 10 feet.[BJ31]

3. Rear: 10 feet.

4. Side: five feet.

F. Maximum building coverage: 45 percent.

G. Maximum impervious surface coverage: 60 percent.

H. Small lot subdivisions and short subdivisions shall include restrictive plat notes identifying the requirements of this section.~~ (Ord. 1857 § 2 (Exh. B), 2018).~~

I. Maximum density: One primary residential building per lot.

J. Accessory dwellings shall not be permitted on a lot created through the small lot development process.

17.15.120 Cottage housing. (Reserved)

Chapter 17.20

~~R-2~~RA-1 – RESIDENTIAL ATTACHED ZONE ~~TWO-FAMILY RESIDENCE DISTRICTS~~[BJ1]

Sections:

17.20.010 Title.
17.20.020 Application.
17.20.030 Purpose.
17.20.040 Authority.
17.20.050 Permitted primary uses.
17.20.060 Permitted accessory uses.
17.20.070 Conditional uses.
17.20.080 Additional regulations.
17.20.090 Development regulations.
17.20.100 Cluster developments.
17.20.105 Residential small lot.

17.20.010 Title.

This chapter shall be called "~~R-2 Two-Family Residence Districts.~~RA-1 – Residential Attached Zone" ~~(Ord. 1857 § 2 (Exh. B), 2018)~~.

17.20.020 Application.

This chapter shall apply to all uses and developments in areas ~~designated~~ zoned ~~R-2~~RA-1. (Ord. 1857 § 2 (Exh. B), 2018).

17.20.030 Purpose.

~~The R-2, two-family residence, zone is intended to permit up to two dwelling units on a single lot at moderate densities above those permitted in the R-1 zones, but below those permitted in the R-3 zone. (Ord. 1857 § 2 (Exh. B), 2018).~~ The RA-1 zone is intended to implement the RA comprehensive plan designation by accommodating a variety of small scale attached residential buildings such as duplexes, townhomes, small multiunit buildings, and related accessory uses. Other uses may also be permitted in limited circumstances when consistent with the goals and policies of the comprehensive plan. RA-1 zone is intended to provide a transition in scale between lower density, detached residential areas and areas of more intensive development. It is generally applied to areas characterized by a pattern of small lots, fragmented property ownership, or a mix of attached and detached dwellings. It can also be applied to areas within walking distance of schools, parks, or commercial services that lack the infrastructure to support more intensive forms of residential development. [BJ2]

17.20.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63A, 36.70A, and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.20.050 Permitted primary uses.

Buildings, structures, and lots in the RA-1 zone shall only be used for the following, unless otherwise provided for in this title:~~Any use listed as a permitted use in the R-1 zone shall be considered a permitted use in the R-2 zone. The following additional uses shall also be considered permitted uses in the R-2 zone:~~

A. ~~A. Two-family (d~~Duplex~~)~~ dwellings; ~~provided, that no more than one duplex building shall be permitted on a single lot. (Ord. 1857 § 2 (Exh. B), 2018).~~

B. Horizontally attached dwellings;

C. Small multiunit buildings; [BJ3]

D. Detached dwellings;

E. Small boarding houses;

F. Small commercial child daycare center;

~~a.~~G. Small utilities. [BJ4]

17.20.060 Permitted accessory uses. [BJ5]

The following buildings, structures, and uses are permitted accessory uses in the RA-1 zone. Accessory uses shall only be permitted when associated with, and incidental and subordinate to, a legally established primary use. [BJ6]

A. Normal residential appurtenances. The following uses and structures may be authorized as an accessory use in conjunction with a dwelling: garage, guest cottage, recreation room, storage shed, noncommercial greenhouse, swimming pool, decks, patios, driveway, on-site utilities and utility connections, fences, and solar panels;

B. Keeping of not more than six household pets, four of which may be dogs, kept in the home. This limit shall not include birds, fish or suckling young of pets;

C. Family day care services;

D. Foster family care services;

E. Accessory dwelling units;

F. Urban agriculture;

[BJ7]G. Telecommunication micro facility, subject to the following requirements, except as limited by the Telecommunication Act of 1996 as amended:

1. Micro facility shall be located on existing buildings, poles or other existing support structures. A micro facility may locate on buildings and structures; provided, that the interior wall or ceiling immediately adjacent to the facility is not designated residential space.

2. Antennas equal to or less than four feet in height (except omnidirectional antennas which can be up to six feet in height) and with an area of not more than 580 square inches in the aggregate (e.g., one-foot diameter parabola or two-foot by one-and-one-half-foot panel as viewed from any one point) are exempt from the height limitation of the zone in which they are located. Structures which are nonconforming with respect to height may be used for the placement of omnidirectional antennas providing they do not extend more than six feet above the existing structure. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

3. The micro facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

4. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

5. Micro facilities for a specific wireless provided shall be separated by a distance equal to or greater than 1,320 linear feet from other micro facilities of the same wireless provider.~~Any use identified as a permitted accessory use in the R-1 zone shall be considered a permitted accessory use in the R-2 zone, subject to any standards identified in BMC 17.15.070. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.20.070 Conditional uses.

~~Any use listed as a conditional use in the R-1 zone may be permitted as a conditional use in the R-2 zone subject to the procedural requirements applicable to conditional use permits. The following additional uses may also be permitted as conditional uses in the R-2 zone~~The following uses shall require a conditional use permit:

A. Large b~~B~~oarding houses ~~accommodating more than 10 persons~~;

B. ~~Duplexes, more than one per lot~~Medium multiunit buildings;[BJ8]

C. Small meeting facilities~~Museums~~;

D. Small private schools~~Nursing homes~~;

E. Large commercial child daycare centers;

F~~E~~. ~~Utility substations~~Medium utilities;

G. ~~.~~Accessory buildings with a footprint greater than 800 square feet;

~~.(Ord. 1857 § 2 (Exh. B), 2018).~~I. Small nursing homes.

17.20.080 Additional regulations.[BJ9]

A. Manufactured Homes. Manufactured homes may [BJ10]be placed on any lot in an RA-1 zone and regulated in accordance with the same standards and requirements applicable to site built detached homes, except that the following additional regulations shall apply. These standards and requirements do not apply to legally established, nonconforming manufactured homes or manufactured homes placed within a manufactured home park.

1. The manufactured home shall be set upon a permanent foundation, as specified by the manufacturer, and the space between the bottom of the home and the ground shall be enclosed by concrete or an approved concrete product which may be either load bearing or decorative;

2. The manufactured home shall have been originally constructed with and shall now have a composition or wood shake or shingle, coated metal, or similar roof of nominal 3:12 pitch;

3. The manufactured home shall have exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences;

4. The placement of the manufactured home shall be consistent with all other regulatory requirements generally applicable to new homes.

B. Rural agricultural uses are not permitted.

C. No trailer, recreational vehicle, boat, camping trailer, fifth wheel, camper, van, car, or other similar type of mobile unit that is not a permanent structure attached to the ground, shall be used as a place of habitation or as a dwelling. Only site built structures which comply with all applicable building code requirements and manufactured or modular homes which meet applicable state or federal standards for use as a dwelling unit may be used as a place of habitation or as a dwelling.

E. Junk storage is only permitted outdoors when completely surrounded by a solid, site obscuring fence and not visible from an adjoining street or public right-of-way. Outdoor storage shall also be subject to the following additional restrictions and requirements:

1. Litter, trash, used appliances, used interior furnishings and discarded exterior furnishings and similar items are prohibited outdoors regardless of location.

2. Junk storage is further limited to piled used lumber, yard cleanup equipment and similar types of items; it is not intended to include the storage of any items that would be classified as a nuisance under chapter 8.12 BMC.

F. Where alley access is available, off street parking spaces and garages shall be accessed from the alley and no curb cuts shall be permitted. This requirement shall apply to all land divisions, the construction of new homes and accessory buildings, and requests for curb cuts to serve existing homes and accessory buildings.

G. Heat pumps or other noise-producing mechanical equipment shall only be permitted within 10 feet of a property line abutting another lot if all equipment shall be equipped with a noise-baffling screen so that there shall be no audible sound at the property line.

H. New subdivisions or developments that will result in 40 or more lots or dwellings shall include a common open space area for outdoor recreation.

I. Larger residential buildings: The following requirements shall apply to multiunit or townhouse buildings that contain more than four dwelling units: [BJ11]

1. Except as authorized as part of a cluster development, medium multiunit buildings may only be permitted on lots within 1,320 feet (travel distance) of a school, park, bus route, or commercially zoned parcel;

2. Buildings shall be designed by a licensed architect and detailed elevation drawings shall be provided with the conditional use permit application.

3. For horizontally attached dwellings, each unit shall have frontage on a public or private street and shall have its own exterior entrance. Each unit's primary exterior entrance shall face the street and direct pedestrian access to the street shall be provided;

4. Primary building entrances shall incorporate a covered porch or landing with a minimum area of 20 square feet and a minimum depth of three feet;

5. A consolidated garbage and recycling area shall be provided and shall be screened from view in accordance with the applicable landscaping standard;

6. The maximum building length shall not exceed 180 feet.

7. Horizontally attached units shall incorporate design features that clearly identify each dwelling unit as individual residences such as a change in materials, color, articulation, rooflines, gables orientation, or other similar architectural techniques;

8. Each building shall include architectural design elements or materials intended to break up the mass of the building and provide greater compatibility with the scale and appearance of surrounding residential structures. At a minimum all buildings must incorporate at least three of the following design elements:

a. Modulations along the front façade at intervals of no more than 30 feet. Each modulation shall step the façade back or forward by at least four feet;

b. Changes in the roofline at intervals of no more than 30 feet, such as variations in roof pitch, overhangs, projections, or extended eves;

c. Include at least two dormers with a minimum width of three feet;

d. Include at least two balconies on front façade. Balconies shall have a minimum depth of 6 feet between the building wall and the balcony railing;

e. For buildings with more than one floor, reduce the area of the upper floor so that its area is less than that of the first floor. To receive credit for this design element, the front building wall on the upper floor shall be stepped back from the first floor a minimum of two feet. The portion of upper floor stepped back from the first floor shall have a minimum width of eight feet. Uncovered, or covered unenclosed, balconies can be used to receive credit for this design element provided they satisfy the minimum dimensional requirements of this provision;

f. Use trim with a minimum depth of .75 inches and a minimum width of 3.5 inches to mark rooflines, windows, and doors.

K. Accessory Dwelling Units. The following standards shall apply to the accessory dwelling units (ADUs).

1. Type. ADUs may be attached to the primary dwelling or be located in an accessory building;

2. Number. One accessory dwelling unit is permitted for each primary dwelling;

3. Maximum Size:

a. Detached: 1,000 square feet, exclusive of any area used as a garage, carport, or covered patio. In all cases detached ADUs shall comply with the size limits applicable to accessory buildings identified in this section;

b. Attached: 1,000 square feet or 30 percent of the floor area of the primary dwelling, whichever is less, provided that in all cases at least 500 square feet may be permitted;

4. Design standards[BJ12].

c. Entrances and addressing: Separate entrances shall be provided for the primary dwelling and the ADU. The ADU entrance shall be oriented so that it faces a different direction than the entrance to the primary dwelling. ADUs shall be assigned their own address.

d. Setbacks: Detached ADUs shall comply with the setback standards applicable to accessory buildings identified in in this chapter.

e. Access: Direct pedestrian access shall be provided between the ADU and a street or alley.

5. Tenure and ownership. The ADU must be located on the same lot as the primary dwelling it is associated with and may not be separately sold. [BJ13]

L. Nonresidential uses. The following standards shall apply to schools, meeting facilities, and commercial day care centers, and other nonresidential uses other than utilities:[BJ14]

1. Schools, meeting facilities, and commercial day care centers shall be located on a corner lot and adjoin an arterial street;

2. The total building footprint shall not exceed 2,500 square feet;

3. Parking areas shall not be located between the building and the street and shall be completely screened from view with landscaping and fencing;

4. Outdoor play areas shall be screened from adjacent streets and residences with landscaping and fencing;

5. The lot on which the nonresidential use will be located shall have an area of at least 10,000 square feet;

6. Flat roofs are prohibited. Roofs shall have a pitch of no less than 4:12;

7. The primary exterior entrance shall face the street and direct pedestrian access shall be provided between the entrance and the street.

~~All structures, uses, and developments located in the R-2 zone shall be subject to the "additional regulations" identified in the R-1 zone (BMC 17.15.090). (Ord. 1857 § 2 (Exh. B), 2018).~~

17.20.090 ~~———~~Development regulations.

~~All structures, uses, and developments shall comply with the "development standards" identified in the R-1 zone (BMC 17.15.100) except as follows:~~

A. Lot Area and Dimension. The following requirements shall apply to land divisions and boundary line adjustments in the RA-1 zone. Small lot and cluster developments shall be subject to the applicable standards in this chapter.

1. Minimum Lot Area: 1,500 square feet.

[BJ15]2. Minimum lot width: 30 feet, except that a minimum lot width of 15 feet may be authorized as follows:

a. For lots with alley access or where curb cuts are prohibited by plat notes;

b. Infill development involving the establishment of up to four horizontally attached dwellings on an existing lot.

3. Minimum lot depth: 60 feet.

B. Minimum Setback Requirements.

1. Front.

a. For lots with no alley access or where curb cuts are permitted: 17 feet

b. For lots with alley access or where curb cuts are prohibited by plat notes: 10 feet

2. Street side: 10 feet[BJ16].

3. Side: 5 feet.

4. Rear: 20 feet.

5. Alley: 0 feet.

5. Setback Exceptions.

a. Accessory buildings, small lots, and cluster developments shall be subject to the setback requirements outlined in the applicable sections of this chapter;

b. When authorized pursuant to this chapter, no property line setback shall apply to the common walls of zero lot line structures or horizontally attached dwellings;[BJ17]

c. All other buildings and structures: see BMC 17.70.080.

6. Minimum Building Separation:

a. Primary structures: 10 feet, except that when authorized pursuant to this chapter, no separation requirement shall apply between zero lot line structures or horizontally attached dwellings that share a common wall.[BJ18]

b. Accessory structures: 5 feet.

C. Maximum Building and Impervious Surface Coverage.

1. Building and impervious surface coverage: 70 percent[BJ19].

2. For new plats coverage limits may be averaged across lots within the plat boundaries. When coverage limits are averaged restrictive notes shall be included on the face of the plat identifying the coverage limits applicable to each lot.

D. Maximum Building Height: 35 feet.

E. Accessory buildings and structures shall comply with all of the requirements of this chapter except as follows:

1. Maximum Height: 25 feet;

2. Maximum Building Footprint: 800 square feet, provided that open uncovered decks and patios shall not be subject to this limit and larger buildings may be permitted with a conditional use permit;

3. Maximum rear yard coverage: Accessory buildings and structures shall not cover more than 50 percent of the required rear yard setback area;

4. Minimum Setback Requirements:

a. Front: 17 feet, provided that no accessory building shall be located closer to the front property line than the primary structure it is associated with;

b. Side: 5 feet except no property line setback shall apply to the common walls of zero lot line structures;

c. Street side: 10 feet;

d. Rear: 5 feet;

e. Alley: 0 feet.

F. Maximum driveway width. The following restrictions shall only apply to new lots created for the purpose of accommodating detached, horizontally attached, or duplex dwellings.

1. For driveways accessing a public or private street: 10 feet;

2. For driveways accessing an alley: no maximum width.

~~A. Lot Area and Dimension. The following requirements shall apply to land divisions and boundary line adjustments in the R-2 zone except that small lot development shall be subject to the standards and requirements in BMC 17.15.110 and cluster developments shall be subject to the standards and requirements in BMC 17.15.105.~~
~~1. Minimum lot area: 7,600 square feet.~~
~~2. Minimum lot width: 70 feet.~~
~~B. Maximum Building and Impervious Surface Coverage.~~
~~1. Building coverage: 40 percent.~~
~~2. Impervious surface coverage: 60 percent. See table in BMC 17.15.100(C).~~
~~All other area and dimensional regulations shall be the same as those identified in the R-1 zone. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.20.100 Cluster developments[BJ20]~~.~~

Cluster developments may be permitted through a subdivision or short subdivision process. A variety of building types and site layouts may be authorized and alternative standards for lot width, lot depth, lot area, building and impervious surface coverage, and property line setbacks may be employed. Cluster developments shall comply with all of the requirements of this chapter except as follows:

A. Permitted housing types may include, but are not limited to, [BJ21]detached dwellings,[BJ22] townhouses, multiunit buildings, cottage housing, zero lot line development, or a combination of housing types.

B. The maximum allowable density of a cluster development may be averaged across the entire site. The maximum permitted density shall not exceed 38 dwelling units per acre. Accessory dwelling units shall be excluded from maximum density calculations

C. When the building or impervious surface coverage of individual lots exceeds the permissible limits for the zone in which the development is located, additional open space areas shall be set aside so that the total coverage of development is consistent with the coverage limits prescribed by the underlying zone.

D. The resulting subdivision or short subdivision design shall clearly retain a substantial area of continuous, publicly accessible open space, wetlands, areas adjacent to wetlands, steep slopes, geologically hazardous areas, wildlife habitat areas, or other critical areas. Cluster developments may also be authorized if the resulting open space area(s) is used for nonstructural low impact development features, such as bio-retention areas, which mimic natural environmental and hydrologic processes. All such low impact development features shall be extensively landscaped using native vegetation. The following minimum open space requirements shall apply to cluster developments:

1. Special management areas 60 percent;

2. All other locations: 30 percent.

E. Lot width. The standard requirement for minimum lot width shall be 30 feet. Lots widths may be reduced to 15 feet in the following circumstances:

1. Restrictive plat notes are included prohibiting curb cuts;

2. The lot(s) abut a street approved under the alternative street design provisions of BMC 17.85.150 and on-street parking or off-street parking lots are available for visitor and overflow parking within 400 feet.

F. Restrictive plat notes shall be included identifying the approved building types and densities.

G. Open space areas created through a cluster development shall be placed within separate tracts.

H. Restrictive notes shall be included on the face of the plat, or short plat, limiting future use and development of open space tracts to uses and developments that are consistent with the intended purpose of the open space tracts. (Ord. 1857 § 2 (Exh. B), 2018).

~~Cluster developments may be permitted in the R-2 zone as part of the subdivision or short subdivision process subject to the applicable provisions set forth in the R-1 zone (BMC 17.15.105). (Ord. 1857 § 2 (Exh. B), 2018).~~

~~17.20.105 Residential small lot.~~

~~Residential small lots may be created in an R-2 zone through a subdivision or short subdivision process subject to the applicable provisions set forth in the R-1 zone (BMC 17.15.110). (Ord. 1857 § 2 (Exh. B), 2018).~~

Chapter 17.25

~~R-3 MULTIFAMILY RESIDENCE DISTRICTS~~RA-2 RESIDENTIAL ATTACHED ZONE

Sections:

17.25.010 Title.
17.25.020 Application.
17.25.030 Purpose.
17.25.040 Authority.
17.25.050 Permitted primary uses.
17.25.060 Permitted accessory uses.
17.25.070 Conditional uses.
17.25.080 ~~Additional~~ General use regulations.
17.25.090 ~~Development~~ Design standards.
17.25.100 ~~Cluster developments~~Development standards.
17.25.1100~~5~~ ~~Residential small lot~~Cottage housing.

17.25.010 Title.

This chapter shall be called "RA-2 – Residential Attached Zone"~~"R-3 Multifamily Residence Districts." (Ord. 1857 § 2 (Exh. B), 2018).~~

17.25.020 Application.

This chapter shall apply to all uses and developments in areas designated ~~R-3~~RA-2. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

17.25.030 Purpose.

The RA-2 zone is intended to implement the RA comprehensive plan designation by accommodating a variety of larger scale residential buildings such as multiunit buildings, including apartments and condominiums, townhomes, duplexes, and related accessory uses. Other uses may be permitted in limited circumstances when consistent with the goals and policies of the comprehensive plan. The RA-2 zone permits more intensive development than the RA-1 zone and is generally applied to areas that adjoin a detached residential zones where commercial development would not be appropriate due to a lack of traffic, visibility, or inadequate infrastructure. ~~The R-3 district is intended to accommodate a variety of higher density housing types, including, but not limited to, attached townhomes, multifamily apartment buildings, and duplexes. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.25.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63A, 36.70A, and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.25.050 Permitted primary uses.

Buildings, structures, and lots in the RA-2 zone shall only be used for the following, unless otherwise provided for in this title:~~Any use listed as a permitted use in the R-1 or R-2 zone shall be considered a permitted use in the R-3 zone. The following additional uses shall also be considered permitted uses in the R-3 zone:~~

A. Detached dwellings;

B. Duplex dwellings;

C. Horizontally attached dwellings;

D. Multiunit buildings, all sizes; [BJ1]

E. Boarding houses, all sizes;

F. Commercial child daycare center;

Note: replace with: "commercial child daycare centers, all sizes".

G. Small utilities;

H. Small private schools; [BJ2]

I. Small meeting facilities;

J. Small nursing homes.

~~A. Multifamily dwellings. The construction and development of multifamily dwellings shall be subject to the following requirements:~~
~~1. Parking areas shall be screened from the street.~~
~~2. Pedestrian access shall be provided throughout the site and shall provide a complete and logical circulation system that connects each dwelling unit with streets, adjoining developments, parking areas, common areas, and recreation areas. Any additional pedestrian access circulation and access requirements identified in chapter 17.85 BMC (Access, Parking and Loading) shall also be addressed.~~
~~3. Trash and recycling areas and containers shall be fully enclosed and screened from view with a solid site obscuring fence or wall and gate. Trash and recycling containers shall not be visible from adjoining public streets or adjacent properties.~~
~~4. Developments with 40 or more units shall provide a children's play area(s) at a rate of 225 square feet plus 20 additional square feet for each unit.~~
~~5. Developments with 40 or more units shall provide common open space for passive or active recreation at the rate of 50 square feet per unit.~~
~~6. Laundry and storage facilities shall be provided, either in each unit or in a central facility.~~
~~7. Exterior lighting shall be provided for parking areas, access streets and pedestrian walkways. Lighting shall be designed to direct light away from residential units to prevent glare. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.25.060 Permitted accessory uses.

The following buildings, structures, and uses are permitted accessory uses in the RA-2 zone. Accessory uses shall only be permitted when associated with, and incidental and subordinate to, a legally established primary use.

~~Any use identified as a permitted accessory use in the R-1 or R-2 zone shall be considered a permitted accessory use in the R-3 zone, subject to any standards identified in BMC 17.15.070. The following additional uses shall also be considered permitted accessory uses in the R-3 zone:~~

~~A.~~ A. Normal residential appurtenances. The following uses and structures may be authorized as an accessory use in conjunction with a dwelling, multiunit building, or residential development: garages, recreation or exercise facilities, community room, manager's office, storage shed, noncommercial gardens and greenhouses, swimming pools, laundry rooms and facilities, decks, patios, driveways, on-site utilities and utility connections, fences, and solar panels;

B. Keeping of not more than six household pets, four of which may be dogs, kept in the home. This limit shall not include birds, fish or suckling young of pets;

C. Family day care services;

D. Foster family care services;

F. Telecommunication mini facility, subject to the following requirements:

1. The mini facility may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The mini facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Mini facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 10 feet, or in the case of nonconforming structures the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height

limitation if affixed to the side of an existing nonconforming building and blends in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. ~~(Ord. 1857 § 2 (Exh. B), 2018)~~

G. Parking facilities. ~~.~~

17.25.070 Conditional uses.

The following uses shall require a conditional use permit:~~Any use listed as a conditional use in the R-1 or R-2 zone may be permitted as a conditional use in the R-3 zone subject to the procedural requirements applicable to conditional use permits. The following additional uses may also be permitted as conditional uses in the R-3 zone:~~

B. Large meeting facilities;[BJ3]

C. Large private schools;

D. Medium utilities;

E. Professional offices;

F. Personal services;

G. Specialized instruction;

H. Large nursing homes.

~~A. Commercial child day care center;~~

~~B. Health care facilities;~~

~~C. Professional offices;~~

~~D. Government facilities, other than those listed as a permitted use. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.25.080 ~~Additional~~ General use regulations.

A. Rural agricultural uses are not permitted.

B. No trailer, recreational vehicle, boat, camping trailer, fifth wheel, camper, van, car, or other similar type of mobile unit that is not a permanent structure attached to the ground, shall be used as a place of habitation or as a dwelling. Only site built structures which comply with all applicable building code requirements and manufactured or modular homes which meet applicable state or federal standards for use as a dwelling unit may be used as a place of habitation or as a dwelling.

C. Jun[BJ4]k storage is only permitted outdoors when completely surrounded by a solid, site obscuring fence and not visible from an adjoining street or public right-of-way. Outdoor storage shall also be subject to the following additional restrictions and requirements:

1. Litter, trash, used appliances, used interior furnishings and discarded exterior furnishings and similar items are prohibited outdoors regardless of location.

2. Junk storage is further limited to piled used lumber, yard cleanup equipment and similar types of items; it is not intended to include the storage of any items that would be classified as a nuisance under chapter 8.12 BMC.

17.25.090 Design standards.

A. Parking facilities and access.

1. Where alley access is available, off street parking spaces and garages shall be accessed from the alley and no curb cuts shall be permitted. This requirement shall apply to all land divisions, the construction of new homes and accessory buildings, and requests for new curb cuts.

2. Parking shall not be located between the building and the street. This restriction shall not apply to driveways serving detached dwellings on individual lots or duplexes and townhome in developments of eight units or less.

B. Heat pumps and other mechanical equipment shall be located at least 10 feet from any property line adjoining another residential development or dwelling and all equipment shall be equipped with a noise-baffling screen so there is no audible sound at the property line. All such equipment shall be fully screened from view using landscaping or fencing. Rooftop mechanical equipment shall be fully screened from view.

C. The following exterior finishes and materials shall be prohibited:

1. Vinyl siding;

2. T-111 plywood;

3. Exterior insulation finishing system (EIFS).

D. New subdivisions or developments that will result in 40 or more lots or dwellings shall include a common open space area for outdoor recreation.

E. Detached dwellings. Detached dwellings shall only be permitted in the following circumstances:

1. On existing lots that have an area of 4,000 square feet or less;

2. The construction of two or more detached dwellings on an existing lot provided the resulting density is at least one unit per 4,000 square feet

3. In a cottage development with a gross density of at least 15 units per acre;

4. As part of a development with a mix of building types that has a gross density of at least 15 units per acre.

F. Multiunit and horizontally attached dwellings.

1. Large multiunit buildings and residential buildings in any development that includes more than eight dwellings shall be designed by a licensed architect and detailed elevation drawings shall be provided with the land use permit application;

2. Large multiunit buildings and residential buildings in any development that includes more than eight dwellings shall have frontage on a public or private street. The primary entrance for each building shall face the street and direct pedestrian access shall be provided between the entrance and the street.

3. For horizontally attached dwellings, each unit shall have its own exterior entrance and a direct pedestrian connection shall be provided between the entrance and the nearest street. For developments that include more than eight units, each unit shall have frontage on a public or private street and the primary entrance to each unit shall face the street.

4. Primary building entrances shall incorporate a covered porch or landing with a minimum area of 20 square feet and a minimum depth of three feet;

5. A consolidated garbage and recycling area shall be provided and shall be screened from view in accordance with the applicable landscaping standard;

6. The maximum building length shall not exceed 180 feet.

7. Street facing facades of large multiunit buildings shall incorporate modulations at intervals of 60 feet or less as follows:

a. Each modulation shall have a minimum width of 15 feet and a minimum depth of 6 feet;

b. Balconies can be used to meet a portion of this requirement provided each balcony has an area of at least 80 square feet and a depth of at least 6 feet.

8. For the purpose of breaking up the vertical mass of buildings, the first floor of a multistory building shall be distinguished from the upper floors through the use of at least one of the following design elements:

a. Change in materials;

b. Change in color;

C. Molding or other horizontally distinguishing transition trim, treatment, or embellishment.

9. Each building shall include architectural design elements or materials intended to break up the mass of the building and provide greater compatibility with the scale and appearance of surrounding residential structures. At a minimum all buildings must incorporate at least two of the following design elements:

a. Changes in the roofline at intervals of no more than 30 feet, such as variations in roof pitch, height, overhangs, projections, or extended eves;

c. Include at least two dormers with a minimum width of three feet;

d. Include at least two balconies on the front façade. Balconies shall have a minimum depth of 6 feet between the building wall and the balcony railing;

e. For buildings with more than one floor, reduce the area of the upper floor so that its area is less than that of the first floor. To receive credit for this design element, the front building wall on the upper floor shall be stepped back from the first floor a minimum of two feet. The portion of upper floor stepped back from the first floor shall have a minimum width of eight feet. Uncovered, or covered unenclosed, balconies can be used to receive credit for this design element provided they satisfy the minimum dimensional requirements of this provision.

10. Transition areas. For developments that abut property zoned RD the following standards shall apply:

a. All residential buildings shall be setback at least 20 feet from parcels zoned RD. Any portion of a building higher than 25 feet or containing more than two stories shall be setback at least 40 feet from parcels zoned RD.

b. Balconies that face a parcel zoned RD shall be faced with a material such as frosted or opaque glass to provide visual privacy to neighboring properties.

c. Parking spaces and access roads shall not be located within 20 feet of a parcel zoned RD.

d. A landscaped buffer shall be provided in accordance with the requirements of Chapter 17.81 BMC.

K. Nonresidential uses.

1. Nonresidential uses shall have frontage on a public street. The primary exterior entrance providing access to the non-residential uses shall face the street and direct pedestrian access to the street shall be provided;

2. Schools, meeting facilities, and commercial day care centers shall be located on a corner lot;

3. Professional offices and personal service establishments shall have frontage on a public street;

4. The total floor area of any single building devoted to a non-residential use shall not exceed 2,500 square feet, provided this restriction shall not apply to residential accessory uses such as community rooms, gyms, pools, or leasing offices;

5. Parking areas shall not be located between the building and the street and shall be completely screened from view with landscaping and fencing;

6. Outdoor play areas shall be screened from adjacent streets and residences with landscaping and fencing;

7. Flat roofs are prohibited. Roofs shall have a pitch of no less than 4:12;

L. Manufactured Homes. Manufactured homes may be placed on any lot in an RA-2 zone where detached dwellings are permitted and regulated in accordance with the same standards and requirements applicable to site built detached homes, except that the following additional regulations shall apply. These standards and requirements do not apply to legally established, nonconforming manufactured homes or manufactured homes placed within a manufactured home park.

1. The manufactured home shall be set upon a permanent foundation, as specified by the manufacturer, and the space between the bottom of the home and the ground shall be enclosed by concrete or an approved concrete product which may be either load bearing or decorative;

2. The manufactured home shall have been originally constructed with and shall now have a composition or wood shake or shingle, coated metal, or similar roof of nominal 3:12 pitch;

3. The manufactured home shall have exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences;

4. The placement of the manufactured home shall be consistent with all other regulatory requirements generally ~~All structures, uses, and developments located in the R-3 zone shall be subject to the "additional regulations" identified in the R-1 zone (BMC 17.15.090). (Ord. 1857 § 2 (Exh. B), 2018).~~

5. Manufactured homes shall comply with all of the regulatory requirements and permit processing procedures identified in the chapter for site built detached homes.

17.25.~~090~~100 Development standards.

~~All structures, uses, and developments shall comply with the "development regulations" identified in the R-1 zone (BMC 17.15.100) except as follows:~~

A. Lot Area and Dimension. The following requirements shall apply to land divisions and boundary line adjustments in the RA-2 zone except that cluster developments shall be subject to the standards in BMC 17.20.105.~~The following requirements shall apply to land divisions and boundary line adjustments and not to the use of existing lots~~:

1. Minimum lot area: ~~6,000 square fee~~1,500 square feet~~t~~.

2. Minimum lot width: 30 feet, except that a minimum lot width of 15 feet may be authorized as follows:

a. For lots with alley access or where curb cuts are prohibited by plat notes;

b. Infill development involving the establishment of up to four horizontally attached dwellings on an existing lot.

~~: 60 feet.~~

3. Minimum lot depth: 60 feet~~80 feet.~~

B. Minimum setback requirements.

1. Front: 10 feet

2. Street side: 10 feet

3. Side: None.

4. Rear: None.

C. Minimum building separation.

1. Primary structures: 30 feet.

2. Accessory structures: 10 feet.

3. Exceptions: When authorized pursuant to this Chapter no separation requirement shall apply between zero lot line structures or horizontally attached dwellings that share a common wall.

~~B. Maximum Density. The maximum permissible density for multifamily development shall be calculated as follows: one unit per lot plus one additional unit for every 3,000 square feet of lot area; provided, that additional density may be permitted through the agricultural heritage credit program.~~

D~~C~~. Maximum building and impervious surface coverage: 70 percent.

E~~D~~. Maximum building height: 4~~3~~5 feet.

~~E. Minimum Building Separation.~~
~~1. Between primary structures located on the same lot: 30 feet.~~
~~2. Between primary structures and accessory structures: 10 feet.~~
~~F. Maximum Building Dimension. In no instance shall the greatest dimension of a multifamily building exceed 150 feet, measured parallel to exterior building walls.~~
~~G. Maximum Building Gross Floor Area. In no instance shall the gross floor area exceed 8,000 square feet for any multifamily building. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.25.11~~00 Cluster development~~Cottage Housing (Reserved)~~s~~.

~~Cluster developments may be permitted in the R-3 zone as part of the subdivision or short subdivision process subject to the applicable provisions set forth in the R-1 zone (BMC 17.15.105). (Ord. 1857 § 2 (Exh. B), 2018).~~

~~**17.25.105 Residential small lot.**~~

~~Residential small lots may be created in an R-3 zone through a subdivision or short subdivision process subject to the applicable provisions set forth in the R-1 zone (BMC 17.15.110). (Ord. 1857 § 2 (Exh. B), 2018).~~

Chapter 17.30

~~R-S SEMI-PUBLIC DISTRICT~~MUR-1 – Mixed Use Residential Zone

Sections:
17.30.010 Title.
17.30.020 Application.
17.30.030 Purpose.
17.30.040 Authority.
17.30.050 Permitted primary uses.
17.30.060 Permitted accessory uses.
17.30.070 Conditional uses.
17.30.080 ~~Additional~~ General use regulations.
17.30.090 ~~Development~~ Design standards.
17.30.100 Development standards.
17.30.110 Cottage housing.

17.30.010 Title.
This chapter shall be called "~~R-S Semi-Public District.~~MUR-1 – Mixed Use Residential Zone" ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

17.30.020 Application.
This chapter shall apply to all uses and developments in areas zone MUR-1~~designated R-S~~. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

17.30.030 Purpose.
~~The R-S residential office zone encompasses Burlington's original town site and is intended to permit a mixture of residential and office uses that are compatible in design and character with adjacent residential uses. (Ord. 1857 § 2 (Exh. B), 2018)~~MUR-1 zone is intended to implement the MUR comprehensive plan designation by accommodating a mix of attached housing and commercial uses with an emphasis on residential uses. The MUR-1 zone is intended to create an environment that accommodates small scale, indoor commercial activities such as offices, professional services, home businesses, art galleries, and other similar uses that generate limited traffic, pollution, and noise, and primarily operate during daytime business hours. Permitted residential uses include a variety of higher density housing types including duplexes, townhomes, and multiunit buildings. The development standards and design regulations for the MUR-1 zone are intended to create a streetscape and environment that has more traditional urban characteristics than the City's residential zones, including building set closer to the street, varied roof types, and intermittent commercial spaces. ~~.~~

17.30.040 Authority.
This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.30.050 Permitted primary uses.
~~Any use listed as a permitted use in the R-1, R-2 or R-3 zone shall be considered a permitted use in the R-S zone. The following additional uses shall also be considered permitted uses in the R-S zone~~Buildings structures, and lots in the MUR-1 zone shall only be used for the following, unless otherwise provided for in this title:

A. Detached dwellings;

B. Duplex dwellings;

C. Horizontally attached dwellings;

D. Multiunit buildings, small and medium; [BJ1]

E. Boarding houses;

F. Commercial child daycare center;

Note: replace with: "Commercial child daycare centers, all sizes"

G. Small utilities;

H. Small private schools; [BJ2]

I. Small meeting facilities;

J. Professional offices;

K. Personal services;

L. Specialized instruction;

M. Small nursing homes;

N. Small scale retail;

O. Small healthcare facilities;

P. Veterinary clinics.

~~A. Professional offices. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.30.060 Permitted accessory uses.

The following buildings, structures, and uses are permitted accessory uses in the MUR-1 zone. Accessory uses shall only be permitted when associated with, and incidental and subordinate to, a legally established primary use.

A. Normal residential appurtenances. The following uses and structures may be authorized as an accessory use in conjunction with a dwelling, multiunit building, or residential development: garages, recreation, exercise, or community room, manager's office, storage shed, noncommercial gardens and greenhouses, swimming pools, laundry rooms and facilities, decks, patios, driveways, on-site utilities and utility connections, fences, and solar panels;

B. Keeping of not more than six household pets, four of which may be dogs, kept in the home. This limit shall not include birds, fish or suckling young of pets;

C. Family day care services;

D. Foster family care services;

E. Telecommunication mini facility, subject to the following requirements:

1. The mini facility may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The mini facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Mini facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 10 feet, or in the case of nonconforming structures the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and blends in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

F. Parking facilities.

G. Urban agriculture.

~~Any use identified as a permitted accessory use in the R-1, R-2, or R-3 zone shall be considered a permitted accessory use in the R-S zone, subject to any standards identified in BMC 17.15.070. The following additional uses shall also be considered permitted accessory uses in the R-S zone:~~
~~A. Accessory buildings or uses incidental and subordinate to primary permitted commercial use, including but not limited to: garages solely for the storage and servicing of vehicles of occupants of the building; restaurants or cafeterias primarily for the convenience of the occupants of the building; printing of materials necessary in the operation of the primary business and not used for the conduct of a general printing business; sample display sales rooms; or similar accessory uses. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.30.070 Conditional uses.

The following uses shall require a conditional use permit:

B. Large meeting facilities;[BJ3]

C. Large private schools;

D. Medium utilities;

E. Large multiunit buildings;

F. Small eating and drinking establishments;

G. Medium scale retail;

H. Large nursing homes;

I. Large healthcare facilities.

~~Any use listed as a conditional use in the R-1 or R-2 zone may be permitted as a conditional use in the R-S zone subject to the procedural requirements applicable to conditional use permits. The following additional uses may also be permitted as conditional uses in the R-S zone:~~

~~A. Multifamily housing at densities higher than those allowed in the R-3 zone. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.30.080 ~~Additional~~ General use regulations.

A. Rural agricultural uses are not permitted.

B. No trailer, recreational vehicle, boat, camping trailer, fifth wheel, camper, van, car, or other similar type of mobile unit that is not a permanent structure attached to the ground, shall be used as a place of habitation or as a dwelling. Only site built structures which comply with all applicable building code requirements and manufactured or modular homes which meet applicable state or federal standards for use as a dwelling unit may be used as a place of habitation or as a dwelling.

C. Jun[BJ4]k storage is only permitted outdoors when completely surrounded by a solid, site obscuring fence and not visible from an adjoining street or public right-of-way. Outdoor storage shall also be subject to the following additional restrictions and requirements:

1. Litter, trash, used appliances, used interior furnishings and discarded exterior furnishings and similar items are prohibited outdoors regardless of location.

2. Junk storage is further limited to piled used lumber, yard cleanup equipment and similar types of items; it is not intended to include the storage of any items that would be classified as a nuisance under chapter 8.12 BMC.

D. Drive-through uses are prohibited.

E. Uses generating noise levels incompatible with residential occupancy shall not be permitted and the following regulations shall apply to all uses:

1. Truck loading, deliveries, and other similar activities shall only be prohibited except between the hours of 7:00 a.m. and 7:00 p.m.

2. Uses involving music, such as dance studios or music classes, and uses that could potentially generate noise impacts, such as eating and drinking establishments, shall be conducted in a fully enclosed building and an approved acoustical wall installed to prevent excessive noise at the property line, or if in a mixed use building, to provide a noise barrier between the commercial and residential occupancy. Construction techniques shall be employed to ensure sound transmission control ratings are compatible with a mixed use environment.

F. Processing, handling, and storage of hazardous materials, including medical waste, is prohibited, except for small quantities as minimally necessary when incidental and secondary to a permitted use.

~~All structures, uses and developments located in the R-S zone shall be subject to the "additional regulations" identified in the R-1 zone (BMC 17.15.090) except as noted below.~~
~~A. No operation shall be permitted in the R-S district which creates smoke, dust, dirt, fly ash, noise, glare, heat, odor, gases, vibrations, electrical radiation or interference or any other evidence of nuisance which is detectable at objectionable levels at the property lines. The performance standards of chapter 17.70 BMC shall provide the criteria for measurement of such nuisances.~~
~~B. Parking shall be provided as required by chapter 17.85 BMC (Access, Parking and Loading).~~
~~C. Signs and signage shall comply with the regulations identified in chapter 17.95 BMC (Signs).~~
~~D. All parking areas and storage yards shall be fully screened from view. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.30.090 Design standards.

A. Parking facilities and access.

1. Where alley access is available, off street parking spaces and garages shall be accessed from the alley and no curb cuts shall be permitted. This requirement shall apply to all land divisions, the construction of new homes and buildings, and requests for new curb cuts;

2. Parking areas shall not be located between the building and the street and shall be fully screened from view using a combination of fencing and landscaping.

B. Heat pumps and other mechanical equipment shall only be permitted within 10 feet of a property line adjoining another residential development or dwelling if all equipment shall be equipped with a noise-baffling screen so there is no audible sound at the property line. All such equipment shall be fully screened from view using landscaping or fencing. Rooftop mechanical equipment shall be fully screened from view.

C. The following exterior finishes and materials shall be prohibited:

1. Vinyl siding;

2. T-111 plywood;

3. Exterior insulation finishing system (EIFS).

D. New subdivisions or developments that will result in 40 or more lots or dwellings shall include a common open space area for outdoor recreation.

E. Detached dwellings. Detached dwellings shall only be permitted in the following circumstances:

1. On existing lots that have an area of 4,000 square feet or less;

2. The construction of two or more detached dwellings on an existing lot provided the resulting density is at least one unit per 4,000 square feet;

3. In a cottage development with a gross density of at least 15 units per acre;

4. As part of a development with a mix of building types that has a gross density of at least 15 units per acre.

F. Multiunit and horizontally attached dwellings.

1. Large multiunit buildings and residential buildings in any development that includes more than eight dwellings shall be designed by a licensed architect and detailed elevation drawings shall be provided with the land use permit application;

2. Large multiunit buildings and residential buildings in any development that includes more than eight dwellings shall have frontage on a public or private street. The primary entrance for each building shall face the street and direct pedestrian access shall be provided between the entrance and the street.

3. For horizontally attached dwellings, each unit shall have its own exterior entrance and a direct pedestrian connection shall be provided between the entrance and the nearest street. For developments that include more than eight units, each unit shall have frontage on a public or private street and the primary entrance to each unit shall face the street.

4. Primary building entrances shall incorporate a covered porch or landing with a minimum area of 20 square feet and a minimum depth of three feet;

5. A consolidated garbage and recycling area shall be provided and shall be screened from view in accordance with the applicable landscaping standard;

6. The maximum building length shall not exceed 180 feet.

7. Street facing facades of large multiunit buildings shall incorporate modulations at intervals of 60 feet or less as follows:

a. Each modulation shall have a minimum width of 15 feet and a minimum depth of 6 feet;

b. Balconies can be used to meet a portion of this requirement provided each balcony has an area of at least 80 square feet and a depth of at least 6 feet.

8. For the purpose of breaking up the vertical mass of buildings, the first floor of a multistory building shall be distinguished from the upper floors through the use of at least one of the following design elements:

a. Change in materials;

b. Change in color;

C. Molding or other horizontally distinguishing transition trim, treatment, or embellishment.

9. Each building shall include architectural design elements or materials intended to break up the mass of the building and provide greater compatibility with the scale and appearance of surrounding residential structures. At a minimum all buildings must incorporate at least two of the following design elements:

a. Changes in the roofline at intervals of no more than 30 feet, such as variations in roof pitch, height, overhangs, projections, or extended eves;

c. Include at least two dormers with a minimum width of three feet;

d. Include at least two balconies on front façade. Balconies shall have a minimum depth of 6 feet between the building wall and the balcony railing;

e. For buildings with more than one floor, reduce the area of the upper floor so that its area is less than that of the first floor. To receive credit for this design element, the front building wall on the upper floor shall be stepped back from the first floor a minimum of two feet. The portion of upper floor stepped back from the first floor shall have a minimum width of eight feet. Uncovered, or covered unenclosed, balconies can be used to receive credit for this design element provided they satisfy the minimum dimensional requirements of this provision.

10. Transition areas. For developments that abut property zoned RD the following standards shall apply:

a. All residential buildings shall be setback at least 20 feet from parcels zoned RD. Any portion of a building higher than 25 feet or containing more than two stories shall be setback at least 40 feet from parcels zoned RD.

b. Balconies that face a parcel zoned RD shall be faced with a material such as frosted or opaque glass to provide visual privacy.

c. Parking spaces and access roads shall not be located within 20 feet of a parcel zoned RD.

d. A landscaped buffer shall be provided in accordance with the requirements of Chapter 17.81 BMC.

