

Chapter 20.35 REVIEW AND APPEAL PROCEDURES

Sections:

- 20.35.010 Purpose and scope
- 20.35.015 Framework for decisions
- 20.35.020 Pre-application conferences
- 20.35.030 Applications
- 20.35.035 Method of mailing and publication
- 20.35.040 Construction notices
- 20.35.045 Land use decisions – When final
- 20.35.070 Appeal of City land use decisions to Superior Court
- 20.35.080 Merger of certain decisions
- 20.35.085 Appeals of nonland use matters
- 20.35.100 Process I: Hearing Examiner quasi-judicial decisions
- 20.35.120 Notice of application
- 20.35.125 Minimum comment period
- 20.35.127 Public meetings
- 20.35.130 Director's recommendation
- 20.35.135 Public notice of Director's recommendation
- 20.35.137 Hearing Examiner public hearing
- 20.35.140 Hearing Examiner decision
- ~~20.35.150 Appeal of Hearing Examiner decision~~
- 20.35.200 Process II: Administrative decisions
- 20.35.210 Notice of application
- 20.35.225 Minimum comment period
- 20.35.227 Public meetings
- 20.35.230 Director's decision
- 20.35.235 Notice of decision

- 20.35.250 Appeal of Process II decisions
- 20.35.300 Process III: City Council quasi-judicial decisions
- 20.35.320 Notice of application
- 20.35.325 Minimum comment period
- 20.35.327 Public meetings
- 20.35.330 Director's recommendation
- 20.35.335 Public notice of Director's recommendation
- 20.35.337 Hearing Examiner public hearing
- 20.35.340 Hearing Examiner recommendation
- 20.35.350 ~~Appeal of Hearing Examiner recommendation~~ Reserved
- 20.35.355 City Council decision on the application
- 20.35.365 Reserved
- 20.35.400 Process IV: City Council legislative actions
- 20.35.410 Planning Commission procedure
- 20.35.415 Notice of application
- 20.35.420 Public hearing notice
- 20.35.430 Public hearing
- 20.35.435 Reserved