K. Nonresidential uses.

L. Manufactured Homes. Manufactured homes may be placed on any lot in an MUR-1 zone where detached dwellings are permitted and regulated in accordance with the same standards and requirements applicable to site built detached homes, except that the following additional regulations shall apply. These standards and requirements do not apply to legally established, nonconforming manufactured homes or manufactured homes placed within a manufactured home park.

1. The manufactured home shall be set upon a permanent foundation, as specified by the manufacturer, and the space between the bottom of the home and the ground shall be enclosed by concrete or an approved concrete product which may be either load bearing or decorative;

2. The manufactured home shall have been originally constructed with and shall now have a composition or wood shake or shingle, coated metal, or similar roof of nominal 3:12 pitch;

3. The manufactured home shall have exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences;

4. The placement of the manufactured home shall be consistent with all other regulatory requirements generally

5. Manufactured homes shall comply with all of the regulatory requirements and permit processing procedures identified in the chapter for site built detached homes.

~~17.30.090~~17.30.100 Development standards.

A. Lot Area and Dimension. The following requirements shall apply to all land divisions and boundary line adjustments:

1. Minimum lot area: 1,500 square feet.

2. Minimum lot width:

a. For lots with no alley access or where curb cuts are permitted: 30 feet

b. For lots with alley access or where curb cuts are prohibited by plat notes: 15 feet

3. Minimum lot depth: 60 feet.

B. Minimum setback requirements.

1. Front: 10 feet

2. Street side: 10 feet

3. Side: 5 feet.

4. Rear: 10 feet.

5. Alley: 0 feet.

6. Setback Exceptions:

a. When authorized pursuant to this chapter, no property line setback shall apply to the common walls of zero lot line structures or horizontally attached dwellings;[BJ5]

b. All other buildings and structures: see Chapter 17.70 BMC.

C. Minimum building separation:

1. Primary structures: 30 feet.

2. Accessory structures: 10 feet.

3. Exceptions: When authorized pursuant to this Chapter no separation requirement shall apply between zero lot line structures or horizontally attached dwellings that share a common wall.

D. Maximum building and impervious surface coverage: 70 percent.

E. Maximum building height: 45 feet.

Chapter 17.40

MUR-2 – Mixed Use Residential Zone~~MR-NB MEDIUM DENSITY RESIDENTIAL AND NEIGHBORHOOD BUSINESS DISTRICT~~

Sections:

17.40.010 Title.
17.40.020 Application.
17.40.030 Purpose.
17.40.040 Authority.
17.40.050 Primary permitted uses.
17.40.060 Permitted accessory uses.
17.40.070 Conditional uses.
17.40.080 ~~Additional~~ General use regulations.
17.40.090 ~~Development~~ Design standards.
17.40.100 Development standards.

17.40.010 Title.

This chapter shall be called "MUR-2 – Mixed Use Residential Zone"~~This chapter shall be called "MR-NB Medium Density Residential and Neighborhood Business District." (Ord. 1857 § 2 (Exh. B), 2018).~~

17.40.020 Application.

This chapter shall apply to all uses and developments in areas zone MUR-2.~~This chapter shall apply to all uses and developments in areas designated MR-NB. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.40.030 Purpose.

MUR-2 zone is intended to implement the MUR comprehensive plan designation by accommodating a mix of attached housing and commercial uses with an emphasis on residential uses. The MUR-2 zone is intended to create an environment that accommodates small scale, commercial activities such as offices, professional services, home businesses, art galleries, and other similar uses that generate limited traffic, pollution, and noise, and primarily operate during daytime business hours. This zone is also intended to accommodate small scale craft industries and trades that are compatible with residential uses such as contractor's offices and craft industries. Permitted residential uses include a variety of higher density housing types including duplexes, townhomes, and multiunit buildings. The development standards and design regulations for the MUR-2 zone are intended to create a streetscape and environment that has more traditional urban characteristics than the City's residential zones, including buildings set close to the street, varied roof types, and intermittent commercial spaces, and to minimize conflicts between residential and non-residential uses.~~This area is intended to provide a mixed use zone for residences, business and other commercial uses that are not high traffic generators and that provide limited customer services on the premises, in areas that may already be mixed use in character because of a fragmented zoning pattern, or residential areas that are in transition as a result of changes in the arterial street network. Reuse of existing buildings is encouraged. This is a mixed use, medium density residential and neighborhood business district that allows more than one use on a lot, but requires that commercial uses be compatible with residential uses. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.40.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.40.50 ~~17.40.050~~ Primary permitted uses.

A. Detached dwellings;

B. ~~A. Multifamily~~ Duplex dwellings;

C. Horizontally attached dwellings;

D. Multiunit buildings, small and medium; [BJ1]

E. Boarding houses;

F. Commercial child daycare center, all sizes;

G. Small utilities;

H. Private schools, all sizes; [BJ2]

I. Meeting facilities, all sizes;

J. Professional offices;

K. Personal services;

L. Specialized instruction;

M. Craft industries;

N. Contractor's offices;

O. Small eating and drinking establishments;

P. Small scale retail;

Q. Healthcare facilities, all sizes;

R. Veterinary clinics.

~~dwellings;~~
~~B. Art, music and dance studios;~~
~~C. Artisanal uses, such as photographer, artist studio dwelling;~~
~~D. Contractor's office and storage;~~
~~E. Laboratories, such as dental or soil testing;~~
~~F. Light industry;~~
~~G. Municipal parks and playgrounds;~~
~~H. Personal service uses such as barber and beauty shops;~~
~~I. Professional offices;~~
~~J. Fraternal organizations and religious facilities, existing;~~
~~K. Single-family dwellings;~~
~~L. Two-family dwellings;~~
~~M. Trades and subcontractors such as plumbing, electrical, HVAC;~~
~~N. Utilities;~~
~~O. Woodworking uses complying with the International Building Code exception from hazardous occupancies.~~
~~(Ord. 1857 § 2 (Exh. B), 2018).~~

17.40.060 Permitted accessory uses.

The following buildings, structures, and uses are permitted accessory uses in the MUR-2 zone. Accessory uses shall only be permitted when associated with, and incidental and subordinate to, a legally established primary use.

A. Normal residential appurtenances. The following uses and structures may be authorized as an accessory use in conjunction with a dwelling, multiunit building, or residential development: garages, recreation, exercise, or community rooms, manager's office, storage shed, noncommercial gardens and greenhouses, swimming pools, laundry rooms and facilities, decks, patios, driveways, on-site utilities and utility connections, fences, and solar panels;

B. Keeping of not more than six household pets, four of which may be dogs, kept in the home. This limit shall not include birds, fish or suckling young of pets;

C. Family day care services;

D. Foster family care services;

F. Telecommunication mini facility, subject to the following requirements:

1. The mini facility may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The mini facility shall be exempt from design review if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Mini facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 10 feet, or in the case of nonconforming structures the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and blends in architecturally with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

G. Parking facilities;

H. Outdoor storage yards associated with a non-residential use.

I. Urban agriculture. ~~A. Outdoor storage that is screened with a solid fence and perimeter landscaping, accessory to the primary use;~~

~~B. Home occupations;~~

~~C. Family day care homes;~~

~~D. Automobile parking;~~

~~E. Foster family care homes associated with a single-family dwelling;~~

~~F. Telecommunication mini facility, subject to the following requirements, except as limited by the Telecommunications Act of 1996 as amended:~~

~~1. The mini facility may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.~~

~~2. The mini facility shall be exempt from review by the community development director or designee if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.~~

~~3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.~~

~~4. Mini facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 10 feet, or in the case of nonconforming structures the antennas may extend 10 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing nonconforming building and blends in architecturally with the building. Placement of an antenna on a~~

~~nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.40.070 Conditional uses.
The following uses shall be considered conditional uses and shall require a conditional use permit:

~~A. Eating and drinking establishments with less than 1,000 square feet of floor area;~~

B. ~~Commercial child day care center~~Large multiunit buildings;

C. ~~Fraternal organizations and religious facilities. (Ord. 1857 § 2 (Exh. B), 2018)~~Medium utilities;

D. Minor industrial;

E. Medium scale retail;

F. Large nursing homes;

G. Laboratories and research facilities. ~~.~~

17.40.080 ~~Additional~~ General use regulations.
A. Uses generating noise levels incompatible with residential occupancy shall not be permitted and the following regulations shall apply to all uses:

1. Truck loading, deliveries, and other similar ~~activities and similar noisy~~ activities shall only be prohibited except between the hours of 7:00 a.m. ~~to~~ and 7:00 p.m.

2. Uses involving ~~such as~~ music, such as ~~and~~ dance studios or music classes, and uses that could potentially generate noise impacts, such as eating and drinking establishments and craft industries, shall be conducted in a fully enclosed building and an approved acoustical wall installed to prevent excessive noise at the property line, or if in a mixed use building, to provide a noise barrier between the commercial and residential occupancy. Construction techniques shall be employed to ensure s~~S~~ound transmission control ratings are compatible with ~~mixed uses~~a mixed use environment ~~shall be required in construction~~.

B. ~~No o~~P~~n-site hazardous substance p~~rocessing, ~~and~~ handling, and storage of hazardous materials, including medical waste, is prohibited~~or hazardous waste treatment and storage facilities shall be permitted~~, except for small quantities as minimally necessary when~~, unless clearly~~ incidental and secondary to a permitted use~~, subject to the requirements of the International Fire Code~~.

~~C. Parking areas shall be fully screened from view and shall be landscaped in accordance with the requirements identified in chapter 17.80 BMC.~~C. Outdoor storage shall only be permitted in an improved storage yard and shall be subject to the following standards:

1. Outdoor storage yards shall be secondary and incidental to a permitted use;

2. Must be paved with asphalt, concrete, or an approved permeable paving material;

3. In addition to any other standard prescribed in the landscaping section, outdoor storage yards shall be screened from view using a combination of fencing and landscaping;

4. Storage yards shall not be located between a building and the street, except on corner lots where storage yards may be located between a building and one street frontage if no feasible alternative exists;

4. Litter, trash, used appliances, used interior furnishings and discarded exterior furnishings and similar items are prohibited outdoors regardless of location.

5. Outdoor storage of junked, wrecked, or inoperable vehicles shall be prohibited.

6. Outdoor storage of any items that would be classified as a nuisance under Chapter 8.12 BMC is prohibited.

D. Drive-~~in~~ through uses are prohibited.

~~E. Parking area illumination shall be directed away from residential uses.~~E. Rural agricultural uses are not permitted.

F. No trailer, recreational vehicle, boat, camping trailer, fifth wheel, camper, van, car, or other similar type of mobile unit that is not a permanent structure attached to the ground, shall be used as a place of habitation or as a dwelling. Only site built structures which comply with all applicable building code requirements and manufactured or modular homes which meet applicable state or federal standards for use as a dwelling unit may be used as a place of habitation or as a dwelling.

17.40.090 Design standards.

A. Parking facilities and access.

1. Where alley access is available, off street parking spaces and garages shall be accessed from the alley and no curb cuts shall be permitted. This requirement shall apply to all land divisions, the construction of new homes and buildings, and requests for new curb cuts;

2. Parking areas shall not be located between the building and the street and shall be fully screened from view using a combination of fencing and landscaping

B. Heat pumps and other mechanical equipment shall only be permitted within 10 feet of a property line adjoining another residential development or dwelling if all equipment shall be equipped with a noise-baffling screen so there is no audible sound at the property line. All such equipment shall be fully screened from view using landscaping or fencing. Rooftop mechanical equipment shall be fully screened from view.

C. The following exterior finishes and materials shall be prohibited:

1. Vinyl siding;

2. T-111 plywood;

3. Exterior insulation finishing system (EIFS).

D. New subdivisions or developments that will result in 40 or more lots or dwellings shall include a common open space area for outdoor recreation.

E. Detached dwellings. Detached dwellings shall only be permitted in the following circumstances:

1. On existing lots that have an area of 4,000 square feet or less;

2. The construction of two or more detached dwellings on an existing lot provided the resulting density is at least one unit per 4,000 square feet;

3. In a cottage development with a gross density of 15 units per acre or more;

4. As part of a development with a mix of building types and a gross density of 15 units per acre or more.

F. Multiunit and horizontally attached dwellings.

1. Large multiunit buildings and buildings in any development that includes more than eight dwellings shall be designed by a licensed architect and detailed elevation drawings shall be provided with the land use permit application;

2. Multiunit buildings shall have frontage on a public or private street. The primary entrance for each building shall face the street and direct pedestrian access shall be provided between the entrance and the street.

3. For horizontally attached dwellings, each unit shall have its own exterior entrance and a direct pedestrian connection shall be provided between the entrance and the nearest street. For developments that include more than eight units, each unit shall have frontage on a public or private street and the primary entrance to each unit shall face the street.

4. Primary building entrances shall incorporate a covered porch or landing with a minimum area of 20 square feet and a minimum depth of three feet;

5. A consolidated garbage and recycling area shall be provided and shall be screened from view in accordance with the applicable landscaping standard;

6. The maximum building length shall not exceed 180 feet.

7. Street facing facades of large multiunit buildings shall incorporate modulations at intervals of 60 feet or less as follows:

a. Each modulation shall have a minimum width of 15 feet and a minimum depth of 6 feet;

b. Balconies can be used to meet a portion of this requirement provided each balcony has an area of at least 80 square feet and a depth of at least 6 feet.

8. For the purpose of breaking up the vertical mass of buildings, the first floor of a multistory building shall be distinguished from the upper floors through the use of at least one of the following design elements:

a. Change in materials;

b. Change in color;

C. Molding or other horizontally distinguishing transition trim, treatment, or embellishment.

9. Each building shall include architectural design elements or materials intended to break up the mass of the building and provide greater compatibility with the scale and appearance of surrounding residential structures. At a minimum all buildings must incorporate at least two of the following design elements:

a. Changes in the roofline at intervals of no more than 30 feet, such as variations in roof pitch, overhangs, projections, or extended eves;

c. Include at least two dormers with a minimum width of three feet;

d. Include at least two balconies on front façade. Balconies shall have a minimum depth of 6 feet between the building wall and the balcony railing;

e. For buildings with more than one floor, reduce the area of the upper floor so that its area is less than that of the first floor. To receive credit for this design element, the front building wall on the upper floor shall be stepped back from the first floor a minimum of two feet. The portion of upper floor stepped back from the first floor shall have a minimum width of eight feet. Uncovered, or covered unenclosed, balconies can be used to receive credit for this design element provided they satisfy the minimum dimensional requirements of this provision.

10. Transition areas. For developments that abut property zoned RD the following standards shall apply:

a. All residential buildings shall be setback at least 20 feet from parcels zoned RD. Any portion of a building higher than 25 feet or containing more than two stories shall be setback at least 40 feet from parcels zoned RD.

b. Balconies that face a parcel zoned RD shall be faced with a material such as frosted or opaque glass to provide visual privacy.

c. Parking spaces and access roads shall not be located within 20 feet of a parcel zoned RD.

d. A landscaped buffer shall be provided in accordance with the requirements of Chapter 17.81 BMC.

K. Nonresidential uses.

L. Manufactured Homes. Manufactured homes may be placed on any lot in an RA-2 zone where detached dwellings are permitted and regulated in accordance with the same standards and requirements applicable to site built detached homes, except that the following additional regulations shall apply. These standards and requirements do not apply to legally established, nonconforming manufactured homes or manufactured homes placed within a manufactured home park.

1. The manufactured home shall be set upon a permanent foundation, as specified by the manufacturer, and the space between the bottom of the home and the ground shall be enclosed by concrete or an approved concrete product which may be either load bearing or decorative;

2. The manufactured home shall have been originally constructed with and shall now have a composition or wood shake or shingle, coated metal, or similar roof of nominal 3:12 pitch;

3. The manufactured home shall have exterior siding similar in appearance to siding materials commonly used on conventional site-built uniform building code single-family residences;

4. The placement of the manufactured home shall be consistent with all other regulatory requirements generally

5. Manufactured homes shall comply with all of the regulatory requirements and permit processing procedures identified in the chapter for site built detached homes.

~~F. Assembly uses shall require approval from the planning, police and fire departments for all special events. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.40.~~090~~100 Development standards.

A. Lot Area and Dimension.

1. Minimum lot area: 1,500 square feet~~none~~.

2. Minimum lot width:

a. For lots with no alley access or where curb cuts are permitted: 30 feet

b. For lots with alley access or where curb cuts are prohibited by plat notes: 15 feet~~ none.~~

3. Minimum lot depth: ~~none~~60 feet.

B. Maximum Density. New residential development, and the addition of dwelling units to existing residential structures, shall be subject to the following standards:

1. Dwelling Units per Building. A multifamily building shall not contain more than eight dwelling units;

2. Maximum Density. ~~The maximum permissible density for multifamily development shall be calculated as follows: one unit per lot plus one additional unit for every 3,000 square feet of lot area; provided, that additional density may be permitted through the agricultural heritage credit program~~One residential building per lot.

C. Minimum Setback Requirements.

1. Front: ~~17~~ 10 feet.

2. Street s~~S~~ide: ~~5~~ 10 feet.

3. ~~Street~~Side: ~~20~~ 10 feet.

4. Rear: ~~10~~ 5 feet.

5. Alley: 0 feet.

6. Setback Exceptions:

a. When authorized pursuant to this chapter, no property line setback shall apply to the common walls of zero lot line structures or horizontally attached dwellings;[BJ3]

b. All other buildings and structures: see Chapter 17.70 BMC.

D. Minimum building separation:

1. Primary structures: 30 feet.

2. Accessory structures: 10 feet.

3. Exceptions: When authorized pursuant to this Chapter no separation requirement shall apply between zero lot line structures or horizontally attached dwellings that share a common wall.

~~5. Setback Exceptions. Buildings or structures which do not conform to the setback standards identified above may be expanded or modified; provided, that any wall or facade which extends into a required setback may be further extended along the established building line but may not extend further into the required setback;~~

E~~D~~. Maximum building and impervious surface coverage: none.

F~~E~~. Maximum building height: 4~~3~~5 feet. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

Chapter 17.45

~~B-1 BUSINESS DISTRICT~~MUC-1 – Mixed Use Commercial Zone

Sections:

17.45.010 Title.
17.45.020 Application.
17.45.030 Purpose.
17.45.040 Authority.
17.45.050 Permitted primary uses.
17.45.060 Permitted accessory uses.
17.45.070 Conditional uses.
17.45.080 Additional regulations.
17.45.090 Development standards.

17.45.010 Title.

This chapter shall be called "~~B-1 Business District.~~MUC-1 Mixed Use Commercial Zone" ~~(Ord. 1857 § 2 (Exh. B), 2018)~~.

17.45.020 Application.

This chapter shall apply to all areas zoned ~~B-1~~MUC-1. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

17.45.030 Purpose.

MUC-1 zone is intended to implement the MUC comprehensive plan designation by accommodating a dense mix of small scale, pedestrian oriented commercial activities and residential uses such as stores, eating and drinking establishments, offices, art galleries, and smaller multiunit residential buildings. Uses permitted in this zone typically rely on a high degree of visibility and easy pedestrian access. The regulations in this chapter are intended to create and maintain a traditional small town streetscape with urban characteristics, including buildings located at the street-line, smaller scale buildings, and entrances and windows that face the street. Parking is provided by on-street spaces, off-street public parking lots, or in small lots located behind buildings and accessed from alleyways. ~~The B-1 zone should be applied to the historic city center. This area has traditionally served as the city's center for financial, commercial, government, and professional services. This area also provides the greatest concentration of cultural amenities and pedestrian oriented commercial enterprises.~~

~~Th~~Uses that detract from, or do not contribute to, a traditional small town streetscape,~~e purpose of the B-1 zone, and the following regulations, is to preserve and enhance the unique characteristics of the historic city center by encouraging the preservation, expansion, and establishment of smaller scale, pedestrian oriented businesses and uses, and by discouraging or prohibiting incompatible uses~~ such as gas stations, outdoor storage yards, and drive-through uses shall be prohibited. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~[BJ1]

17.45.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.45.050 Permitted primary uses.

Hereafter all buildings, structures, or parcels of land shall only be used for the following, unless otherwise provided for in this title:

A. ~~Administrative o~~Offices, all types, ~~provided they are located in a multistory building the ground floor of which must contain another permitted use listed in this section;~~[BJ2][BJ3]

B. ~~Multifamily~~ Multiunit ~~dwellings~~buildings, all sizes, and dwellings located in mixed use buildings, ~~provided they are located in a multistory building, the ground floor of which must contain another permitted use as listed in this section;~~[BJ4]

~~C. Art, music and photography studios~~[BJ5];[BJ6]

~~D. Automotive parts and accessories;~~[BJ7]

~~E. Customer service office, excluding drive-in facilities;~~[BJ8]

C~~F~~. Retail, small and medium scale; ~~General personal and household retail sales and service;~~

D~~G~~. Hotels;

~~H. Major durables, sales, service and rentals~~[BJ9]~~;~~

E~~I~~. H~~H~~ealth care facilities, all sizes~~, provided such uses shall be prohibited along Fairhaven Avenue~~;[BJ10]

~~J. Multipurpose convenience store;~~[BJ11]

F~~K~~. Eating and drinking establishments, all sizes;

G~~L~~. ~~Schools, including art, business, barber, beauty, dancing, martial arts and music~~Specialized instruction;[BJ12]

~~M. Specialty food store;~~[BJ13]

H~~N~~. Theaters~~s, except drive-in. (Ord. 1857 § 2 (Exh. B), 2018).~~;

I. Commercial child day care center, all sizes;

J. Meeting facilities, all sizes;

K. Horizontally attached dwellings;

L. Private schools, all sizes;

M. Utilities, small;

N. Personal services;

O. Nursing homes, all sizes;

P. Veterinary clinics;

Q. Emergency housing[BJ14].

17.45.060 Permitted accessory uses.

The following buildings, structures, and uses are permitted accessory uses in the MUC-1 zone. Accessory uses shall only be permitted when associated with, and incidental and subordinate to, a legally established primary use**.**

A. Normal commercial and residential appurtenances. The following uses and structures may be authorized as an accessory use in conjunction with a permitted use: recreation, exercise, or community rooms, manager's office, storage shed or buildings, noncommercial gardens and greenhouses, swimming pools, laundry rooms and facilities, decks, patios, driveways, on-site utilities and utility connections, fences, solar panels, and signs;~~Accessory buildings or multi-building developments with uses complementary and related to a dominant or primary use; provided control of building design, location and site development is retained by the dominant use. In such coordinated developments the site area requirement shall apply to the group of buildings and the yard requirements to the site perimeter; provided, that construction of warehouse space accessory to another use shall be required to provide landscaping, comply with design review standards and shall not be permitted to be an all-metal building;~~

B. Automobile parking facilities and vehicle charging stations;

~~C. Outdoor seating associated with an eating and drinking establishment;~~[BJ15]

D. Caretaker apartment;[BJ16]

CE. Macro telecommunication facilities, subject to the following standards:

1. Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the director if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1857 § 2 (Exh. B), 2018).

D. Caretaker dwellings and employee or student housing;

17.45.070 Conditional uses.

The following uses shall be considered conditional uses and shall require a conditional use permit:

A. Administrative offices located on the ground floor;

AB. Multifamily dwellings without a permitted ground floor useDuplexes, subject to the following:

1. The lot is not large enough to accommodate a more intensive residential use or the duplex is part of a larger development with a gross site density of at least 25 dwelling units per acre; and

i.2. The lot does not have frontage on Fairhaven Avenue. ;

BC. ArcadesIndoor commercial entertainment, minor;

D. Utility substations. (Ord. 1857 § 2 (Exh. B), 2018).

C. Utilities, medium;

D. Craft industries, subject to the following:

1. A display area for selling products and crafts manufactured onsite shall be included and must be visible and accessible from adjacent streets;

2. Outside storage shall not be permitted;

3. Garage doors and loading areas shall not be visible from adjoining streets.

E. Retail, large scale;

F. Laboratories and research facilities;

G. Indoor commercial entertainment, small scale;

H. Buildings with a footprint greater than 6,000 square feet, subject to the following:[BJ17]

1. Street facing facades shall incorporate modulations at intervals of 60 feet or less. Each modulation shall have a minimum width of 15 feet and a minimum depth of 2 feet;

2. For the purpose of breaking up the vertical mass of buildings, the first floor of a multistory building shall be distinguished from the upper floors through the use of at least one of the following design elements:

a. Change in materials;

b. Change in color;

c. Awning, molding, or other horizontally distinguishing transition trim, treatment, or embellishment.

3. A minimum of 50 percent of any ground floor façade facing a street shall be comprised of transparent windows or entrances. Reflective glass or film or opaque window treatments shall not be used to satisfy this requirement.

17.45.080 Additional regulations.

A. ~~Off-Street Parking and Loading Area Requirements. See chapter 17.85 BMC~~Off-street parking and loading areas shall not be located between buildings and streets.

B. All uses shall be conducted entirely within a building or structure except:

1. Automobile parking lots and vehicle charging stations;

2. Display or sales of goods that do not extend eight feet past the front of the building, do not block entrances or interfere with pedestrian travel, do not interfere with the parking areas and do not encroach upon public property;

3. Outdoor seating associated with an eating and drinking establishment, theater, or other entertainment;

4. Temporary uses consistent with approval criteria in Chapter 14A BMC ~~as permitted by the fire marshal, building official, community development director or designee or city engineer pursuant to the applicable ordinances~~;

5. Unloading and loading areas;

6. Utility substations;

7. Refuse and recycling containers, provided they are fully screened from view in accordance with any applicable standards set forth in this title;

8. Play areas for child day care centers and schools.

C. Any on-premises repair work shall be incidental only, and limited to repairing the types of merchandise sold on the premises. The floor area devoted to such repair work shall not exceed 30 percent of the total floor area occupied by the primary use, except that the limitations of this subsection shall not apply to electronic devices, shoe, radio, television, or other small appliance repair services.

D. Storage shall be limited to accessory storage of commodities sold at retail on the premises or materials used in the limited fabrication of commodities sold at retail on the premises. No outside storage is permitted.

E. Operations conducted on the premises shall not be objectionable beyond the property boundary lines by reason of noise, odor, fumes, gases, smoke, vibration, hazard, or other causes.

F. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use ~~as regulated by International Fire Code~~. (Ord. 1857 § 2 (Exh. B), 2018).

G. Buildings with frontage on an arterial street may not include dwellings unless at least 50 percent of the ground floor street frontage is devoted to a permitted nonresidential use listed in section 17.45.050.

17.45.090 Development standards.

A. Lot Area and Dimension.

1. Minimum lot size: none.

2. Minimum lot width: none.

3. Minimum lot depth: none.

B. Maximum ~~Density~~building footprint: 6,000 square feet.~~. The maximum permissible density for multifamily development shall be calculated as follows: one unit per lot plus one additional unit for every 3,000 square feet of lot area; provided, that additional density may be permitted through the agricultural heritage credit program~~Larger buildings may be authorized through a conditional use permit subject to BMC 17.45.070.H.

C. Maximum ~~building and~~ impervious surface coverage.

1. Downtown: none

2. All other locations: 80 percent~~: none.~~

D. Minimum Setback-s~~Requirements~~.

1. Front: none;

2. Side: none;

3. Street: none;

4. Rear: none.

E. Maximum ~~front~~ front and street ssetbacks: ~~along Fairhaven Avenue: zero feet; provided, that exceptions to this requirement may be authorized when:~~

1. Along Fairhaven Avenue: 0 feet

2. All other locations: 10 feet

3. Exceptions: Exceptions may be granted in the following situations, provided that in all cases new buildings and additions shall be constructed as close as possible to adjoining streets.

a. ~~A~~ To accommodate a wider sidewalk~~w~~[BJ18]~~ider sidewalk or additional landscaping is approved at the building entrance~~; or

b. To comply with the façade modulation requirements of this chapter; or

c. To accommodate a recessed entry, provided the entry is recessed no more than four feet from the adjoining street; or

d. The presences of utility easement makes compliance with the maximum setback impossible; or

e. The expansion or modification of an existing building where compliance with the maximum setback is not feasible due to the location of the existing building and the size of the proposed expansion. In such cases the expansion shall be constructed forward of the existing building line and closer to the street.~~or~~

~~2. A greater setback is necessary to maintain the continuity of the street front because of the setback line of the buildings on either side.~~

F. Maximum setback requirement in all other locations: 10 feet from the property line on the front and street side. The maximum setback shall apply to each lot line adjacent to a street.

G. Maximum building height: 45 feet.

H. Fences. See ~~BMC~~ Chapter 17.70 BMC~~.070~~.

I. Parking. ~~Parking shall not be located between a building and a street.~~See Chapter 17.85 BMC.

J. Landscaping. See C~~c~~hapter 17.81~~0~~ BMC.

K. Signs. See C~~c~~hapter 17.95 BMC. (Ord. 1857 § 2 (Exh. B), 2018).

L. Lighting. See Chapter 17.70 BMC

Chapter 17.50

~~C-1 GENERAL COMMERCIAL DISTRICT~~MUC-2 MIXED USE COMMERCIAL ZONE

Sections:

17.50.010 Title.
17.50.020 Application.
17.50.030 Purpose.
17.50.040 Authority.
17.50.050 Permitted primary uses.
17.50.060 Permitted accessory uses.
17.50.070 Conditional uses.
17.50.080 Additional regulations.
17.50.090 Development standards.

17.50.010 Title.

This chapter shall be called "~~C-1 General Commercial District~~MUC-2 Mixed Use Commercial Zone." (Ord. 1857 § 2 (Exh. B), 2018).

17.50.020 Application.

This chapter shall apply to all uses and developments in areas ~~designated~~ zoned ~~C-1~~MUC-2. (Ord. 1857 § 2 (Exh. B), 2018).

17.50.030 Purpose.

MUC-2 zone is intended to implement the MUC comprehensive plan designation by accommodating a dense mix of large scale commercial activities and residential uses such as stores, eating and drinking establishments, and offices, and large multiunit residential buildings. Uses permitted in this zone typically rely on a high degree of visibility, easy pedestrian access, and a dense concentration of shoppers and residents. The regulations in this chapter are intended to create and maintain a modern streetscape with urban characteristics, including buildings located near the street-line, entrances and windows that face the street, and amenities that buffer pedestrians from vehicle traffic such as extensive landscaping, street trees, and wide sidewalks. Parking is typically provided on-site but is not located between buildings and the street. Uses that could discourage pedestrian traffic and recreational shopping, such as car lots, drive-through businesses, or gas stations are restricted or prohibited. [BJ1]~~The intent and objective of this classification and its application is to provide for the location of a grouping of uses which are considered compatible uses having common or similar performance standards in that they represent types of enterprises involving the rendering of services, both professional or to the person, or on-premises retail activities. This zone represents the prime commercial designation for small to moderate scale commercial activities and should be developed in a manner which is consistent with and attracts pedestrian oriented activities. This zone encourages leisure shopping and provides amenities conducive to attracting shoppers.~~

~~There are several blocks zoned C-1 general commercial in old downtown Burlington located along Fairhaven, Victoria and Washington between Burlington Boulevard and Anacortes Avenue. The goal of the commercial zoning in this area is to attract new businesses and uses, and to upgrade existing businesses and uses that enhance the district as a whole, without having an adverse impact on parking or changing the character of the area. (Ord. 1857 § 2 (Exh. B), 2018).~~[BJ2]

17.50.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.50.050 Permitted primary uses.

~~Property located in downtown Burlington as mapped in the comprehensive plan that is zoned C-1 general commercial shall comply with the B-1 business district zoning regulations, unless a conditional use permit is authorized by the city council. See also BMC 17.05.100.~~[BJ3]

~~Hereafter all buildings, structures, or parcels of land zoned general commercial but located outside downtown Burlington shall only be used for the following, unless otherwise provided for in this title:~~

A. Multiunit buildings, all sizes, and dwellings located in a mixed use buildings[BJ4] ~~Multifamily dwellings;, provided they are located in a mixed use development with commercial on the street frontage and apartments in a separate structure or on the upper floor(s)~~

~~B. ;~~[BJ5]

~~B.~~ Retail, all sizes;

C. ~~Art, music and photography studios;~~

~~C.~~ Horizontally attached dwellings;

~~Automotive parts and accessories sales;~~

D. ~~Banking and related financial institutions, excluding drive-in facilities, and located in a building containing another permitted use~~Offices, all types;

E. ~~Bowling alleys, bingo halls, skating rinks and other commercial recreation~~Indoor commercial entertainment, all types;

F. ~~Bus~~ Private passenger transportation terminals;

G. ~~Civic, social, and fraternal clubs~~Meeting facilities, all sizes;

H. Commercial child day care centers, all sizes;

I. Private schools, all sizes; ~~Existing automobile service stations;~~

~~J. Funeral homes;~~

J~~K~~. Health care facilities, all sizes;

K~~L~~. ~~Hospitals and health care, to include small animal, but does not allow outside runs or kennels~~Veterinary clinics[BJ6];

L~~M~~. Hotels;

~~N. Meeting rooms and/or reception facilities;~~

M~~O~~. Nursing homes, all sizes;

~~P. Offices;~~

~~Q. Personal and household retail sales and service;~~

~~R. Printing and publishing;~~

~~S. Religious institutions;~~

N~~T~~.~~–~~ Utilities, small; ~~Existing single-family and duplex dwellings;~~

O~~U~~. Eating and drinking establishments, all sizes~~, provided drive-through uses may only be permitted through a conditional use permit process as specified in BMC 17.50.070(D)~~;

P~~V~~. ~~Schools, including art, business, barber, beauty, dancing, martial arts and music~~Specialized instruction;

Q~~W~~. Theaters~~, except drive-in~~;

R. Marijuana retailers (subject to BMC 17.50.080.I);

S. Emergency housing.[BJ7]

~~X. Trailer parks within 1,000 feet of the Skagit River Levee, subject to the following requirements:~~
~~1. A flood evacuation plan shall be prepared by the applicant, approved by the city and posted on the site. The plan shall include the following elements at a minimum:~~
~~a. A requirement that wheels shall not be removed from units;~~
~~b. A requirement that the hitch shall not be removed from units;~~
~~c. A requirement that only quickly removable, knockdown skirting shall be used;~~
~~d. A requirement that a plan is in place to move the units out;~~
~~2. The site shall have a row of screening trees or hedge around the perimeter;~~
~~3. The site shall be designed and maintained as a permanent long-term viable use, rather than an interim use and shall meet city standards for utilities and infrastructure;~~
~~4. The site shall be located in an area where it is unlikely to create land use conflicts with either industrial or residential properties;~~
~~5. The site shall be developed to minimize drainage impacts, with gravel and lawn and minimal asphalt;~~
~~6. The site shall take advantage of FEMA recommendations for location and shall be planned for ease of evacuation in the event of flood danger;~~
~~7. Park rules shall be approved by the city and posted on the site;~~
~~8. Health department and other required permits shall be obtained for the use;~~
~~9. A children's play area approved by the city shall be provided on the site;~~[BJ8]
~~Y. Other uses may be permitted by the community development director or designee if the use is determined to be consistent with the intent of the zone and substantially the same with respect to function and impacts as another use permitted in the zone; provided, that if the use is listed as permitted or conditional in another zone it shall not be permitted. (Ord. 1857 § 2 (Exh. B), 2018).~~[BJ9]

17.50.060 Permitted accessory uses.

A. Automobile parking facilities and charging stations;

B. Caretaker ~~apartment~~dwellings and employee or student housing;

C. Family day care home;

D. Foster family home;

E. Telecommunication macro facilities, subject to the following requirements:

1. Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the community development director or designee if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: ~~Omnidirectioual~~Omnidirectional antennas may exceed the height limitation by 15 feet, or in the ease of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1857 § 2 (Exh. B), 2018).

17.50.070 Conditional uses.

The following uses shall be considered conditional uses and shall require a conditional use permit:

~~A. Multifamily dwellings, either single purpose or as part of a mixed use development where the street frontage is primarily residential; provided, that an additional criterion for approval is that the site is better suited for housing than commercial development. Multifamily dwellings authorized under this provision shall comply with the plan review criteria in BMC 17.25.050(A) and 17.25.090;~~

A~~B~~. ~~Arcades~~Craft industries, subject to the following:~~;~~

1. A display area for selling products and crafts manufactured onsite shall be included and must be visible and accessible from adjacent streets; [BJ10]

2. Outside storage is prohibited;

3. Garage doors and loading areas shall not be visible from adjoining streets.

B~~C~~. ~~Dance halls~~Contractor offices, subject to the following:~~;~~

1. Outside storage is prohibited;

2. Contractor offices shall not be permitted on lots fronting an arterial street;

3. Garage doors and loading areas shall not be visible from adjoining streets. [BJ11]

C~~D~~. Drive-through~~in~~ facilities, subject to the following:~~, including banks and restaurants, when located on a tenant pad on an existing development site or at a signalized intersection;~~

1. Drive-through facilities shall only be permitted at the following locations:

a. Corner lots at signalized intersections; or

b. Corner lots at non-signalized intersections within a binding site plan or plat where the lot was designated and approved for drive-through uses during the land division approval process; or

c. Through lots or lots with alley access.

2. Drive-through facilities shall only permitted when the vehicle entrances and exits fully comply with the intersection and driveway spacing requirements identified in Chapter 12.28 BMC.

3. Buildings shall be located as close to adjoining streets as possible and shall comply with the maximum setback requirements of this chapter except as minimally necessary to accommodate a single queuing lane.

4. In addition to any other applicable landscaping and screening requirements, queuing lanes shall be screened from view using a landscaped earthen berm or a low masonry wall. The screening shall have a minimum height of three feet, as measured above the grade of the adjacent queuing lane and shall be consistent with the standards for Type II screening identified in Chapter17.81 BMC.

5. A raised pedestrian crossing with a minimum walking surface width of 5 feet shall be provided wherever a pedestrian path crosses a queuing lane.

6. For drive-through facilities with inside seating or service areas the primary building entrance shall face the street and a direct pedestrian connection shall be provided between the entrance and the street. For drive-through uses with no inside seating or service areas, a walkup window or service area shall be provided to allow pedestrians to place and pickup orders without entering a vehicle queuing lane.

7. The design shall incorporate enhanced pedestrian amenities and measures to mitigate the impacts of additional vehicle traffic on pedestrian access.

D~~E~~. ~~Government facilities, other than those listed as a permitted use~~Laboratories and research facilities;

E~~F~~. ~~Household goods storage, provided the following requirements are met~~Personal storage, subject to the following:

1. ~~No more than two main entrances and/or exits to the building and access to the individual storage area~~Each building shall have no more than two primary entrances and access to individual storage units ~~–~~shall be from the inside ~~of~~ the building;

2. Landscaping and architectural improvements ~~required~~ shall be provided to ensure ~~compatibility with present and potential C-1 uses in the vicinity~~visual compatibility with those uses and development types typically found in mixed commercial and residential environments;

3. The site ~~does not front~~shall not have frontage on Burlington Boulevard;

4. The design shall incorporate enhanced pedestrian amenities;

5. Garage doors and loading areas shall not be visible from adjoining streets.

F~~G~~. Utilities, medium; ~~y substations. (Ord. 1857 § 2 (Exh. B), 2018).~~

G. Hospitals;

H. Fueling stations and car washes, subject to the following:

1. Fueling stations and car washes shall only be permitted at the following locations:

a. At a signalized intersection; or

b. Within a binding site plan or plat where the lot was designated and approved for drive-through uses during the land division approval process; or

c. Through lots or lots with alley access.

2. Fueling stations and car washes shall only permitted when the vehicle entrances and exits fully comply with the intersection and driveway spacing requirements identified in Chapter 12.28 BMC.

3. Fueling stations and car washes must be located along an arterial providing direct access to an I-5 freeway interchange and be located within 1,500 feet of the centerline of I-5 as measured along the arterial centerline;

4. Buildings, excluding fueling islands and associated canopies, shall comply with the maximum setback standards identified in this Chapter. Drive through car wash buildings and structures shall be located as close to adjoining streets as possible and shall comply with the maximum setback requirements of this chapter except as minimally necessary to accommodate a single queuing lane;

3. In addition to any other applicable landscaping and screening requirements, vehicle circulation and parking areas shall be screened from view using a landscaped earthen berm or a low masonry wall. The screening shall have a minimum height of three feet, as measured above the grade of the adjacent parking or circulation area and shall be consistent with the standards for Type II screening identified in Chapter17.81 BMC;

4. The design shall incorporate enhanced pedestrian amenities and measures to mitigate the impacts of additional vehicle traffic on pedestrian access. [BJ12]

I. Pet boarding, daycare, subject to the following:

1. Kennels shall be entirely indoors;

2. Outside exercise areas shall be surrounded on all sides not adjacent to a building or structure by a solid masonry wall six feet in height;

3. Outside exercise areas shall be used for short term supervised play and exercise only. Animals shall not have access to individual outdoor runs or be left unsupervised, or for extended periods of time, in outdoor areas.

17.50.080 Additional regulations.

A. All uses shall be conducted entirely within a building or structure except:

1. Automobile parking ~~lots~~ facilities and vehicle charging stations~~accessory to a permitted use~~;

~~2. Existing automobile sales and leasing areas;~~

2~~3~~. When accessory to a permitted use, display or sales of goods that do not extend eight feet past the front of the building, do not block entrances or interfere with pedestrian travel, do not interfere with the parking areas and do not encroach upon public property;

3~~4~~. Outdoor seating accessory to a permitted use;

4~~5~~. Play areas accessory to a child day care center or school;

5~~6~~. Refuse and recycling containers associated with a permitted use, provided they are screened from view in accordance with the requirements of chapter 17.80 BMC;

6~~7~~. Temporary uses ~~as permitted by the fire marshal, building official, community development director or designee or city engineer pursuant to the applicable ordinances~~consistent with standards identified in Title 14A BMC;

7~~8~~. Unloading and loading areas accessory to a permitted use;

8~~9~~. Utility substation;

9. Play and exercise areas associated with pet boarding facilities~~s~~.

B. Any repairing done on the premises shall be incidental only, and limited to custom repairing of the types of merchandise sold on the premises at retail. The floor area devoted to such repairing shall not exceed 30 percent of the total floor area occupied by the particular enterprise, except that the limitations of this subsection shall not apply to electronic equipment, shoe, radio, television, or other small appliance repair services.

C. Storage shall be limited to accessory storage of commodities sold at retail on the premises or materials used in the limited fabrication of commodities sold at retail on the premises.

D. Operations conducted on the premises shall not be objectionable beyond the property boundary lines by reason of noise, odor, fumes, gases, smoke, vibration, hazard, or other causes.

E. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the International Fire Code.

F. Off-street p~~P~~arking and loading areas shall not be located between buildings and adjoining streets.

G. Commercial land abutting directly a residential zone shall provide for a transition to the residential use as required in chapter 17.70 BMC, Supplemental Development Standards, and the following:

1. A six-foot screening fence and a 20-foot landscaped buffer designed for sight and noise baffling or a six-foot solid block wall and a 10-foot landscaped buffer designed for sight and noise baffling; and

2. Uses generating noise after 9:00 p.m. shall not be permitted, including assembly occupancies, restaurants with cocktail lounges or dance floors, all night businesses and other similar types of uses;

3. Measures shall be taken to prevent light and glare from being directed to residential uses. (Ord. 1857 § 2 (Exh. B), 2018).

H. Except in the Northern Gateway area buildings with frontage on an arterial street may not include dwellings unless at least 50 percent of the ground floor street frontage is devoted to a permitted nonresidential use listed in BMC 17.50.050. [BJ13]

I. Marijuana Retailers.[BJ14] The following requirements shall apply to marijuana retailers. The provisions of this code section are intended to be consistent, and ensure compliance, with the regulations identified in Chapter 314-55 WAC.

1. In accordance with the provisions of WAC 314-55-050(11)(a) marijuana retailers shall be located at least 100 feet from the following:

a. Recreation centers;

b. Child care centers;

c. Public parks;

d. Transit centers;

e. Libraries;

f. Arcades (where admission is not restricted to persons 21 or older)

2. Marijuana retailers shall not be located within 1,000 feet of the following:

a. Elementary or secondary schools;

b. Playgrounds.

3. In determining compliance with the provisions of this section the definitions and measurement procedures identified in Chapter 314-55 WAC shall apply.

17.50.090 Development standards.

A. Lot Area and Dimension.

1. Minimum lot area: none.

2. Minimum lot width: none.

3. Minimum lot depth: none.

B. Maximum Building and Impervious Surface Coverage.

1. Building coverage: none.

2. Impervious surface coverage: 80 percent.~~Maximum lot coverage: none required.~~

C. Minimum Setbacks.

1. Front: none.

2. Side: none.

3. Street: none.

4. Rear: none.

D. Maximum Setbacks.

1. Front: 10 feet.

2. Street: 10 feet.

3. Exceptions. Exceptions may be granted in the following situations:~~Exceptions to the maximum setbacks identified above may be authorized in the following instances:~~

a. As minimally necessary to accommodate a wider sidewalk[BJ15];

b. A portion of the building façade may be recessed as minimally necessary to accommodate a recessed pedestrian entrance or plaza. In such cases a direct pedestrian connection with a minimum width of 10 feet shall be provided between the adjoining street and the entrance, plazas shall be surfaced with concrete or pavers, and the recessed entrance or plaza shall be publicly accessible;

b. As minimally necessary to avoid a utility easement that makes compliance with the maximum setback impossible;

c. The expansion or modification of an existing building where compliance with the maximum setback is not feasible due to the location of the existing building and the size of the proposed expansion. In such cases the expansion shall be constructed forward of the existing building line and closer to the street;

d. As minimally necessary to accommodate development on irregular shaped lots where the street frontages are angular or curvilinear. In such instances buildings shall be located as close as possible to the street frontages;

e. For corner lots, buildings shall be located at the corner or intersection;

f. For lots with more than two street frontages, the maximum setback shall be applied to the street frontages with the highest classification. For example, if a parcel has frontage on two arterial streets and a local access street, the maximum setback shall apply to the two arterial streets;

d. Drive-through uses subject to compliance with BMC 17.50.070.C;

e. Fueling stations and car washes subject to compliance with BMC 17.50.070.H. ~~a. A greater setback for drive-through uses may be authorized through the conditional use permit for the drive-in use; provided, that the building shall be located as close as possible to adjoining streets and shall be set back only the distance necessary to accommodate the drive-through and any associated queuing lanes.~~

~~b. The presence of a utility easement makes compliance with the maximum setback impossible; provided, that the building shall still be located as close as possible to adjoining streets.~~

~~c. The building entrance may be set back a greater amount to accommodate a wider sidewalk or additional landscaping.~~

~~d. A greater setback is necessary to accommodate m architectural design feature, such as: a unique building entrance, outside seating area, pocket park, or similar element.~~

~~e. Deviations from the maximum setback requirements may be granted for development on irregular shaped lots where the street frontages are angular or curvilinear. In such instances buildings shall be located as close as possible to the street frontages.~~

~~f. The expansion or modification of existing buildings, when a greater setback is needed to preserve existing visual and physical access.~~ [BJ16]

~~g. Other similar exceptions may be granted when consistent with the intent of providing a well-defined street edge and pedestrian oriented streetscape.~~[BJ17]

E. Maximum building height: 45 feet, except:

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line, for each foot the building exceeds 45 feet; and

2. An additional 15 feet of height may be permitted when parking is located under the building.

F. Fences. See ~~BMC~~ chapter 17.70 BMC~~.070~~.

G. Parking. See chapter 17.85 BMC.

H. Landscaping. See chapter 17.81~~0~~ BMC.

I. Signs. See chapter 17.95 BMC. (Ord. 1857 § 2 (Exh. B), 2018).

J. Lighting. Chapter 17.70 BMC.

Chapter 17.55

CI-1~~2 HEAVY COMMERCIAL DISTRICT~~COMMERCIAL AND INDUSTRIAL ZONE

Sections:

17.55.010 Title.
17.55.020 Application.
17.55.030 Purpose.
17.55.040 Authority.
17.55.050 Permitted primary uses.
17.55.060 Permitted accessory uses.
17.55.070 Conditional uses.
17.55.080 Additional regulations.
17.55.090 Development standards.

17.55.010 Title.

This chapter shall be called "CI-1~~2 Heavy Commercial District~~Commercial and Industrial Zone." (Ord. 1857 § 2 (Exh. B), 2018).

17.55.020 Application.

This chapter shall apply to all uses and developments in areas ~~designated~~ zoned CI-1~~2~~. (Ord. 1857 § 2 (Exh. B), 2018).

17.55.030 Purpose.

The CI-1 zone is intended to implement the CI comprehensive plan designation by accommodating a mix of light industrial and outdoor sales uses including automobile and recreational vehicles sales, heavy equipment sales, lumber yards, contractor offices, nurseries, light industry, storage buildings, and other similar uses. The uses permitted in this zone are typically auto-oriented, rely on good freeway access and visibility, have associated outdoor storage or sales lots, or involve low impact industrial or manufacturing processes, such as food preparation and processing and the assembly of products from pre-manufactured components or materials. Uses that involve outdoor manufacturing, loud or consistent noises, or that result in noxious odors or emissions are not permitted. In addition, uses, such as hotels, nursing homes, and apartments, that could interfere with, or be negatively impacted by, the intended purposes of the CI-1 zone are prohibited or restricted. ~~The~~ The regulations in this chapter are intended to create an attractive and welcoming environment and are focused on minimizing clutter and contributing to a sense of unity and order. ~~intent and objective of this classification and its application is to provide for the location of and grouping of enterprises which may involve some on-premises retail service but with outside activities and display or fabrication, assembling, and service features. This zone is intended to accommodate uses which are oriented to automobiles either as the mode or target of producing the commercial service. The uses enumerated in this classification are considered as having common or similar performance standards in that they are heavier in type than those uses permitted in the more restrictive commercial classifications. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.55.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.55.050 Permitted primary uses.

~~Land that is zoned C-2, but located in the retail core as mapped in the comprehensive plan, shall comply with the C-1 zoning regulations for the retail core; provided, that expansion of an existing use on C-2 zoned property shall be permitted consistent with this chapter. See also BMC 17.05.100.~~

~~Hereafter all buildings, structures, or parcels of land shall only be used for the following, unless otherwise provided for in this title:~~

A. ~~Arcades~~Indoor commercial entertainment, all types;

B. ~~Art, music and photography studios~~Craft industries;

~~C. Auction houses, excluding animals[BJ1];~~

C. Personal services;

~~D~~D. ~~Automotive parts and accessories sales;~~[BJ2] Retail, all types;

E. ~~Banking and related financial institutions~~Offices, all types;

F. ~~Bowling alleys, bingo halls, skating rinks and other commercial recreation;~~[BJ3]Drive through facilities;

G. ~~Building c~~ Contractor ~~services~~offices;

H. ~~Bus~~ Private passenger transportation ~~terminals~~services;

I. Car wash;

J. ~~Civic, social and fraternal associations~~Meeting facilities, all sizes;

K. ~~Dance halls~~[BJ4]~~;~~Passenger and recreational vehicles sales;

L. Commercial child day care centers, all sizes;

M. Eating and drinking establishments, all sizes;

N. Heavy vehicle and equipment sales[BJ5]~~Equipment rental and leasing, does not include heavy construction equipment~~;

O. ~~O. Food locker services;~~[BJ6]Pet boarding, daycare, subject to the following:

~~P. Funeral homes;~~[BJ7]

1. K[BJ8]ennels shall be entirely indoors;
2. Outside exercise areas shall be surrounded on all sides not adjacent to a building or structure by a solid masonry wall six feet in height and screening shall be provided between the wall and adjoining property lines or streets consistent with the requirements for a Type III separation buffer identified in BMC 17.81.110;
3. Outside exercise areas shall be used for short term supervised play and exercise only. Animals shall not have access to individual outdoor runs or be left unsupervised, or for extended periods of time, in outdoor areas.

Q. ~~Gas~~ Fueling stations;

~~R. Health and physical fitness clubs;~~[BJ9]

R. Veterinary clinics;

S. Hospitals~~, to include small animal, but does not allow outside runs or kennels~~[BJ10];

~~T~~T. ~~Hotels;~~[BJ11] Laboratories and research facilities;

U. ~~.~~ Lumber yards;

V. Manufactured ~~/mobile~~ home ~~sales~~ sales ~~lots~~;

~~X. Massage parlors;~~

Y. Health care facilities, all sizes;

Z. ~~Meeting rooms and/or reception facilities~~Specialized instruction;

AA. ~~Mini-storage warehouses~~Personal storage;[BJ12]

BB. ~~Offices~~Nurseries and garden supply;

~~CC. Personal and household retail sales and service;~~

DD. ~~Printing and publishing~~Industrial, minor;[BJ13]

~~EE. Sales and rental of motorized vehicles[BJ14];~~

FF. ~~Schools, including art, business, barber, beauty, dancing, driving, martial arts and music[BJ15];~~ Private schools, all sizes;

GG. Theaters~~, including drive-ins~~;

HH. Vehicle repair, ~~major~~all types;

II. ~~Vehicle repair~~Utilities, ~~minor~~small and medium; ~~.~~ (Ord. 1857 § 2 (Exh. B), 2018).

JJ. Commercial laundries;

17.55.060 Permitted accessory uses.

A. Automobile parking facilities and charging stations;

B. Outdoor storage yards and sales lots;

C. Caretaker ~~apartments~~dwellings and employee or student housing;

D. ~~Storage w~~Warehousing and distribution;

E. Accessory buildings and structures associated with a permitted primary use;

F. Telecommunication macro facilities, subject to the following requirements:

1. Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or celling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the community development director or designee if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height

limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure. (Ord. 1857 § 2 (Exh. B), 2018).

G. Heavy vehicle and equipment repair, when associated with a related sales use;

H. Heliports, when associated with a hospital or healthcare facility.

17.55.070 Conditional uses.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of Title 14A BMC:

A. ~~Multifamily dwellings~~Multiunit buildings and nursing homes, all sizes, subject to the following:[BJ16]

1. Enhanced pedestrian amenities shall be provided;

2. The site shall not have frontage on I-5 or an arterial street;

3. The applicant shall demonstrate why the parcel is not suitable for outdoor sales or minor industrial uses, taking into consideration factors such as the size, configuration, and location of the site, market conditions, visibility, critical area constraints, and other uses in the vicinity of the proposal;

4. The development shall include measures to protect residents and occupants from light, glare, and noise impacts commonly associated with outdoor sales and minor industrial uses. At a minimum screening shall be provided consistent with the requirements for a Type III separation buffer identified in BMC 17.81.110;

5. Large multiunit buildings, large nursing homes, and any residential development including more than eight dwelling units shall be subject to the following activity area requirements:

   a. A children's play area(s) shall be provided with a minimum area of 225 square feet plus 20 additional square feet for each unit or nursing home room. Nursing homes may provide a picnic area, community room, or community garden in place of play area;

   b. Common open space shall be provided for passive or active outdoor recreation at a rate of 50 square feet for each unit or nursing home room;

   c. Individual patios, decks, or balconies shall be provided for at least 25 percent of the units or nursing home rooms.[BJ17]

6. Pedestrian access shall be provided throughout the site and shall provide a complete and logical circulation system that connects each dwelling unit or nursing home room to adjoining streets and developments, parking areas, common areas, and trash and recycling areas. Pedestrian paths shall be equipped with pedestrian scale lighting.

7. Trash and recycling areas shall be located in a central location and fully screened from view. Trash and recycling areas shall not be visible from adjoining public streets or neighboring properties.

8. Exterior lighting shall be provided for parking areas, access streets, and pedestrian paths in accordance with the requirements of Chapter 17.70 BMC.

~~a.~~9. Parking areas shall be located behind, between, or alongside buildings. Parking shall not be located between a street and a building and shall be fully screened from view. ~~, either single purpose or as part of a mixed use development where the street frontage is primarily residential; provided, that an additional criterion for approval is that the site is better suited for housing than commercial development and the project complies with the plan review criteria in BMC 17.25.050(A) and 17.25.090;~~

B. ~~Governmental facilities, other than those listed as a permitted use~~Hotels and emergency housing, subject to the following:[BJ18][BJ19]

1. Enhanced pedestrian amenities shall be provided;

2. The site shall not have frontage on I-5 or an arterial street;

3. The applicant shall demonstrate why the parcel is not suitable for outdoor sales or minor industrial uses, taking into consideration factors such as the size, configuration, and location of the site, market conditions, visibility, critical area constraints, and other uses in the vicinity of the proposal;

4. The development shall include measures to protect occupants from the light, glare, and noise impacts commonly associated with outdoor sales and minor industrial uses. At a minimum screening shall be provided consistent with the requirements for a Type III separation buffer identified in BMC 17.81.110;

~~a.~~5. Parking areas shall be located behind, between, or alongside buildings. Parking shall not be located between a street and a building and shall be fully screened from view.~~;~~

C. Outdoor commercial entertainment;

~~Heliports;~~

D. ~~Miscellaneous light manufacturing including toys, jewelry, ceramic, musical instruments and similar products, apparel and other finished products made from fabrics, leather, and similar materials, manufacturing of professional, scientific, and controlling instruments such as photo and optical goods, watch and clock manufacturing, and similar products, with retail sales of products manufactured on the premises;~~ Pet boarding, overnight, subject to the following:[BJ20]

1. Outdoor runs and exercise areas shall not be located between the primary structure and an adjoining street or public right-of-way;

2. Areas containing outdoor runs or exercise areas shall be surrounded on all sides not adjacent to a building or structure by a masonry wall six feet in height and screening shall be provided between the wall and adjoining property lines or streets consistent with the requirements for a Type III separation buffer identified in BMC 17.81.110;

3. Outdoor runs may be provided but individual indoor sleeping areas shall be provided for all pets;

4. Overnight boarding facilities shall include additional measures to mitigate and reduce the sound of barking including, but not limited to, acoustic insulation, additional landscaping, masonry walls, and operational procedures;

5. Overnight boarding facilities shall only be permitted on sites where all of the adjacent parcels are zoned CI-1 or CI-2. If the site is adjacent to an unincorporated area, all of the adjacent unincorporated parcels shall have a Skagit County natural resource lands designation;

~~i.~~6. The site shall not have frontage on I-5 or an arterial street.

~~E. Nursing homes;~~

E~~F~~. ~~Semi-tractor and trailer sales~~Heavy vehicle and equipment repair;[BJ21]

~~G. Utility substations[BJ22];~~

F~~H~~. Towing service, subject to the following:

1. All outdoor storage yards or outdoor areas where vehicles are impounded shall be consistent with the requirements of BMC 17.55.080.B;~~.~~

2. The towing service shall maintain a registration as required by Chapter 46.55 RCW[BJ23]. Only towing services with a current Washington State registration shall be considered a legally authorized use;

3. The term "towing service" does not include wrecking yards or hulk haulers which are prohibited uses in the CI-1 zone. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

G. Shooting range, indoors[BJ24], subject to the following:

1. Indoor shooting ranges shall include additional measures to mitigate and reduce the sound of gunfire including, but not limited to, acoustic insulation, additional landscaping, masonry walls, and operational procedures, and hours of operation;

2. Indoor shooting ranges shall only be permitted on sites where all of the adjacent parcels are zoned CI-1 or CI-2. If the site is adjacent to an unincorporated area, all of the adjacent unincorporated parcels shall have a Skagit County natural resource lands designation;

17.55.080 Additional regulations.

A. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the International Fire Code.

B. ~~Service Yards~~Outdoor storage yards and service areas. All service yards shall be ~~enclosed~~ surrounded on all sides not adjacent to a building by a solid, site obscuring fence or wall six-feet in height~~foot~~ and landscaped consistent with the requirements for Type I screening identified in BMC 17.81.110 ~~fence and screened with solid planting where visible from the public right-of-way or an adjacent residential zone with the exception of access gates~~. Outdoor storage yards and service areas shall be located behind, between, or alongside buildings and shall not be located between a buildings and a street.

C. Development abutting a less intensive zone shall provide for a transition area and screening as required by chapters 17.70 and 17.81 BMC, and shall be subject to the following:

1. Uses generating noise after 9:00 p.m. shall not be permitted, including taverns, assembly occupancies, restaurants with cocktail lounges or dance floors, all night businesses, shooting ranges, overnight pet boarding, and other similar types of uses; and

2. Measures shall be taken to prevent light and glare from being directed to residential uses. (Ord. 1857 § 2 (Exh. B), 2018).

D. Parking areas and outdoor sales lots shall be located behind, between, or alongside buildings and shall not be located between a building and a street.

17.55.090 Development standards.

A. Lot Area and Dimension.

1. Minimum lot area: none.

2. Minimum lot width: none.

3. Minimum lot depth: none.

B. Maximum Building and Impervious Surface Coverage.

1. Building coverage: none.

2. Impervious surface coverage: 80 percent.

C. Minimum Setbacks.

1. Front none.

2. Side: none.

3. Street: none.

4. Rear: none.

D. Maximum Setbacks.

1. Front: 10 feet.

2. Street: 10 feet.

3. Exceptions. Exceptions may be granted in the following situations:

a. As minimally necessary to accommodate a wider sidewalk[BJ25];

b. A portion of the building façade may be recessed as minimally necessary to accommodate a recessed pedestrian entrance or plaza. In such cases a direct pedestrian connection, with a minimum width of 10 feet shall be provided between the adjoining street and the entrance, plazas shall be surfaced with concrete or pavers, and the recessed entrance or plaza shall be publicly accessible;

b. As minimally necessary to avoid a utility easement that makes compliance with the maximum setback impossible;

c. The expansion or modification of an existing building where compliance with the maximum setback is not feasible due to the location of the existing building and the size of the proposed expansion. In such cases the expansion shall be constructed forward of the existing building line and closer to the street;

d. As minimally necessary to accommodate development on irregular shaped lots where the street frontages are angular or curvilinear. In such instances buildings shall be located as close as possible to the street frontages;

e. For corner lots, buildings shall be located at the corner or intersection;

f. For lots with more than two street frontages, the maximum setback shall be applied to the street frontages with the highest classification. For example, if a parcel has frontage on two arterial streets and a local access street, the maximum setback shall apply to the two arterial streets;

d. Drive-through uses, provided the building shall not be setback more than necessary to accommodate the drive through and querying lanes;

e. Fueling stations and car washes, provided this exception applies only to fueling islands, and buildings washing equipment. Associated retail buildings shall comply the requirements of this section. ~~D. Maximum Setback.~~

~~1. Front: 10 feet.~~

~~2. Street: 10 feet.~~

~~3. Exceptions. Exceptions to the maximum setbacks identified above may be authorized in the following instances:~~

~~a. A greater setback for drive-through uses may be authorized through the conditional use permit for the drive-in use; provided, that the building shall be located as close as possible to adjoining streets and shall be set back only the distance necessary to accommodate the drive-through and any associated queuing lanes.~~

~~b. The presence of a utility easement makes compliance with the maximum setback impossible; provided, that the building shall still be located as close as possible to adjoining streets.~~

~~c. The building entrance may be set back a greater amount to accommodate a wider sidewalk or additional landscaping.~~

~~d. A greater setback is necessary to accommodate an architectural design feature, such as: a unique building entrance, outside seating area, pocket park, or similar element.~~

~~e. Deviations from the maximum setback requirements may be granted for development on irregular shaped lots where the street frontages are angular or curvilinear. In such instances buildings shall be located as close as possible to the street frontages.~~

~~f. The expansion or modification of existing buildings, when a greater setback is needed to preserve existing visual and physical access.~~

~~g. Other similar exceptions may be granted when consistent with the intent of providing a well-defined street edge and pedestrian oriented streetscape.~~

E. Maximum building height: 45 feet, except:

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line for each foot the building exceeds 45 feet; and

2. An additional 15 feet of height may be permitted when parking is located under the building.

F. Fences. See BMC 17.70.070.

G. Parking. See chapter 17.85 BMC.

H. Landscaping. See chapter 17.80 BMC.

I. Signs. See chapter 17.95 BMC. (Ord. 1857 § 2 (Exh. B), 2018).

J. Lighting. See chapter 17.70 BMC:

Chapter 17.60

~~M-1 INDUSTRIAL DISTRICT~~CI-2 COMMERCIAL AND INDUSTRIAL ZONE

Sections:

17.60.010 Title.
17.60.020 Application.
17.60.030 Purpose.
17.60.040 Authority.
17.60.050 Permitted primary uses.
17.60.060 Permitted accessory uses.
17.60.070 Conditional uses.
17.60.080 Additional regulations.
17.60.090 Development standards.

17.60.010 Title.

This chapter shall be called "~~M-1~~CI-2 ~~Industrial District.~~Commercial and Industrial Zone" (Ord. 1857 § 2 (Exh. B), 2018).

17.60.020 Application.

This chapter shall apply to all uses and developments in areas ~~designated M-1~~zoned CI-2. (Ord. 1857 § 2 (Exh. B), 2018).

17.60.030 Purpose.

The CI-1 zone is intended to implement the CI comprehensive plan designation by accommodating ~~An M-1 district shall provide a use district for~~uses such as manufacturing, warehousing, and distribution ~~operation which~~that require little or no retail contact with the general public, large tracts of land, and access to rail. The uses permitted in this zone may involve outdoor manufacturing, intensive nighttime operations, loud and consistent noise emissions, or light, glare, and odor impacts. The uses permitted in this zone may also generate heavy truck traffic or involve loading and unloading operations that are incompatible with general pedestrian or vehicle traffic. The CI-2 zoning designation is primarily associated with the North and South Burlington Industrial Areas but has also been applied to other areas of existing industrial development. ~~The industrial zone is intended to provide for general manufacturing and processing and grouping of industrial enterprises which possess common or similar characteristics and~~The regulations in this chapter are intended to accommodate the needs of uses ~~performance standards~~involving manufacturing processes, assembly~~ling~~, fabrication, ~~and~~ processing, bulk handling ~~of products~~, ~~large amounts of~~ storage and warehousing, ~~outdoor storage, processing and other related uses~~and outdoor activities and to minimize the impacts of such uses through the application of appropriate design and performance standards.

While non-industrial ~~other~~ uses may, in limited circumstances, be permitted~~sited within~~ in this zone, the overall purpose of the CI-2 is to maintain a large block of industrial land, minimize conflicts between incompatible uses, and to discourage, restrict, or prohibit non-industrial uses that could conflict or interfere with the intended purposes of the zone. ~~permits for such uses should not be issued if such uses will discourage use of adjacent sites for industry, interrupt the continuity of industrial sites, or produce traffic in conflict with the industrial uses.~~ (Ord. 1857 § 2 (Exh. B), 2018).

17.60.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.60.050 Permitted primary uses.

Hereafter all buildings, structures, or parcels of land shall only be used for the following, unless otherwise provided for in this title:

A. Adult entertainment use ~~motion picture theater~~[BJ1]; provided, that it shall be located a minimum of 1,000 feet from any residential zone, 1,000 feet from any school, public or private, 1,000 feet from any church, and 1,000 feet from any park, measured along the right-of-way;

B. ~~Automobile~~ Vehicle parking and storage;

C. Fueling stations ~~Basic wood processing including sawmills, planing mills, veneering and laminating of wood~~;

D. ~~Building movers~~[BJ2] Warehousing and distribution;

E. ~~Cold storage plants~~Car wash;

F. ~~Commercial laundries~~ Pet boarding, daycare and overnight, subject to the following:[BJ3]~~;~~

1. Outdoor runs and exercise areas shall not be located between the primary structure and an adjoining street or public right-of-way;

2. Areas containing outdoor runs or exercise areas shall be surrounded on all sides not adjacent to a building or structure by a masonry wall six feet in height and screening shall be provided consistent with the requirements for a Type III separation buffer identified in BMC 17.81.110;

3. Outdoor runs may be provided but individual indoor sleeping areas shall be provided for all pets;

4. Overnight boarding facilities shall include additional measures to mitigate and reduce the sound of barking including, but not limited to, acoustic insulation, additional landscaping, masonry walls, and operational procedures;

~~i.~~5. Overnight boarding facilities shall only be permitted on sites where all of the adjacent parcels are zoned CI-1 or CI-2. If the site is adjacent to an unincorporated area, all of the adjacent unincorporated parcels shall have a Skagit County natural resource lands designation;

G. Contractor offices~~trade services including storage yards~~;

H. ~~Enameling, galvanizing and electroplating~~[BJ4]Nurseries and garden supply[BJ5];

I. ~~Equipment repair and storage~~Bulk material sales and storage;

J. Heavy vehicle and equipment ~~and truck~~ repair;

K. ~~Household movers and storage~~Personal storage;

L. ~~Janitorial services~~Vehicle repair, all types;

M. Specialized instruction, limited to job~~Job~~ training and vocational education~~,~~ where the course of instruction is related to another use listed as permitted ~~use~~in this chapter, including, but not limited to, training and education for construction trades, mechanics, industrial workers, heavy equipment and vehicle operation and repair, and machinists;[BJ6]

N. Lumber yards;

O. Industrial, major and minor;

~~Manufacturing, assembling and packaging of articles, products, or merchandise from previously prepared natural or synthetic materials, including but not limited to bristles, canvas, cellophane, and similar synthetics, chalk, clays (pulverized only, with gas or electric kilns), cloth, cork, feather, felt, fiber, fur, glass (including glass finishing), graphite, hair, horn, leather, paper, paraffin, plastic and resins, precious or semi-precious metals or stones, putty, pumice, rubber, shell, textiles, tobacco, wire, wood, wool, and yarn;~~

~~P. Manufacturing establishments engaged in electronic, automotive, aerospace, airframe, or related manufacturing and assembly activities, including precision machine shops producing parts, accessories, assemblies, systems, engine, major components, and whole electronic or electrical devices, automobiles, aircraft, aerospace, or underwater vehicles, but specifically excluding explosive fuels and propellants;~~

~~Q. Manufacturing, processing, assembling and packaging of precision components and products, including precision machine shops for products such as radio and television equipment, business machine equipment, home appliances, scientific, optical, medical, dental, and drafting instruments, photographic and optical goods, phonograph records and prerecorded audio-visual tape, measurement and control devices, sound equipment and supplies, personal accessories, and products of similar character;~~

~~R. Manufacturing, processing, treating, assembling and packaging of articles, products or merchandise from previously prepared ferrous, nonferrous or alloyed metals;~~

~~S. Manufacturing, processing, blending and packaging of products such as the following:~~

~~1. Soaps, detergents and other basic cleaning and cleansing materials;~~

~~2. Mineral products such as abrasives, asbestos, chalk, pumice, etc.;~~

~~3. Clay and cement products such as brick, tile, pipe, etc.;~~

~~T. Manufacturing, processing, blending and packaging of the following:~~

~~1. Drugs, pharmaceuticals, toiletries, and cosmetics;~~

~~2. Food and kindred products, such as confectionery products, chocolate, cereal breakfast food, bakery products, paste products, fruits and vegetables, beverages, prepared food specialties (such as coffee, dehydrated and instant food, extracts, spices and dressings) and similar products;~~

~~3. Dairy products and byproducts such as milk, cream, cheese and butter, including the processing and bottling of fluid milk, and cream and wholesale distribution;~~

~~U. Manufacturing, assembling, packaging and development of computer equipment and software, and related products;~~

V. Recreational marijuana processors ~~, producers~~and producers ~~and retail stores. All such uses shall meet~~subject to the following ~~development standards~~:

1. The definitions set forth in BMC 17.01.050 shall apply.

2. Recreational marijuana processors ~~, producers~~and producers ~~and retail stores~~ shall only be permitted when licensed by the state of Washington.

3. Location.

a. No more than one medical or recreational marijuana use or garden shall be located on a single parcel or in a single structure.

b. Shall be located fully within a permanent structure designed to comply with the city building code and constructed under a building permit from the city regardless of the size or configuration of the structure.

c. Shall not be located in a mobile structure.

d. Shall not be located within 1,000 feet of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or arcade, single-family residential zone or another medical or recreational marijuana use. The measurement shall be taken in a straight line from property boundary to property boundary.

e. No production, processing or delivery of marijuana may be visible to the public nor may it be visible through windows.

f. All requirements of state laws must be met.

g. All fertilizers, chemicals, gases and hazardous materials shall be handled in compliance with all applicable local, state and federal regulations. No fertilizers, chemicals, gases or hazardous materials shall be allowed to enter a sanitary sewer or storm sewer system nor be released into the atmosphere outside of the structure where the garden is located.

h. No odors shall be allowed to migrate beyond the interior portion of the structure where the garden or processing facility is located;

W. ~~Motor freight terminals and transportation~~Manufactured home sales;

X. ~~Office with more than 50,000 square feet of floor space~~Utilities, small and medium;

Y. ~~Outside~~ Outdoor storage yards;

Z. Printing, publishing, and allied industries including such processes as lithography, etching, and engraving, binding, blueprinting, photocopying, and film processing;

AA. ~~Dwelling units, existing~~Craft industries;

~~BB. Topless club; provided, that it shall be located a minimum of 1,000 feet from any residential zone, 1,000 feet from any school, public or private, 1,000 feet from any church, and 1,000 feet from any park, measured along the right-of-way;~~

BB~~CC~~. ~~Warehousing and distribution facilities, to include wholesale trade not open to general public. (Ord. 1857 § 2 (Exh. B), 2018).~~Auction houses and wholesalers;

CC. Laboratories and research facilities;

DD. Private passenger transportation services;

EE. Towing service, subject to the following:

1. All outdoor storage yards or outdoor areas where vehicles are impounded shall have screening consistent with the requirements for a Type III separation buffer identified in BMC 17.81.110

2. The towing service shall maintain a registration as required by Chapter 46.55 RCW. Only towing services with a current Washington State registration shall be considered a legally authorized use;

3. The term "towing service" does not include wrecking yards or hulk haulers which are classified as conditional uses in the CI-2 zone.

FF. Personal storage;

GG. Commercial laundries.

17.60.060 Permitted accessory uses.

A. Caretaker ~~apartments~~dwellings and employee or student housing[BJ7];

B. Offices, all types ~~related to an on-site permitted use or larger than 50,000 square feet of floor area~~;

C. On-site day commercial child day center serving the employees of a permitted use;

D. On-site recreational facilities serving the employees of a permitted use;

E. ~~Research, development and testing~~Outdoor storage yards and sales lots;

F. Eating and drinking establishment;

G. Retail and wholesale trade of products produced, manufactured, or assembled on site;

H. Telecommunication macro facilities may be permitted, subject to the following requirements, except as limited by the Telecommunications Act of 1996 as amended:

1. Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

3. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

I. Existing monopole I and lattice towers may be extended in height to maximum of 160 feet in height without complying with setback requirements. (Ord. 1857 § 2 (Exh. B), 2018).

17.60.070 Conditional uses.

The following uses shall be considered conditional uses and shall require a conditional use permit:

A. ~~Auction houses, excluding animals~~Meeting facilities, all sizes;

B. ~~Automobile w~~Wrecking yards and hulk haulers[BJ8];

C. ~~Banks and financial institution~~Indoor commercial entertainment, all types~~s~~;

D. ~~Car wash~~Outdoor commercial entertainment;

E. ~~Family day care home~~Shooting range, indoors;

F. ~~Commercial child day care centers~~Utilities, large;

G. ~~Eating and drinking establishments other than those serving a permitted use on the same site~~Truck stop[BJ9];

H. ~~. Equipment rental and leasing and sales;[BJ10]~~Industrial, high impact;

~~I. Health and physical fitness clubs;[BJ11]~~

~~J. Mini-storage warehouses;[BJ12]~~

~~K. Offices with less than 50,000 feet of floor space and not accessory to a permitted use, including corporate headquarters;[BJ13]~~

~~L. Personal and household retail sales and service;[BJ14]~~

~~M. Reupholstery and furniture repair;[BJ15]~~

~~N. Secretarial services;[BJ16]~~

~~O. Small appliance repair;[BJ17]~~

~~P. Towing service;[BJ18]~~

~~Q. Vehicle repair, major and minor[BJ19];~~

~~R. Animal auction houses;[BJ20]~~

~~S~~.

I. Animal and food processing including the following:

1. Tanning and dressing of hides,

2. Curing, canning, freezing, canning and processing of meat and seafood,

3. Pickling and brine curing;

T. Bulk storage or processing of oil, gas, petroleum, butane, liquid petroleum, gas and similar products, unless clearly incidental and secondary to support a principally permitted use;

U. Concrete mixing and batching plants, including ready-mix concrete facilities;

~~V. Drive-in theaters;~~[BJ21]

~~W. Government facilities, other than those listed as a permitted use;~~[BJ22]

~~X. Hotels;~~[BJ23]

~~Y. Radio and television transmitting towers;~~

Z. Rock crushing plants;

AA. Sales and rental of motorized vehicles;

BB. Transmission towers~~, on Burlington Hill where co-location exists~~[BJ24] subject to the following ~~additional criteria~~, except as limited by the Telecommunications Act of 1996 as amended:

1. Antennas may not extend more than 15 feet above their supporting structure, monopole, lattice tower, building or other structure;

2. Site location and development shall preserve the preexisting character of the surrounding buildings and land uses and the zone district to the extent consistent with the function of the communications equipment. Wireless communication towers shall be integrated through location and design to blend in with the existing characteristics of the site to the extent practicable. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area;

3. Accessory equipment facilities used to house wireless communications equipment should be located within buildings or placed underground when possible. When they cannot be located in buildings, equipment shelters or cabinets shall be screened and landscaped in conformance with chapter 17.80 BMC;

4. No equipment shall be operated so as to produce noise in levels above 45 dB as measured from the nearest property line on which the attached wireless communication facility is located;

5. New transmission towers and additional height on existing towers shall comply with performance standards for industrial uses adjacent to less intensive or residential zones consistent with chapters 17.70 and 17.81 BMC; ~~(BMC 17.70.115, 17.70.120 and 17.70.125);~~

6. New transmission towers shall only be permitted within the Burlington Hill special management area[BJ25];

7. New transmission towers shall only be permitted where co-location exists.

~~CC. Utility substations, unless clearly incidental and part of a permitted use;~~[BJ26]
~~DD. Warehouse sales, open to the public, must have a minimum of 50,000 square feet of floor space. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.60.080 Additional regulations.

A. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use, subject to the requirements of the International Fire Code.

B. ~~Industrial land~~Development abutting a less intensive~~directly a residential~~ zone shall provide for a transition area and screening as required by chapters 17.70 and 17.81 BMC and shall be subject to the following the following:~~to the residential use required in chapter 17.70 BMC, Supplemental Development Standards, and the following:~~

~~1. A six-foot screening fence and a 20-foot landscaped buffer designed for sight and noise baffling or a six-foot solid block wall and a 10-foot landscaped buffer designed for sight and noise baffling;~~

2. Uses generating noise after 9:00 p.m. shall not be permitted, including assembly occupancies, restaurants with cocktail lounges or dance floors, all night businesses, shooting ranges, overnight pet boarding, and other similar types of uses. This shall not include shift work for an ~~the~~ industrial or manufacturing use;

3. Measures shall be taken to prevent light and glare from being directed to residential uses; and

~~4. A 20-foot setback shall be required for sites that abut or adjoin a residential zone. This setback requirement shall also apply to sites which are separated from a residential zone by a street 50 feet or less in width and when the abutting property is located outside the city of Burlington. (Ord. 1857 § 2 (Exh. B), 2018).~~C. Outdoor storage yards and service areas. All service yards shall be surrounded on all sides not adjacent to, and directly abutting, a building by a solid site obscuring fence or wall six-feet in height and landscaped consistent with the requirements for Type I screening identified in BMC 17.81.110 ~~fence and screened with solid planting where visible from the public right-of-way or an adjacent residential zone with the exception of access gates.~~

17.60.090 Development standards.

A. Lot Area and Dimension.

1. Minimum lot area: none.

2. Minimum lot width: none.

3. Minimum lot depth: none.

B. Maximum Building and Impervious Surface Coverage.

1. Building coverage: none.

2. Impervious surface coverage: 80 percent.

C. Minimum Setbacks.

1. Front: none.

2. Side: none.

3. Street: none.

4. Rear: none.

D. Maximum building height: 45 feet except:

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line for each foot the building exceeds 45 feet; and

2. An additional 15 feet of height may be permitted when parking is located under the building.

E. Fences. See ~~BMC 17.70.070~~Chapter 17.70 BMC.

F. Parking. See chapter 17.85 BMC.

G. Landscaping. See ~~–~~Cchapter 17.81~~0~~ BMC.

H. Signs. See Cchapter 17.95 BMC.

I. Performance Standards. See Cchapter 17.70 BMC. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

Chapter 17.65

BP BUSINESS PARK DISTRICT[BJ27]

Sections:

17.65.010 Title.
17.65.020 Application.
17.65.030 Purpose.
17.65.040 Authority.
17.65.050 Permitted primary uses.
17.65.060 Permitted accessory uses.
17.65.070 Conditional uses.
17.65.080 Additional regulations.
17.65.105 Development standards.

17.65.010 Title.

This chapter shall be called "BP Business Park District." (Ord. 1857 § 2 (Exh. B), 2018).

17.65.020 Application.

This chapter shall apply to all areas zoned BP. (Ord. 1857 § 2 (Exh. B), 2018).

17.65.030 Purpose.

The purpose of this chapter is to respond to modern trends in business park (BP) development by providing a suitable area for industrial, professional office, service and commercial uses within a planned, well-managed site with high-quality development standards. (Ord. 1857 § 2 (Exh. B), 2018).

17.65.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.65.050 Permitted primary uses.

Any use listed as a permitted or conditional use in the B-1, R-3, C-1, C-2, and M-1 zones shall be considered a permitted use in the BP zone except as limited or restricted by provisions in this chapter that outdoor activities such as storage, fabrication, or sales shall be prohibited. (Ord. 1857 § 2 (Exh. B), 2018).

17.65.060 Permitted accessory uses.

A. Caretaker apartments;
B. Offices related to an on-site permitted use or larger than 50,000 square feet of floor area;
C. On-site commercial child day care center serving the employees of a permitted use;
D. On-site recreational facilities serving the employees of a permitted use;
E. Research, development and testing;
F. Eating and drinking establishment;
G. Retail and wholesale trade of products produced, manufactured, or assembled on site;
H. Telecommunication macro facilities may be permitted, subject to the following requirements, except as limited by the Telecommunications Act of 1996 as amended:
1. Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.
2. The macro facility shall be exempt from review by the community development director or designee if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.
3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.
4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet or in the case of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure;
I. Existing monopole I and lattice towers may be extended in height to maximum of 160 feet in height without complying with setback requirements. (Ord. 1857 § 2 (Exh. B), 2018).

17.65.070 Conditional uses.

Reserved. (Ord. 1857 § 2 (Exh. B), 2018).

17.65.080 Additional regulations.

A. All activities shall be conducted entirely within a building except as follows:
1. Gas pumps;

2. Refuse containers, provided they are screened from adjoining properties and streets in accordance with any applicable municipal code requirements;
3. Horticulture activities;
4. Play areas for commercial child day care centers and schools.
B. All odors, noise, vibrations, heat, glare, or other emissions are controlled within the confines of a building unless specifically permitted elsewhere by this title.
C. No outdoor testing of products.
D. No highly combustible, explosive or hazardous materials are permitted, unless clearly incidental and secondary to the permitted use.
E. Rooftop equipment shall be set back a minimum of 20 feet from the edge of the roof and be painted the same color as the building on which the equipment is located; or, screen the equipment from adjoining uses or from street right-of-way if setback is less than 20 feet.
F. Loading and unloading docks that have frontage on a street shall be required to provide an additional 10-foot width of landscaping or in lieu of additional 10-foot width, landscaping may be provided as approved by the landscaping committee.
G. Outdoor storage may be restricted to the rear of the property and shall as a minimum be guided by the screening and landscaping requirements of the M-1 zone.
H. No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use. On-site hazardous waste treatment and storage facilities shall be subject to the approval of the fire department. (Ord. 1857 § 2 (Exh. B), 2018).

17.65.105 Development standards.

A. Lot Area and Dimension.
1. Minimum lot area: none.
2. Minimum lot width: none.
3. Minimum lot depth: none.
B. Maximum Building and Impervious Coverage.
1. Building coverage: none.
2. Impervious surface coverage: 80 percent.
C. Minimum Setbacks.
1. Front: none.
2. Side: none.
3. Street: none.
4. Rear: none.
D. Maximum building height: 45 feet except:
1. Buildings may exceed 45 feet if one foot of setback is provided from each property line for each foot the building exceeds 45 feet; and
2. An additional 15 feet of height may be permitted when parking is located under the building.
E. Fences. See BMC 17.70.070.
F. Parking. See chapter 17.85 BMC.
G. Landscaping. See chapter 17.80 BMC.
H. Signs. See chapter 17.95 BMC.
I. Performance Standards. See chapter 17.70 BMC. (Ord. 1857 § 2 (Exh. B), 2018).

Chapter 17.66

PC-1 Parks and Conservation Zone

Sections:

17.66.010 Title.
17.66.020 Application.
17.66.030 Purpose.
17.66.040 Authority.
17.66.050 Permitted primary uses.
17.66.060 Conditional uses.
17.66.070 Permitted accessory uses.
17.66.080 Development standards.

17.66.010 Title.

This chapter shall be called "PC-1 Parks and Conservation Zone".

17.66.020 Application.

This chapter shall apply to all uses and developments in areas zoned PC-1. (Ord. 1857 § 2 (Exh. B), 2018).

17.66.030 Purpose[BJ1].

The PC-1 zone is intended to implement the PC comprehensive plan designation by identifying and protecting environmentally sensitive lands, lands needed for conservation, restoration, or natural resource functions, and recognizing parcels subject to public or private development restrictions. The uses and developments permitted in this zone are related to, or compatible with, environmental restoration, passive recreation, natural storm-water management, or flood control. In addition, above or below ground utilities, agricultural uses, and transportation improvements may be acceptable in limited circumstances. The regulations of this chapter are intended to provide opportunities for the public to interact with nature, protect important habitat blocks and corridors, allow for the maintenance and restoration of natural hydrologic functions, limit exposure to natural hazards, and to facilitate the construction of flood protection measures and environmental restoration projects.

The PC-1 zoning designation should be applied to areas that are largely undeveloped and extensively constrained by natural hazards or critical areas. This zoning designation is generally applied to publicly owned land, but may also be applied to privately owned land when the land is restricted by conservation or open space easement, notes or restrictions on a recorded plat, or where the widespread presence of severe natural hazards or critical areas makes development extremely hazardous or infeasible.

17.66.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.66.050 Permitted primary uses.

Buildings, structures, and parcels of land shall only be used for the following uses, unless otherwise provided for in this title. In order to be considered a permitted use projects initiated by a government agency shall be listed below and must also be clearly identified in, and consistent with, the City's adopted capital improvement plan or the capital facilities element of the comprehensive plan. [BJ2]

A. Agriculture, urban[BJ3];

B. Passive recreation[BJ4];

C. Flood control improvements;[BJ5]

D. Storm-water and sewer outfalls[BJ6];

E. Commercial wetland mitigation banks[BJ7];

F. Underground and overhead utilities[BJ8];

G. Natural storm-water management[BJ9];

17.66.060 Conditional uses.
The following uses may be permitted when a conditional use permit has been issued pursuant to the provisions of this code:

17.66.070 Accessory uses.
The following uses and developments may be authorized as accessory uses. Accessory uses shall only be permitted when incidental and subordinate to a legally established primary use.

A. Restrooms;

B. Storage buildings;

C. Automobile parking facilities and charging stations;

D. Interpretive or directional signs;

F. Picnic tables, benches, and other similar improvements.

17.66.080 Additional Regulations.
A. Outdoor storage shall be prohibited;

B. Parking areas shall be limited to the absolute minimum necessary to support an allowed use;

C. Land divisions shall be prohibited except when necessary to accommodate a permitted or conditional use identified in this chapter. When authorized, land divisions shall be subject to title restrictions or restrictive plat notes that limit the allowed uses to those authorized by this chapter. Under no circumstances shall a land division been authorized to facilitate, or allow, new residential, commercial, or industrial development.

D. No buildings shall be permitted in conjunction with an urban agricultural use;

E. If surfaced, walking paths should be constructed of gravel or wood chips. Paved paths shall not be permitted in the PC-1 zone except as part of a regional or citywide trail network;

F. Utilities, other than those minimally necessary to support a use authorized by this chapter, shall be subject to the following:

1. There is no reasonable or practicable alternative that avoids land zoned PC-1;

2. All reasonable methods have been taken to avoid disturbing critical areas and critical area buffers, such as underground boring;

3. The location and construction of the project is designed to minimize critical area impacts and maintain the physical and aesthetic characteristics of the property and will not interfere with any existing or planned public park improvements;

4. The project fully complies with the critical area standards in Title 14 BMC.

17.66.090 Development standards.

A. Lot Area and Dimension: No requirements

B. Minimum Setback Requirements: No requirements

C. Maximum building height: 20 feet.

D. Maximum impervious surface coverage: 10 percent

Chapter 17.70

PC-2 Parks and Conservation Zone

Sections:

17.70.010 Title.
17.70.020 Application.
17.70.030 Purpose.
17.70.040 Authority.
17.70.050 Permitted primary uses.
17.70.060 Conditional uses.
17.70.070 Permitted accessory uses.
17.70.080 Additional regulations.
17.70.090 Development regulations.

17.70.010 Title.

This chapter shall be called "PC-2 Parks and Conservation Zone".

17. 70.020 Application.

This chapter shall apply to all uses and developments in areas zoned PC-2. (Ord. 1857 § 2 (Exh. B), 2018).

17.70.030 Purpose[BJ10].

The PC-2 zone is intended to implement the PC comprehensive plan designation by identifying and designating lands needed for publicly owned parks and recreation facilities. The uses and developments permitted in this zone are related to, or compatible with, active recreation, such as athletic fields, sports facilities, and community centers. In addition, above or below ground utilities, flood control improvements, and transportation facilities may be acceptable in limited circumstances.

The PC-2 zoning designation should be applied to existing and planned publicly owned parks, including areas that are already developed for active recreational purposes.

17.70.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.70.050 Permitted primary uses.

Buildings, structures, and parcels of land shall only be used for the following, unless otherwise provided for in this title. In order to be considered a permitted use projects initiated by a government agency shall be listed below and must also be clearly identified in, and consistent with, the City's adopted capital improvement plan or the capital facilities element of the comprehensive plan.

A. Agriculture, urban[BJ11];

B. Recreation, active and passive;

C. Flood control improvements;[BJ12]

D. Storm-water and sewer outfalls;

E. Underground and overhead utilities[BJ13];

F. Natural storm-water management[BJ14];

G. Meeting facilities, public;

H. Boat launches and mooring facilities, public;

I. RV parks and campgrounds, public;

J. Pubic services, administrative and customer service;

K. Cemeteries.

L. Any other public park improvement identified in the adopted Parks Recreation and Open Space Plan (PROs) Plan, Capital Improvement Plan (CIP), or the Parks and Recreation Element of the comprehensive plan.

17.70.060 Conditional uses.

A. Emergency housing;

17.70.070 Accessory uses.

The following uses and developments may be authorized as accessory uses. Accessory uses shall only be permitted when incidental and subordinate to a legally established primary use.

A. Restrooms;

B. Storage buildings and yards;

C. Automobile parking and charging stations;

D. Interpretive or directional signs;

E. Caretaker dwellings;

F. Picnic tables, benches, and shelters;

G. RV pump out stations;

17.70.080 Additional Regulations.

A. Outdoor storage yards shall be fully screened from view;

B. Parking areas shall be limited to the absolute minimum necessary to support an allowed use;

C. Land divisions shall be prohibited except when necessary to accommodate a permitted or conditional use identified in this chapter. When authorized, land divisions shall be subject to title restrictions or restrictive plat notes that limit the allowed uses to those authorized by this chapter. Under no circumstances shall a land division been authorized to facilitate, or allow, new residential, commercial, or industrial development.

D. In addition to complying with all the regulations identified in this chapter, only those public improvements identified in the adopted Parks Recreation and Open Space Plan (PROs) Plan, Capital Improvement Plan (CIP), or the Parks and Recreation Element of the comprehensive plan shall be permitted;

E. Trailer parks and campgrounds may only be permitted if operated by a government agency and shall only be used to accommodate short term, recreational stays by travelers or event attendees.

F. Utilities, other than those minimally necessary to support a use authorized by this chapter, shall be subject to the following:

1. There is no reasonable or practicable alternative that avoids land zoned PC-1 or PC-2;

2. All reasonable methods have been taken to avoid disturbing critical areas and critical area buffers, such as underground boring;

3. The location and construction of the project is designed to minimize critical area impacts and maintain the physical and aesthetic characteristics of the property and will not interfere with any existing or planned public park improvements;

4. The project fully complies with the critical area standards in Title 14 BMC.

17.70.090 Development standards.

A. Lot Area and Dimension: No requirements

B. Minimum Setback Requirements: No requirements

C. Maximum building height: 35 feet.

D. Maximum impervious surface coverage: none

Chapter 17.67

PC-2 Parks and Conservation Zone

Sections:

17.67.010 Title.
17.67.020 Application.
17.67.030 Purpose.
17.67.040 Authority.
17.67.050 Permitted primary uses.
17.67.060 Conditional uses.
17.67.070 Permitted accessory uses.
17.67.080 Additional regulations.
17.67.090 Development regulations.

17.67.010 Title.

This chapter shall be called “PC-2 Parks and Conservation Zone”.

17. 67.020 Application.

This chapter shall apply to all uses and developments in areas zoned PC-2. (Ord. 1857 § 2 (Exh. B), 2018).

17.67.030 Purpose[BJ1].

The PC-2 zone is intended to implement the PC comprehensive plan designation by identifying and designating lands needed for publicly owned parks and recreation facilities. The uses and developments permitted in this zone are related to, or compatible with, active recreation, such as athletic fields, sports facilities, and community centers. In addition, above or below ground utilities, flood control improvements, and transportation facilities may be acceptable in limited circumstances.

The PC-2 zoning designation should be applied to existing and planned publicly owned parks, including areas that are already developed for active recreational purposes.

17.67.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.67.050 Permitted primary uses.

Buildings, structures, and parcels of land shall only be used for the following, unless otherwise provided for in this title. In order to be considered a permitted use projects initiated by a government agency shall be listed below and must also be clearly identified in, and consistent with, the City’s adopted capital improvement plan or the capital facilities element of the comprehensive plan.

A. Agriculture, urban[BJ2];

B. Recreation, active and passive;

C. Flood control improvements;[BJ3]

D. Storm-water and sewer outfalls;

E. Underground and overhead utilities[BJ4];

F. Natural storm-water management[BJ5];

G. Meeting facilities, public;

H. Boat launches and mooring facilities, public;

I. RV parks and campgrounds, public;

J. Pubic services, administrative and customer service;

K. Cemeteries.

L. Any other public park improvement identified in the adopted Parks Recreation and Open Space Plan (PROs) Plan, Capital Improvement Plan (CIP), or the Parks and Recreation Element of the comprehensive plan.

17.67.060 Conditional uses.

A. Emergency housing;

17.67.070 Accessory uses.

The following uses and developments may be authorized as accessory uses. Accessory uses shall only be permitted when incidental and subordinate to a legally established primary use.

A. Restrooms;

B. Storage buildings and yards;

C. Automobile parking and charging stations;

D. Interpretive or directional signs;

E. Caretaker dwellings;

F. Picnic tables, benches, and shelters;

G. RV pump out stations;

17.67.080 Additional Regulations.

A. Outdoor storage yards shall be fully screened from view;

B. Parking areas shall be limited to the absolute minimum necessary to support an allowed use;

C. Land divisions shall be prohibited except when necessary to accommodate a permitted or conditional use identified in this chapter. When authorized, land divisions shall be subject to title restrictions or restrictive plat notes that limit the allowed uses to those authorized by this chapter. Under no circumstances shall a land division been authorized to facilitate, or allow, new residential, commercial, or industrial development.

D. In addition to complying with all the regulations identified in this chapter, only those public improvements identified in the adopted Parks Recreation and Open Space Plan (PROs) Plan, Capital Improvement Plan (CIP), or the Parks and Recreation Element of the comprehensive plan shall be permitted;

E. Trailer parks and campgrounds may only be permitted if operated by a government agency and shall only be used to accommodate short term, recreational stays by travelers or event attendees.

F. Utilities, other than those minimally necessary to support a use authorized by this chapter, shall be subject to the following:

1. There is no reasonable or practicable alternative that avoids land zoned PC-1 or PC-2;

2. All reasonable methods have been taken to avoid disturbing critical areas and critical area buffers, such as underground boring;

3. The location and construction of the project is designed to minimize critical area impacts and maintain the physical and aesthetic characteristics of the property and will not interfere with any existing or planned public park improvements;

4. The project fully complies with the critical area standards in Title 14 BMC.

17.67.090 Development standards.

A. Lot Area and Dimension: No requirements

B. Minimum Setback Requirements: No requirements

C. Maximum building height: 45 feet.

D. Maximum impervious surface coverage: 80 percent.

Chapter 17.68

PFT-1 Public Facilities and Transportation Zone

Sections:
17.68.010 Title.
17.68.020 Application.
17.68.030 Purpose.
17.68.040 Authority.
17.68.050 Permitted primary uses.
17.68.060 Conditional uses.
17.68.070 Permitted accessory uses.
17.68.080 Development standards.

17.68.010 Title.

This chapter shall be called "PFT-1 Public Facilities and Transportation Zone".

17.68.020 Application.

This chapter shall apply to all uses and developments in areas zoned PFT-1. (Ord. 1857 § 2 (Exh. B), 2018).

17.75.030 Purpose[BJ1].

The PFT-1 zone is intended to implement the PFT comprehensive plan designation by identifying and designating lands needed for public services and facilities. The uses and developments permitted in this zone are compatible with, or necessary to support, residential and commercial development and typically have a commercial or institutional character. Examples of uses allowed in the PFT-1 include schools, fire stations, public offices, small scale utilities and public streets. The regulations of this chapter are intended to ensure public facilities are compatible with surrounding development patterns and encourage long-range planning and coordination between public agencies, utility providers, and various levels of government.

The PFT-1 zoning designation should be applied to all ands occupied by one of the permitted uses listed below on or before effective date of this chapter. New lands may be designated PFT-1 consistent with the applicable policies identified in the Public Services and Facilities Element of the Burlington Comprehensive Plan.

17.68.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.68.050 Permitted primary uses.

Buildings, structures, and parcels of land shall only be used for the following, unless otherwise provided for in this title. In order to be considered a permitted use projects shall be listed below and must also be clearly identified in, and consistent with, the City's adopted Capital Improvement Plan (CIP) or the Public Facilities and Services Element of the Comprehensive Plan. Private utilities shall be subject to the requirements of Chapter 17.90 BMC and shall not be regulated under this chapter.

A. Public housing;

B. Nursing homes;[BJ2]

D. Emergency housing;

E. Healthcare facilities;

F. Child daycare;

K. Automobile parking and vehicle charging stations;

M. Public restrooms;

N. Emergency services;

O. Transit stops and services;

P. Public facilities, administrative and customer service;

Q. Public meeting facilities;

R. Public streets, pedestrian paths, and multiuse trails;

S. Utilities, small and medium.

T. Emergency Housing

17.68.060 Conditional uses.

A. Hospitals;

B. Schools;

C. Colleges and universities;

D. Public facilities, industrial;

E. Utilities, large, limited to overhead or underground infrastructure such as electrical wires or sewer and water lines.

17.68.070 Accessory uses.

The following uses and developments may be authorized as accessory uses. Accessory uses shall only be permitted when incidental and subordinate to a legally established primary use.

A. Storage buildings and yards;

B. Caretaker dwellings and employee or student housing;

C. Fueling stations;

D. Picnic tables and shelters;

E. Drive through uses;

F. Automobile parking facilities and charging stations;

G. Telecommunication macro facilities, subject to the following requirements:

1. Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the community development director or designee if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the ease of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

17.68.080 Additional regulations.

A. Off-street parking and loading areas shall not be located between buildings and adjoining streets.

B. Public facilities directly abutting a less intensive or residential zone shall provide for a transition area and screening consistent with the requirements of chapters 17.70 and 17.81 BMC.

17.68.090 Development standards.

A. Lot Area and Dimension.

1. Minimum lot area: none.

2. Minimum lot width: none.

3. Minimum lot depth: none.

B. Maximum Building and Impervious Surface Coverage.

1. Building coverage: none.

2. Impervious surface coverage: 80 percent.

C. Minimum Setbacks.

1. Front: none.

2. Side: none.

3. Street: none.

4. Rear: none.

D. Maximum Setbacks.

1. Front: 10 feet.

2. Street: 10 feet.

3. Exceptions. Exceptions may be granted in the following situations:

a. To accommodate a wider sidewalk[BJ3];

b. To accommodate a recessed pedestrian entrance, plaza, or additional landscaping;

b. As minimally necessary to avoid a utility easement that makes compliance with the maximum setback impossible;

c. The expansion or modification of an existing building where compliance with the maximum setback is not feasible due to the location of the existing building and the size of the proposed expansion. In such cases the expansion shall be constructed forward of the existing building line and closer to the street;

d. As minimally necessary to accommodate development on irregularly shaped lots where the street frontages are angular or curvilinear. In such instances buildings shall be located as close as possible to the street frontages;

e. For corner lots, buildings shall be located at the corner or intersection;

f. For lots with more than two street frontages, the maximum setback shall be applied to the street frontages with the highest classification. For example, if a parcel has frontage on two arterial streets and a local access street, the maximum setback shall apply to the two arterial streets;

d. Drive-through uses accessory to an authorized public use;

e. As minimally necessary to accommodate pick-up and drop-off lanes;

f. To provide access to emergency services equipment bays.

[BJ4]E. Maximum building height: 45 feet, except:

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line, for each foot the building exceeds 45 feet; and

2. An additional 15 feet of height may be permitted when parking is located under the building.

F. Fences. See Chapter 17.70 BMC.

G. Parking. See Chapter 17.85 BMC.

H. Landscaping. See Chapter 17.81 BMC.

I. Signs. See Chapter 17.95 BMC.

J. Lighting. See Chapter 17.70 BMC.

Chapter 17.69

PFT-2 Public Facilities and Transportation Zone

Sections:

17.69.010 Title.
17.69.020 Application.
17.69.030 Purpose.
17.69.040 Authority.
17.69.050 Permitted primary uses.
17.69.060 Conditional uses.
17.69.070 Permitted accessory uses.
17.69.080 Development standards.

17.69.010 Title.

This chapter shall be called "PFT-2 Public Facilities and Transportation Zone".

17.69.020 Application.

This chapter shall apply to all uses and developments in areas zoned PFT-2.

17.80.030 Purpose[BJ1]**.**

The PFT-2 zone is intended to implement the PFT comprehensive plan designation by identifying and designating lands needed for public services and facilities. The uses and developments permitted in this zone are compatible with, or necessary to support, public facilities and services with an industrial character that could negatively impact residential or commercial uses. Examples of uses allowed in the PFT-2 include maintenance and storage yard, equipment repair, major utility installations such as sewage treatment plans, and high capacity regional transportation facilities such as freeways, transit centers, and railways. The regulations of this chapter are intended to ensure public facilities are compatible with surrounding development patterns and encourage long-range planning and coordination between public agencies, utility providers, and various levels of government.

The PFT-2 zoning designation should be applied to all ands occupied by one of the permitted uses listed below on or before effective date of this chapter. New lands may be designated PFT-2 consistent with the applicable policies identified in the Public Services and Facilities Element of the Burlington Comprehensive Plan.

17.69.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.69.050 Permitted primary uses.

Buildings, structures, and parcels of land shall only be used for the following, unless otherwise provided for in this title. In order to be considered permitted, a use must be both listed below and clearly identified in, and consistent with, the City's Capital Improvement Plan (CIP) and the Public Facilities and Services element of the comprehensive plan. Private utilities shall be subject to the requirements of Chapter 17.90 BMC and shall not be regulated under this chapter.

A. Emergency housing;

B. Automobile parking and vehicle charging stations;

C. Public restrooms;

D. Emergency services;

E. Transit stops and services;

F. Transit centers;

G. Public facilities, administrative and customer service;

H. Public facilities, minor and major industrial;

I. Public streets, pedestrian paths, and multiuse trails;

J. State highways;

K. Intercity passenger rail facilities;

L. Transmission towers;

M. Utilities, all types;

N. Outdoor storage yards;

O. Vehicle repair, minor and major;

P. Heavy vehicle and equipment repair;

17.69.060 Conditional uses.

A. Public facilities, high impact industrial;

B. Heliports, when accessory to a healthcare facility, hospital, or emergency services facility;

C. Shooting range, indoors;

17.69.070 Accessory uses.

The following uses and developments may be authorized as accessory uses. Accessory uses shall only be permitted when incidental and subordinate to a legally established primary use.

A. Storage buildings and yards;

B. Caretaker dwellings and employee or student housing;

C. Fueling stations;

D. Automobile parking facilities and charging stations;

E. Telecommunication macro facilities, subject to the following requirements:

1. Macro facilities may be located on buildings and structures; provided, that the immediate interior wall or ceiling adjacent to the facility is not a designated residential space.

2. The macro facility shall be exempt from review by the community development director or designee if the antenna and related components are the same color as the existing building, pole or support structure on which it is proposed to be located.

3. The shelter or cabinet used to house radio electronic equipment shall be contained wholly within a building or structure, or otherwise appropriately concealed, camouflaged or located underground.

4. Macro facilities shall comply with the height limitation specified for all zones except as follows: Omnidirectional antennas may exceed the height limitation by 15 feet, or in the ease of nonconforming structures the antennas may extend 15 feet above the existing structure. Panel antennas may exceed the height limitation if affixed to the side of an existing building and architecturally blends in with the building. Placement of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

17.69.080 Additional regulations.

A. Public uses with an industrial character directly abutting a less intensive or residential zone shall provide for a transition area and screening consistent with the requirements of chapters 17.70 and 17.81 BMC.

B. Outdoor storage yards and service areas. All service yards shall be surrounded on all sides not adjacent to, and directly abutting, a building by a solid site obscuring fence or wall six-feet in height and landscaped in accordance with the requirements of Chapter 17.81 BMC. Outdoor storage yards and service areas shall be located behind, between, or alongside buildings and shall not be located between a buildings and a street.

17.69.090 Development standards.

A. Lot Area and Dimension.

1. Minimum lot area: none.

2. Minimum lot width: none.

3. Minimum lot depth: none.

B. Maximum Building and Impervious Surface Coverage.

1. Building coverage: none.

2. Impervious surface coverage: 80 percent.

C. Minimum Setbacks.

1. Front: none.

2. Side: none.

3. Street: none.

4. Rear: none.

D. Maximum building height: 45 feet except:

1. Buildings may exceed 45 feet if one foot of setback is provided from each property line for each foot the building exceeds 45 feet; and

2. An additional 15 feet of height may be permitted when parking is located under the building.

E. Fences. See Chapter 17.70 BMC.

F. Parking. See Chapter 17.85 BMC.

G. Landscaping. See Chapter 17.81 BMC.

H. Signs. See Chapter 17.95 BMC.

I. General Development Standards. See Chapter 17.70 BMC.

Chapter 17.7070

SUPPLEMENTAL General Development StandardsDEVELOPMENT STANDARDS

Sections:

17.770.010 Title.
17.770.020 Application.
17.770.030 Purpose.
17.770.040 Authority.
17.70.045 Prohibited uses.
17.770.050 Special height restrictionsPerformance standards[BJ1].
17.770.060 Obstructions, generally prohibitedSite distances and right-of-way obstructions[BJ2].
17.770.070 Fences.
17.770.080 Standard setback exceptions.
17.770.090 Home occupations.
17.770.100 Responsibility for aAnimals[BJ3].
17.770.105 Outdoor vending machineslighting[BJ4].
17.770.110 Performance standardsVehicles[BJ5].
17.770.115 Height requirements for Ttransitional zonesareas.[BJ6]
17.770.120 Setback requirements for transition zones.
17.770.125 Telecommunication facilities.
17.70.130 Mechanical equipment[BJ7].
17.770.135 Low impact development.
17.70.140 Temporary uses.

17.770.010 Title.
This chapter shall be called "Supplemental General Development Standards." (Ord. 1857 § 2 (Exh. B), 2018).

17.770.020 Application.
The standards of tThis section shall apply to the use of and development landall new uses, structures, the construction of new buildings, and development, and to the expansion or modification of existing uses, structures and developments. (Ord. 1857 § 2 (Exh. B), 2018).

17.770.030 Purpose.
The purpose of supplemental development standards is to achieve compatible land uses within zoning districts and surrounding areas by providing uniform regulations throughout each district, encouraging neighborhood stability and consistency, and promoting commercial viability and compatibility. (Ord. 1857 § 2 (Exh. B), 2018).

17.770.040 Authority.
This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.70.045 Prohibited uses.[BJ8]
The following uses and developments shall be prohibited in all zones and throughout the City of Burlington. This list is not exhaustive and is only intended to highlight specific uses which are explicitly prohibited in all other zones. Other uses may also be prohibited pursuant to BMC 17.05.090.E and other applicable code provisions.

A. Agriculture, rural;

B. Shooting range, outdoors;

C. Billboards and offsite advertising;

D. Electric fences;

E.

E. Commercial composting;

F. Bulk storage, manufacturing, processing, handling, or disposal of hazardous substances such as, chemicals, petroleum products, medical waste, radioactive material, and explosives. This prohibition shall not apply to minor quantities incidental to a permitted use or activity.

17.770.050 Special height restrictionsPerformance standards[BJ9].

The purpose of this section is to establish the following performance standards which are intended to reduce the visual, physical, and environmental impacts of new development on existing uses and developments.

A. Light and Glare. Building materials with high light-reflective qualities shall not be used in the construction of buildings in such manner that reflected sunlight will throw intense glare to surrounding areas. Artificial lighting shall be hooded or shaded so that direct light of high-intensity lamps will not result in glare when viewed from residential areas surrounding a commercial or industrial district.

B. Electrical Interference. Provisions must be made for necessary shielding or other preventive measures against interference occasioned by mechanical, electrical and nuclear equipment uses or processes with electrical apparatus in nearby buildings or land uses.

C. Odorous Gases and Matter. The emission of odorous gases or matter in such quantities as to be readily detectable, without special instruments, at any point beyond the property line of the use creating the odor, is prohibited.

D. Smoke and Particulate Matter Emissions. No emissions shall exceed the allowances set forth by the Environmental Protection Agency, the Washington State Department of Ecology and/or the Northwest Sound Air Pollution Control Agency, unless local regulations are more restrictive, in which case the local regulation shall apply.

E. Dust, Dirt, Fly Ash, or Air-Borne Solids. No observable dust, dirt, fly ash or other air-borne solids shall be emitted except as related to construction activity.

F. Waste Storage. Storage of animal or vegetable wastes which attract insects or rodents or otherwise create a health hazard shall be prohibited. No waste products shall be exposed to view, from eye level, beyond the property line of the use storing the waste.

G. Toxic Gases and Matter. No emissions of toxic gases or matter shall be permitted.

H. Vibration. Vibration which is easily discernible, without special instruments at any point beyond the property line, is prohibited. This shall not apply to vibration caused by highway vehicles, trains, aircraft or construction activities.

I. Hazardous Substance and Waste. No hazardous substances or wastes shall be released into the environment so as to cause dangerous or offensive emission or contamination of any public or private water supply, sewage treatment processes, watercourse or water body, the air, or the ground, except in accordance with standards approved by provisions of federal, state and local laws and regulations, and the International Fire Code. (Ord. 1857 § 2 (Exh. B), 2018).

~~A. There shall not be anything constructed or reconstructed, and no obstruction permitted to grow, other than a post, column or tree not exceeding one foot square or one foot in diameter, between a height three feet and 10 feet above the established grade within the triangular areas described below, without the express approval of the city engineer:~~

~~1. The triangular area formed by a line 20 feet along the right-of-way lines of two intersecting streets, measured from the point of intersection of the right-of-way lines, and the line connecting the two ends of the two 20-foot lines;~~

~~2. The triangular area formed by a line 15 feet along the street right-of-way line measured from the point of intersection of the alley right-of-way line and a line 15 feet along the alley right-of-way line measured from the point of intersection of the street and alley right-of-way lines and the line connecting the unconnected ends of the two lines.~~

~~B. In general, no fence, hedge, structure or other obstruction shall act as a sight hazard to traffic, and the city engineer may order the removal of such hazard whether or not such object otherwise complies with the provisions of this title. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.770.060 ~~Obstructions, generally prohibited~~Site distances and obstruction[BJ10]s.

~~A. In no case shall any~~Obstructions such ~~-~~fence~~s and/or,~~ hedges, signs, buildings, walls, landscaping, trees, and overgrown vegetation shall be prohibited in the following locations:

~~a.~~ W~~be constructed or grown, w~~ithin a distance of three feet of a~~, around any~~ fire hydrant or in any location that~~t; as well as no fence or hedge shall~~ deters or hinders the fire department from gaining access to any fire department connection, fire protection control valve, fire hydrant, or fire department appliance or device;

A.

~~b.~~ In any location that ~~B. In no case shall any fence and/or hedge obstruct~~ obscures the visibility of a~~ny~~ fire hydrant from a distance of 150 feet, in any direction, of vehicular approach to the hydrant;

B.

C. In any location ~~C. In no case shall any fence and/or hedge be constructed or grown in a manner which~~ that interferes with access to storm or sanitary sewer manholes and other appurtenances which require access for maintenance purposes. (Ord. 1857 § 2 (Exh. B), 2018).

D. In any location which, in the opinion of the City Engineer, constitutes a traffic safety hazard for pedestrians, drivers, or other road users. The City Engineer may order the removal of any such hazard whether or not the object otherwise complies with the provisions of this title.

E. No object, or portion of an object, shall be permitted in the areas described below, without the express approval of the City Engineer:

1. The triangular area formed by a line 20 feet along the right-of-way lines of two intersecting streets, measured from the point of intersection of the right-of-way lines, and the line connecting the two ends of the two 20-foot lines;

2. The triangular area formed by a line 15 feet along the street right-of-way line measured from the point of intersection of the alley right-of-way line and a line 15 feet along the alley right-of-way line measured from the point of intersection of the street and alley right-of-way lines and the line connecting the unconnected ends of the two lines.

3. Exceptions:

a. Objects with a height of three feet or less;

b. Posts, poles, and trees with a diameter or one foot or less;

c. Overhanging or cantilevered objects that are ten feet or more above the street grade.

17.7~~7~~0.070 Fences and Retaining Walls.

The following standards shall apply to the construction, placement, and maintenance of fences, walls, and retaining walls. [BJ11]

A. General Standards.

1. Fences, walls, and retaining walls shall not obstruct a required site line or otherwise violate the site distance and obstruction requirements of this Chapter (BMC 17.90.060);

2. Electric fences shall be prohibited citywide and in all zones.[BJ12]

3. Measurement of height.

a. Except for fences or walls located on top of a retaining wall, height shall be calculated by measuring from the lowest adjacent grade to the top of the fence, wall, or retaining wall;

b. For fences and walls located on top[BJ13], and within six feet, of a retaining wall or earth berm, the total combined height of the retaining wall and fence or wall shall be subject to the applicable height restrictions in this section (BMC 17.90.070). In such cases the total height shall be calculated by measuring from the lowest adjacent predevelopment grade to the top of the fence or wall.

B. Residential zones. The following standards shall apply in the RD, RA, and MUR zones.

1. Height.

a. Front setback area: 3.5 feet;

b. Street side setback area: 3.5 feet; [BJ14]

c. All other locations: 6 feet.

2. Material. Acceptable materials include wood, stone, decorative metal, and masonry blocks. Chain link or cyclone fencing is prohibited in front and street side setback areas. In all other locations chain link or cyclone fencing may only be used if it is treated with a dark, natural colored coating (such as green or black) and matching privacy slats are used. Barbed wire, razor wire, and other similar security treatments are prohibited.

3. Setbacks. The minimum setback from a sidewalk or public right-of-way shall be 12 inches.

B. Mixed use commercial zones. The following standards shall apply in the MUC, PC, and PFT-1 zones.

1. Height.

a. Between a principal structure and a street: 42 inches;

b. All other locations: 6 feet.

2. Material. Acceptable materials include wood, stone, decorative metal, and masonry block. Chain link or cyclone fencing may only be used if it is screened with landscaping, treated with a dark, natural colored coating (such as green or black) and matching privacy slats are used. Barbed wire, razor wire, and other similar security treatments are prohibited.

3. Setbacks. Fences and walls shall not be located within a street frontage landscaping strip required by Chapter 17.81 BMC. Retaining walls may be located within a street frontage landscaping strip.

C. Industrial zones. The following standards shall apply in the CI and PFT-2 zones.

1. Height: 6 feet. Fences and walls with a maximum height greater than 6 feet, but less than 8 feet, may be authorized with a building permit provided:

a. Landscaping, comprised of evergreen trees and shrubs planted at intervals of 15 feet or less, is provided between the fence and adjoining property lines and public rights-of-way;

b. Barbed wire or razor wire shall not permitted on any fence or wall with a height greater than 6 feet.

2. Material: Acceptable materials include wood, stone, decorative metal, masonry block, and chain link. Barbed wire and razor wire may be added to the top of a fence or wall provided it is not visible from a street or a public right-of-way. Barbed wire and razor wire is only permitted on top of fences or walls, must be a least six feet above the ground, and may not extend more than one foot above the top of the fence.

3. Setbacks. Fences and walls shall not be located within a street frontage landscaping strip required by Chapter 17.81 BMC. Retaining walls may be located within a street frontage landscaping strip.

~~A. Fences in residential areas providing a maximum six-foot sight obstruction from adjacent properties can be built on the side and rear property lines and across the front of the property in line with the front of a building but not closer than 20 feet to the street right-of-way. Corner lots must observe the 20-foot setback on both streets. From the 20-foot line to the street right-of-way, solid fences a maximum of three feet high, measured from the ground on which the fence stands, are permitted and open rail fences a maximum of four feet, six inches high, measured from the ground on which the fence stands, are permitted in which the rails and posts constitute not more than one-third of the fence area. Taller fences may be permitted in the 20-foot setback area by way of an administrative permit issued by the community development director or designee based on a field inspection and staff report with site plan and photographs provided by the applicant demonstrating consideration of adjacent structures, driveways, location of transit stops, need for privacy, visual impacts of fence structure on block front, or other circumstances not anticipated by this code. Fences up to six feet tall are permitted in commercial and industrial areas subject to corner vision requirements and permit conditions established through the plan review process.~~
~~B. Electric fences shall only be permitted in the OSP district and only when associated with an agricultural use. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.7~~7~~0.080 Standard setback exceptions.

The following may project into a required setback:

A. Fireplace structures, bay windows, garden windows, enclosed stair landings, closets, framed fireplace shafts or similar projections not wider ~~then~~than eight feet measured in the general direction of the wall of which it is a part: 18 inches into a required setback area;

B. Uncovered porches, decks, and platforms less than 30 inches in height: 18 inches into side yards and six feet into the front yard and rear yard;

C. Planting boxes or masonry planters not exceeding 42 inches in height may be placed in a required setback area;

D. Eaves may protrude into a required setback provided they do not exceed 24 inches into a required setback area.

E. Ramps and other structures necessary to provide handicap access. (Ord. 1857 § 2 (Exh. B), 2018).

F. Covered patios and entrances may protrude up to 6 feet into a required front or street-side setback. [BJ15]

17.7~~7~~0.090 Home occupations.

A. General Requirements. ~~All~~H~~-h~~ome occupation~~s, including permitted and conditional home occupations,~~s shall only be permitted when ~~be~~ consistent with all of the following:

1. Only members of the immediate family residing on the premises may be employed;

2. No inventory is kept (other than incidental supplies necessary for and consumed in the conduct of such home occupation) or commodities sold other than those produced on the premises. Samples may be kept but not sold on the premises. Items commonly collected or traded, and occasionally sold by hobbyists such as coins, stamps,

antiques, etc., may be considered to be exempt from this provision, as long as all other requirements of home occupations are met;

3. No mechanical equipment (such as fire suppression hoods or dust collectors)[BJ16] is used except such as is customarily used for domestic, household or personal purposes (or as deemed similar in terms of power and type);

4. Not more than one-fourth of the floor area of any building is devoted to such occupation, except accessory buildings which are used for no other purpose;

5. Such occupation shall not require internal or external alteration or involve construction features not customarily found in a dwelling;

6. Shall not involve the use of commercial vehicles for the distribution of materials from the premises;

7. The conduct of any home occupation, including but not limited to the storage of goods and equipment, shall not reduce or render unusable areas provided for the required off-street parking. Additional parking is not allowed in order to conduct a home occupation;

8. Only one sign is permitted, two square feet in area, indirect illumination only, and attached to a building or inside the home;

9. No display pertaining to the occupation, other than the one permitted sign, is visible from the street or adjacent residences;

10. No more animals are maintained on the premises than what may otherwise be permitted in the zone;

11. The home occupation is to be conducted in such a manner that the residence shall not differ from its residential character either by the use of colors, materials, construction, lighting, signs, or the emissions of sound, noises, vibrations or odors.

B. Exemptions. Garage sales, yard sales, bake sales, temporary home boutiques or bazaars for handcrafted items, parties for the display of domestic products, and other like uses do not need to comply with the requirements of this section as long as the use is not conducted on more than four days in any given two-year period or in violation of any other provisions of the Burlington Municipal Code. To qualify for this exemption, garage and yard sales must involve only the sale of household goods, none of which were purchased for the purpose of resale.

C. Prohibited home occupations.[BJ17] [BJ18]

1. ~~A conditional use permit is required and must be granted by the city council for the following home occupation uses, even if the use meets all 11 of the requirements of subsection (A) of this section but in no case shall any home occupation meet less than nine of the 11 requirements:~~[BJ19]Industrial uses that would otherwise only be permitted in the CI-1 or CI-2 zones;

2. Uses meeting the definition of minor, major, or high impact industrial;

~~a.~~3. Pet boarding, training, or grooming; [BJ20]

~~1. Automobile repair and rebuild;~~
~~2. Craft classes;~~
~~3. Home occupations that can only meet nine or 10 of the 11 requirements as outlined in subsection (A) of this section;~~
~~4. Music and dancing studios.~~
~~D. Additional Requirements. In addition to the requirements identified above, any home occupation identified as a conditional use shall be subject to the following:~~
~~1. In considering applications for home occupation conditional use permits, the hearing examiner shall consider the nature and conditions of all adjacent uses and structures, and no such special home occupation permit shall be~~

~~authorized unless the city council finds that the authorizing of such special home occupation permit will not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the property is located, and that the authorization of such permit will be consistent with the spirit and purpose of this title.~~

~~2. The hearing examiner may impose such requirements and conditions with respect to location, installation, construction, maintenance and operation and extent of open spaces in addition to those expressly set forth in this title, as may be deemed necessary for the protection of other properties in the zone or vicinity and the public interest. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.770.100 ~~Responsibility for a~~Animals.

A. Household Pets. The keeping of household pets shall be consistent with the requirements of Title 6 BMC.

B. Livestock. Rural agricultural uses are prohibited. Urban agriculture is permitted subject to the following:

1. Poultry may be kept in the rear yard of detached dwelling subject to the following:

   a. All feed shall be kept in a manner that prevents rodents and other animals from accessing it;

   b. Manure shall be collected and disposed of regularly and objectionable odors shall not be readily detectable beyond the property boundaries;

   c. Poultry shall be confined to the rear yard. The yard shall be fully enclosed by a solid site obscuring fence sufficient to prevent hens from escaping;

   d. Coops and other similar enclosures shall be located at least five feet from adjoining property lines. [BJ21]

C. Kennels. Kennels and pet boarding shall only be permitted when specifically authorized by Burlington Municipal Code and shall be consistent with any applicable standards or requirements identified in Title 6 BMC. [BJ22][BJ23]

~~i. Owners, including both property owners and residents, of animals, including household pets and farm animals, shall be responsible for damage to other properties, including damage to trees and other landscaping, fences and structures. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.770.105 Outdoor ~~vending machines~~lighting[BJ24].

A. General.

1. The requirements and standards of this section (BMC 17.90.105) shall apply to the installation, modification, maintenance, and operation of all outdoor lighting except:

   a. Public safety lights, including any lighting required for aviation safety, emergency equipment, law enforcement, or essential public facilities;

   b. Temporary construction lighting associated with an active on ongoing construction project;

   c. Special event lighting when authorized by temporary use permit or special event permit;

   d. Temporary low intensity holiday lights;

   e. Street lights installed illuminating a public street right-of-way consistent with the requirements of Title 12 BMC;

   f. Outdoor performance, event, or sports field lighting associated with a publicly owned or operated facility, provided such lighting shall be turned off within 30 minutes of the end of the event and the illumination level is consistent with any applicable standards published by the Illuminating Engineering Society of North America

2. Lighting plan required. A lighting plan shall be provided for all lands use permits and development proposals including, but not limited to, subdivisions, short plats, site plan reviews, and conditional use permits. The Community Director may waive the lighting plan requirement for the construction of a single detached home or duplex building on an existing lot. In all cases the City shall have the authority to request a lighting plan or lighting fixture information if necessary to demonstrate compliance with this section (BMC 17.90.105). Lighting plans shall include the following information:

    a. The location, type, and height of all proposed outdoor lighting fixtures;

    b. Illumination intensities and levels;

    c. Provisions for minimizing glare and spillover onto nearby properties;

    d. Manufacture's specifications and design details;

    e. Any other information necessary to demonstrate compliance with this section.

3. Exterior lighting shall comply with all applicable Washington State Energy Code requirements. When a lighting plan is required, documentation shall be submitted demonstrating compliance with all applicable energy code requirements.

4. Lighting shall be provided at consistent levels with gradual transitions between maximum and minimum levels of lighting and between lit and unlit areas. Highly contrasting pools of light and dark areas shall be avoided.

5. Pedestrian scale lighting shall be provided when required. Pedestrian scale lighting may be provided using building mounted light fixtures, bollards, or other free-standing light fixtures. Pedestrian scale light fixtures shall have a maximum height of 14 feet and shall be designed to provide an average minimum illumination level of at least two foot candles.

6. All exterior light fixtures shall be full cutoff designs, dark sky rated, and permanently directed downwards so the light source is not directly visible beyond the property boundaries or from a public right-of-way. Adjustable pivot mounts that allow fixtures to be repositioned to point outwards or upwards shall not be used. All light fixtures shall be permanently fixed in position. Low intensity lights used exclusively for landscape or architectural accent illumination may be directed upwards provided such lighting has a maximum intensity of 900 lumens, is projected towards a building, fence, wall, or other similar obstruction such that the light source is blocked from projecting into the sky and is not directly visible beyond the property boundaries or from a public right-of-way.

7. Publicly accessible spaces and common areas, such as parking areas, pedestrian paths, and service areas, associated with commercial, multiunit residential, institutional uses shall be subject to the following average minimum illumination levels:

    a. Areas with little or no pedestrian traffic, such as emergency exit paths, outdoor storage areas, and maintenance areas: 0.5 foot candles;

    b. Areas with moderate pedestrian traffic such as common areas, internal circulation paths, parking areas, and garbage and recycling areas: 1 foot candles;

    c. Primary building entrances, crosswalks, and high volume pedestrian routes including sidewalks along street frontages: 4 foot candles;

    d. Maximum uniformity ratio: 15:1.

8. Prohibited lights. Lights that blink, flash, revolve, or change intensity or that constitutes a public safety hazard shall be prohibited citywide and in all zones.

B. Lighting Requirements for Residential zones. The following standards shall apply in the RD, RA, and MUR zones.

1. Maximum fixture height: 14 feet.

2. Maximum exterior lighting level: 5 foot candles

3. Light spillover limit and property boundaries:

a. When adjoining properties are zoned RD, RA, MUR, or PC-1: 0.1 foot candles;

b. When adjoining properties are zoned MUC, CI, PFT, or PC-2: 0.8 foot candles;

c. At the boundary of a wetland or fish and wildlife habitat buffer: 0.1 foot candles.

C. Lighting Requirements for Mixed-Use Commercial Zones. The following standards shall apply in the MUC, PC, and PFT-1 zones.

1. Maximum fixture height: 25 feet, except that fixtures within 40 feet of a residential zone shall be limited to a maximum height of 14 feet.

2. Maximum exterior light level: 5 foot candles

3. Light spillover limit at property boundaries:

a. When adjoining properties are zoned RD, RA, MUR, or PC-1: 0.1 foot candles;

b. When adjoining properties are zoned MUC, CI, PFT, or PC-2: 0.8 foot candles;

c. At the boundary of a wetland or fish and wildlife habitat buffer: 0.1 foot candles.

D. Lighting Requirements Industrial zones. The following standards shall apply in the CI and PFT-2 zones.

1. Maximum fixture height: 30 feet, except that fixtures within 40 feet of a residential zone shall be limited to a maximum height of 14 feet.

2. Maximum exterior light level: 5 foot candles, except that areas designated on the lighting plan for outdoor manufacturing or sales lots may have a maximum illumination level of 10 foot candles.

3. Light spillover limit at property boundaries:

a. When adjoining properties are zoned RD, RA, MUR, or PC-1: 0.1 foot candles;

b. When adjoining properties are zoned MUC, CI, PFT, or PC-2: 0.8 foot candles;

c. At the boundary of a wetland or fish and wildlife habitat buffer: 0.1 foot candles.

~~A[BJ25]. Notwithstanding any other provisions of this chapter, outdoor vending machines may be operated only in the C-1 and C-2 zoning districts, provided the use, maintenance, and placement of vending machines shall be consistent with the requirements of this chapter. Outdoor vending machines located in public parks or any other public property shall not be subject to this section.~~

~~B. No outdoor vending machine may be installed, maintained, repaired or operated in the city without first being issued a valid land use permit. A land use permit shall be issued by the community development director or designee only if the following standards and conditions are met:~~

1. The outdoor vending machine may not be located such that the outdoor vending machine, or a user of the outdoor vending machine, is within:
a. A public right-of-way;
b. A required landscape area;
c. A driveway;
d. An area used by vehicles for circulation; or
e. Five feet of any business entrance or exit.
2. All outdoor vending machines must be ancillary to an approved primary use and may not be located on an unimproved lot. Automated banking teller machines not on the same property as the financial institution may be located in a parking lot of a multiple-tenant development if a conditional use permit is issued pursuant to BMC Title 14A.
3. When an outdoor vending machine is situated within the primary ingress to and egress from the lot, a minimum walkway width of six feet shall be required in front of the outdoor vending machine. The building official shall determine whether the ingress to and egress from the lot is primary to the lot. In all other situations, a minimum walkway width of four feet is required in front of the outdoor vending machine.
4. All outdoor vending machines shall only be located on a building elevation that contains a primary entrance.
5. All outdoor vending machines must be positioned against a building wall and not located in front of windows.
6. An outdoor vending machine shall not block the exit door.
7. Outdoor vending machine sign panels shall be limited to the products sold within the outdoor vending machine. No additional signs or advertising can be attached to or placed on the top or side of any outdoor vending machine.
8. Exterior conduit, piping or wiring must not be visible when standing directly in front of the outdoor vending machine.
9. No visible security cages are permitted on the outside of an outdoor vending machine.
10. Outdoor vending machines shall not exceed 80 inches in height and 36 inches in depth and 42 inches in width.
11. All outdoor vending machines shall be maintained in a clean and attractive condition.
12. Any graffiti on an outdoor vending machine shall be removed within 24 hours.
13. The vending machine shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the machine as visible from any residence or vehicle traveling the right-of-way.
14. Number of Outdoor Vending Machines.
a. No more than five outdoor vending machines shall be permitted per development site or integrated development site.
b. The number of outdoor vending machines permissible on a development site shall be as follows:

Square Footage of Development Site	**Number of Outdoor Vending Machines**
15,000 or less	1
15,001 – 30,000	2
30,001 – 45,000	3
45,001 – 60,000	4
60,001 or greater	5

c. For integrated development sites, regardless of the number of lots or individual tenants, that are developed with common parking, on-site circulation, architecture or design features, with multiple underlying lots, at least one outdoor vending machine, but not to exceed three outdoor vending machines, may be allowed per lot. Multiple outdoor vending machines shall be subject to the following ratio:

Square Footage of a Lot within an Integrated Development	**Number of Outdoor Vending Machines**
15,000 or less	1
15,001 – 30,000	2

Square Footage of a Lot within an Integrated Development	Number of Outdoor Vending Machines
30,001 or greater	3

15. Upon removal of an outdoor vending machine, the building and site area where the outdoor vending machine was located shall be repaired to its original condition. (Ord. 1857 § 2 (Exh. B), 2018).

17.770.110 Performance standardsVehicle[BJ26]s[BJ27].

The purpose of this section is to establish the following performance standards which are intended to reduce the visual, physical, and environmental impacts of new development on existing uses and developmentsThe following standards shall apply to all vehicles including trailers, recreational vehicles, boats, camping trailers, fifth wheels, campers, vans, trucks, and cars. .

A. Light and Glare. Building materials with high light-reflective qualities shall not be used in the construction of buildings in such manner that reflected sunlight will throw intense glare to surrounding areas. Artificial lighting shall be hooded or shaded so that direct light of high intensity lamps will not result in glare when viewed from residential areas surrounding a commercial or industrial district. Under no circumstances shall vehicles be parked, stored, or displayed in a landscaping area required by Chapter 17.81 BMC.[BJ28]

B. B. Electrical Interference. Provisions must be made for necessary shielding or other preventive measures against interference occasioned by mechanical, electrical and nuclear equipment uses or processes with electrical apparatus in nearby buildings or land usesJunk storage and the storage of wrecked vehicles shall only be permitted in the following locations and only when consistent with all other applicable code requirements:.

1. In a fully enclosed building or structure;

2. In an area that is fully screened from view on all sides by buildings or fencing with a minimum height of six feet;

3. In conjunction with a lawfully established repair facility, wrecking yard, or towing service. [BJ29]

C. Vehicles may only be parked or stored within a right-of-way when in full compliance with all applicable parking and traffic laws, regulations, and Burlington Municipal Code provisions.

C. Odorous Gases and Matter. The emission of odorous gases or matter in such quantities as to be readily detectable, without special instruments, at any point beyond the property line of the use creating the odor, is prohibited.
D. Smoke and Particulate Matter Emissions. No emissions shall exceed the allowances set forth by the Environmental Protection Agency, the Washington State Department of Ecology and/or the Northwest Sound Air Pollution Control Agency, unless local regulations are more restrictive, in which case the local regulation shall apply.
E. Dust, Dirt, Fly Ash, or Air Borne Solids. No observable dust, dirt, fly ash or other air-borne solids shall be emitted except as related to construction activity.
F. Waste Storage. Storage of animal or vegetable wastes which attract insects or rodents or otherwise create a health hazard shall be prohibited. No waste products shall be exposed to view, from eye level, beyond the property line of the use storing the waste.
G. Toxic Gases and Matter. No emissions of toxic gases or matter shall be permitted.
H. Vibration. Vibration which is easily discernible, without special instruments at any point beyond the property line, is prohibited. This shall not apply to vibration caused by highway vehicles, trains, aircraft or construction activities.
I. Hazardous Substance and Waste. No hazardous substances or wastes shall be released into the environment so as to cause dangerous or offensive emission or contamination of any public or private water supply, sewage treatment processes, watercourse or water body, the air, or the ground, except in accordance with standards approved by

provisions of federal, state and local laws and regulations, and the International Fire Code. (Ord. 1857 § 2 (Exh. B), 2018).

17.770.115 Height requirements for tTransitional zonesareas.

All commercial, industrial, and multifamily development within 45 feet of a single-family zone shall be limited to a maximum height of 35 feet. (Ord. 1857 § 2 (Exh. B), 2018).

17.70.120 Setback requirements for transition zones. [BJ30]

The following setback requirementsstandards shall apply to all commercial, industrial, and multifamily development on properties adjacent to single-family zones.

A. MultifamilyCommercial, Mixed Use, and Attached Residential. The minimum side and rear setbacks for multifamily development adjacent to single-family zones shall be derived using a ratio of two feet of building setback for every one foot of building heightthe following standards shall apply to sites zoned RA-2, MUC-1, MUC-2, or PFT-1 that abut areas zoned RD or RA-1.

1. Development setback: Except for landscaping and screening, all above ground improvements such as parking areas, drive isles, trash enclosures, or light fixtures shall be setback at least ten feet from any parcel zoned RD or RA-1;

2. Building setback: Except for covered trash enclosures all buildings shall be setback at least 20 feet from any parcel zoned RD or RA-1;

3. Building height: Buildings or portions of buildings located within 40 feet of a parcel zoned RD or RA-1 shall be limited to a maximum height of 35 feet;

a.4. Balconies within 100 feet of, and facing, a parcel zoned RD or RA-1 shall have railings faced with an opaque site obscuring materials such as frosted glass, decorative metal, or siding material.

B. CommercialIndustrial. The following standards shall apply to sites zoned CI-1, CI-2, or PFT-2 that abut areas zoned RD, MUR, or MUC.The minimum side and rear setbacks for commercial development adjacent to single-family zones shall be derived using a ratio of two feet of building setback for every one foot of building height.

1. Development setback: Except for landscaping and screening, all above ground improvements such as parking areas, drive isles, trash enclosures, or light fixtures shall be setback at least 10 feet from any parcel zoned RD, MUR, or MUC;

2. Activity setback: All outdoor manufacturing, assembly, and activity areas shall be setback at least 60 feet from any parcel zoned RD, MUR, or MUC;

3. Building setback: All buildings shall be setback at least 40 feet from parcels zoned RD or RA;

a.4. Maximum building height: For sites that abut parcels zoned RD or RA the maximum building height shall derived using a ratio of one foot of building height for every two feet of setback. For example, if a proposed building is setback 60 feet from a parcel zoned RD-1, the maximum permitted building height at the setback line would be 30 feet.

A. C. Industrial. The minimum side and rear setbacks for structures adjacent to single-family lots shall be derived using a ratio of two feet of building setback for every one foot of building height. (Ord. 1857 § 2 (Exh. B), 2018).Unincorporated Resource Lands. Except for the development of a single detached dwelling on an existing lot, all new development adjacent to unincorporated resource lands shall be subject to the following standards: [BJ31]

1. Development setback: Except for landscaping and screening, all above ground improvements such as parking areas, drive isles, trash enclosures, or light fixtures shall be setback at least 25 feet from any unincorporated resources lands;

2. Activity setback: All outdoor manufacturing, assembly, storage, and activity areas shall be setback at least 25 feet from any unincorporated resources lands;

3. Building setback: All residential buildings and dwellings shall be located at least 50 feet from unincorporated resources lands;

~~1.~~4. Land divisions: Plats adjoining unincorporated resources lands shall identify the setback required by this section on the face of the plat.

17.7~~7~~0.125 Telecommunication facilities.

A. Application and Conditional Use Criteria – FCC Preemption. In any proceeding regarding the issuance of a conditional use permit under the terms of this chapter, federal law prohibits consideration of environmental effects of radio frequency emissions to the extent that the proposed facilities comply with the Federal Communications Commission regulations concerning such emission.

B. The following are exempt from the requirements of a conditional use permit, and shall be considered a permitted use in all zones where wireless and attached wireless communications facilities are permitted: minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, so long as there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this title.

C. A wireless communications facility or attached wireless communications facility shall be removed by the facility owner within six months of the date it ceases to be operational or if the facility falls into disrepair. (Ord. 1857 § 2 (Exh. B), 2018).

17.7~~7~~0.130 Mechanical equipment.

A. Mechanical equipment shall be equipped with a noise-baffling screen as necessary, so that there shall be no audible sound at the property line.

B. ~~Roof-mounted or ground-mounted~~ Exterior mechanical ~~equipment~~equipment shall be located and designed to blend in with the architecture of the building~~.~~ (Ord. 1857 § 2 (Exh. B), 2018).

C. Roof-mounted mechanical equipment, with the exception of solar panels and wind generating equipment, shall be fully screened from view using architectural devices such as parapet walls, false roofs, roof wells, or clerestories.[BJ32]

C. Ground mounted equipment shall be fully screened from view using a site obscuring fence or landscaping.

17.7~~7~~0.135 Low impact development.

The following standards and requirements shall apply to any building, development, or construction activities that result in an increase in impervious surface coverage, building coverage, or modifications to existing storm water management features or facilities. These standards and requirements shall also apply to all activities involving the modification of existing impervious surfaces or the removal of significant quantities of vegetation.

A. All development, building, construction, and grading permit applications shall be provided to the city engineer for review. No permit shall be issued or approved unless the city engineer finds the proposal complies with the surface water management regulations in BMC Title 14.

B. All development activities shall be designed and constructed in accordance with the Washington State Department of Ecology's Stormwater Manual for Western Washington.

C. Low impact development shall be the preferred and commonly used approach for all development and construction activities. Low impact development (LID) techniques shall be incorporated into all development proposals unless demonstrated to be infeasible through an engineering analysis.

D. The Department of Ecology's Stormwater Manual for Western Washington and the Puget Sound Partnership's Low Impact Development Technical Guidance Manual for Puget Sound shall be consulted to assess the feasibility of LID techniques, to select appropriate LID measures, and to aid in the design and construction of LID features. All storm water systems.

E. Clearing or the installation of impervious surfaces or paving shall be limited to the minimum amount necessary to support a permitted use or development. [BJ33]

Chapter 17.81
Landscaping

17.81.010 Title
17.81.020 Application
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17.81.100 Streetscape Landscaping
17.81.110 Buffers and Screening
17.81.120 Landscaping Maintenance and Tree Retention

Note: This chapter is intended to repeal and replace Chapter 17.80 in its entirety. All text of chapter 17.80 shall be repealed. All text in Chapter 17.81 shall be added.

17.81.010 Title

This Chapter shall be called “Landscaping”

17.81.020 Application

This Chapter shall apply to all development, including but not limited to land use and building permits, the maintenance, removal or alteration of any landscaping required under this Chapter, and the removal or alteration of significant trees.

17.81.030 Purpose

The purpose of this Chapter is to:

A. Improve the character and appearance of the City;

B. Manage storm-water, reduce erosion, provide areas for bio-filtration, and maintain or restore natural hydrologic processes;

C. Protect public health by providing shade and wind protection, reducing urban heat island effects, improving air quality;

D. Reduce localized flooding and slow the movement of floodwaters;

E. Protect the quality of groundwater, provide opportunities for groundwater recharge, and conserve water resources;

F. Provide buffers between incompatible uses and minimize aesthetic, noise, light, glare, and privacy impacts;

G. Promote economic development by creating an aesthetically pleasing, safe, and comfortable environment for residents, visitors, and businesses;

H. Provide wildlife habitat and promote biodiversity;

I. Implement the City's comprehensive plan

17.81.040 Authority

This Chapter is adopted pursuant to the provisions of chapters 35A.63 and 36.70A RCW and other applicable laws and regulations.

17.81.050 Plans and Review Process

A. Plans Required. Landscaping plans shall be required for all new development except:

1. The construction or modification of a detached dwelling or duplex on an existing lot;

2. The construction or modification of normal residential appurtenances and accessory uses associated with an individual detached, duplex, or horizontally attached dwelling unit;

3. Normal residential landscaping and gardening associated with an individual detached, duplex, or horizontally attached dwelling unit;

4. The construction or modification of buildings and other improvements on a site where the existing landscaping fully complies with this chapter and where the landscaping will not be modified;

5. Simple small scale projects where little or no landscaping is required and where compliance with the requirements of this Chapter can be readily assured through simple conditions of approval.

B. Landscape Architect Required. All landscaping plans shall be prepared by a Landscape Architect licensed in the State of Washington. This requirement may be waived for simple small scale projects where little or no landscaping is required.

C. Plan Requirements. Landscaping plans shall be drawn to scale and include the information specified below.

1. The location of property boundaries, easements, and streets located on, or adjoining the development site;

2. The location and dimensions of all existing and proposed structures and site improvements such as buildings, parking areas, utilities, storm-water improvements, trash enclosures, and low impact development features;

3. The location and dimensions of all existing and proposed landscaping areas, buffers strips, fences, walls, and retaining walls;

4. The location, species, and approximate size of all proposed landscape plantings and trees;

5. Identify and describe all non-plant landscaping materials such as gravel, stones, bark, mulch, fountains, and ponds;

6. Tables demonstrating compliance with the minimum area and planting ratios specified in this Chapter;

7. Irrigation plans or draught tolerating planting documentation;

8. The location of any existing significant trees and information on their protection and retention;

9. Planting information describing the mature size of plants and trees, the size of plants or trees at installation, and information on the coverage or spread of groundcover plantings;

10. Instructions regarding planting methods, watering, or soil amendments necessary to ensure the landscaping is adequately established and survives;

11. Plans for the removal of any noxious weeds or invasive species;

12. Any other information deemed necessary by the Community Development Director for purposes of demonstrating compliance with this Chapter or any other provision of the Burlington Municipal Code.

D. Review Process. Landscaping plans shall generally be reviewed in conjunction with the associated land use permit. Where no land use permit is required the landscaping plan shall be reviewed in conjunction with the underlying building or development permit. If no permit is required the landscaping plan shall be processed as a Type I permit review in accordance with the requirements of Title 14A BMC.

17.81.060 General Requirements

A. Landscaping Materials.

1. Plants and trees shall be adapted to the local climate and soil conditions;

2. At least 50 percent of all plants and trees shall be native to the Puget Lowland region of the Pacific Northwest and at least 25 percent of all required trees shall be coniferous evergreens;

3. No artificial lawn or plants shall be permitted in landscaped areas or used to satisfy the requirements of this Chapter;

4. Bark, mulch, gravel, river-rock, and other non-vegetative material may only be used conjunction with landscaping to assist with the health and growth of plants and trees. Non-vegetative material shall not be used as a substitute for vegetative ground cover or otherwise used to satisfy the requirements of this Chapter. Under no shall non-vegetative material appear to dominate over plant material;

5. Species identified as noxious weeds or invasive species by the Washington State Noxious Weed Control Board or other applicable authority are prohibited and shall not be planted anywhere in the City of Burlington. When landscaping is required all existing noxious weeds or invasive species shall be removed from the site and properly disposed of;

6. Species should include a variety of seasonal colors, forms, and textures that contrast or complement each other and a mixture of evergreen and deciduous trees, shrubs, groundcover, and low-maintenance perennials. Preference should be given to species that can be maintained in their natural form without significant pruning or care;

7. Species shall be selected, planted, and maintained to avoid conflicts with, or damage to, streets, sidewalks, paths, above or below ground utilities, and other similar improvements. When trees are planted within ten feet of a sidewalk, pedestrian path, or street root barriers shall be provided. Tree wells shall have sufficient depth and dimensions to promote healthy root development and avoid damage to adjacent improvements. At a minimum, trees shall be planted in a hole that measures at least three time the diameter of the tree’s root-ball.

B. Minimum Landscape Material Specifications. The following specifications shall apply to the plants, trees, fences, walls, and other landscaping materials required by this section.

1. Deciduous trees shall have a clear truck at least five feet above the ground and a minimum caliper of at least two inches at the time of planting;

2. Evergreen trees shall have a minimum height of six feet at the time of planting;

3. Vine maples and other multi-stemmed trees shall have a minimum height of seven feet at the time of planting;

4. Small shrubs shall be have a minimum height of 12 inches with a one gallon pot or ball-and-burlap at the time of planting. Small shrubs have a mature height of 3 feet or less.

5. Medium shrubs shall be have a minimum height of two feet with a three gallon pot or ball-and-burlap at the time of planting. Medium shrubs have a mature height of more than three feet but less than six feet.

6. Large Shrubs shall have a minimum height of more than two feet with a five gallon pot or ball-and-burlap at the time of planting. Large shrubs have a mature height of six feet or more.

7. Groundcover shall be provided using grass sod, or spreading groundcover in four inch pots planted at intervals of nine inches or less, or one gallon pots planted at intervals of 18 inches or less. In all cases groundcover plantings shall be sufficient to achieve a uniform spread and 80 percent cover of the planting area within two years of installation.

8. Solid site obscuring fences shall be constructed of wood and painted or stained a dark natural color. Chain-link (cyclone) fencing may also be used provided it is treated with a dark, natural colored coating (such as black or green) and matching privacy slats are used. Other materials may be authorized provided they are consistent with the objective of creating a solid site obscuring fence that is visually inconspicuous, blends in with surrounding vegetation, and complements the architecture of surrounding buildings and developments.

C. Minimum Area Requirements. The following requirements specify the minimum percentage of the gross site area which must be landscaped.

Table 17.80.060.C-1

Zoning Classification	Required Percentage of Gross Site Area
Residential (RD and RA)	15
Mixed Use Residential (MUR-1 and MUR-2)	15
Mixed Use Commercial (MUC-1 and MUC-2)	15
Public Facilities and Transportation (PFT-1)	15
Public Facilities and Transportation (PFT-2)	10

Commercial Industrial (CI-1 and CI-2)	10

1. Downtown. For sites located in the Downtown Priority Development Area with frontage on Fairhaven Avenue the minimum gross site area requirement may be reduced to five percent as minimally necessary to accommodate buildings, walkways, parking, or service areas provided all remaining portions of the site are fully landscaped.

2. Utilities and Transportation. The minimum gross site area requirements identified above shall not apply to street rights-of-way or other similar linear transportation improvements located in the PFT zone. Utility lines, substations, and pump stations shall also be exempt from the gross site area requirements provided all other applicable requirements of this Chapter, such as screening, buffers, and perimeter landscaping are met.

D. Irrigation. All new landscaping shall either utilize a draught tolerant landscaping plan, an automatic irrigation system, or an approved alternative irrigation system as follows:

1. Automatic Irrigation Systems. Except as explicitly authorized by this section an automatic irrigation system shall be provided. The irrigation system shall provide sufficient coverage to irrigate all of the required landscaping areas. Irrigation system plans and specifications shall be included in the landscaping plans required by this Chapter.

2. Draught Tolerant Landscaping Plans. A draught tolerant landscaping plan may be used as an alternative to an automatic irrigation system. When a draught tolerant landscaping plan is proposed the landscape architect shall provide a written statement documenting that the landscaping can be expected to survive in the absence of regular watering. The landscape architect shall also document that suitable draught tolerant species have been prescribed and identify any planting methods, soil amendments, or temporary irrigation measures necessary to ensure the landscaping is fully established and self-sustaining. Draught tolerant landscaping plans must be prepared by a licensed landscape architect.

3. Alternative Irrigation Methods. For simple small scale projects with minimal landscaping requirements, the Community Development Director may authorize the use of hand watering to meet the irrigation requirements of this Chapter. In such cases hose bibs shall be provided within 50 feet of all required landscaping areas.

E. Storm-Water Management.

1. Storm-water facilities and low impact development (LID) features landscaped in accordance with the requirements of this Chapter may be used to meet any applicable landscaping requirements.

2. To the greatest extent possible the planting areas required by the Chapter shall be used as storm-water infiltration areas or LID features.

3. Low impact development features and planting areas used to manage storm-water shall be designed and constructed consistent with the Washington State Department of Ecology's "Stormwater Manual for Western Washington" and the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for the Puget Sound".

4. When trees or plants will be located within, or adjacent to, an infiltration area or LID feature the landscape architect shall submit evidence that they have coordinated with the engineer responsible for the on-site storm-water management system. Based on information provided by the storm-water engineer the landscape architect shall:

    a. Specify tree and plant species suitable for the hydrologic and soil conditions anticipated in the planning area; and

    b. Specify tree and plant species that will no detrimentally affect the ability of the planting area to manage storm-water.

5. Landscaping plans shall identify areas of the site with suitable soils for storm-water infiltration and LID features.

6. Above ground storm-water improvements, such as swales, ponds, or ditches, shall be sloped, graded, or otherwise designed to avoid the need for protective fencing and to give the appearance of a natural landscape feature. Above ground storm-water improvements shall be landscaped with appropriate plant and tree species.

7. All storm-water management measures and LID features shall be consistent with the requirements of Title 14 BMC.

17.81.070 Street Frontage Landscaping

The following requirements shall apply to all portions of a site abutting a public or private street.

A. Minimum Width. A landscaping strip with a minimum width of ten feet shall be provided along all public and private streets.

B. Planting Requirements.

1. Street trees shall be provided at intervals of 30 feet on center except as minimally necessary to accommodate obstructions such as traffic control signs, bus stops, utilities, required site lines, and driveways. In such cases additional trees shall be provided in groups in order to achieve an overall ratio of one tree for every 30 feet of street frontage. When a dominant pattern of street trees is present along nearby street frontages the same species shall be used. Where no dominant pattern is present trees shall be selected using the City's Street Tree Selection Guide. When street trees are provided in a planting or buffer strip in a public right-of-way, trees may be selected for the frontage strip that complement or contrast with the street trees and may be grouped together provided at least one tree is provided for every 30 feet of street frontage. [BJ1]

2. A mixture of small, medium, and large shrubs shall be provided at a rate of one shrub for every four feet of street frontage.

3. Groundcover shall be provided in all areas not occupied by trees or shrubs consistent with the requirements of this Chapter (BMC 17.80.060.B.7).

C. Exceptions.

1. Sidewalks and pedestrian paths may cross a street frontage landscaping strip;

2. Driveways may cross a street frontage landscaping strip;

3. Signs that fully comply with City's sign code (Chapter 17.95 BMC) may be located within a street frontage landscaping strip;

4. Building awnings, balconies, bay windows and other similar architectural features located at the top of, or above, the first story of a building may extend over a street frontage landscaping strip;

5. Downtown. A street frontage landscaping strip shall not be required in areas of the Downtown Growth Area where buildings are required to be located at the edge of the right-of-way, or where a maximum setback applies that is less ten feet. In such cases street trees shall be provided in trees wells or curb bulb-outs approved by the City's Public Works Department and any remaining area between the building line and the sidewalk shall be fully landscaped.

D. Planting Strips. When a planting or buffer strip is provided in the public right-of-way streets trees shall be provided. Street tree spacing and species selection shall be consistent with the requirements of BMC 17.81.070.B. [BJ2]

17.81.080 Perimeter Landscaping

A. Minimum Width: 5 feet.

B. Planting Requirements.

1. Trees shall be planted at a ratio of one tree for every 30 feet of perimeter landscaping area. A mixture of evergreen and deciduous trees shall be used and no more than 60 percent of the required trees may be deciduous;

2. Medium sized shrubs shall be planted in triangulated rows at intervals of 24 inches or less.

3. Groundcover shall be provided in all areas not occupied by trees or shrubs consistent with the requirements of this Chapter (BMC 17.81.060.B.7).

C. Exceptions.

1. Areas occupied by buildings where no building setback or screening is required;

2. Sidewalks and pedestrian paths may cross a perimeter landscaping strip;

3. Driveways may cross a street frontage landscaping strip;

17.81.090 Parking Lot Landscaping

The purpose of this section is to mitigate the negative impacts associated with parking areas by providing shade, interrupting and infiltrating precipitation, providing trees to interrupt wind gusts, and blocking glare from headlights.

A. Applicability. This section applies to off-street parking area that containing 20 or more parking spaces.

B. Minimum Area. At least 15 square feet of landscaping shall be provided for each interior parking space. An interior parking space is a parking space not abutting a building or the perimeter of a site.

C. Configuration of Parking Lot Landscaping. Parking lot landscaping shall be located at the ends of parking columns, between parking stalls, or between rows of parking. Planting islands shall have a minimum area of 65 square feet.

D. Planting Requirements.

1. Trees. One tree shall be provided for every six parking spaces.

2. Shrubs. Small or medium shrubs shall be provided. If small shrubs are used, they shall be planted at intervals of 18 inches on center or less. If large shrubs are used they shall be planted at intervals of 24 inches on center or less.

3. Groundcover. Groundcover shall be provided in all areas not occupied by trees or shrubs consistent with the requirements of this Chapter (BMC 17.80.060.B.7).

4. Landscape Protection. Curbs or wheel stops shall be used to prevent vehicles from damaging parking lot landscaping.

17.81.110 Buffers and Screening

Certain uses, such as residential developments, can be negatively impacted when located adjacent to incompatible uses, such as industrial sites due to negative environmental impacts such as noise, glare, and dust. Landscaped buffers and screening can be used to mitigate these impacts, soften the visual transition between developments located in different zoning classifications, and to prevent conflicts between incompatible uses. Landscape screening can also be used to establish visual boundaries or screen certain site improvements such as mechanical equipment, trash enclosures, storage yards, or service areas. The purpose of this section is to identify and prescribe an appropriate range of buffer and screening methods.

A. The purpose of this section is to accomplish the following:

1. Establish a buffer between incompatible developments located on adjacent sites with different zoning classifications;

2. Screen or conceal service areas, trash enclosures, mechanical equipment, storage yards, and other similar site improvements;

3. Establish a visual transition between streets and adjoining parking areas or drive aisles;

4. Minimize the environmental impacts associated with freeway and railroad corridors, including light, noise, and air quality impacts;

5. Prevent conflicts between urban development and rural resource activities such as agricultural uses;

6. Provide any screening or buffers required as mitigation through a conditional use permit process.

B. Standard Buffer and Screening Types. This section identifies the standard buffer or screening methods referenced in the Burlington Municipal Code. When a given buffer type or screening method is required by the Burlington Municipal Code it shall be consistent with the specifications identified in this section. These requirements shall be regarded as minimum standards. Additional screening or buffer requirements may apply to specific uses, developments, or site improvements.

1. Type I – General Screening. General screening is intended to obscure trash enclosures, mechanical equipment, outdoor storage and other similar features.

    a. Minimum width. The minimum buffer width shall be five feet.

    b. Physical screening. A solid site obscuring fence or wall with a minimum height of six feet shall be provided.

    c. Shrubs. A combination of small and medium shrubs shall be provided. A minimum of one medium shrub and one small shrub shall be provided for every four feet of buffer.

    d. Ground cover shall be provided for all areas not occupied by shrubs.

    e. Exceptions. The landscaped buffer required by this section is not required in areas where a gate, driveway, or path is present.

2. Type II – Low Wall or Earth Berm. This buffer type is used for screening parking lots, drive-through lanes, drive aisles and other similar features located adjacent to streets. Type II buffers must include both physical screening and landscaping. Physical screening shall be provided using either a low wall, raised planter, or an earth berm as described below.

    a. Minimum width. The minimum buffer width shall be ten feet.

    b. Low wall. If a low wall is used to provide physical screening it shall be constructed of masonry or concrete, and shall have a minimum height of three feet. If the wall is adjacent to a street it shall be setback at least five feet from the right-of-way.

    c. Raised planter. If a raised planter is used to provide physical screening it shall be constructed of masonry or concrete, shall have a minimum height of three feet, and a minimum width of four feet. If the raised

plater is adjacent to a street it shall be setback at least five feet from the right-of-way. The planter shall be completely landscaped.

d. Earth berm. Earth berms shall have a minimum height of two feet, a maximum slope of 33 percent (one foot of vertical height for every three feet of horizontal distance) The crest of the berm shall be planted with a row of small shrubs planted at intervals of two feet or less on center to form a dense opaque buffer. The shrubs required by this provision shall be evergreen species and may be used to meet the landscaping requirement below (BMC 17.81.110.B.2.e).

e. Landscaping. Type II buffers shall be planted with a mixture of small and medium sized shrubs at a ratio of one shrub for every four feet of buffer area. Ground cover shall be provided for all areas not occupied by shrubs. At least 75 percent of the required shrubs shall be evergreen varieties.

3. Type III – Separation Buffer – This buffer type is intended to separate more intensive uses from less intensive uses in situations where the anticipated impacts are largely aesthetic. A type III buffer combines a solid site obscuring fence or wall with evergreen trees and shrubs to create a year-round visual screen.

    a. Minimum width. The minimum buffer width shall be ten feet.

    b. Physical screening. A solid site obscuring fence or wall at least six feet in height shall be provided.

    c. Landscaping. In addition to any normally required perimeter landscaping evergreen trees shall be provided at intervals of 15 feet or less. The trees required by this provision may be used to meet normally applicable tree planting requirements for perimeter landscaping.

4. Type IV – High Intensity Buffer – This buffer type is intended to separate high intensity uses with potentially significant light, noise, glare, and dust impacts from less intensive uses. For example, a high intensity buffer would be appropriate for separating an industrial site from a residentially zoned parcel. High intensity buffers must employ a solid site obscuring fence or wall and a dense opaque band of evergreen vegetation. In order to provide adequate acoustic separation, type IV buffers that provide physical screening with a fence, as opposed to a masonry wall, must provide an additional ten feet of landscaped area.

a. Minimum width. If a masonry wall is used the required buffer width shall be 15 feet. If a fence is used the required buffer width shall be 25 feet.

b. Physical screening. Type IV buffers must include a solid site obscuring fence or wall with a minimum height of six feet.

c. Landscaping. In addition to any normally required perimeter landscaping triangulated rows of evergreen trees shall be provided at intervals of 15 feet. A minimum of one large shrub for every four feet of buffer area must be provided, 75 percent of which must be evergreen varieties. The trees required by this provision may be used to meet normally applicable tree planting requirements for perimeter landscaping.

C. Incompatible Uses.

Table 17.81.110.C-1

Zone Where Development is Proposed	**Adjacent Zoning Designation or Area and Required Buffer Type[1]**					
	RD & RA-1	**RA-2 & MUR**	**MUC & PFT-1**	**CI & PFT-2**	**Resource Zones**	**Freeway or Railroad ROW**
RD & RA-1	N/A	None	None	None	Type IV	Type IV
RA-2 & MUR	Type III	N/A	None	None	Type IV	Type IV
MUC & PFT-1	Type III	Type III	None	None	Type IV	Type III
CI & PFT-2	Type IV	Type IV	Type III	None	Type IV	None
Resource Zones	N/A	N/A	N/A	N/A	N/A	N/A
Freeway or Railroad ROW	Type IV[2]	Type IV[2]	Type IV[2]	Type IV[2]	N/A	N/A

(1) An adjacent property is one that directly abuts the property on which development is occurring. Properties separated by a street or railroad right-of-way shall not be considered adjacent and no buffer shall be required.
(2) Applies only to freeway projects involving ROW acquisition, widening, or major construction.

17.81.120 Landscaping Maintenance and Tree Retention

The following requirements shall apply to all uses and developments except for landscaping or yards associated with individual residences or dwellings. [BJ3]

A. General Requirements.

1. Dead and dying vegetation shall be promptly removed and replaced. Trees and plants shall be replaced with the same species unless an alternative

replacement with similar characteristics is approved by the Community Development Director.

2. Vegetation shall be kept trimmed as necessary to avoid obstructing sidewalks, paths, streets, parking areas, or driveways.

3. Noxious weeds and invasive species shall be removed and properly disposed of.

4. Exposed soils shall be avoided. When erosion is observed corrective actions shall be taken immediately. Corrective actions may include providing additional groundcover or shrubs, mulch or other similar material. In cases of significant erosion it may be appropriate to regrade the area to reduce the steepness of the slope.

5. Landscaping areas required by this chapter shall not be used for parking, storage, or display. Under no circumstances shall vehicles be parked in landscaping areas or buffers.

B. Pruning and Tree Protection. Excessive pruning and tree topping is prohibited except as authorized by this Chapter. The following requirements shall apply to any trees planted to satisfy the requirements of this Chapter and to existing significant trees.

1. Trees should be pruned in a manner that allows them to attain their full natural height and shall not be topped except as minimally necessary to prevent damage to buildings or utilities;

2. All pruning work should comply with ANSI A300 (Part 1 – 2017), “Tree, Shrub and Other Woody Plant Management – Standard Practices, to maintain long term health” unless alternative methods are specified by an arborist;

3. When trees and shrubs are required for screening or buffering, or for the purpose of creating a visually opaque hedge, pruning shall maintain the visual opaqueness of the screen, buffer, or hedge.

C. Significant Trees.

1. This section shall apply to all significant trees except as follows:

a. Trees located within a public street right-of-way when the work is performed by, or at the direction of, the City consistent with Chapter 12.20 BMC;

b. Removal, pruning or modification as minimally necessary to prevent damage to overhead or below ground utilities when the work is performed by, or at the direction of, a public or private utility;

c. Trees located within the boundaries of an existing landscaped yard associated with an individual dwelling, except for redevelopment projects;

d. The construction of a single detached dwelling, duplex, or small multiunit building and residential land divisions involving the creation of four lots or less.

2. Definition. A significant tree is any tree that is at least six inches in diameter at breast height (D.B.H). A tree growing with multiple stems shall be considered a significant tree if any one of the stems, when measured at a point six inches from the joint with the main trunk, is at least four inches in diameter. The following species shall not be considered significant trees regardless of size:

    a. Black locust (Robinia pseudoacacia);

    b. Cottonwood (Populous freemontii);

    c. Native alder (Native Alnus only);

    d. Native willow (Native Salix only);

    e. Lombardy Poplar (Populous nigra).

3. Retention. Significant trees shall be incorporated into the project design and site layout whenever possible and may only be removed under the following circumstances:

    a. When absolutely necessary to accommodate a proposed development and where no feasible option exists for incorporating the tree into the overall site layout;

    b. Hazard trees and nuisance trees. Hazard and nuisance trees may be removed with City authorization. In such cases an arborist's report may be required to document the nature and extent of the hazard or nuisance and to demonstrate that no feasible alternative to removal exists;

4. Significant trees shall be protected during construction or development unless removal is authorized pursuant to this Chapter. Temporary construction fencing shall be placed around the tree and no equipment, chemicals, soil deposits or construction materials may be placed within the barrier. When a landscaping plan is required all significant trees shall be identified and a protection plan shall be included. For all projects the department may specify any measures necessary to ensure the protection of significant trees and may are require that an arborist prepare the tree protection plan.

5. Approval required. Significant trees shall not be removed without prior authorization from the department. An arborist's report, site plan, or other documentation may be required in order to demonstrate compliance with the requirements of this section (BMC 17.81.120). In emergency situations where an immediate threat to human life or property exists hazard trees may be removed without City authorization provided the department is notified the next business day. In the event of a natural disaster, such as a flood or windstorm, the department shall be authorized to temporarily suspend all approval and notification requirements.

6. Replacement. When significant trees are removed replacement trees shall be provided in accordance with the following provisions:

    a. Significant trees shall be replaced at the following rates:

Table 17.81.120.C-1	
Diameter (DBH) Tree Removed	**Number of Required Replacement Trees**
6" - 18"	2
> 18"	4

    b. All deciduous replacement trees shall be a minimum of 2.5 inches in diameter and coniferous evergreens shall be at least eight feet in height.

    c. Replacement trees shall be planted on the same site where the tree removal occurred, provided that in unique circumstances where onsite replacement is not feasible offsite replacement may be authorized. When offsite replacement is authorized replacement trees shall be planted in a publicly owned park, open space area or conservation easement within the City of Burlington.

    d. A planting plan, prepared by an arborist or landscape architect, shall be provided specifying any requirements necessary to ensure the replacement trees become fully established and self-sustaining, such as planting instructions, staking, temporary watering, or mulching.

e. Replacement is not required for diseased or hazardous trees except in cases where the damage or disease is due to intentional actions.

7. Except when explicitly authorized by this Chapter the excessive pruning, topping, or deliberate damage of significant trees shall be prohibited, including any action that results a loss of more than 20 percent of the tree's root system, the removal of more than 50 percent of the live crown of the tree, or any other action that significantly alters the tree's growth potential. Such actions constitute "removal" and will be considered a violation of this Chapter.

8. Violations. In addition to any other applicable fines, penalties, or enforcement provisions, a replanting plan and replacement trees shall be provided for the unauthorized removal of a significant tree.

Chapter 17.85

ACCESS AND , PARKING ~~AND LOADING~~

Sections:

17.85.010 Title.
17.85.020 Application.
17.85.030 Purpose.
17.85.040 Authority.
17.85.050 General ~~and exceptions~~.
17.85.060 Parking quantities.~~Required off-street parking—Quantity.~~
17.85.070 Shared parking.
17.85.080 Cooperative parking.
17.85.090 ~~Drive-in businesses.~~(Reserved)
17.85.100 ~~Off-street parking area development and maintenance.~~(Reserved)
17.85.105 ~~Development of required off-street parking spaces for single-family dwelling units.~~Construction standards.
17.85.110 ~~Off-street parking lots—~~ Location and screening standards. ~~.~~
17.85.115 ~~Off-street parking plan d~~Design standards.
17.85.120 Pedestrian circulation and access.
17.85.125 ~~Existing off-street parking reduction~~(Reserved).
17.85.130 ~~Fractional spaces~~(Reserved).
17.85.135 ~~Off-street loading space~~(Reserved).
17.85.140 ~~Design standards for p~~Private streets ~~and roads~~.

17.85.010 Title.

This chapter shall be called "Access and , Parking ~~and Loading~~." (Ord. 1857 § 2 (Exh. B), 2018).

17.85.020 Application.

The standards of this section shall apply to all new uses, structures, and developments, and to the expansion or modification of existing uses, structures and developments. (Ord. 1857 § 2 (Exh. B), 2018).

17.85.030 Purpose.

The purpose of this chapter is to establish standards for access and parking as follows:

A. P~~p~~rovide ~~for~~ adequate, safe, and convenient access for drivers, pedestrians, cyclists, and transit users;

B. Ensure~~off-street parking and loading areas~~ accessibility by people of all ages and physical abilities;

C. Promote development patterns that are accessible and convenient while minimizing traffic, parking, storm-water, and other impacts;

D. Ensure that each new development contributes to, and functions as part of, an interconnected and coherent overall transportation system;

E. Promote flexible development patterns that can accommodate future changes and transportation needs.

~~for the different zones as described in this title by specifying requirements for off-street parking and loading, and describing design standards and other required improvements. (Ord. 1857 § 2 (Exh. B), 2018).~~[BJ1]

17.85.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.85.050 General ~~and exceptions~~.

A. ~~Off-street~~ Access and parking ~~and loading~~ ~~lots~~ shall be provided in accordance with the ~~following~~ provisions of this chapter ~~for every building hereafter erected, altered, enlarged, or relocated~~.

1. ~~Any~~ All new or modified developments, buildings, uses, or structures shall ~~provide the required parking to~~be consistent with the ~~standards specified herein~~provisions of this chapter.

2. ~~Any~~ All new or modified parking areas, driveways, drive aisles, pedestrian access paths, private streets, and similar improvements ~~lot hereafter physically altered~~ shall ~~comply~~ be consistent with ~~all of~~ the provisions of this chapter~~, except that such lot which provides five percent of its area in landscaping shall be deemed to comply with chapter 17.80 BMC.~~.[BJ2][BJ3]

B. ~~Parking Quantity~~ Exceptions~~s~~. ~~in General.~~

1. ~~Parking Exceptions for~~ Landmark Structures. For uses in a landmark structure the number of required parking spaces~~The director~~ may be reduced or waived based o[BJ4]n the following criteria~~the minimum accessory off-street parking requirements for a use permitted in a landmark structure, considering the following elements~~:

a. A survey may be required of on- and off-street parking availability.

b. A determination that there is no feasible way to meet parking requirements on the lot.

c. Consideration of the types and scale of uses proposed or practical in the landmark structure and the controls imposed by the landmark designation.

2. ~~Expansion of Existing Nonresidential Uses in Commercial and Business Zones~~Existing Development. Except in the RD and RA zones, a~~A~~dditional parking spaces ~~for nonresidential uses~~ shall not be required for the expansion of existing ~~structures~~ uses, or when changing uses, unless the expansion or change would have the effect of increasing the number of required parking spaces by more than ten percent or five spaces, whichever is greater. [BJ5]

~~if the minimum parking requirement would not be increased by more than 10 percent. If the minimum parking requirement would be increased by more than 10 percent, the parking spaces required for the entire expansion shall be provided. This provision may be used only once for any individual structure.~~

~~3. Whenever any existing, nonresidential use in a building is changed to another use in the same building, the requirements of this section shall apply in full to the new use if and only if the change in parking requirements between the old and new uses is greater than five spaces. Credit for on-street parking spaces that are located along the building's street frontage shall be given.~~

~~4. Whenever there is a change from a residential use to a nonresidential use in an existing building, the requirements of this section shall apply in full to the new use; except that the planning commission may determine that a portion of the residential structure cannot be effectively utilized by the proposed commercial use and such area then may be excluded from the gross floor area used to compute the parking requirement.~~

3~~5~~. On-Street Parking. ~~Existing o~~On-street parking spaces abutting a development site may be used to meet the requirements of this chapter~~, at a rate of one space for every 20 linear feet of abutting street frontage,~~ except as follows:

a. Spaces that are not available, or will not be available, due to roadway design, right-of-way constraints, or future plans shall not be included; and

b. Applicants may be required to provide a parking survey prepared by a qualified professional demonstrating that adequate on-street parking is reasonably available.

C. ~~Parking Quantity~~ Exceptions~~, in the~~ Downtown ~~Special Planning~~Priority Development Area.

1. N~~N~~o parking shall be required for new uses in existing structures, or when existing structures are remodeled.

2. For new structures or when an existing structure is expanded, n~~N~~o parking shall be required for the first 2,500 square feet of nonresidential floor space or for the first four dwellings. ~~, or the nonresidential portion of a live-work unit.~~[BJ6]

3. No parking shall be required for ~~any floor area used for~~ public facilities~~human services~~ or commercial child daycare centers~~care~~.

~~4. No parking shall be required for the addition of one residential unit to an existing building. If two units are added,~~[BJ7] ~~one space will be required; three units will require two spaces, etc.~~

~~5. When an existing nonresidential structure is partially or completely converted to residential use, no parking shall be required for the first dwelling unit; provided, the lot area is not increased and any existing parking is screened and landscaped to the greatest extent practical.~~[BJ8]

D. Tandem Parking ~~and Multifamily~~. Off-street parking for ~~multifamily~~ dwellings ~~structures~~[BJ9] may be provided as tandem parking.

E. Parking and loading areas shall have ~~reasonable~~ legal access to a public street or alley. When alley access is available parking areas shall be accessed from the alley.

~~F. Removal of required parking and/or loading spaces from practical use by obstruction, erection of buildings, or other actions as to reduce the parking and/or loading capacity or usefulness thereof below the minimum requirements established in this chapter is prohibited.~~

F~~G~~. "Parking area" includes ~~the~~ parking spaces, ~~together with~~ drive aisles, and internal access streets~~ways and the access to public street~~. (Ord. 1857 § 2 (Exh. B), 2018).

G. Calculations. When calculating the number of required parking spaces fractions shall be rounded down to the nearest whole number.

17.85.060 ~~Required off-street parking—Quantity~~Parking Quantities.

A. The number of required ~~off-street~~ parking spaces shall be determined for each principal use of the land, building, or structure using Table 17.85.060.A-1 and by applying any applicable deductions or exemptions. ~~For ancillary uses to the principal use, required parking shall be calculated the same as for the principal use, or as otherwise provided for in this chapter.~~ [BJ10]For uses not specifically identified in this chapter, parking shall be provided as specified for the use which, in the opinion of the D~~d~~irector, is most similar to the use under consideration. When, in the opinion of the Director, no comparable use is listed, the number of required parking spaces shall be determined by applying the provisions of BMC 17.85.060.C (Alterations and Unlisted Uses). [BJ11]

B. The total number of parking spaces provided for any use or development shall not exceed 120 percent of the minimum requirements identified in this section, except:

1. This limitation shall only apply to uses and developments that require 20 or more parking spaces; and

2. This limitation shall not apply to uses and developments where an alternative maximum number is prescribed by Burlington Municipal Code; and

3. Additional spaces may be provided in excess of 120 percent of the minimum requirement; provided, that any such spaces are located under a building with usable floor space; and

4. This limitation may be waived for publicly owned parking lots; and

5. This limitation may be waived if a traffic and parking study is submitted showing the need for additional parking. Such studies shall be prepared by a licensed engineer, shall be consistent with, and integrated into, any other traffic study prepared for the project, and shall be reviewed by the city engineer.

C. Alterations and Unlisted Uses. The following criteria shall be used to determine parking requirements for unlisted uses that not substantially similar to a listed use and to evaluate requests to reduce the standard minimum parking quantity. In such cases the director may require a parking study addressing the criteria below. When required, parking studies shall be prepared by a licensed engineer and shall be consistent with, and integrated into, any other traffic study prepared for the project and shall be reviewed by the City Engineer for constancy with established transportation engineering practices.

1. Trip generation and turnover;

2. Proximity to frequent transit service or a transit center;

3. The availability of alternative transportation services such as school buses or shuttle vans;

4. The provision of onsite housing for students or employees;

5. Commute trip reduction measures implemented by the agency, business, or facility operator;

6. The extent to which the development will provide enhanced pedestrian amenities and bicycle facilities:

7. The intensity of development and mix of uses within 1,320 feet of the development site;

8. The condition and availability of sidewalks and other pedestrian amenities within 1,320 feet of the development site.[BJ12]

D. Standard Reductions. The following parking spaces may be included in parking calculations at a rate of 1.25:

1. Spaces located under a building;

2. Spaces located within 1,320 feet of transit center or bus stop;

3. Spaces for affordable housing developments.

USE	PARKING REQUIREMENT GENERAL [BJ13]
ANIMALS	
Dog day care with no outside runs or kennels	1 space for each 500 square feet
Kennels, boarding, outside runs	1 space for each 2,000 square feet
Veterinary clinic, animal services, animal hospital with no outside runs or kennels	1 space for each 350 square feet
ASSEMBLY	
Commercial recreation indoors (bowling, swimming, skating, bingo, dancing)	1 space for each 100 square feet of activity area
Commercial recreation outdoors (miniature golf, batting, ball courts)	1 space for each 350 square feet, or 1 per cage, hole, court
Community center, city	1 space for each 550 square feet
Facilities for lectures, meetings, dances, receptions	1 space for each 8 fixed seats or 1 space for each 100 square feet of spectator assembly area not containing fixed seats
Library	l space for each 80 square feet of floor area of all auditoriums and public meeting rooms; plus 1 space for each 500 square feet of other gross floor area open to the public
Motion picture theatre, adult motion picture theatre	1 space for each 8 fixed seats or 1 space for each 100 square feet of spectator assembly area not containing fixed seats
Museum	1 space for each 100 square feet of floor area of all auditoriums and public assembly rooms; plus l space for each 500 square feet of other gross floor area open to the public
Performing arts theater	1 space for each 8 fixed seats or l space for each 100 square feet of spectator assembly area not containing fixed seats
Private club, health, fitness, civic, social and other organization	1 space for each 100 square feet of floor area of all auditoriums and public assembly rooms; plus 1 space for each 500 square feet of other gross floor area open to the public
Religious facility	1 space for each 80 square feet of all auditoriums
Sports facility or stadium	1 space for each 8 fixed seats or l space for each 100 square feet of spectator assembly area not containing fixed seats
Topless club	1 space per 200 square feet
HEALTH AND FAMILY SERVICES	
Counseling service	1 space for each 350 square feet
Day care, adult	1 space for each 10 clients or 1 space for each staff member, whichever is greater; plus 1 loading and unloading space for each 20 clients
Commercial child day care centers and mini commercial child day care centers	1 space for each 10 children or 1 space for each staff member, whichever is greater; plus 1 loading and unloading space for each 20 children
Family day care home	1 loading and unloading space
Health care facility	1 space for each 350 square feet
Hospital	2 per bed
Medical facilities, clinic, laboratory, urgent care, triage	1 space for each 350 square feet
Medical services, doctor, chiropractor, optometrist office, health care	1 space for each 350 square feet
Nursing home, convalescent center, assisted living	1 space for each 2 staff members on site at peak staffing time; plus 1 space for each 6 beds or units
Physical therapy, massage services	1 space for each 350 square feet
INDUSTRY, MANUFACTURING, PROCESSING, WHOLESALING	
Auction house except animals	1 space for each 2,000 square feet
Bulk storage of petroleum products unless incidental to primary use	1 space for each 2,000 square feet
Cold storage plant	1 space for each 2,000 square feet
Commercial laundry	1 space for each 2,000 square feet
Concrete mixing or batch plant	1 space for each 2,000 square feet
Construction services, contractor's office and storage	1 space for each 2,000 square feet
Equipment rental and leasing	1 space for each 2,000 square feet
Enameling, galvanizing and electroplating	1 space for each 2,000 square feet
Government facilities other than office	1 space for each 2,000 square feet

~~Heavy equipment and trucks, repair, sales and leasing~~	~~1 space for each 2,000 square feet~~
~~Laboratories such as water quality, soil testing, research and development~~	~~1 space for each 1,500 square feet~~
~~Manufactured/mobile home sales lot~~	~~1 space for each 2,000 square feet~~
~~Manufacturing and related activities such as processing, assembling, research and development~~	~~1 space for each 1,500 square feet~~
~~Materials yards – lumber, stone, concrete products~~	~~1 space for each 2,000 square feet~~
~~Mini-storage and/or household goods warehouse~~	~~1 space for each 30 storage units~~
~~Motor freight terminals~~	~~1 space for each 2,000 square feet~~
~~Printing and publishing~~	~~1 space for each 2,000 square feet~~
~~Retail and wholesale of products manufactured, processed, or assembled on site~~	~~1 space for each 1,500 square feet~~
~~Salvage yard~~	~~1 space for each 2,000 square feet~~
~~Storage warehousing~~	~~1 space for each 2,000 square feet~~
~~Warehouse and distribution facilities~~	~~1 space for each 2,000 square feet~~
~~Wholesale showroom~~	~~1 space for each 1,500 square feet~~
~~Wood processing~~	~~1 space for each 2,000 square feet~~
~~**LODGING**~~	
~~Bed and breakfast inn~~	~~1 space for each dwelling plus 1 space for each 2 guest rooms or suites~~
~~Hotels or motels~~	~~1 space for each sleeping room or suite~~
~~**RESIDENTIAL**~~	
~~Accessory dwelling unit~~	~~1 space~~
~~Adult family home~~	~~1 space for each dwelling unit~~
~~Multifamily dwellings~~	~~General: 1-1/2 per 1 and 2 bedroom; 2 per 3 or more bedroom and guest parking at a rate of 1 space for every 3 units~~ ~~Downtown special planning area: 1 per unit~~
~~Apartment for adults age 55 and up~~	~~1 space for each dwelling unit and guest parking at 1 space for 3 units~~
~~Artist's studio dwelling~~	~~1 space for each dwelling unit~~
~~Boarding and group housing~~	~~1 space for each dwelling unit~~
~~Caretaker's quarters~~	~~None~~
~~Residential small lot development~~	~~1 space for each dwelling unit~~
~~Duplex (two-family dwelling)~~	~~1 per 1 and 2 bedroom; 2 per 3 or more bedroom~~ ~~1 per unit downtown~~
~~Live-work unit up to 2,500 square feet~~	~~1 space for each unit~~
~~Live-work unit greater than 2,500 square feet~~	~~1 space for each unit; plus the number of spaces required for the commercial or manufacturing activity conducted in the unit, based on the most similar nonresidential use~~ ~~Downtown special planning area: See BMC 17.85.050(C)~~
~~Mobile home park or trailer park~~	~~2 per unit plus guest parking at 1 space for 3 units~~
~~Single-family dwelling including manufactured home~~	~~1 per 2 bedroom, 2 per 3 or more bedroom~~ ~~1 downtown special planning area~~
~~Townhouse~~	~~1 per 1 and 2 bedroom; 2 per 3 or more bedroom~~ ~~1 downtown special planning area~~
~~**RETAIL AND SERVICE**~~	
~~Banking and related financial institutions~~	~~1 space for each 350 square feet~~
~~Business support services~~	~~1 space for each 2,000 square feet~~
~~Car wash~~	~~1 space for each 2,000 square feet~~
~~Communication utilities~~	~~1 space for each 2,000 square feet~~
~~Custom and craft work~~	~~1 space for each 1,000 square feet~~
~~Dog day care~~	~~1 space for each 500 square feet~~
~~Drive-in business – high volume such as food, coffee, bank~~	~~1 space for each 200 square feet~~
~~Eating and drinking establishments – all types~~	~~1 space for each 200 square feet~~

~~Funeral home and mortuary services~~	~~1 space for each 350 square feet~~
~~Gas station~~	~~1 space for each 2,000 square feet~~
~~Ground floor businesses in downtown special planning area~~	~~None, maximum of 10 spaces~~
~~Major durables sales, service, and rental such as furniture, appliance~~	~~1 space for each 2,000 square feet~~
~~Multipurpose convenience store such as grocery, hardware, drugs, variety~~	~~1 space for each 350 square feet~~
~~Municipal buildings, city hall, police and fire stations~~	~~1 space for each 350 square feet~~
~~Office, administrative~~	~~1 space for each 1,000 square feet~~
~~Office, customer service~~	~~1 space for each 350 square feet~~
~~Personal and household retail sales and service, general~~	~~1 space for each 350 square feet~~
~~Personal services such as barber, beauty shop, tan, tattoo~~	~~1 space for each 500 square feet~~
~~Sales, service and rental of office equipment~~	~~1 space for each 350 square feet~~
~~Shopping center or mall~~	~~1 space for each 350 square feet~~
~~Small appliance repair~~	~~1 space for each 500 square feet~~
~~Specialty food store – bakery, deli, cheese, wine, some seating~~	~~1 space for each 500 square feet~~
~~Studios – art, music, photography~~	~~1 space for each 1,000 square feet~~
~~Trades and subcontractors – plumbing, electrical, HVAC~~	~~1 space for each 1,000 square feet~~
~~Woodworking~~	~~1 space for each 1,000 square feet~~
~~**SCHOOLS/EDUCATION/TRAINING**~~	
~~School, private elementary and secondary~~	~~1 space for each 80 square feet of floor area of all auditoriums and public assembly rooms, or if no auditorium or assembly rooms, 1 space for each staff member~~
~~School, public elementary and secondary~~	~~1 space for each 80 square feet of floor area of all auditoriums or public assembly rooms, or 1 space for every 8 fixed seats in auditoriums or public assembly rooms containing fixed seats, for new public schools on a new or existing public school site~~
~~Vocational or fine arts school~~	~~1 space for each 2 faculty and full-time employees; plus 1 space for each 5 students (based on the maximum number of students in attendance at any one time)~~
~~**TRANSPORTATION AND UTILITIES**~~	
~~Dispatch facility – taxi, ambulance, limousine~~	~~1 space for each 1,000 square feet~~
~~Telecommunication tower~~	~~1 space~~
~~Terminal – bus, rail, transit~~	~~1 space for each 200 square feet~~
~~Transit vehicle base~~	~~1 space for each 2,000 square feet~~
~~Utility substation or service facility~~	~~1 space for each 2,000 square feet~~
~~**VEHICLE RELATED**~~	
~~Automotive or boat parts or accessories sales~~	~~1 space for each 350 square feet~~
~~Automobile wrecking yard~~	~~1 space for each 2,000 square feet~~
~~Sales, service and rental of motorized vehicles including automobiles, motorcycles, trucks other than semis, boats~~	~~1 space for each 2,000 square feet~~
~~Semi-tractor and trailer sales~~	~~1 space for each 2,000 square feet~~
~~Towing service~~	~~1 space for each 1,000 square feet~~
~~Vehicle repair, major and minor~~	~~1 space for each 2,000 square feet; minimum of 3 spaces~~
~~** In addition, for all multifamily uses whose average gross floor area per dwelling unit, excluding decks and all portions of a structure shared by multiple dwelling units, exceeds 500 square feet shall be required up to a maximum additional 0.15 spaces per dwelling unit; and When at least 50 percent of the dwelling units in a multifamily use have three bedrooms, an additional 0.25 spaces per bedroom for each unit with three bedrooms shall be required; and Any multifamily use that contains a dwelling unit with four or more bedrooms shall be required to provide an additional 0.25 spaces per bedroom for each unit with four or more bedrooms.~~	

~~(Ord. 1857 § 2 (Exh. B), 2018).~~

17.85.070 Shared parking.

A. Shared Parking – General Provisions.

1. Shared parking shall be allowed between two or more uses to satisfy all or a portion of the minimum off-street parking requirement of those uses as provided in subsections (B) and (C) of this section.

2. Shared parking shall be allowed between different categories of uses or between uses with different hours of operation, but not both.

3. A use for which an application is being made for shared parking shall be located within ~~800~~ 1,320 feet of the parking.

4. No reduction to the parking requirement shall be made if the proposed uses have already received a reduction through the provisions for cooperative parking.

5. ~~The reduction to p~~Parking reductions permitted through shared use of parking shall be determined as a percentage of the minimum parking requirement as modified by any other~~the~~ reductions permitted in BMC 17.85.050 and 060.

6. An agreement providing for the shared use of parking, executed by the parties involved, shall be filed with the director. Shared parking privileges shall continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, then parking shall be provided as otherwise required by this chapter.

B. Shared Parking for Different Categories of Use.

1. A business establishment may share parking according to only one of the following subsections: (B)(2), (3), or (4) of this section.

2. If an office use and a retail sales and service use share parking, the parking requirement for the retail sales and service use may be reduced by 20 percent; provided, that the reduction shall not exceed the minimum parking requirement for the office use.

3. If a residential use shares parking with a retail sales and service use other than lodging uses, eating and drinking establishments or entertainment uses, the parking requirement for the residential use may be reduced by 30 percent; provided, that the reduction does not exceed the minimum parking requirement for the retail sales and service use.

4. If an office and a residential use share off-street parking, the parking requirement for the residential use may be reduced by 50 percent; provided, that the reduction shall not exceed the minimum parking requirement for the office use.

C. Shared Parking for Uses with Different Hours of Operation.

1. For the purposes of this section, the following uses shall be considered daytime uses:

a. Customer service and administrative offices;

b. Retail sales and services, except eating and drinking establishments, lodging uses, and entertainment uses;

c. Wholesale, storage and distribution uses;

d. Manufacturing uses; and

e. Other similar primarily daytime uses, when authorized by the community development director or designee.

2. For the purposes of this section, the following uses shall be considered nighttime or Sunday uses:

a. Auditoriums accessory to public or private schools;

b. Religious facilities;

c. Entertainment uses, such as theaters, bowling alleys, and dance halls;

d. Eating and drinking establishments;

e. Lodging uses; and

f. Other similar primarily nighttime or Sunday uses, when authorized by the community development director or designee.

3. Up to 90 percent of the parking required for a daytime use may be supplied by the off-street parking provided by a nighttime or Sunday use and vice-versa, when authorized by the director, except that this may be increased to 100 percent when the nighttime or Sunday use is a religious facility.

4. The applicant shall show that there is no substantial conflict in the principal operating hours of the uses for which the sharing of parking is proposed. (Ord. 1857 § 2 (Exh. B), 2018).

17.85.080 Cooperative parking.

A. Cooperative parking shall be permitted between two or more business establishments which are commercial uses according to the provisions of this section.

B. Up to a 20 percent reduction in the total number of required parking spaces for four or more separate business establishments, 15 percent reduction for three business establishments, and a 10 percent reduction for two commercial uses may be authorized by the director under the following conditions:

1. No reductions to the parking requirement shall be made if the proposed business establishments have already received a reduction through the provisions for shared parking.

2. The business establishments for which the application is being made for cooperative parking shall be located within ~~800~~ 1,320 feet of the parking.

3. The reductions to parking permitted through cooperative parking shall be determined as a percentage of the minimum parking requirement as modified by any~~the~~ reductions permitted ~~through~~ by BMC 17.85.050, 060~~(B) and (C)~~ and this section.

4. An agreement providing for the cooperative use of parking shall be filed with the director when the facility or area is established as cooperative parking. Cooperative parking privileges shall continue in effect only as long as the agreement to use the cooperative parking remains in force. If the agreement is no longer in force, then parking shall be provided as otherwise required by this chapter. New business establishments seeking to meet parking requirements by becoming part of an existing cooperative arrangement shall provide the director with an amendment to the agreement stating their inclusion in the cooperative parking facility or area. (Ord. 1857 § 2 (Exh. B), 2018).

17.85.090 (Reserved)

17.85.100 (Reserved)

~~**17.85.090 Drive-in businesses.**~~

~~All banks, savings and loan associations, food dispensing establishments, and other businesses which maintain drive-in facilities which are intended to serve customers who remain in their motor vehicles during business transactions, or are designed in such a manner that customers must leave their automobiles temporarily in a driving lane located adjacent to the facility, shall provide stacking space for the stacking of motor vehicles as follows:~~

~~A. Stacking Space. The drive-in facility shall be so located that sufficient stacking space is provided for the handling of motor vehicles using such facility during peak business hours of such facility.~~

~~B. Driveway Location. The location of entrances and exits shall be determined by the public works director.~~

~~C. Shopping Centers. When located in a shopping center, drive-in facilities shall provide sufficient stacking space to handle peak business demands and shall not in any way obstruct the normal circulation pattern of the shopping center. (Ord. 1857 § 2 (Exh. B), 2018).~~[BJ14]

17.85.10~~5~~0 ~~Off-street parking area development and maintenance~~Construction standards.

A. All parking areas, ~~including interior driveway~~driveways, drive aisles, private streets, and outdoor storage and sales lots~~s and access to a public street~~, [BJ15]shall be paved with permeable pavement, asphalt concrete, or cement concrete pavement. All asphalt pavement sections shall have a minimum pavement section consisting of two inches of Class "B" asphalt concrete, two inches of five-eighths-inch minus crushed rock, and six inches of Class "A" bank run gravel or approved equal. All permeable paving, concrete pavement sections, or any alternative asphalt pavement sections shall be designed to support the post development traffic loads anticipated due to the intended use.

B. Parking and circulation areas, access roads, and drive aisles shall be designed and constructed with LID features such as permeable pavement, rain gardens, or bio-retention areas unless demonstrated to be infeasible through an engineering analysis.

C. In determining the feasibility of LID features, an engineering analysis shall be submitted and reviewed by the city engineer. This analysis should consider site characteristics such as soil and ground water conditions, and anticipated traffic volumes. The analysis should be consistent with the Department of Ecology's "Stormwater Manual for Western Washington" and the design and site evaluation guidance in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound." The engineering analysis requirement identified above may be waived by the city engineer for simple small-scale projects when the feasibility of permeable pavement can be easily determined without the need for additional information or analysis; provided, that an engineering analysis shall be submitted for all projects involving 20 or more parking spaces.

D. All parking and circulation areas, access roads, and drive aisles shall be designed and constructed in accordance with any applicable requirements in ~~BMC~~ Title 14 BMC.

E. Parking areas shall be used for automobile parking only, with no sales, unless permitted elsewhere by this title, dead storage, repair work, or dismantling of any kind.

F. Outdoor sales areas and storage yards shall be paved and landscaped in accordance with this title.

G. ~~If lighting is provided, it shall be arranged to reflect away from the residential area, also from any public street or highway~~Lighting. See Chapter 17.70 BMC.

H. ~~Drainage facilities for storm water shall be provided for and be approved by the public works department.~~Stormwater shall be managed in accordance with Chapter 14.05 BMC and LID measures shall be provided consistent with the requirements of this Chapter and Chapter 17.70 BMC.

I. ~~Ingress and egress shall be approved as to location and design by the public works department~~Access to public streets shall be approved be approved by the Public Works Department consistent with the requirements of Title 12 BMC.

J. Driveways and parking stalls shall be clearly marked.

K. Landscaping. See C~~c~~hapter 17.81~~0~~ BMC. (Ord. 1857 § 2 (Exh. B), 2018).

L. Driveways and parking spaces for detached, duplex, and horizontally attached dwellings shall be paved with permeable pavement, asphalt, or concrete and may utilize a two track design to minimize impervious surface coverage. [BJ16]

M. The installation of paving and impervious surfaces shall be limited to the minimum amount necessary to support a permitted use or development. [BJ17][BJ18]

~~**17.85.105 Development of required off-street parking spaces for single-family dwelling units.**~~
~~For parking areas serving single-family dwellings, this section shall apply in lieu of BMC 17.85.100.~~
~~A. Required off-street parking spaces for one-family dwellings on separate lots smaller than 15,000 square feet in area shall be paved with permeable pavement, asphalt concrete, or cement concrete. Each required off-street parking space shall be connected to an improved public or private street by a driveway which shall be paved with permeable pavement, asphalt concrete, or cement concrete.~~
~~B. Required off-street parking spaces for one-family dwellings on separate lots of 15,000 or more square feet in area shall have an all-weather surface. Each required off-street parking space shall be connected to an improved public or private street by a driveway which shall have an all-weather surface. The construction of the all-weather surface shall be determined by the public works director.~~
~~C. A note shall be included on the face of subdivisions and short subdivisions identifying any applicable impervious surface limits.~~
~~D. Driveways for single-family dwellings may utilize a two track design to minimize impervious surface coverage. (Ord. 1857 § 2 (Exh. B), 2018).~~[BJ19]

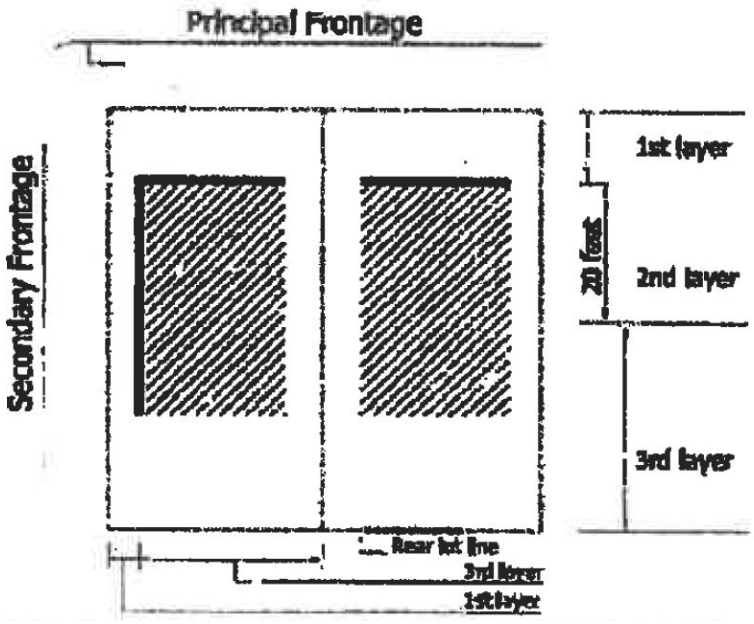
17.85.110 ~~Off-street parking lots—~~Location and screening standards.

A. Required off-street parking shall be located on the same parcel as the uses served unless off-site parking is authorized in compliance with this chapter. Parking shall be located on each site in compliance with the parking layer requirements illustrated below:

1. First Layer. The area between the frontage line and the facade line.

2. Second Layer. The area between the facade line and 20 feet from the facade. Note that the second layer is not required on the secondary frontage.

3. Third Layer. That portion of the lot that is neither the first layer nor the second layer. Generally this portion of the lot extends to an alley or an interior lot line.



B. Surface Parking Location and Screening. The following requirements shall apply in addition to any other parking, landscaping, setback, or site design requirements:

1. Parking area and service yards must be screened from adjoining residences.

2. Where alley access is available, parking shall be located off the alley and no curb cuts shall be permitted for residential uses.

3. Parking located in the setback in front of the building shall be screened and landscaped with a streetscreen as defined in BMC 17.80.105.

4. Parking area illumination shall be directed away from residential uses.

5. Downtown special planning area including surface parking shall be located in the third layer and masked by a streetscreen or building, except that driveways and aprons may be located in the first or second layer.

6. Burlington Boulevard Corridor. Surface parking may be located in the first, second or third layer and masked by a streetscreen if the street frontage is not fully occupied by buildings.

~~C. Single-Family Dwellings. Required parking shall be located on the same lot as the building it serves.~~[BJ20]

D. Offs~~-S~~ite Parking. ~~Required parking may be in areas other than on the premises if the required amount of parking area is set aside for a particular use in such a lot and such area is not located more than~~ 800~~[BJ21] feet from the premises and is in the same zone as the use. The lot or area to be utilized shall be legally encumbered by an easement or other appropriate means to ensure continuous use of the parking facilities~~Offsite parking areas may be used to meet the requirements of this Chapter provided the offsite parking area is located within 1,320 feet of the development site and is either in common ownership or encumbered by an easement or other formal agreement. Offsite parking areas shall be connected to the development site with a [BJ22]

~~E. Whenever required parking facilities are located off site,~~ Continuous pedestrian path in the form of a concrete sidewalk. Marked crosswalks shall be provided at all intersections. ~~pedestrian facilities shall be provided connecting the satellite parking facility to the development being served, which are safe, durable and adequate to accommodate pedestrian use. (Ord. 1857 § 2 (Exh. B), 2018).~~[BJ23]

17.85.115 ~~Off-street parking plan d~~Design standards.

A. Dimensions and Site Layout. The standards in this section shall apply to all outdoor parking areas. Parking areas located beneath a building shall be subject only to the requirements for minimum stall and aisle dimensions (BMC 17.85.115.D).[BJ24]

1. Parking stalls and drive aisles shall be consistent with the dimensions specified in Figure "A" below.

2. Except when adjacent to a building frontage or the perimeter of a site, parking rows and columns shall have a maximum length of 200 feet.

3. Drive aisles may be used to provide direct access to individual parking rows and should be connected to a public or private street.

B. Up to 30 percent of the parking spaces required by this chapter may be compact spaces, except in the downtown special planning area where all of the required parking spaces may be compact.

C. Off-street parking lots shall comply with the barrier-free parking space requirements of the International Building Code.

D. The minimum parking space and aisle dimensions for the most common parking angles are shown on chart below. For parking angles other than those shown on the chart, the minimum parking space and aisle dimensions shall be determined by the community development director and shall be proportional to the dimensions shown below.

Figure A

Minimum Parking Stall and Aisle Dimensions

Parking Angle	Stall Width	Curb Length	Stall Depth	Aisle Width		Unit Depth	
				1-Way	2-Way	1-Way	2-Way
0°	8.0	20.0	8.0	102.0 12.0	20.0 20.0	** 29.0NA	** 37.0NA
30°	8.0* Min. 8.5	16.0* 17.0	15.0* 16.5	10.0 10.0	20.0 20.0	** 43.0	** 53.0
45°	8.0* Min. 8.5	11.5* 12.0	17.0* 19.0	12.0 12.0	20.0 20.0	** 50.0	** 58.0
60°	8.0* Min. 8.5	9.5* 10.0	18.0* 20.0	18.0 18.0	20.0 20.0	** 58.0	** 60.0
90°	8.0* Min. 8.5	8.0* 8.5	15.0* 17.0	23.0 23.0	23.0 23.0	** 63.0	** 63.0

* For use with compact stalls only.

** Variable with compact and standard combinations.

E. Any parking spaces abutting a landscaped area on the driver or passenger side of the vehicle shall provide an additional 18 inches above the minimum space width requirement to provide a place to step other than in the landscaped area. The additional width shall be separated from the adjacent parking space by a parking space division stripe. The parking space depth may be reduced when vehicles overhang a walkway under the following conditions:

1. ~~Wheelstops~~Wheel stops or curbs are installed.

2. The remaining walkway provides a minimum of 60 inches of unimpeded passageway for pedestrians.

3. The amount of space depth reduction is limited to a maximum of one and one-half feet for standard parking spaces and one and one-half feet for compact spaces including the ~~wheelstop~~wheel stop or curb.

F. Driveways may cross required setbacks or landscaped areas in order to provide access between the off-street parking facilities and the street, provided no more than 10 percent of the required landscaping or setback area is displaced by the driveway. Driveways may be used for parking when serving single detached dwellings but shall not be considered for purposes of calculating required parking.

G. ~~Lighting shall be provided for safety of traffic and pedestrian circulation on the site~~Parking areas shall be illuminated in accordance with the City's Outdoor Lighting Standards (Chapter 17.70 BMC)~~, as required by the International Building Code. It shall be designed to minimize direct illumination of abutting properties and adjacent streets. The city council shall have the authority to waive the requirement to provide lighting~~. Pedestrian scale lighting shall be provided along all pedestrian paths and at all crosswalks. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

17.85.120 Pedestrian circulation and access.[BJ25]

A. General. All uses shall provide pedestrian access to the site. Pedestrian access shall be provided at all pedestrian arrival points for the development including the property edges, adjacent lots, abutting street intersections and mid-block crosswalks, ~~existing~~ transit stops, and at least every 100 feet of consecutive street frontage. Pedestrian access shall be located as follows:

1. Adjacent Streets and Property Edges. Access at property edges and to adjacent lots shall be coordinated with existing development to provide logical circulation patterns between developments.

a. Pedestrian connections shall be provided along adjacent street frontages at intervals of 100 feet or less;

b. Connections shall be provided to existing or planned transit stops;

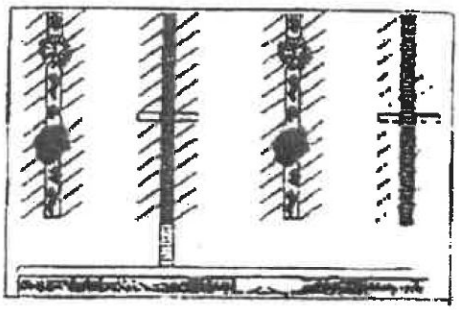
c. Pedestrian paths shall be connected to existing pedestrian paths on adjacent sites whenever feasible;

d. For development sites that abut properties that are vacant or likely to redevelop, pedestrian paths should be extended to the property or site boundaries to support future development.

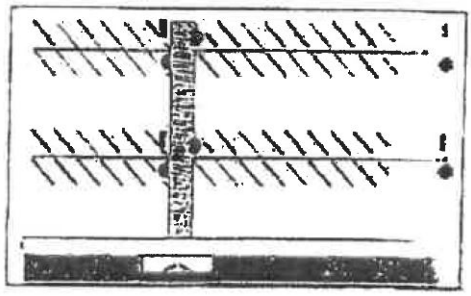
B~~2~~. Residential D~~d~~evelopments. Pedestrian access shall be provided ~~links between cul-de-sacs or buildings~~ to allow pedestrian access from within the development and from adjacent developments to activity centers, parks, common tracts, open space areas~~s~~, schools or other public facilities, transit stops and public streets. When dead-end streets or cul-de-sacs are used pedestrian access paths shall be provided to allow direct links between streets and cul-de-sacs. For multi-unit residential developments pedestrian access paths shall be provided to link buildings together.

C~~3~~. ~~Pedestrian~~ Parking Areas. Pedestrian circulation shall be provided within all parking areas and between parking areas and adjacent uses. The following standards are intended to create a grid of interconnecting paths, minimize the distance parking lot users must travel from a vehicle to a pedestrian path. The intent of these requirements is to create a grid of interconnected pedestrian paths located at convenient intervals. Pedestrian paths shall be provided within parking areas as follows. These requirements do not apply to parking areas located under a building. ~~walkways shall be located as follows:~~

1~~a~~. Parallel to parking rows. ~~If walkways run parallel to the parking row at least one walkway shall be provided for every two rows. Rows without walkways shall be landscaped or contain barriers or other means to encourage pedestrians to use the walkways~~Pedestrian paths shall be provided parallel to parking rows at intervals of every four parking rows, provided the distance between pedestrian paths shall not exceed 200 feet. ~~.~~



2~~b~~. Perpendicular to parking rows~~If walkways run perpendicular to the parking rows, access to the walkway shall be no further than five parking spaces. Landscaping, barriers or other means shall be provided between the parking rows to encourage pedestrians to use the walkways~~. Pedestrian paths shall be provided perpendicular to parking rows at intervals of 200 feet or less.



D~~B~~. Building Access. Pedestrian ~~walkways~~ paths shall form ~~an on-site~~ a circulation system that minimizes ~~the~~ conflicts between pedestrians and vehicle traffic and provides direct and convenient access to all buildings ~~at all points of pedestrian access to on-site parking and building entrances~~. ~~–~~Pedestrian ~~walkways shall be provided when~~

~~the pedestrian access or any parking space is more than 75 feet from the building entrance or principal on-site destination and~~access shall be provided as follows~~ as follows~~:

1. All developments ~~which~~ contain more than one building shall provide ~~walkways~~ pedestrian paths between the principal entrances of ~~the~~ each buildings~~.~~

2. Commercial and mixed-use buildings shall provide pedestrian paths along all building frontages that contain an entrance or abut a parking area. Building frontages containing only service entrances, such as loading docks, that are not accessible to the general public shall be exempt from this requirement. ~~All nonresidential buildings set back more than 100 feet from the public right-of-way shall provide for direct access from the building to the buildings on adjacent lots.~~

3. For residential and industrial buildings, pedestrian paths shall connect the primary building entrances to adjacent streets and pedestrian access paths.

3. Emergency exits shall be connected to the pedestrian access system.

E~~C~~. ~~Pedestrian access and walkways shall meet the following minimum d~~Design S~~s~~tandards:

1. ~~Access and walkways~~Pedestrian paths shall be ~~well lit and~~ physically separated from driveways and parking spaces by landscaping, berms, barriers, grade separation or other means to protect pedestrians from vehicular traffic. Unless an alternative method providing an equivalent level of pedestrian safety and physical separation is approved, this requirement shall be met by providing curbing and raised sidewalk.

2. ~~Access and walkways~~Pedestrian paths ~~shall be a minimum of 60 inches of unobstructed width and shall~~ be constructed using permeable pavement unless demonstrated to be infeasible through an engineering analysis, in which case concrete or an ~~an~~ alternative hard surface approved by the city engineer shall be used. Pedestrian access paths shall have a minimum unobstructed width of five feet except as follows:

a. Pedestrian paths that directly abut parking spaces shall have a minimum unobstructed width of seven feet;

b. Pedestrian paths along the frontage of a building with a floor area greater than 10,000 square feet but less than 20,000 square feet shall have a minimum width of 10 feet;

c. Pedestrian paths along the frontage of a building with a floor area of 20,000 square feet or more shall have a minimum width of 20 feet. [BJ26]

3. ~~Access shall be usable by the mobility impaired and shall be designed and constructed to be easily located by the sight-impaired pedestrian by either grade change, texture or other equivalent means~~Pedestrian access paths shall comply with all applicable ADA and accessibility requirements.

4. A crosswalk shall be required when a ~~walkway~~ pedestrian path crosses a driveway, street, or a paved area accessible to vehicles. Except where driveways or streets access a major arterial the maximum crosswalk length, or distance between curbs, shall be 20 feet. [BJ27]Crosswalks should generally be configured to provide a direct crossing perpendicular to the direction of vehicle travel and shall be designated using paint unless an alternative method is specified by Burlington Municipal Code or approved by the City Engineer.

5. If any parking space is more than 150 feet from the building entrance or principal on-site destination, a stop sign ~~, stop~~and stop line or other pavement marking ~~and a speed bump~~ shall be required at the end of every row of parking.

6. If any parking space is more than 200 feet from the building entrance or principal on-site destination:

a. At least one sheltered rest area shall be provided; and

b. Raised crosswalks or speed bumps shall be located at all points where a walkway crosses the lane of vehicle travel.

7. Where the building entrance is more than 250 feet from the public right-of-way, a sheltered rest area may be required at the public street.

8. Sidewalks and walkways should be sloped to drain towards adjoining landscaping, planting areas, or infiltration features. (Ord. 1857 § 2 (Exh. B), 2018).

9. Pedestrian access paths should avoid indirect or circuitous routes and should generally be laid out parallel and perpendicular to the building entrances. When site grades dictate an indirect routing to accommodate an ADA ramp an additional, direct route shall be provided using stairs or steps if needed. [BJ28]

10. Required pedestrian paths along building frontages may be covered by awnings but shall not be located under a building or between the building and a vertical support element such as a pier, pillar, or post.

11. Lighting shall be provided consistent with the requirements of BMC 17.90.105.

17.85.125 (Reserved)~~Existing off-street parking reduction~~.

~~Off-street parking facilities shall not be eliminated or reduced to an amount less than that required for new uses. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.85.130 (Reserved)~~Fractional spaces~~.

~~When units or measurements determining the number of required parking spaces result in requirements of a fractional space, any fraction up to one-half shall be disregarded, and fractions of one-half or over shall require one parking space. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.85.135 (Reserved)~~Off-street loading space~~.

~~Buildings devoted to retail trade, retail and wholesale food markets, warehouses, supply houses, wholesale and manufacturing trade, hotels, hospitals, laundry, dry cleaning establishments or other buildings where large amounts of goods are received or shipped shall provide loading and unloading space on the same premises as the building as follows:~~

~~A. Building of 6,000 square feet or more of floor area: one off-street loading and unloading space plus one additional off-street loading space for each 20,000 square feet of floor area;~~

~~B. Each loading space shall be not less than 10 feet in width, 25 feet in length and 14 feet in height;~~

~~C. Loading space, exclusive of driveways and/or corridors leading thereto, shall not be considered as providing off-street parking space. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.85.140 Design standards for private streets and roads.

Private streets and roads created to serve new development, including subdivisions, short subdivisions, binding site plans, and commercial and industrial development, shall be subject to the following standards and requirements:

A. For private streets that provide access to more than one lot, a~~A~~ road maintenance agreement and access easement approved by the C~~c~~ity E~~e~~ngineer shall be recorded with Skagit County auditor's office;

B. Street segments serving ~~s and roads serving up to~~ four dwellings or less units shall be at least 20 feet in width;

C. Streets and roads serving non-residential development, more than four dwelling units, or carrying a traffic volume of up to 250 average trips per day, whichever is less, shall be at least ~~28~~ 38 feet in width and shall include two driving lanes, one parking lane and ~~a~~ sidewalks along both sides of the street. ~~shall be provided on at least one side in addition to the 28 feet of roadway width;~~[BJ29]

D. Streets and roads carrying a traffic volume of 250 average trips per day or more shall comply with the design standards and specifications applicable to public streets and roads in chapter 12.28 BMC;

E. Low impact development features such as bio-retention areas, rain gardens, and permeable paving shall be incorporated into the design and construction of all private streets and roads unless demonstrated to be infeasible through an engineering analysis. In determining the feasibility of such low impact development features, an

engineering analysis shall be submitted and reviewed by the city engineer. This analysis should consider site characteristics such as soil and ground water conditions, and anticipated traffic volumes. The analysis should be consistent with the Washington State Department of Ecology's "Stormwater Manual for Western Washington" and the design and site evaluation guidance in the Puget Sound Partnership's "Low Impact Development Technical Guidance Manual for Puget Sound."

F. ~~All private streets and roads shall be~~ Streets shall be connected to streets on adjacent sites whenever possible. For development sites that abut properties that are vacant or likely to redevelop streets should be extended to the property or site boundaries to facilitate future development.

G. Construction. Private streets shall be paved and shall be designed and constructed in accordance with any ~~designed and constructed consistent with any~~ applicable construction or storm-water requirements identified in ~~BMC~~ Title 14 BMC.

H. Lighting. Pedestrian scale street lighting shall be provided and all lighting shall be consistent with the City's outdoor lighting standards (Chapter 17.70 BMC)~~.~~.

I. Fire Flow and Access. All streets shall comply with the applicable fire flow and access requirements identified in Chapter 15.08 BMC. ~~(Ord. 1857 § 2 (Exh. B), 2018).~~

J. Alternative Street Design Standards. As an alternative to the private road standards listed above, the City may authorize the use of the following alternative design standards for private streets

Note: The existing table under BMC 17.85.060 shall be repealed and replaced with this table.

Table 17.85.060.A-1

Parking Requirements

Table 17.85.060 - Minimum Parking Quantities	
Use	**Requirement**
Boarding House	1 space per dwelling plus one space for each sleeping room
Commercial Entertainment and Indoor Active Recreation	1 space for every 350 square feet of activity area
Commercial Child Daycare	1 space for every 10 children plus one loading/unloading space for every 20 children
Craft Industries and Contractor Offices	1 space for every 1,000 square feet
Dwellings - detached, duplex, horizontally attached, and small and medium multiunit buildings	Containing up to two bedrooms: 1 space per dwelling Containing three or more bedrooms: 2 spaces per dwelling
Dwellings - large multiunit buildings	Studio units: 1 space per dwelling Containing between one and two bedrooms: 1.5 spaces per dwelling Containing three or more bedrooms: 2 spaces per dwelling Guest parking: 1 spaces for every 3 dwelling units containing one or more bedrooms
Eating and Drinking Establishments	Small: 1 space for every 500 square feet Large: 1 space for every 200 square feet
Fueling Stations and Car Washes	1 space for every 2,000 square feet
Government Facilities	*see BMC 17.85.060.C*
Healthcare Facilities and Veterinarians	1 space for every 350 square feet
Hospitals	*see BMC 17.85.060.C*
Hotels and Transient Accommodations	1 space for each sleeping room or suite
Industrial, Vehicle Repair, and Wrecking Yards	1 space for every 2,000 square feet
Kennel (Ped Boarding, Overnight)	1 space for every 2,000 square feet
Lumberyards, Nurseries, and Garden Supply	1 space for every 2,000 square feet
Meeting Facilities and Theaters	1 space for every 8 fixed seats or 1 space for every 100 square feet of auditorium or spectator area without fixed seats
Nursing Homes	1 space for every 6 beds plus 2 space for every two employees expected to be onsite during peak staffing periods
Offices	Administrative: 1 space for every 1,000 square feet Customer Service: 1 space for every 350 square feet
Personal Services and Pet Boarding, Daycare	1 space for every 500 square feet
Personal Storage	1 space for every 30 units
Private Passenger Transportation Services	1 space for every 200 square feet
Private Schools	*see BMC 17.85.060.C*
Retail	General Consumer Goods: 1 space for every 350 square feet Major Durables, Furniture, and Appliances: 1 space for every 2,000 square feet
Sales and Rental of Motorized Vehicles	1 space for every 2,000 square feet
Specialized Instruction	1 space for each faculty member and full time employee plus 1 space for every 5 students in attendance during peak periods
Bicycle Parking	
Multiunit Residential Buildings, Medium	1 space for every 4 dwellings
Multiunit Residential Buildings, Large	1 outdoor space for every 20 dwellings plus 1 indoor space for every 4 dwellings
Retail	2 spaces plus 1 additional space for every 12,000 square feet

Eating and Drinking Establishments	Small: 2 spaces Large: 4 spaces
Offices	2 spaces per building plus 1 additional space for every 5,000 square feet
Personal Services	2 spaces
Government Facilities	*see BMC 17.85.060.C*
Private Schools	*see BMC 17.85.060.C*
Commercial Child Daycare	2 spaces plus 1 additional space for every four vehicle parking spaces provided

17.85.150. Alternative Street Design Standards.

As an alternative to the design requirements listed in BMC 17.85.150, the City may authorize the use of the following alternative design standards for private streets. The alternative design standards in this section may only be used for streets serving residential developments comprised primarily of detached, horizontally attached, small lot, or cottage housing.

A. Entrances. Entrances to a private street system shall clearly delineated using signage and other visual and tactile indicators, such as pavement markings, bollards, planters, boulders, or restricted turning radiuses.

B. Paving and curbs. The design shall incorporate a variety of paving materials to create a varied surface that visually distinguishes the location of intersections, parking lanes, crosswalks, and pedestrian paths.

C. Traffic calming. Traffic calming measures, such as raised intersections, chicanes, on-street parking areas, or extra street frontage landscaping shall be incorporated into the design. The overall design should create a street environment that encourages traffic to move at, or near, the speed of pedestrians.

D. Roadway width. The standard roadway width for two way traffic shall be 20 feet. Narrower street widths may be approved consistent with applicable fire code requirements and for one way street segments.

E. Pedestrian circulation. A pedestrian access path shall be provided along at least one side of the street. The pedestrian access path shall be at least five feet in width, physically separated form vehicle circulation areas with curbing, landscaping, or bollards, and shall be paved with conventional or porous concrete. A separate pedestrian path shall not be required for street segments less than 150 feet in length consistent with the following:

   a. The street segment serves only the dwelling units adjoining it and does not function as part of the street system, or the street segment is terminates in a dead end; and

   b. The roadway surface contains an area delineated for pedestrian travel using a contrasting paving material, such as concrete or stamped asphalt.

F. On-Street Parking. At least one on-street parking space shall be provided for every four dwelling units in the development. On-street parking spaces may be grouped together and configured as parallel, angled or parking pocket designs. On-street parking areas shall be differentiated from adjacent travel lanes using painting, pavement parkers, or contrasting paving materials. On-street spaces shall be located within 400 of the dwellings they are associated with.

Note: The text in this section (BMC 17.85.150) is new and shall be added to the code.

G. Storm-water. Private streets shall be designed and constructed consistent with the requirements of Title 14 BMC and shall incorporate LID features consistent with the provisions of BMC 17.85.140.E.

H. Street maintenance agreement. A street maintenance agreement must be approved by the City Engineer and recorded with the Skagit County Auditor.

Chapter 17.90

PUBLIC UTILITIES

Sections:
17.90.010 Title.
17.90.020 Application.
17.90.030 Purpose.
17.90.040 Authority.
17.90.050 Permitted when.
17.90.060 Visual compatibility.
17.90.070 Protective fencing.
17.90.080 Setbacks.
17.90.090 Permit requirements.
17.90.100 Residential locations.

17.90.010 Title.
This chapter shall be called "Public Utilities." (Ord. 1857 § 2 (Exh. B), 2018).

17.90.020 Application.
The provisions of this chapter shall apply to all public utility and telecommunication carriers which occupy, use, construct, or maintain utility or telecommunication facilities within the city. (Ord. 1857 § 2 (Exh. B), 2018).

17.90.030 Purpose.
Reserved. (Ord. 1857 § 2 (Exh. B), 2018).

17.90.040 Authority.
This chapter is adopted pursuant to the provisions of chapters 35.63, 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.90.050 Permitted when.
Public utility buildings, telephone exchanges, sewage pumping stations, electrical distribution substations, and similar developments necessary for the operation of a public utility shall be permitted subject to the requirements set forth in this chapter and any other applicable requirements. (Ord. 1857 § 2 (Exh. B), 2018).

17.90.060 Visual compatibility.
A. If the installation is housed in a building, the building must conform architecturally with the surrounding buildings or with the type of building that will develop due to the zoning district.

B. An unhoused installation on the ground or a housed installation that does not conform to the architectural requirements of subsection (A) of this section must be sight-screened with evergreen trees, shrubs and landscaping planted in sufficient depth to form an effective sight barrier within five years. (Ord. 1857 § 2 (Exh. B), 2018).

17.90.070 Protective fencing.
An unhoused installation of a dangerous nature such as an electrical distribution substation shall be enclosed with a~~n eight-foot-high wire~~ fence 6 feet in height.[BJ1] (Ord. 1857 § 2 (Exh. B), 2018).

17.90.080 Setbacks.
All buildings, installations and fences shall observe the setback requirements for buildings in the district in which they are located., ~~except that in the R-1 district the side setback requirements shall be increased to 20 feet. Exceptions to these setback requirements may be permitted by variance. (Ord. 1857 § 2 (Exh. B), 2018).~~[BJ2]

17.90.090 Permit requirements.
All applications to develop or construct utilities shall include a complete plot plan and elevations showing the entire development, and photographs showing the location and character of all adjoining land improvements in addition to

all other applicable permit application requirements. Permits for utilities and utility development shall be subject to review and approval by the city engineer. (Ord. 1857 § 2 (Exh. B), 2018).

17.90.100 ~~Residential locations~~Consistency with Comprehensive Plan.

A. In order to be considered a permitted use publicly owned utilities must be identified in the Public Facilities and Services Element of the Comprehensive Plan, listed in the City's Capital Improvement Plan (CIP), or identified in a functional or capital plan adopted by reference under the City's Comprehensive Plan.

B. All publicly owned utilities shall be fully consistent with City's Comprehensive Plan and the requirements of this section. [BJ3]

~~In residential zones utility developments shall require a conditional use permit. (Ord. 1857 § 2 (Exh. B), 2018).~~

Chapter 17.95

SIGNS

Sections:

17.95.010 Title.
17.95.020 Application.
17.95.030 Purpose.
17.95.040 Authority.
17.95.050 General provisions.
17.95.060 Permit requirements.
17.95.070 Exceptions.
17.95.080 Review of signs/design standards.
17.95.090 ~~Residential district s~~Sign regulations, Residential zones.
17.95.100 ~~Commercial, business, and industrial district s~~Sign regulations, mixed use commercial and commercial-industrial zones.
17.95.105 ~~Neighborhood business district s~~Sign regulations, mixed use residential zones.
17.95.110 ~~Areas zoned B-1 and C-1 and located in downtown on Fairhaven Avenue and Victoria Avenue s~~Sign regulations, Downtown Growth Area.
17.95.112 Sign regulations, public facilities and transportation zones. [BJ1]
17.95.115 On-site traffic control and directories.
17.95.120 Electronic changing message sign requirements.
17.95.125 Permitted temporary or portable signs.
17.95.130 Off-premises signs.
17.95.135 Prohibited signs.
17.95.140 Variances.

17.95.010 Title.

This chapter shall be called “Signs.” (Ord. 1857 § 2 (Exh. B), 2018).

17.95.020 Application.

The provisions of this chapter shall apply to the construction, erection, installation, maintenance, alteration, expansion, or development of all signs, signage, and sign structures within the city of Burlington. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.030 Purpose.

The purpose of this chapter is to establish standards for the regulation of signs, to assist businesses in contributing to the economic well-being of the community by increasing the overall effectiveness of visual communications, to provide a harmonious relationship of urban graphics and their settings, and to avoid the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities and the community’s appearance. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.040 Authority.

This chapter is adopted pursuant to the provisions of chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.050 General provisions.

A. Conflicting Standards. All signs shall be subject to the provisions of this chapter, except where more specific standards for signs are specified for a special planning area, zone, or district. In such case the more specific standards shall apply.

B. Signs Subject to State Approval. All signs visible to the traveling public from state highways are subject to the regulations and permit requirements of the State Department of Transportation. Where the regulations of the state and city differ, the more restrictive regulations shall govern.

C. Building Code Compliance. All signs for which a building permit is required shall comply with the applicable provisions of the building code adopted by the city and codified in ~~BMC Title 15~~Title 15 BMC.

D. Address Display. The signing program for a multifamily, commercial or industrial development shall include the display of street numbers for the development on the sign, support structure, or building where it can be seen from adjacent roads, as specified in ~~BMC 15.10.080~~Title 15 BMC.

E. Sign Clearances. A minimum of eight feet above sidewalks and 15 feet above driveways shall be provided under freestanding or projecting signs.

F. Setbacks. Signs shall be situated in a manner so as not to adversely affect safety, corner vision, public rights-of-way, improvements or future improvements, easements, or other similar conditions.

G. Illuminated Signs.

1. Internally illuminated signs, or lights used to indirectly illuminate signs, shall be placed, shielded or deflected so as not to shine into residential dwelling units or structures or impair the vision of the driver of any vehicle.

2. No colored lights shall be used at any location or in any manner which may be confused with or construed to be traffic signals or control devices, or lights on an emergency vehicle.

3. No person shall construct, establish, create or maintain any stationary exterior lighting or illumination system or any interior system which is intended to be viewed from a public right-of-way used for vehicular traffic which system contains or utilizes:

a. Any exposed incandescent lamp with a wattage in excess of 25 watts unless a dimmer or sun screen is attached;

b. Any exposed incandescent lamp with an internal or external metallic reflector;

c. Any continuous or sequential flashing operation.

4. All lighted signs shall have low or soft illumination or be shielded.

H. Moving Signs. No sign, sign structure, or portion thereof shall be designed to rotate, flutter, or appear to move, except as specifically provided in this code.

I. Maintenance. All signs, together with all of their supports, braces, guys, and anchors, shall be kept in good repair and be maintained in a safe condition. All signs and the sites upon which they are located shall be maintained in a neat, clean, and attractive condition. Signs shall be kept free from rust, corrosion, peeling paint, or other surface deterioration. The display surfaces of all signs shall be kept neatly painted or posted.

J. Nonconforming Signs. Legally established signs and sign structures which do not comply with the regulations and requirements in this chapter shall be subject to the provisions of Cehapter 17.100 BMC ~~as a nonconforming use, except that alteration to a nonconforming sign which reduces or does not increase its noncompliance with the provisions of this chapter, including changes in display surface, sign area, height and setback, may be allowed subject to review under the provisions of BMC 17.95.080. (Ord. 1857 § 2 (Exh. B), 2018).~~[BJ2]

17.95.060 Permit requirements.

A. A permit shall be required to erect, re-erect, construct, reface, alter, expand, or relocate any sign or sign structure unless the type of sign is specifically listed in the ~~excepted~~ exceptions section of the chapter (~~pursuant to~~ BMC 17.95.070).

B. Applications for sign permits shall be submitted to the director upon forms provided by the city. Sign permit applications shall include:

1. ~~Two s~~Site (plot) plan drawn to scale~~s~~ showing the location of the affected site, lot, premises, building or buildings, and sign or signs, showing both existing signs and awnings and the proposed sign;

2. ~~Two copies of a s~~Scale drawing of the proposed sign or sign revision, including size, height, copy, structural and footing details, material specifications, methods of attachment, illumination, landscaping, front and end views of awning, sample of canvas, soil, seismic and wind calculations, photograph of site and building marked to show where sign or awning is proposed, and any other information required to ensure compliance with appropriate laws;

3. Written consent of the owner of the building, structure, or property where the sign is to be erected, if not the applicant;

4. A permit fee per current fee resolution;

5. A list identifying the size and type of each existing sign located on the building, lot, site, premises, or business establishment. (Ord. 1857 § 2 (Exh. B), 2018).

6. Any other information requested by the Director for purposes of demonstrating compliance with the Chapter or any other applicable regulatory requirements. [BJ3]

17.95.070 Exceptions.

The following shall not require a permit. These exceptions shall not be construed as an exemption from the other requirements of this chapter or other applicable laws and regulations.

A. Address signs are allowed without permit when the following conditions are met:

l. One sign allowed per street frontage displaying the street number and/or name of the occupant of the premises;

2. Such signs may be attached to the building or may be on a post no more than four feet high, and set back at least three feet from the public right-of-way;

3. Such signs may include identification of an on-premises professional office;

4. Such signs may not exceed two square feet in area;

5. Such signs shall be limited to a maximum letter height of eight inches.

B. Temporary signs as defined in subsection (B)(7) of this section are allowed without permit when the following conditions are met:

1. Only one sign is allowed for each street frontage of the property upon which the sign is located. Small directional signs may be placed at the end of the block where an occurrence requiring a sign is located with the property owner's permission.

2. Signs shall not exceed nine square feet in area and six feet in height; flags must not exceed 15 square feet in area.

3. Signs shall not be illuminated.

4. Signs must be set back a minimum distance of five feet from the frontage road and 10 feet from adjoining properties unless exceptions are made by the community development director or designee. Sign may not be placed on public street right-of-way or private property without an owner's permission. Directional signs may not be placed in any improved roadway. Portable signs must be placed in a way that does not unduly obstruct foot or vehicular traffic.

5. Temporary signs shall not be placed upon public utility poles.

6. Signs shall be placed or erected at the time of the occurrence requiring the use of the sign and removed within 48 hours of the end of the occurrence requiring use of the sign.

7. Temporary signs include signs intended to be or allowed to be displayed for a limited period of time. Excepted temporary signs do not include ongoing commercial signage or readerboards. Temporary signs typically include the following:

a. Construction signs;

b. Real estate signs;

c. Directional signs;

d. Flags;

e. Garage sale signs;

f. Public notification signs; and

g. Signs, banners, streamers and other similar apparatus used in conjunction with a community event. A "community event" is an event of a public nature sponsored by the city or a community club, chamber of commerce, or other community organization.

Temporary signs that do not meet the description and conditions set forth above may be allowed pursuant to a permit pursuant to the conditions and terms of BMC 17.95.125.

C. Political Signs. Political signs on private property where allowed by the property owner or upon properties that lawfully constitute a public forum. Such signs shall be removed within one week after the election for which the sign is posted. Signs shall not exceed 16 square feet in size as viewed from one direction unless placed on an approved off-site location with greater allowed size limitations. Such signs shall observe the corner vision requirements of this title, and shall not be situated in a manner which creates a hazard.

D. Incidental signs located on the premises may be displayed on any window or door. Incidental signs are permanent signs that include emblems, decals, nameplates and other similar signs indicating residence, affiliation or membership in organizations, acceptance of credit cards, brand names of items sold, and other such information which pertains to the use of the premises.

E. Temporary Window Signs. Posters and other signs of a temporary nature which advertise or inform the public of current prices or events may be displayed on the inside of any window or door of a business located in a commercial, business, or industrial district, covering a maximum of 20 percent of the window or door area.

F. Within a Building. Any sign which is located within a building and which is clearly intended to be visible primarily to people located within the building. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.080 Review of signs/design standards.

The size, design, color, lighting, location and supporting structures of nonexempt signs shall comply with the following provisions, in addition to other applicable provisions of this chapter:

A. Legibility. All forms of sign copy shall be of a size, color, style, spacing, and shape to produce a legible, concise, and uncluttered message as viewed from adjacent public roads or from an internal circulation road or walkway towards which it is oriented.

B. Design. Signs shall be designed using shapes, graphics, colors, materials, and lighting which are coordinated, integrated into, and a natural extension of the design of the building, development or business identified. On-building signs shall be incorporated into the design of the building and shall not be placed in locations which interrupt, detract from or change the architectural lines of the building.

C. Coordination. In multi-tenant developments, every effort shall be made to coordinate the size, placement, and colors of signs to promote a pleasing image and avoid a confusing, cluttered appearance, while retaining individual business identity through the use of letter style, logos or symbols. An overall sign program addressing the requirements of this section shall be required for multi-tenant developments, and it shall be the responsibility of the owner/manager of the development to inform all tenants of the requirements of the approved sign program.

D. Sign Structure. When visible, the supporting structure of the sign shall be incorporated into the overall sign design, and shall be in scale with the sign. The sign structure, and any street numbers included on the sign structure, shall not be counted for purposes of determining sign area. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.090 ~~Residential district s~~Sign regulations, residential zones.

Only those sign types listed below or identified as exceptions in BMC 17.95.070 shall be permitted in the RD or RA-~~R-1, R-2, and R-3~~ zones.

A. Residential Nameplate Signs.

1. Permitted sign types: building-mounted only.

2. Maximum sign area: two square feet.

3. Maximum number: one for each dwelling unit.

4. Location and setback requirements: may be mounted on a dwelling unit or accessory structure.

5. Permitted illumination: external illumination only.

B. ~~Home Occupation~~ Home Occupation and Non-Residential Uses~~Signs~~. The following standards shall apply to signs identifying home occupations or permitted non-residential uses. [BJ4]

1. Permitted sign types: interior, building-mounted, or freestanding.

2. Maximum sign area: six square feet (24 inches by 36 inches).

3. Maximum number: one sign.

4. Location and Setback Requirements. Home occupation signs must be located on the same lot as the dwelling unit housing the home occupation and:

a. Interior signs shall be located within the building housing the home occupation; and

b. Building-mounted signs shall be affixed to the building housing the home occupation; and

c. Freestanding signs shall be located within 10 feet of the building housing the home occupation. Freestanding signs shall be subject to a maximum height of four feet, six inches.

5. Permitted illumination: external illumination only.

C. Signs Identifying ~~Multifamily~~ Residential Developments ~~or Subdivisions~~.[BJ5]

1. Permitted sign types: freestanding signs only.

2. Maximum sign height: five feet.

3. Maximum sign area: 30 square feet.

4. Maximum Number. One sign shall be allowed for each development or complex, even when more than one tax lot or ownership is included in the development, except as follows:

a. When an additional sign is needed to provide identification of the development at major public access points located on two different roads; or

b. When two single-faced signs oriented in two different directions are proposed in lieu of a two-sided identification sign.

c. In business park developments, additional signage may be permitted to identify the residential portions of the development, as well as the commercial or industrial portions.

5. Location and Setback Requirements. Signs shall be situated in a manner so as not to adversely affect safety, corner vision, public rights-of-way improvements or future improvements, easements, or other similar conditions.

6. Permitted Illumination. E~~Internal or e~~xternal illumination ~~may be permitted~~only. ~~Externally illuminated signs shall be subject to BMC 17.95.050(G).~~

D. Noncommercial Public Service Signs.

1. Permitted sign types: freestanding, building-mounted, and ~~readerboard~~reader board.

2. Maximum sign height: see BMC 17.95.100(B).

3. Maximum Sign Area.

a. Freestanding signs: 24 square feet per side.

b. Building-mounted signs: see BMC 17.95.100(E).

4. Maximum Number.

a. Freestanding signs: one freestanding sign on each premises.

b. Building-Mounted Signs. Building-mounted signs shall be subject to the maximum area limits specified in BMC 17.95.100(E).

5. Permitted Illumination. ~~Internal or e~~External illumination ~~may be permitted~~only.

~~Externally illuminated signs shall be subject to BMC 17.95.050(G), except that internally illuminated signs in residential zones shall be turned off between 10:00 p.m. and 6:00 a.m.~~

6. Special Standards. Reader board signs that are not electronic are allowed; provided, that the area of the reader-board shall be included within the total allowable square footage for signage. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.100 ~~Commercial, business, and industrial district s~~Sign regulations, mixed use commercial and commercial-industrial zones.

A. General. The following regulations and standards shall apply to all on-premises signs located in the ~~B-1, BP, C-1, C-2, and M-1~~MUC and CI zones; provided, that this section shall not apply to signs located within the ~~downtown special planning area~~Downtown Priority Development Area which shall be subject to the standards in BMC 17.95.110. Only those signs listed below shall be permitted.

B. Freestanding Signs, Individual on Premises. Individual businesses or uses that are not located in a multiple-tenant development may be identified by a single freestanding on-premises sign. The following regulations shall apply to all freestanding signs ~~located in the B-1, BP, C-1, C-2, and M-1 zones,~~ [BJ6]except for freestanding signs located within a multiple-tenant development which shall be subject to the requirements identified in subsections (C) and (D) of this section:

1. Maximum sign height: 25 feet, except that:

a. Freestanding on-premises signs located within 500 feet of an I-5 interchange which are associated with a use catering to freeway travelers such as a gas station, eating and drinking establishment, or hotel may have a maximum height of 50 feet; and

b. Freestanding on-premises signs located on lots with freeway frontage may be 45 feet in height.

2. Maximum sign area: 50 square feet as viewed from one direction, except that:

a. An additional 30 square feet may be permitted if the site is larger than one-half acre; and

b. An additional 30 square feet may be permitted if identification of more than one use within a development is included on the sign; and

c. An additional 30 square feet may be permitted if the sign uses natural materials (carved or sand-blasted wood, or marble or stone) and indirect illumination; and

d. An additional 30 square feet may be permitted for freestanding on-premises signs located within 500 feet of an I-5 interchange or on lots with freeway frontage when associated with a use catering to freeway travelers; and

e. Sign area may be increased by a maximum of 20 square feet for time and temperature only if a time and/or temperature display is incorporated in the design of the sign, as further regulated in BMC 17.95.120; and

f. For developments over 30 acres in size, an additional 30 square feet of sign area is allowed for each tenant larger than 10,000 square feet in size up to a maximum of 350 square feet.

3. Maximum number: one sign for each tenant or use.

4. Location and Setback Requirements.

a. All freestanding on-premises signs shall be located on the same site or premises as the tenant or use with which they are associated; and

b. All freestanding on-premises signs shall be located within a landscaped planter with protective curbs located at least three feet from all support elements; and

c. All freestanding on-premises signs ~~with a sign area greater than 50 square feet, or a sign height exceeding 25 feet,~~ shall be subject to a minimum property line setback of 10 feet.[BJ7] This setback shall be measured from the outer edge of the sign closest to the property line.

5. Permitted Illumination. Internal or external illumination may be permitted. Externally illuminated signs shall be subject to BMC 17.95.050(G).

C. Development Complex Signs, Primary. The following standards and regulations shall apply to all multiple-tenant developments and to freestanding signs located in a multiple-tenant development:

1. Maximum sign height: see subsection (B)(1) of this section.

2. Maximum sign area: see subsection (B)(2) of this section.

3. Maximum Number. One development complex sign shall be allowed for each multiple-tenant development, even when more than one tax lot or ownership is included in the development, except that:

a. Two additional signs may be used to identify a multiple-tenant development if the development has access points located at different major arterials; provided, that the additional signs shall be located at an arterial point; and further provided, that only one such sign shall be located at each access point; and

b. Two single-faced signs oriented in opposite directions may be used in lieu of a single double-faced identification sign.

4. Location and Setback Requirements. Development complex signs shall be located within the multiple-tenant development with which they are associated and may only be used to advertise the development and the tenants and uses located within the development. Development complex signs shall be subject to a minimum property line setback of 10 feet.

5. Permitted Illumination. Internal or external illumination may be permitted. Externally illuminated signs shall be subject to BMC 17.95.050(G).

D. Development Complex Signs, Supplemental. A monument sign may be used to identify individual tenants within a multiple-tenant development which are not otherwise identified by a primary development complex sign subject to the following:

1. Permitted sign types: freestanding only.

2. Maximum sign height: six feet.

3. Maximum sign area: 36 square feet.

4. Maximum Number. Only one monument sign shall be allowed for each tenant or business.

5. Location and Setback Requirements.

a. Each sign shall be located in front of the tenant or business it identifies; and

b. Each sign shall be located within a landscaped area surrounded by curbing located at least three feet from the base of the sign unless the sign is located next to a sidewalk.

c. Each sign shall be located at least 50 feet from any primary development complex sign and 100 feet from any supplemental development complex sign.

d. Signs shall not be located within a radius of 20 feet of the corner of any two streets or the corner of a driveway and street.

6. Material and Design Requirements. Colors and materials shall be the same, or substantially the same, as those used on the building housing the tenant or business identified by the sign.

7. Permitted Illumination. Internal or external illumination may be used subject to the general illumination standards in BMC 17.95.050(G).

E. Building-Mounted Signs. Building-mounted signs identifying the use of space within the building on which the sign is mounted may be permitted subject to the following conditions:

1. Maximum Sign Area. The total combined area of all building-mounted signs on a building frontage shall be limited to two square feet for each linear foot of building frontage, except that if a tenant is not identified by any other sign 60 square feet may be permitted regardless of frontage length.

2. Permitted Illumination. Signs may be internally or externally illuminated subject to BMC 17.95.050(G).

F. Movie Theaters. The following additional provisions shall apply to on-premises signs advertising movie theaters:

1. Movie theaters with freeway frontage or located within 500 feet of a freeway interchange may have up to two freestanding signs provided one freestanding sign is located along an arterial and one sign is located along the freeway frontage. Signs permitted by this provision shall be limited to 100 square feet per sign face.

2. Readerboards may be incorporated into freestanding signs or building-mounted signs; provided, that no moving messages shall be permitted; and further provided, that the total area of any such sign does not exceed the maximum permitted sign area.

G. Permitted Temporary and Portable Signs. The following regulations shall apply to temporary and portable signs permitted pursuant to BMC 17.95.125:

1. No more than a combination of one portable sign and two banners shall be permitted for any business.

2. In addition to permanent signage, a business may also display one movable sign during business hours up to a maximum size of six square feet per sign face.

3. Signs shall be secured, anchored, weighted or staked to handle wind loads of 50 miles per hour.

4. In the retail core, signs shall be located behind the sidewalk on private property.

5. In downtown, signs shall be located within the area for outdoor display of goods, as provided in BMC 17.45.080(B)(2) of this section, or other approved location.

6. Well-maintained banners may be used for promotions if securely anchored.

7. Up to two well-maintained blade banners per street front may be used on private property and not extend over public right-of-way, if securely anchored.

H. Walking Advertisers. Persons carrying or wearing portable advertising signs or costumes designed to advertise a business, event, sale or season/holiday with a permit describing location, supervision and public safety. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.105 ~~Neighborhood business district s~~Sign regulations, mixed use residential zones.

A. General. The following regulations and standards shall apply to all on-premises signs located in the ~~MR NB and R S~~MU[BJ8]R zones. Only those signs listed below shall be permitted.

B. Permitted sign types: building-mounted or freestanding.

C. Maximum sign height: Freestanding signs shall be limited to a maximum height of five feet.

D. Maximum sign area: 20 square feet.

E. Maximum number: one sign for each building or premises.

F. Location and Setback Requirements. Freestanding signs shall be located in front of, and within 15 feet of, the building they are associated with.

G. Permitted Illumination. Internally illuminated signs are prohibited. Externally illuminated signs shall be subject to the general standards in BMC 17.95.050(G).

H. Permitted Temporary and Portable Signs. The following regulations shall apply to temporary and portable signs:

1. No more than a combination of one portable sign and two banners shall be permitted for any business.

2. In addition to permanent signage, a business may also display one movable sign during business hours up to a maximum size of six square feet per sign face.

3. Signs shall be secured, anchored, weighted or staked to handle wind loads of 50 miles per hour.

4. In the retail core, signs shall be located behind the sidewalk on private property.

5. In ~~downtown~~the Downtown Priority Development Area, signs shall be located within the area for outdoor display of goods, as provided in BMC 17.45.080(B)(2), or other approved location.

6. Well-maintained banners may be used for promotions if securely anchored.

7. Up to two well-maintained blade banners per street front may be used on private property and not extend over public right-of-way, if securely anchored.

I. Walking Advertisers. Persons carrying or wearing portable advertising signs or costumes designed to advertise a business, event, sale or season/holiday with a permit describing location, supervision and public safety. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.110 ~~Areas zoned B-1 and C-1 and located in downtown on Fairhaven Avenue and Victoria Avenue sign regulations.~~Sign regulations, Downtown Priority Development Area

A. General. In addition to any other applicable standards or requirements identified in this chapter, signs located within the ~~downtown special planning areas~~Downtown Growth Area shall be ~~reviewed for conformance with the downtown design guidelines as adopted in the comprehensive plan~~subject to the following additional standards.

B. Permitted Sign Types. Each building or premises may have either a freestanding sign or a building-mounted sign. Building-mounted signs may be projected signs.

C. Maximum Sign Height. Maximum sign height shall be 25 feet.

D. Maximum Sign Area. Maximum sign area shall be 25 square feet.

E. Maximum Number. A single sign is permitted for each building or premises.

F. Special Standards. Building-mounted signs which project over a sidewalk or alley (within the right-of-way) shall have at least eight feet of vertical clearance from the sidewalk to the bottom of the sign, or 15 feet of clearance from an alley to the bottom of the sign. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.110 Sign regulations, public facilities and transportation zones. [BJ9]

A. General. The following standards apply to signs located in the PFT zones.

B. Permitted Sign Types. Each building or premises may have both a freestanding sign and a building-mounted sign. Building-mounted signs may be projected signs or rooftop signs.

C. Maximum Sign Height. Maximum sign height shall be 25 feet, except for rooftop signs authorized by this section.

D. Maximum Sign Area. Maximum sign area shall be 25 square feet.

E. Maximum Number:

1. Building mounted signs: one sign for each building façade;

2. Freestanding signs: one sign for each street frontage abutting the premises;

F. Special Standards.

1. Building-mounted signs which project over a sidewalk or alley (within the right-of-way) shall have at least eight feet of vertical clearance from the sidewalk to the bottom of the sign, or 15 feet of clearance from an alley to the bottom of the sign.

2. Rooftop signs shall only be permitted on gabled roofs and shall be located as close to the eve line as possible. Under no circumstances shall a rooftop sign, or any portion of a rooftop sign, extend above the peak of the roof it is attached to.

3. Prohibited signs:

a. Signs located in a street right-of-way and off premises signs except for traffic control signs, temporary construction signs, signs necessary for emergency management purposes, and signs installed under the provisions of the City's wayfinding signage program (BMC 17.95.130.D);

b. Signs owned, erected by, managed, maintained, or paid for by a private entity. Only public signs are permitted in the PFT zones.

17.95.115 On-site traffic control and directories.

A. Traffic Control. Signs which direct the flow of traffic to, from and within the site area shall observe the corner vision requirements of the district and shall be a maximum of three square feet per side. See BMC 17.70.050 and 17.70.060.

B. Directories. An on-site sign oriented primarily towards vehicle circulation which identifies and directs traffic to a number of tenants, uses or buildings within the development, including informational signs, shall be limited in area to a maximum of two square feet per tenant, use or building specifically identified, up to a maximum of 40 square feet, and shall not exceed 12 feet in height. Directories oriented toward pedestrian circulation areas, including those attached to buildings, shall be a maximum of 24 square feet in area and eight feet in height.

C. Menu Boards. On-site menus oriented toward internal circulation drives shall not exceed a combined area of 40 square feet. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.120 Electronic changing message sign requirements.

A. A time and temperature sign is permitted up to a maximum of 20 square feet in area for time and temperature only, in locations specified in BMC 17.95.100.

B. An LED gas price sign is permitted with digit heights of six, eight, 12, 15, 22 and 30 inches for gas prices only, in locations specified in BMC 17.95.100, to be included in maximum sign area.

C. Electronic message center signs and other changeable copy signs shall be incorporated into a permanent identification sign which is otherwise permitted by this chapter. Approval for electronic message center signs shall not be granted unless the following conditions are satisfied:

1. Only one electronic message center sign shall be used in a development;

2. The changeable copy sign or electronic message center shall be integrated into a non-electronic sign and the electronic portion of the sign shall not exceed:

a. Eighty square feet in sign area for signs 40 feet or less in height;

b. One hundred fifty square feet in sign area for signs over 40 and less than 50 feet in height;

c. Two hundred fifty square feet in sign area for signs 50 feet in height;

d. Sign pole width shall be a maximum of one-fourth of the sign width;

3. Electronic message centers and changeable copy signs may be used only to advertise activities conducted or goods and services available on the property on which the sign is located, or to present public service information;

4. Electronic message center signs are only permitted for a multiple-tenant development complex~~, a group of businesses, or an individual business~~;[BJ10]

5. Location shall be in the Westside Special Development Area,[BJ11] within 100 feet of the Interstate 5 right-of-way and the sign shall be oriented to Interstate 5, separated along each side of I-5 by 1,500 feet;

6. The display shall comply with WAC 468-66-050 as summarized and amended here: Electronic signs may be used only as on-premises signs and/or to present public service information as follows:

a. Advertising messages on electronic signboards may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the signboard, with all segments of the total message to be displayed within 10 seconds. A one-segment message may remain static on the signboard with no duration limit.

b. Displays must appear as a picture that holds in a static position for a minimum of four seconds.

c. Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard.

d. No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. In no case may the brightness exceed 8,000 nits or equivalent candelas during daylight hours, or 1,000 nits or equivalent candelas between dusk and dawn. Signs shall be programmed to automatically adjust illumination for all times of day and night.

D. No other signs or illuminating devices shall have blinking, flashing, or fluttering lights. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.125 Permitted temporary or portable signs.

The following regulations shall apply to all temporary or portable signs not exempt under BMC 17.95.070:

A. Special Events Sign Permit. Temporary signs, banners, lights, streamers, inflatables, balloons, and other similar apparatus used in conjunction with a special event may be used after obtaining a special event permit subject to the following conditions:

1. Time Period and Duration. The display of apparatus specified shall not exceed a total time period of four weeks in any calendar year; provided, that temporary displays for outdoor sales of vehicles that are maintained in good repair may be used as desired except in the retail core.

2. Hazards. No sign, light, electric cord, streamer, banner, or other apparatus shall be situated or used in a manner which creates a hazard.

B. Temporary Portable Identification Signs. One portable identification sign may be used to temporarily identify a new business until permanent identification signs are installed, or to identify an existing business while permanent signs are being repaired or replaced, under the following conditions and limitations:

1. Maximum Size. No portable identification sign shall exceed 24 square feet in area.

2. Setbacks. Portable signs shall observe corner vision requirements, and shall in no case be placed in the public right-of-way.

3. Anchoring. All signs shall be physically anchored to the premises in a manner which both prevents the sign from being moved or blown from its approved location, and allows the prompt removal of the sign.

4. Illuminated Signs. No portable identification sign shall have flashing lights or arrows or any other apparatus which may be construed to be a traffic control device. All illuminated signs requiring an outside power source shall use a state-approved power outlet.

5. Hazards. No portable sign or associated apparatus shall be situated or used in a manner which creates a hazard. The city retains the right to remove a portable sign that, in the judgment of the city officials, may create a hazardous situation.

C. Walking Advertisers. Persons carrying or wearing portable advertising signs or costumes designed to advertise a business, event, sale or season/holiday with a permit describing location, supervision and public safety. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.130 Off-premises signs.

Off-premises signs shall not be allowed except as herein provided:

A. Billboards (Outdoor Advertising Structures). New billboards shall not be allowed in any zoning district. ~~Billboards may be allowed to relocate from one location within the city to another. Such relocated billboards shall not be allowed in any zoning district except the general commercial, heavy commercial and industrial districts.~~[BJ12]

B. Political Signs. Signs which support or oppose ballot measures, persons running for political office, and other issues subject to a vote by the public may be allowed subject to the following conditions:

1. Approval of the owner of the property on which the sign is to be placed;

2. Location. Such signs shall not be posted in state, county or city rights-of-way, on telephone poles, traffic signs, or other public apparatus. Such signs shall observe the corner vision requirements of this title, and shall not be situated in a manner which creates a hazard;

3. Size. Signs shall not exceed 16 square feet in size as viewed from one direction;

4. Time Limit. Such signs shall not be posted more than four months before the affected election, and shall be removed within one week after the election for which the sign is posted.

C. Temporary Directional Signs. The intent of this provision is to allow the infrequent, and not the regular, use of signs of a temporary nature. Off-premises directional signs of a temporary nature such as those used to direct persons to open houses, garage sales, or special events of short (two days') duration may be allowed subject to the following conditions:

1. Any such sign which is visible from a state highway shall be subject to approval by the State Department of Transportation.

2. All such signs shall comply with subsections (B)(1) through (3) of this section.

3. Time Limit. All such signs shall be removed at the end of the day on which the event, open house or garage sale is conducted and shall not be used repeatedly, contrary to the stated intent.

4. The city shall have the authority to immediately remove and dispose of any such sign found to be in violation of this subsection.

D. ~~Permanent Off-Premises Directional Signs~~Wayfinding Signage Program. The intent of this provision is to ~~provide~~ establish a city managed wayfinding sign program that provides[BJ13] directional and locational information to the general public about places of general interest, such as tourist information services, school or public recreational facilities, shopping malls, restaurants, lodging, business directories designed to be compatible with the city's urban wayfinding program, central business or other special districts, historic sites, and regional developments; or to provide information of a general community nature, such as those found at city entrance locations identifying the city and historic dates, or listing local service clubs and organizations or to provide business identification for sites located on a dead-end street. Such signs may be allowed, subject to the following:

1. Only signs located in a public right-of-way and installed and maintained by the City of Burlington shall be permitted under this section (BMC 17.95.130.D).

2. In order to reduce visual clutter and maximize the benefits of the wayfinding program, signs identifying individual points of interest shall be consolidated whenever possible and all signs shall be consistent with the City's adopted wayfinding signage program.

3. ~~Any such s~~Signs ~~which is~~ visible from, or located in the right-of-way of, a state highway shall be subject to approval by the ~~community development director or designee of transportation.~~Washington State Department of Transportation.

~~2. Approval of the owner of the property on which the sign is to be placed.~~

4~~3~~. Location. The location of wayfinding signs shall be approved by the City Engineer. Signs ~~Any such sign~~ shall not be placed where ~~it~~ they may cause a hazard, or obstruct the vision of any driver.

4. Size. Signs identifying individual points of interest s~~S~~hall be no larger than necessary to clearly inform or direct the public and shall be consistent ~~. City identification/community service club type signs shall be reviewed and approved by the planning commission. Business identification directional signs on dead end streets and business directories shall be designed to be generally compatible~~ with the city's urban wayfinding signage program. ~~m and the design shall be reviewed and approved by the planning commission.~~

5. Illumination. May be indirectly illuminated.

6. Design. All such signs shall be designed using materials, colors, lettering and other graphics ~~which shall be established by planning commission~~consistent with the City's adopted wayfinding signage program. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.135 Prohibited signs.

A. Prohibited signs are subject to removal by the city at the owner's or user's expense. Prohibited signs on public property may be summarily removed by the city. Prohibited signs on private property shall be subject to code enforcement action for removal pursuant to this section.

B. The following signs or displays are prohibited in all zones within the city, whether located on public or private property, except those expressly permitted as temporary signs in BMC 17.95.125:

1. Abandoned or obsolete signs;

2. Animated or moving signs;

3. Dilapidated, nonmaintained signs;

4. Flashing signs and strobe lights, holographic displays;

5. Inflatable advertising devices;

6. Mylar balloons;

7. Obstructing signs which obstruct or interfere with free access to or egress from a required exit from a building or structure, or do not meet corner vision requirements;

8. Off-premises signs except those expressly allowed in this chapter;

9. Pennants, streamers, ribbons, spinners, whirlers, propellers, festoons, blinking lights, or similar items that attract attention through movement, reflection or illumination;

10. Portable signs include any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building. Examples of portable signs include but are not limited to wire stake signs, A-frame, sandwich board signs and portable readerboard signs. See BMC 17.95.125(B) for exceptions;

11. Persons carrying or wearing portable advertising signs or costumes designed to advertise a business. See BMC 17.95.125(C) for exceptions;

12. Signs mounted on the tops of roofs, projecting above parapet walls, are prohibited, except those explicitly authorized by this Chapter. (Ord. 1857 § 2 (Exh. B), 2018).

17.95.140 Variances.

Relief from or modifications of the size limits of signs regulated by this chapter require a zoning variance as provided in BMC 14A.05.150. (Ord. 1857

Chapter 17.100

NONCONFORMING STRUCTURES, LOTS AND USES[BJ1]

Sections:

17.100.010 Title.
17.100.020 Application.
17.100.030 Purpose.
17.100.040 Authority.
17.100.050 Continuance of nonconforming structures and uses.
17.100.060 Nonconforming lots.
17.100.070 Nonconforming uses.
17.100.080 Nonconforming structures and developments.
17.100.090 Abatement of nonconforming structures and uses.
17.100.100 Amortization and abatement of nonconforming signs.

17.100.010 Title.

This chapter shall be called “Nonconforming Structures, Lots and Uses.” (Ord. 1857 § 2 (Exh. B), 2018).

17.100.020 Application.

This chapter shall apply to buildings, structures, lots, developments, and uses which become nonconforming as a result of the application of this title to them, or from classification or reclassification of the property under this title, or any subsequent amendments thereto. This chapter must be read along with chapter 14.15 BMC, Critical Area Regulations, and the more restrictive requirements shall apply. (Ord. 1857 § 2 (Exh. B), 2018).

17.100.030 Purpose.

Over time the adoption and amendment of regulations has resulted in lots, uses, structures, and developments which were lawful when established but would be prohibited or restricted by the regulations currently in effect. The purpose of this chapter is to permit the continuation and maintenance of nonconforming lots, uses, structures, and developments, but generally prohibit their expansion, modification, or reconstruction except in limited circumstances. (Ord. 1857 § 2 (Exh. B), 2018).

17.100.040 Authority.

This chapter is adopted pursuant to the authority set forth in chapters 35A.63, 36.70A, 36.70B, and 36.70C RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.100.050 ~~Continuance of nonconforming structures and uses.~~General.

This chapter shall apply to all nonconforming structures, lots, and uses except as follows:

A. Hazardous Material Storage. Nothing in this Chapter shall be construed as allowing the expansion of any nonconforming hazardous material storage.

B. Flood Hazards. The provisions of this chapter (17.100 BMC) shall not apply to structures or developments that are nonconforming with respect to the floodplain management regulations in Title BMC. Such structures and developments shall be subject to the substantial damage and substantial improvement provisions of Title 14 BMC.

C. Permit Conditions. Nothing in this Chapter shall be construed to waive or modify conditions of approval attached to development permit.

E. Uniform Codes. Nothing in this chapter shall be construed as an exemption from compliance with Title 15 BMC or the uniform codes adopted under Title 15 BMC.

~~Any legally existing nonconforming structure or use may be continued and maintained in conformance with provisions of this chapter, provided no enlargement of area, space or volume occupied by the nonconforming use occurs. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.100.060 Nonconforming lots.

A. If any parcel of land with a minimum lot size or lot dimension which is less than that prescribed for by the ~~district~~ zone in which such parcel is located was subdivided into lots according to a plat of record on or before the effective date of this title, or any subsequent amendments to this title, then the fact that the parcel of land does not meet the minimum lot size or lot dimension requirements as set forth in this title shall not prohibit the property from being utilized; provided, that all other regulations prescribed for that district by this title are complied with, except as provided for in chapter 17.70 BMC.

B. Adjacent undeveloped lots in common ownership which do not meet current requirements for area or dimension shall be considered a single combined lot of record if the combination would have the effect of remedying or minimizing the extent of the nonconformity. (Ord. 1857 § 2 (Exh. B), 2018).

17.100.070 Nonconforming uses.

~~Changes of use, tenancy, ownership or management may occur to any existing legally established and continued nonconforming use under one or more of the following circumstances:~~Legally established nonconforming uses may be maintained and repaired, and changes of tenancy or ownership may occur except as follows:

A. If a nonconforming use is discontinued for more than 180 days any subsequent use or development of the property or building shall fully comply with all applicable zoning and development regulations.

B. Nonconforming uses shall not be intensified or enlarged.

C. Nonconforming uses shall not be expanded or extended to occupy a greater area of land, and shall not be moved or relocated to occupy a different area of land unless the expansion or relocation fully complies with all applicable zoning and development regulations.

~~A. Any part of a structure occupied by an existing legally established and continued nonconforming use may be changed to a use which, in the opinion of the community development director or designee, is of the same or of a more restrictive nature. When the use of a nonconforming structure is hereafter changed to a more restrictive use, the structure shall not thereafter be used for a less restrictive use.~~
~~B. There may be a change of tenancy, ownership or management of any existing legally established and continued nonconforming use provided there is no change in the nature, character or occupancy classification of such nonconforming use except as authorized within this chapter.~~
~~C. Structures or lands which are nonconforming as to use regulations shall not be enlarged or intensified in any manner unless the enlargement within such structures or lands conforms to all regulations of the district in which it is located. A nonconforming use, within a nonconforming structure, shall not expand into any portion of the nonconforming structure.~~
~~D. This subsection also does not allow the expansion of any nonconforming hazardous material storage. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.100.080 Nonconforming structures ~~and developments~~.

A. Maintenance and Repairs. Ordinary maintenance of ~~a~~ nonconforming structures, ~~which~~ includinges minor interior and exterior repairs and incidental alterations is permitted. Minor maintenance and repair may include but is not limited to painting, roof repair and replacement, plumbing, wiring, mechanical equipment replacement, and weatherization. Incidental alterations may include construction of nonbearing walls or partitions.

B. Alterations and Expansions. ~~No structural alterations, as defined by the International Building Code, shall be made except as required by law or ordinance; provided, that the cost of such work shall not exceed 50 percent of the assessed valuation of such structure as established by the most current Skagit County assessor's tax roll~~Nonconforming structures may be enlarged or altered under the following circumstances: ~~.~~

1. The alteration or expansion does increase the degree of nonconformity; or

2. The alternation or expansion is required by law; or

3 The alternation involves structural changes necessary to adapt a nonconforming structure to new technologies or equipment and the alternation does not increase the floor area of the structure;

4. When a nonconforming structure is altered or expanded, the alteration or expansion shall, to the maximum extent possible, comply with all applicable zoning and development regulations.

C. Damage and Replacement. A nonconforming structure having been damaged or partially destroyed to an extent not exceeding 50 percent of the assessed valuation of such structure as established by the most current Skagit County assessor's tax roll may be restored to its original condition, as authorized by the city's building official, and its immediately preceding or existing use at the time of partial destruction may be continued or resumed. Restoration shall begin within one year and be completed within two years of the date of partial destruction. If restoration is not started within one year, then the reuse and occupancy of the structure shall conform to all the regulations of the ~~district~~ zone in which the ~~use~~ structure is located.

~~D. Structures and developments which are nonconforming as to percentage of site coverage, setbacks, building height or density shall not be enlarged unless such enlargement conforms to the regulations of the district in which it is located.~~

~~E. Nonconforming residential structures are allowed to provide maintenance, alterations and additions which may exceed the requirements of this chapter; provided the total number of dwelling units does not increase and all other development standards of the district are complied with.~~

~~F. This chapter shall not prevent the following provided the total value of the improvements, over the lifetime of the nonconforming use, does not exceed 50 percent of the assessed value of the nonconforming use as established by the most current Skagit County assessor's tax roll; and the nonconforming use or structure is not expanded except as allowed by subsection (D) of this section; provided further, that any replacement of a nonconforming structure, or parts thereof, must comply with the appropriate development standards unless a variance is granted pursuant to this title.~~

~~1. Strengthening or restoring to a safe condition any nonconforming structure or part thereof which is declared to be unsafe or a hazard to the public by the order of a city official charged with protecting the public safety;~~

~~2. Lessening a hazardous situation, nuisance or other adverse environmental impact;~~

~~3. Bringing the structure or use into more conformance with this title;~~

~~4. Adapting the structure to new technologies or equipment;~~

~~5. Improvements which do not increase the intensity of the nonconforming use.~~

~~G. This subsection does not allow the expansion of a use or structure which would be inconsistent with a previously authorized conditional use permit, special property use permit, contract rezone, or binding agreement between the city and the property owner.~~

H. When a building or structure is moved to another location it must then be made to conform to the requirements of the ~~district~~ zone to which it is moved, unless specifically allowed elsewhere by this title.

~~I. This section also does not allow the expansion of any nonconforming hazardous material storage. (Ord. 1857 § 2 (Exh. B), 2018).~~

~~17.100.090 Abatement of nonconforming structures and uses.~~

~~Nonconforming structures and uses shall be abated if one or more of the following circumstances exist:~~

~~A. If a nonconforming use is discontinued and changed to a conforming use, any future use of the structure or land shall be in conformity to the regulations of the district in which structure or land is located.~~

~~B. Any structure or portion of a nonresidential structure, or parcel of land occupied by a nonconforming use which becomes vacant and remains unoccupied for a continuous period of 180 days shall not thereafter be occupied except by a use which conforms to the use regulations of the district in which it is located. Residential uses in commercial or industrial zones which are unoccupied for more than 180 days may be allowed to reoccupy if a variance is issued pursuant to this title.~~

~~C. If a nonconforming structure sustains damage or destruction which exceeds 50 percent of the current assessed valuation of the structure as established by the Skagit County assessor's office, reconstruction of such damaged structure or reuse of occupancy shall conform to all regulations of the district in which it is located and it shall be treated as a new building. This subsection shall not apply to single-family dwellings. (Ord. 1857 § 2 (Exh. B), 2018).~~

17.100.100 Amortization and abatement of nonconforming signs.

Legally established non-conforming signs shall be subject to the following:

A. Off-Premises Signs. All off-premises advertising and directional signs that do not comply with the requirements of C~~c~~hapter 17.95 BMC shall be given an amortization period of ~~six~~ 180 days~~months~~ that commences upon notification of the sign owner and/or property owner. Following such notification, the nonconforming sign shall be abated within ~~six months~~180 days. (Ord. 1857 § 2 (Exh. B), 2018).

B. On-Premises Signs. On-premises signs that do not fully comply with the requirements Chapter 17.95 BMC shall be brought into compliance with Chapter 17.95 BMC if removed or modified, except for alternations limited to changing the display surface. On-premises signs that do not fully comply with the requirements of Chapter 17.95 BMC shall be brought into compliance with Chapter 17.95 if the use with which the sign is associated is discontinued for a period of 180 days or more.

Chapter 17.105

ESSENTIAL PUBLIC FACILITIES

Sections:

17.105.010 Title.
17.105.020 Application.
17.105.030 Purpose.
17.105.040 Authority.
17.105.050 Procedure.
17.105.060 Applications for EPF projects.
17.105.070 CUP-EPF review criteria.
17.105.080 Building permit application.
17.105.090 Special provisions for secure community transition facilities (SCTFs).
17.105.100 Processing timelines.
17.105.105 CUP city council authority – Final decision.

17.105.010 Title.

This chapter shall be called "Essential Public Facilities." (Ord. 1857 § 2 (Exh. B), 2018).

17.105.020 Application.

A. This chapter establishes the criteria that the city shall use in making a decision upon an application for an essential public facility (EPF). The community development director or designee shall develop a list of essential public facilities at the time of a request for conditional use permit by an applicant. These facilities shall meet the definition of essential public facilities under ~~BMC 17.01.050~~Chapter 17.01 BMC and the list shall be part of the record for the application.

B. This chapter shall serve to establish the process for permitting those uses determined to be EPFs and which satisfy the criteria set forth under BMC 17.105.070. The director shall determine whether a proposed facility shall be reviewed as an EPF and subject to this review process. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.030 Purpose.

A. The purpose of this chapter is to establish a siting process for essential public facilities (EPFs). This process involves the community and is intended to assist in the identification and minimization of adverse impacts.

B. Essential public facilities are defined in BMC 17.01.050. EPFs include, but are not limited to, those facilities which are difficult to site, such as airports, state educational facilities, state and regional transportation facilities, state and local correctional facilities, solid waste handling facilities and in-patient facilities (including substance abuse and mental health facilities). The Growth Management Act mandates that no local development regulation may preclude the siting of essential public facilities. Secure community transition facilities as defined in BMC 17.01.050 are also included.

C. Nothing in this chapter shall be deemed to waive the city's rights to assert lead agency status to conduct environmental review under Washington State's Environmental Policy Act pursuant to chapter 43.21C RCW and chapter 197-11 WAC as now and hereafter amended. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.040 Authority.

This chapter is adopted pursuant to the authority set forth in chapter 36.70A RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.050 Procedure.

Applications that seek approval for an EPF as defined by BMC 17.01.050 and listed under BMC 17.105.020 shall follow the procedures established in C~~c~~hapter 14A.05 BMC for a Type IV EPF conditional use permit process. In addition to the decision criteria described in BMC 17.105.070, secure community transition facilities as defined in BMC 17.01.050 shall also be consistent with the decision criteria described in BMC 17.105.090. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.060 Applications for EPF projects.

All proposed projects determined to be EPFs shall be reviewed and conditioned in accordance with all requirements of the Burlington Municipal Code including the conditional use permit procedure, set forth in this chapter and referred to as the CUP-EPF review procedure. All EPF applications shall contain the following information:

A. A detailed written description of the proposed and potential public services to be provided, including a proposed site plan, the proposed service area of the facility, the source or sources of funding, and identification of any applicable public regulatory agencies or regional state or federal project agency sponsors and the federal or state authority which the agency has been granted for siting decision making; and

B. A written statement of the need, in statistical or narrative form, for the proposed project currently and over the following 10-year period; and

C. An inventory of known, existing or proposed facilities, by name and address, within Skagit County, or within the region, serving the same or similar needs as the proposed project; and

D. An explanation of the need and suitability for the proposed facility in the proposed city location(s); and

E. An assessment of the suitability of the proposed location in the city or another jurisdiction in terms of local, county, regional and/or state needs in order to minimize public costs (where appropriate) and environmental impacts, to discern the suitability of the facility's location in the city or within another jurisdiction, to determine the number of jurisdictions affected or served by the proposed EPF, and to decide what, if any, inter-jurisdictional approach is most appropriate or available; and

F. An analysis of the environmental, social, economic, financial and infrastructure impacts of the proposed EPF, including an assessment of the proportionate financial impacts on affected jurisdictions, consideration copies of agreements which allocate the financial burdens of the proposed project on the city and other jurisdictions, and the approximate area within which the proposed project could potentially have adverse impacts, such as increased traffic, public safety risks, noise, glare, emissions, or other environmental impacts; and

G. An analysis of the proposal's consistency with the city's comprehensive plan and development regulations, and plans and policies of other affected jurisdictions, including but not limited to Skagit County countywide planning policies; and

H. Documentation of public involvement efforts to date, including public and agency comments received, and plans for future public participation; and

I. All application materials required by other chapters of the Burlington Municipal Code for components of the project not covered by this chapter; such as platting requirements, critical area code compliance, traffic concurrency, comprehensive plan and zoning, etc., so that code compliance for all components of the project can be reviewed together; and

J. Such information as requested by the community development director or designee as determined necessary to complete the preliminary analysis or to otherwise assist the community development director or designee in making recommendation(s) and the city council in making the final determination on the CUP-EPF. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.070 CUP-EPF review criteria.

A. Essential public facilities shall be subject to classification and identification as follows:

1. Type One – Regional EPFs. These are major essential public facilities that provide public services to more than one county and where the provider has statutory authority to site and construct the facility and where a regional, intergovernmental siting process has been followed. These facilities may include, but are not limited to, regional transportation facilities, such as regional airports, state correction facilities, and state educational facilities.

2. Type Two – Local EPFs. These are local or interlocal facilities serving residents or property serving Skagit County. A "local EPF" means an essential public facility that is not a regional EPF.

3. To enable the city to determine the project's classification, any public or private entity proposing to site an EPF in the city shall provide the application materials set forth in BMC 17.105.060 to the community development director or designee once it is known that the EPF is likely or required to be built.

4. The community development director or designee shall review the application for an EPF upon receipt and determine whether the proposed project shall be identified as an EPP and if so whether the EPF shall be classified as a regional EPF or local EPF. A determination shall be made within 45 days following the director's written notice to the applicant of receipt of sufficient material and information set forth in BMC 17.105.060. The community development director or designee shall provide notice of determination to the applicant and publish notice of the determination in a newspaper of general circulation within Skagit County.

5. The community development director's or designee's determination shall be an administrative determination subject to appeal and procedures established in Title 14A BMC ~~BMC 14A.05.060(A)~~.

B. Notification and involvement of community and jurisdictions for EPFs shall be as follows:

l. Type One Facilities. In addition to such other notice as may be required by law before the siting decision, and at least 90 days before submitting an application for a type one essential public facility, the prospective applicant shall notify the affected public and jurisdictions of the general type and nature of the proposal, identify sites under consideration for accommodating the proposed facility, and identify opportunities to comment on the proposal. Applications for specific projects shall not be considered complete in the absence of proof of a published notice and notice to the city regarding the proposed project. Published notice shall be in a newspaper of general circulation in the affected area. This notice shall include the information described above and shall be published at least 90 days prior to the submission of the application. It is expected that an environmental impact statement may be required for most type one facilities in accordance with the SEPA environmental review process. Nothing from this chapter will preclude the city from consulting with the Skagit County council of governments which may provide the project sponsor and affected jurisdictions with their comments or recommendations regarding alternative project locations during this process. The purpose of this provision is to enable potentially affected jurisdictions and the public to collectively review and comment on alternative sites for major facilities before the project sponsor has made their siting decision.

2. Type Two Facilities. Type two essential public facilities shall be required to provide a notice of application as required by BMC Title 14A in addition to any standard notification requirements for conditional uses.

C. Conditional Use Permit Required.

1. An EPF shall be a conditional use in all zones. In the event of a conflict with any other provision within the Burlington Municipal Code, the provisions of this chapter shall govern.

2. In addition to the conditional use permit, other development review permits might be necessary depending upon the site that is selected. For example, a plat or critical area mitigation could be necessary.

3. An EPF application and approval process shall satisfy the requirements of this chapter and the procedures established in BMC Title 14A for a conditional use permit.

4. In addition to the conditional use permit application fee, an additional cost reimbursement agreement with the applicant may be required for additional costs, including but not limited to costs for independent consultant review set forth in subsection (D) of this section, associated with review of an EPF application under the criteria established in this chapter.

D. Independent Consultant Review.

1. The community development director or designee may require independent consultant review of the proposal to assess its compliance with the decision criteria contained in this chapter.

2. If independent consultant review is required, the applicant shall deposit funds or other security in an amount and in a form acceptable to the community development director or designee to defray the cost of such review.

Unexpended funds will be returned to the applicant following the final decision on the application without interest.

E. Decision Criteria for Type One Facilities – Regional Essential Public Facilities. ~~City council~~Conditional use permit applications for Type I EPFs may be~~ust~~ approved or approved with conditions, ~~a conditional use permit for a type one EPF~~[BJ1] in accordance with the following criteria:

1. The sponsor has provided a meaningful opportunity for public participation in the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the county code, and state or federal law;

2. The proposal complies with applicable requirements of BMC Title 14A and all other applicable provisions of the city code except BMC 14A.05.140;

3. The proposal shall be consistent with the comprehensive plan and types of uses of the underlying zoning of the proposed site including being consistent with the environmental impacts of the underlying zoning permitted uses;

4. The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs;

5. The proposal, as conditioned, adequately mitigates significant adverse impacts to life, limb, property, the environment, public health and safety, transportation systems, economic development and other identified impacts;

6. The proposal, as conditioned, adequately mitigates for any probable significant adverse impact on critical areas or resource lands, except for lineal facilities, such as highways, where no feasible alternative exists;

7. The proposal incorporates specific features to ensure it responds appropriately to the existing or planned character, appearance, quality of development, and physical characteristics of the site and surrounding property; and

8. The project sponsor has proposed mitigation measures that are consistent with the Uniform Relocation Assistance Act, chapter 8.26 RCW, chapter 486-100 WAC, as now exists or is hereafter amended when otherwise required by law.

F. Decision Criteria for Type Two Facilities – Local Essential Public Facilities. ~~City council may approve, or condition its approval, of a conditional use permit for a local EPF~~Conditional use permits for Type II EPFs shall only be approved ~~only~~ when the proposal meets all of the following criteria:

1. The proposal shall be consistent with the comprehensive plan and types of uses of the underlying zoning of the proposed site including being consistent with the environmental impacts of the underlying zoning permitted uses;

2. The project applicant has demonstrated a need for the project, as supported by an analysis of the projected service population, an inventory of existing and planned comparable facilities, and the projected demand for the type of facility proposed;

3. If applicable, the project would serve a significant share of the city's population, and the proposed site will reasonably serve the project's overall service population;

4. The applicant has reasonably investigated alternative sites, as evidenced by a detailed explanation of site selection methodology;

5. The project is consistent with the applicant's own long-range plans for facilities and operations;

6. The project has fewer impacts in the particular geographic area in contrast with other available locations;

7. The applicant has provided a meaningful opportunity for public participation in the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the city code, and state or federal law;

8. The proposal complies with applicable requirements of all other applicable provisions of the city code;

9. The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs;

10. The proposal, as conditioned, adequately mitigates significant adverse impacts to life, limb, property, the environment, public health and safety, transportation systems, economic development and other identified impacts;

11. The proposal shall not have any probable significant adverse impact on critical areas or resource lands, except for lineal facilities, such as highways, where no feasible alternative exists;

12. The proposal incorporates specific features to ensure it responds appropriately to the existing or planned character, appearance, quality of development, and physical characteristics of the site and surrounding property;

13. Major public facilities which generate substantial traffic should be sited near major transportation corridors;

14. The project sponsor has proposed mitigation measures that are consistent with the Uniform Relocation Assistance Act, chapter 8.26 RCW, chapter 486-100 WAC, as now exists or is hereafter amended when otherwise required by law;

15. The proposal will not be materially detrimental to uses or property in the immediate vicinity;

16. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property; and

17. Parity exists with the uses permitted in the same general area in their freedom from nuisance-generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.080 Building permit application.

A. Any building permit for an EPF approved under this chapter shall comply with all conditions of approval in the conditional use permit. In the event a building permit for an EPF is denied, the community development director or designee shall submit in writing the reasons for denial to the project sponsor.

B. No construction permits may be applied for prior to approval of a conditional use permit for an EPF unless the applicant signs a written release acknowledging that such approval is neither guaranteed nor implied by the community development director or designee's acceptance of the construction permit applications. The applicant shall expressly hold the city harmless and accept all financial risk associated with preparing and submitting construction plans before a final decision is made under this chapter. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.090 Special provisions for secure community transition facilities (SCTFs).

A. The purpose and intent of this section is to establish standards for secure community transition facilities (SCTFs) in compliance with chapter 71.09 RCW, and to maintain compatibility with other land uses and services permitted within the city. The standards in this section apply to all SCTFs in addition to the conditional use permit process set forth under BMC 14A.05.140; the standards of this section are not subject to variance.

B. SCTFs conforming ~~with~~to the standards set forth below (in addition to approval under standards set forth pursuant to BMC 17.105.070, criteria for EPFs) may be approved by conditional use permit. The following additional siting criteria apply to SCTFs:

1. SCTFs should be located near transit facilities, as appropriate.

2. No SCTF shall be permitted within one mile from any existing SCTF, work release, prerelease, or similar facilities, and shall not result in disproportionate grouping of similar facilities pursuant to RCW 71.09.250(8) and (9).

3. On-Site Facilities Required. Each SCTF shall have the capability to provide on-site dining, on-site laundry or laundry service, and on-site recreation facilities to serve the residents.

4. SCTFs shall not be permitted adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a conditional use is applied for consideration. “Risk potential activity” or “risk potential facility” means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: public and private schools, school bus stops, licensed day care and licensed preschool facilities, public and private parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the community development director or designee following the hearings on a potential site required in RCW 71.09.315. “Within the line of sight” means that it is possible to reasonably visually distinguish and recognize individuals.

5. Siting of SCTFs shall be in accordance with the siting criteria of chapter 71.09 RCW, and regulations adopted pursuant thereto. In addition, no SCTFs shall be sited closer than 1,000 feet from any residentially zoned or utilized property.

6. SCTFs shall provide the following staffing and security measures:

a. The owner and operator of the SCTF shall submit and maintain a plan for staffing, security measures, procedures for immediate public notification of escapes, and escapee search procedures (“the plan”), all in a form and content satisfactory to the director. The security measures shall indicate the types of security measures/facilities proposed for the SCTF including, but not limited to, constant electronic monitoring of residents, site security measures/equipment, and site access and control consistent with chapter 71.09 RCW, unless otherwise ordered by a court. The plan, along with documentation of the director’s concurrence in or rejection of the plan, shall be included in materials submitted to and reviewed by the planning commission; provided, that the security plan made part of the public record shall not be in such detail that security of the facility would be compromised.

b. The owner and operator of the SCTF shall enter into a contract with the city, in a form and content satisfactory to the city attorney, committing the owner and operator to comply with and maintain the plan for the life of the facility.

c. The applicant shall install an eight-foot-high fence, in character with the surrounding area, between the facility and all property boundaries. This fence shall be set back at least 10 feet from the property boundaries and screening landscaping as defined within BMC 17.80.105 shall be installed between the property boundary and the fence. The planning commission may waive or lessen this requirement upon finding that due to existing site features or the type or character of adjoining uses, the privacy and security of the occupants of adjoining properties can be maintained in the absence of a fence or with a lower fence, or with reduced landscaping requirements.

d. The facility shall have a backup power source.

7. The total number of SCTF beds in an SCTF shall be no greater than the total number of beds required to be sited in a county under RCW 71.09.250(7)(a). The number of SCTF beds in a proposed SCTF shall be reduced below the maximum number required in a county when public safety and security considerations including site characteristics, program components, average response time of emergency services to the general area, and proximity of proposed site to risk activity exists and alternative siting is available elsewhere within the county.

C. Application Materials. In addition to the regular application materials required for a land use review pursuant to BMC Title 14A and BMC 17.105.060, an application for an SCTF shall also include:

1. The siting process used for the SCTF, including alternative locations considered.

2. An analysis showing that consideration was given to potential sites such that siting of the facility will not result in a concentration of similar facilities in a particular neighborhood, community, jurisdiction, or region.

3. Proposed mitigation measures, including the use of buffering from adjoining uses.

4. A general overview of planned security for the facility.

5. A schedule and analysis of all public input solicited or to be solicited during the siting process.

6. Notice of the application to all property owners and occupants of record within one mile of the proposed site. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.100 Processing timelines.

A. Notice of the ~~city council~~ final decision following the public hearings on a project permit application shall be issued within 120 days from when the permit application is determined by the director to be technically complete for processing.

B. In determining the number of days that have elapsed after an application is technically complete, the following periods shall be excluded:

1. Any period during which the city asks the applicant to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the city mails notification to the applicant of the need for additional information until the date the city determines whether the additional information satisfies the request for information, or 28 days after the applicant supplies the information to the city, whichever is earlier. If the information submitted by the applicant under this subsection is insufficient, the city shall mail notice to the applicant of the deficiencies and the provisions of this subsection shall apply as if a new request for information had been made;

2. Any period during which an environmental impact statement is being prepared;

3. The period specified for administrative appeals of project permits;

4. Any period during which processing of an application is suspended pursuant to verification of compliance with required notice requirements; and

5. Any period of time mutually agreed upon by the applicant and the city.

C. The time periods established by this section shall not apply to a project permit application:

1. That requires an amendment to the comprehensive plan or a development regulation in order to obtain approval;

2. That is substantially revised by the applicant, in which case a new 120-day time period shall start from the date at which the revised project application is determined to be complete;

3. That requires approval of a development agreement by the city council;

4. When the applicant consents to an extension; or

5. During any period necessary for reconsideration of the Hearing Examiner's~~a planning commission's~~ decision.

D. The city shall notify the applicant in writing if a notice of final decision on the project has not been made within the time limits specified in this section. The notice shall include a statement of reasons why the time limits have not been met and an estimated date of issuance of a notice of final decision.

E. Failure of the city to make a final decision within the timelines specified by this chapter shall not create liability for damages. (Ord. 1857 § 2 (Exh. B), 2018).

17.105.105 CUP city council authority – Final decision.

A. The designated hearing body, giving substantial weight to the recommendations of the staff report, shall review the application under the following criteria:

l. Whether the proposed action as recommended by city staff is consistent with the criteria established under BMC 17.105.070 and 17.105.090 if applicable;

2. Whether modifications to recommended conditions or restrictions, if any, are adequate to mitigate impacts in a manner which meets the standards of this code and any related development agreement; and

3. Whether project conditions cumulatively are reasonable and would not preclude development of the EPF.

B. Recognizing that RCW 36.70A.200(2) prohibits the city from precluding the siting of an essential public facility, if the permit application proposes siting of a project in a location other than the city's preferred location as recommended by city staff or otherwise designated under the city's comprehensive plan or zoning code, the applicant shall present information as to why the city's preferred location, rather than the location applied for, will preclude development of the project. The applicant shall provide any engineering, financial and other studies and information necessary to explain its position, unless it has already done so through the comprehensive projects, such as roads and highways, proposed by the Washington State Department of Transportation. The city council, with additional analysis and input from city staff if requested, shall make findings and a decision as to whether siting the project at the city's preferred location would be impossible, impracticable, or otherwise preclusive. The said findings and decision shall not be deemed, however, to preclude the authority of a regional decision-making body, under law now existing or subsequently amended, to determine, where a regional EPF shall be sited, assuming applicable laws and legal requirements are complied with. This section shall not apply to the siting of SCTFs.

C. As a condition of approval pursuant to BMC 17.105.070, the city council may:

1. Increase requirements in the standards, criteria, or policies established by this title;

2. Stipulate the exact location as a means of minimizing hazards to life or limb, property damage, impacts to the environment, erosion, underground collapse, landslides, or transportation systems;

3. Impose conditions necessary to avoid, minimize or mitigate any adverse impacts identified as a result of the project;

4. Require the posting of construction and maintenance bonds sufficient to secure to the city the estimated cost of construction, installation and maintenance of required improvements;

5. Impose any requirement that will protect the public health, safety, and welfare; and

6. Impose conditions as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. (Ord. 1857 § 2 (Exh. B), 2018)

Chapter 17.110

AGRICULTURAL HERITAGE CREDIT PROGRAM

Sections:
17.110.010 Purpose.
17.110.020 Application.
17.110.030 Definition of terms used in this chapter.
17.110.040 General requirements.
17.110.050 Procedure to sell or transfer development rights from sending site.

17.110.010 Purpose.

The purpose of the agricultural heritage credit program is to provide additional residential density in specific zoning districts in exchange for a fee dedicated to transfer and/or purchase of development rights through the Skagit County farmland legacy program. The program provides a voluntary, incentive-based process for permanently preserving agricultural lands that provide a public benefit. The provisions of this program are intended to supplement land use regulations, resource protection efforts and open space acquisition programs and to encourage increased residential development density inside the city where it can best be accommodated with the least impacts on the natural environment and public services by:

A. Providing an effective and predictable incentive process for agricultural land property owners to preserve lands with a public benefit;

B. Providing an efficient and streamlined administrative review system to ensure that transfers of development rights to receiving sites are evaluated in a timely way and balanced with other county goals and policies, and are adjusted to the specific conditions of each receiving site. (Ord. 1857 § 2 (Exh. B), 2018).

17.110.020 Application.

A. ~~The MR-NB, B-1, C-1 and R-3 zoning district areas as shown on the official zoning map of the city of Burlington are a receiving zone for Burlington~~The term "receiving zone" as used in this chapter shall mean the Burlington Urban Growth Area (UGA). ~~.~~

B. Agricultural heritage credits are assigned towards the purchase of development rights from land zoned agriculture natural resource in the Skagit County zoning ordinance and designated as significant open space connections on the development right acquisition area map, attached as Exhibit A to the ordinance codified in this chapter.

C. The residential use in the receiving zone shall be permitted at the rate of one additional residential dwelling unit per Burlington agricultural heritage credit.

D. The applicant may opt to acquire development rights from farmland that is included in the Skagit farmland legacy program and transfer those rights into the receiving zone at a rate comparable to the Burlington agricultural heritage credit formula. (Ord. 1857 § 2 (Exh. B), 2018).

17.110.030 Definition of terms used in this chapter.

A. "Burlington agricultural heritage credit program" means a voluntary program where density of new development may be increased as specified in this title through the purchase of heritage credits at a set price established by resolution[1] directly from the city of Burlington and the funds are used by the Skagit farmland legacy program towards the purchase of farmland development rights through an interlocal agreement/contract.

B. "Development right" means one residential unit of credit. This is calculated for unincorporated Skagit County in the agriculture natural resource land zoning district (AgNRL) at the rate of one residential unit per 40 acres of farmland, or at the rate of one residential unit per county certified lot of record for development. The farmland legacy program will accumulate Burlington heritage credits until a willing seller is identified and there is enough funding to acquire one or more development rights from agricultural resource land in the area specified on Map Exhibit A, attached to the ordinance codified in this chapter.

C. "Receiving site" means the site in the recipient zoning district that will receive the increased density by purchasing Burlington heritage credits at a set fee or transferring development rights from the sending site. Receiving sites in the city of Burlington are further described in the MR-NB, B-1, C-1 and R-3 zoning districts.

D. "Sending site" means the site that is to be preserved as agricultural resource land by selling or transferring its residential development rights to the Skagit farmland legacy program or other entity approved by the Skagit farmland legacy program. Sending sites shall be maintained permanently as agricultural lands and no structures may be built on the land. Sending sites may not be in public ownership. If the sending site consists of more than one tax lot, the lots must be contiguous. For purposes of this section, lots divided by a street are considered contiguous if the lots would share a common lot line if the street was removed. See Map Exhibit A, attached to the ordinance codified in this chapter, for land generally eligible as sending sites for the purpose of this chapter. (Ord. 1857 § 2 (Exh. B), 2018).

17.110.040 General requirements.

A. Property eligible for increased residential density is ~~described in the MR-NB, B-1, C-1 and R-3 zoning districts~~located in the City's Urban Growth Area.[BJ1]

B. Burlington agricultural heritage credits shall be used by the Skagit farmland legacy program for the acquisition of residential development rights on agricultural resource land in target locations to protect the agriculture natural resource land around the Burlington urban growth area as identified on Map Exhibit A, attached to the ordinance codified in this chapter.

C. The residential development rights of agricultural resource land shall be considered as interests in real property and may be transferred by sale or gift in part or in total as provided in this section. Once used, credits for residential development rights shall not be used again and the residential development rights of the subject property providing them shall be considered severed forever.

D. Residential development rights on agricultural natural resource land may be ~~transfered~~transferred to a specific parcel in Burlington or sold to an individual(s) or other entity such as the Skagit farmland legacy program.

E. On the receiving site, the purchase of Burlington agricultural heritage credits shall increase the underlying zoning density by one dwelling unit per heritage credit, as further designated in the MR-NB, B-1, C-1 and R-3 zoning districts. Owners of the parcels within the recipient zone districts gain additional density for their property when they purchase Burlington agricultural heritage credits for the receiving site. Detailed use and development standards for the receiving site are specified in each zoning district.

F. Burlington agricultural heritage credits shall be allocated to a specific receiving site.

G. Conservation easements shall be required for land contained in the sending site to indicate development limitations on the sending site. (Ord. 1857 § 2 (Exh. B), 2018).

17.110.050 Procedure to sell or transfer development rights from sending site.

Note: this process may be amended by the farmland legacy program.

A. The farmland legacy program will receive Burlington heritage credit fees collected by the city and use those fees to acquire residential development rights on agriculture natural resource land in the areas identified around the Burlington urban growth area on Map Exhibit A, attached to the ordinance codified in this chapter.

B. Property owners participating in the farmland preservation program will use the following process to sell or transfer their residential development rights:

1. An owner of real property desiring to sell or transfer development rights shall submit an application for severance of development rights (sending site certification) to the Skagit farmland legacy program or other such entity as the city council may nominate. The farmland legacy program shall determine the form of the application and the information required for a complete application. The farmland legacy program shall determine if the application may be accepted. Responsibility for preparing a completed application rests exclusively with the applicant. Application for sending site certification shall include:

a. A legal description of the site;

b. A title report;

c. A brief description of the site resources and public benefit to be preserved;

d. A site plan showing the proposed conservation easement area, existing and proposed dwelling units, submerged lands, any area already in a conservation easement or other similar encumbrance and any other area, except setbacks, required by Skagit County to remain open.

2. The applicant shall submit a Skagit County lot certification if the lot is less than 40 acres in size and the farmland legacy program shall determine the number of residential development rights available for severance.

3. A preliminary estimate of value is defined by reviewing the site selection criteria and pricing formula and the estimate is transmitted to the conservation futures committee for approval and any additional steps required by the farmland legacy program.

4. To sever residential development rights approved by the farmland legacy program, the property owner shall execute a restrictive easement, (the "conservation easement"), granting to the farmland legacy program or a tax exempt organization or other governmental agency, as approved by the farmland legacy program. The conservation easement shall preclude subdivision of the subject property. If the sending site includes federal funds, an appraisal is ordered.

5. Once development rights have been severed from a sending area property in accordance with this code, the property owner may sell or transfer the development rights by executing and recording with the Skagit County auditor a deed of residential development rights, using a deed form prescribed by the farmland legacy program. The deed shall describe the number of development rights being sold or transferred.

6. The certificate of residential development rights and the restrictive easement shall be recorded by the escrow agent of the farmland legacy program with the Skagit County auditor. The owner shall provide a copy of the recorded documents to the farmland legacy program. When the documents have been recorded and the recorded documents have been received by the department, the severance is complete.

C. Procedure to Acquire and Use Burlington Agricultural Heritage Credits.

1. A request to increase residential density within a receiving area by purchasing Burlington agricultural heritage credits must be part of a land use permit application under chapter 14A.05 BMC. The site plan must indicate the number of Burlington agricultural heritage credits necessary to implement the project.

2. Prior to final approval of the site plan, the applicant must buy Burlington agricultural heritage credits at the rate of one credit per additional dwelling unit.

3. The site plan, referencing the Burlington agricultural heritage credits, shall be recorded by the owner with the Skagit County auditor. (Ord. 1857 § 2 (Exh. B), 2018).

[1] Fee is based on initial study "Demand for and Value of Density (Heritage) Credits," June 2009, and study shall be updated once every five years to ensure accurate economic basis for fee.

Chapter 17.115

PLANNING COMMISSION

Sections:
17.115.010 Title.
17.115.020 Application.
17.115.030 Purpose.
17.115.040 Authority.
17.115.050 Created – Membership – Appointment – Tenure – Compensation.
17.115.060 Organization – Meetings – Rules and records.
17.115.070 Quorum.
17.115.080 Powers and duties – Statutory authority.
17.115.090 Powers and duties – Designated.
17.115.100 Recommendation to city council.

17.115.010 Title.

This chapter shall be called "Planning Commission." (Ord. 1857 § 2 (Exh. B), 2018).

17.115.020 Application.

The provisions of this chapter shall be applicable to all actions of the planning commission as defined herein. (Ord. 1857 § 2 (Exh. B), 2018).

17.115.030 Purpose.

The purpose of this chapter is to establish the planning commission for proposed developmental action as specified in this title. (Ord. 1857 § 2 (Exh. B), 2018).

17.115.040 Authority.

This chapter is adopted pursuant to the authority set forth in chapters 35.63 and 35A.63 RCW allowing the creation of a planning commission and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.115.050 Created – Membership – Appointment – Tenure – Compensation.

The commission shall consist of seven in number, who shall be selected as follows:

A. The seven members shall be selected and appointed by the mayor and confirmed by the city council.

B. The term of office of the seven commissioners first appointed shall be designated from one to six years in such manner as to provide that the fewest possible terms will expire in any one year. Thereafter the term of office for each appointed member shall be six years. The terms of the first seven members appointed shall be fixed and designated by the mayor at the time of the appointment.

C. Vacancies occurring otherwise then through the expiration of terms shall be filled for the unexpired term.

D. The members shall be selected without respect to political affiliations and they shall serve without compensation. (Ord. 1857 § 2 (Exh. B), 2018).

17.115.060 Organization – Meetings – Rules and records.

The commission shall elect its own chair and create and fill such other offices as it may determine it requires. Planning commission meetings shall be open to the public in accordance with the provisions of the Open Public Meetings Act and the time and date of each meeting shall be published in advance of the meeting. It shall adopt rules for transaction of business and shall keep a written record of its meetings, regulations, transactions, findings and determinations, which records shall be a public record. (Ord. 1857 § 2 (Exh. B), 2018).

17.115.070 Quorum.
A majority of the commission shall constitute a quorum for the transaction of business. Any action taken by a majority of those present at any regular or special meeting of the commission shall be taken as the action of the commission. (Ord. 1857 § 2 (Exh. B), 2018).

17.115.080 Powers and duties – Statutory authority.
The planning commission shall have the powers and perform the duties specified in chapter 35.63 RCW, including amendments enacted after the effective date of the ordinance. (Ord. 1857 § 2 (Exh. B), 2018).

17.115.090 Powers and duties – Designated.
A. The commission may act as the research and fact finding agency of the municipality. To that end it may make such surveys, analyses, researches and reports as are generally authorized or requested by the council.

B. The commission shall review proposed development projects for compliance with ordinances and plans for the physical development of the city, in such measure as is reasonably necessary or requisite in the interest of the general public and as further specified in the zoning and subdivision codes.

C. The commission shall make recommendations to the council on adopting area-wide rezoning and development code text changes and subdivision ordinances.

D. The commission shall make recommendations to the council on the adoption of a comprehensive plan and amendments to the plan.

E. The commission shall make recommendations to the council as specified in BMC 17.115.100. (Ord. 1857 § 2 (Exh. B), 2018).

17.115.100 Recommendation to city council.
A. The city council shall refer to the planning commission for its recommendation and report on the adoption or amendment of:

1. ~~All recommendations as required by the city zoning ordinance~~Zoning or development regulations;

2. ~~Adoption of t~~The comprehensive plan and any amendments to the comprehensive plan;

3. Functional or capital plans necessary to implement the comprehensive plan, including, but not limited to, sewer and stormwater plans, the Capital Improvement Plan (CIP), and the Transportation Improvement Plan (TIP)~~.~~

4. The annual review docket and the Community Development Department's annual work plan. [BJ1]

B. The commission shall make its written recommendation within 30 days subsequent to the date it has completed its public hearing or public meeting as required by ordinance. (Ord. 1857 § 2 (Exh. B), 2018).

Chapter 17.120

HEARING EXAMINER

Sections:

17.120.010 Title.
17.120.020 Application.
17.120.030 Purpose.
17.120.040 Authority.
17.120.050 Creation of office.
17.120.060 Appointment.
17.120.070 Qualifications.
17.120.080 Removal.
17.120.090 Conflict of interest and appearance of fairness.
17.120.100 Freedom from improper influence.
17.120.110 Rules.
17.120.120 Duties.
17.120.130 Public hearings.
17.120.140 Examiner's decision.
17.120.150 Notice of examiner's decision.
17.120.160 Decision final action by city.
17.120.170 Conflicting code provisions and rules of procedure.

17.120.010 Title.
This chapter shall be called "Hearing Examiner." (Ord. 1857 § 2 (Exh. B), 2018).

17.120.020 Application.
The provisions of this chapter shall be applicable to all zones as set forth in this title. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.030 Purpose.
The purpose of this chapter is to establish a quasi-judicial hearing system which will ensure procedural due process and appearance of fairness in regulatory hearings and will provide an efficient and effective hearing process for quasi-judicial matters. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.040 Authority.
This title is created pursuant to the authority set forth in chapter 35A.63 RCW and other applicable laws and regulations. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.050 Creation of office.
The office of hearing examiner, hereinafter referred to as "examiner," is created. The examiner shall perform the duties and functions specified in this chapter, together with such other quasi-judicial duties and functions as may be delegated by the mayor and city council. Unless the context requires otherwise, the term "examiner" as used herein shall include any examiner pro tem who may be appointed. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.060 Appointment.
The examiner shall be appointed by the mayor subject to confirmation by a majority vote of the city council. The terms of the examiner's employment shall be specified by a professional service contract. An examiner pro tem may also be appointed by the mayor subject to confirmation by majority vote of the city council. An examiner pro tem shall serve in the event of absence or disqualification of the examiner. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.070 Qualifications.
The examiner shall be appointed solely with regard to his or her qualification for the duties of the office, and will have such training and experience as will qualify the examiner to conduct administrative and quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon the examiner by the mayor and city council. The examiner shall hold no other elective or appointive office or position in city government. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.080 Removal.
The examiner may be removed from office for cause by the mayor, subject to confirmation by majority vote of the city council. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.090 Conflict of interest and appearance of fairness.
The examiner shall not conduct or participate in any hearing or decision in which the examiner has a direct or indirect personal interest which might influence the examiner or interfere with the examiner's decision-making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. The hearing shall then be conducted by an examiner pro tem.

The appearance of fairness doctrine, as specified in chapter 42.36 RCW, shall apply to all proceedings conducted by the examiner, and may result in the examiner's disqualification when necessary. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.100 Freedom from improper influence.
No council member, city official, or any other person shall attempt to interfere with or improperly influence the examiner in the performance of his or her designated duties. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.110 Rules.
The examiner shall have the power to prescribe rules and regulations for the scheduling and conduct of bearings and other procedural matters related to the duties of the office. The rules shall provide that all public hearings be held after 6:00 p.m., except under special circumstances authorized by the mayor. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.120 Duties.
The examiner is vested with the duty and authority to hold public hearings and render decisions on the following matters:

A. Type III land use decisions as specified in chapter 14A.05 BMC;

B. Appeals of Type I and II land use decisions as specified in chapter 14A.05 BMC;

C. Appeals of final administrative decisions made under chapter 8.12 BMC;

D. Complaints by citizens or city staff seeking administrative enforcement of provisions of city land use codes or conditions in development permits and approvals;

E. Violation notices, penalties, and other final administrative decisions made under chapter 8.12 BMC;

F. Such other regulatory, enforcement or quasi-judicial matters as may be assigned to the examiner by the mayor and city council. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.130 Public hearings.
Where public hearings are required by state statute or city code, the examiner shall hold at least one such hearing prior to rendering a decision on any matter. All testimony at any such hearing shall be taken under oath. Public notice of the time and place of the hearing shall be given as required by city code. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.140 Examiner's decision.
Within 15 calendar days after the conclusion of a hearing unless a longer period is agreed to by the applicant in writing or verbally on the record at the public hearing, the examiner shall render a written decision which shall include at least the following:

A. Findings of fact based upon the record and conclusions therefrom which support the decision;

B. The decision shall state whether the application is either granted, granted in part, granted with conditions, modifications or restrictions, returned to the applicant for modification, denied with prejudice or denied without prejudice;

C. If a time limit exists for filing an administrative or judicial appeal of the decision, said time limit shall be disclosed. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.150 Notice of examiner's decision.
Not later than five calendar days following the rendering of a written decision, copies thereof shall be mailed to the applicant and other parties of record as defined in BMC Title 14A. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.160 Decision final action by city.
Unless specifically provided otherwise by ordinance or state law, all decisions of the hearing examiner shall be final action by the city. Hearing examiner decisions shall be appealable pursuant to chapter 14A.05 BMC. (Ord. 1857 § 2 (Exh. B), 2018).

17.120.170 Conflicting code provisions and rules of procedure.
Any and all provisions of this code, and any and all provisions of the rules of procedure adopted by the examiner which are in conflict with this chapter, are superseded. (Ord. 1857 § 2 (Exh. B), 2018).

Chapter 17.125

AMENDMENTS TO COMPREHENSIVE PLAN AND DEVELOPMENT REGULATIONS

Sections:

17.125.010 Title.
17.125.020 Application.
17.125.030 Purpose.
17.125.040 Authority.
17.125.050 Comprehensive plan text and map amendments.
17.125.060 Development agreements associated with a comprehensive plan amendment.
17.125.070 Area-wide rezones.
17.125.080 Site-specific zoning map amendments.
17.125.090 Development regulation text amendments.

17.125.010 Title.

This chapter shall be called "Amendments to Comprehensive Plan and Development Regulations." (Ord. 1857 § 2 (Exh. B), 2018).

17.125.020 Application.

The provisions of this chapter shall be applicable to all zones as set forth in this title. (Ord. 1857 § 2 (Exh. B), 2018).

17.125.030 Purpose.

The purpose of this chapter is to establish procedures and criteria for amending the city's zoning map, development regulations, comprehensive plan, and comprehensive plan map. (Ord. 1857 § 2 (Exh. B), 2018).

17.125.040 Authority.

This title is created pursuant to the authority set forth in chapters 35A.63, 36.70A, and 36.70B RCW and other applicable laws. (Ord. 1857 § 2 (Exh. B), 2018).

17.125.050 Comprehensive plan text and map amendments.

A. General. Pursuant to RCW 36.70A.130(2)(a) and the process set forth in BMC Title 14A, proposed updates to the comprehensive plan shall be processed only once a year except for the adoption of original subarea plans, amendments to the shoreline master program, the amendment of the capital facilities chapter concurrent with the adoption of the city budget, in the event of an emergency or to resolve an appeal of the comprehensive plan filed with the Growth Management Hearings Board.

B. Amendment Procedures. Comprehensive plan text and map amendments are classified as Type IV decisions and shall be processed pursuant to BMC Title 14A. (Ord. 1857 § 2 (Exh. B), 2018).

17.125.060 Development agreements associated with a comprehensive plan amendment.

A. Pursuant to RCW 36.70B.170 through 36.70B.210, the city may enter into a development agreement with a person having ownership or control of real property within its jurisdiction as part of a comprehensive plan amendment and associated rezone. A development agreement and subsequent rezone shall be consistent with applicable development regulations set forth in BMC Title 14A.

B. Development agreements associated with a comprehensive plan amendment are classified as Type IV decisions and shall be processed in compliance with the comprehensive plan amendment and the regulations of RCW 36.70B.170 through 36.70B.210.

C. Development agreements associated with a comprehensive plan amendment and subsequent rezone may be used at the city council's discretion. Development agreements may be used to place restrictions on a proposed amendment to minimize the impacts of future development.

D. Development Agreement Contents. For the purpose of this section, development standards may include, but are not limited to, the following:

1. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;

2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

3. Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;

4. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;

5. Affordable housing;

6. Parks and open space preservation;

7. Phasing;

8. Review procedures and standards for implementing decisions;

9. A build-out or vesting period for applicable standards; and

10. Any other appropriate development requirement procedure.

E. The final decision authority for approval of the development agreement and development plan shall be the city council as set forth in BMC Title 14A.

F. The decision of the city council on a development agreement and plan in conjunction with a comprehensive plan amendment and subsequent zoning change is the final decision of the city and may be appealed pursuant to chapter 36.70C RCW.

G. A development agreement shall be recorded with the Skagit County auditor at the applicant's expense. During the term of the development agreement, the agreement is binding on the parties and their successors.

H. The city will process and decide upon an application for an amendment as if it were an application for a new development agreement in a manner set forth above, unless it is deemed a minor modification as set forth in subsection (I) of this section.

I. Modifications of Development Plan.

1. The director of community development may approve minor modifications to the development plan pursuant to BMC Title 14A.

2. Criteria for approving minor modifications include but are not limited to the following:

a. Shall conform to the terms of the development agreement;

b. Shall not reduce landscaping, buffering, or open space areas;

c. Shall not reduce setback requirements;

d. Shall not result in an increase in height of any structure;

e. Shall not result in a change in ingress or egress;

f. Shall not increase any adverse impacts or undesirable effects;

g. Shall not significantly alter the project. (Ord. 1857 § 2 (Exh. B), 2018).

17.125.070 Area-wide rezones.

A. Area-wide rezones shall be considered only in conjunction with updates to the comprehensive plan text and maps to ensure full consideration of the cumulative effects of all changes.

B. Area-wide rezones are classified as Type IV decisions and shall be processed pursuant to BMC Title 14A. (Ord. 1857 § 2 (Exh. B), 2018).

17.125.080 Site-specific zoning map amendments.

A. Site-specific zoning map amendment requests, which are consistent with the comprehensive plan map, may be submitted at any time. Site-specific zoning map amendments consistent with the comprehensive plan map shall be processed as a Type III review pursuant to BMC Title 14A. Amendments to the zoning map which are not consistent with the comprehensive plan map shall be processed as a Type IV review and may only be considered in conjunction with a corresponding amendment to the comprehensive plan.

B. All site-specific zoning map amendment requests must meet all of the following criteria:

1. The requirements of RCW 36.70A.070(6), Concurrency;

2. The requested map amendment is consistent with the comprehensive plan;

3. The map amendment bears a substantial relation to the public health, safety and welfare;

4. The map amendment is warranted in order to achieve consistency with the comprehensive plan or because of a need for additional property in the proposed zoning district classification, or because the proposed zoning classification is appropriate for reasonable development of the subject property;

5. Property is adjacent and contiguous (which shall include corner touches and property located across a public right-of-way) to property of the same zoning classification;

6. The map amendment will not be materially detrimental to uses or property in the immediate vicinity of the subject property;

7. The map amendment has merit and value for the community as a whole. (Ord. 1857 § 2 (Exh. B), 2018).

17.125.090 Development regulation text amendments.

A. The text of the city's development regulations may be amended at any time provided the amendment is consistent with the comprehensive plan and does not interfere with its implementation. Text amendments that are consistent with the comprehensive plan shall be processed as a Type IV review pursuant to BMC Title 14A.

B. Text amendments which are not consistent with the comprehensive plan shall be processed as a Type IV review and may only be considered together with a corresponding amendment to the comprehensive plan. Text amendments which are not consistent with the comprehensive plan shall be subject to the annual processing limitation described in BMC 17.125.050. (Ord. 1857 § 2 (Exh. B), 2018).

17.125.100 Annual Review Process. [BJ1]

A. Purpose. The purpose of this section is to establish procedures for amending the comprehensive plan and for major development regulation amendments.

B. Applicability. The following actions shall be subject to the provisions of this section (BMC 17.125.100):

1. Amending the text of the comprehensive plan or a comprehensive plan map.

2. Major amendments to the text of the City's development regulations. A major amendment is an amendment that substantively changes the effect of the code, requires a corresponding comprehensive plan amendment, or cannot otherwise be classified as a minor amendment.

3. Zoning map amendments that require a corresponding comprehensive plan amendment including area wide rezones as described in BMC 17.125.070.

4. Adoption or amending functional plans related to, referenced by, or necessary to implement the comprehensive plan, such as sewer, stormwater, or transportation plans.

C. Exemptions. The following actions are not subject to the annual review process described in this section (BMC 17.125.100):

1. Changes necessary to address an emergency involving an immediate threat to public health, safety, or the environment;

2. Changes required by the Growth Management Hearings Board or a Court in order to address an appeal;

3 Amendments to the Capital Improvement Plan (CIP) associated with the adoption of the City's annual budget. Changes to the CIP shall be subject to BMC 17.125.110

4. Minor amendments to the text of the City's development regulations. A minor amendment is an amendment that has little or no substantive effect. Minor amendments include editing changes to correct spelling, grammar and organizational problems, and changes necessary to address contradictory requirements or conflicting code provisions. Minor changes must be fully consistent with the comprehensive plan.

5. Site specific zoning map amendments that are consistent with the comprehensive plan, do not require a corresponding amendment to a comprehensive plan map.

D. Suggesting Amendments. Amendments to the comprehensive plan or comprehensive plan map and major development regulation amendments may be suggested by any person. Suggested amendments shall be submitted 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 suggested amendments that include all of the information required by this section will be advanced for further consideration.

1. Name, address, phone number, and email address of the person suggesting the amendment;

2. Citation of the specific text, map, or illustration to be amended;

3. The suggested amendment;

4. All applicable fees.

E. Evaluation of Suggested Amendments.

1. Suggesting Amendments. Suggested amendments shall be submitted between January 1st and June 1st of each year for possible consideration the following calendar year.

2. Department Action. On an annual basis the Community Development Department shall compile a list of suggested amendments received between January 1st and June 1st. The list prepared by the Community Development Department shall then be provided to the Planning Commission by August 1st.

3. Planning Commission Consideration. Based on the list prepared by the Community Development Department the Planning Commission shall hold one or more public meetings to consider the list of suggested amendments and may select suggested changes warranting further consideration and add them to the annual work program. Items should be selected for inclusion in the annual work program based on the priorities identified in the Implementation Element of the comprehensive plan and the following additional considerations.

a. The suggested amendments addresses a broad public interest rather than a narrow private interest;

b. The suggested amendment addresses a documented problem with the comprehensive plan or development regulations, or is intended to address a significant change in conditions that has occurred since the comprehensive plan or development regulations were adopted;

c. The suggested amendment does not conflict with other comprehensive plan provisions;

d. The suggested amendment is consistent with the requirements of the Washington State Growth Management Act (GMA) and the Skagit County Countywide Planning Policies;

e. The Community Development Department and Planning Commission have sufficient resources to properly consider the suggested amendment and consideration of the suggested amendment will not conflict with or delay other higher priority work items.

4. City Council Consideration. Following the review process outlined above the Planning Commission should forward a draft work plan and a list of any suggested amendments warranting further consideration to the City Council by October 1st. The Council should then act on the Planning Commission's recommendation by December 31st.

5. Effect of City Council Action. The list of suggested amendments included in the final work plan approved by the City Council shall be known as the "annual review docket". Only amendments included on the annual review docket may considered for action the following year. Inclusion of a suggested amendment on the annual review docket does not require that be taken on the docketed item. Based on resource constraints, feasibility, or other considerations, docketed items may be deferred to subsequent years, deferred to subsequent periodic update cycles, or dropped from further consideration.

6. The process for suggesting amendments is intended to provide an opportunity to bring potential amendments to the attention of the Planning Commission and City Council but does not create an obligation for the City to act on any suggested amendment. The Planning Commission and City Council may, at their discretion, decline to take action or defer action to a subsequent year or review cycle.

F. Adoption Process. Amendments to the comprehensive plan and major development regulations amendments shall be made no more frequently than once each calendar year. All changes being advanced for action shall be combined and considered together in a consolidated fashion so the cumulative, or combined impact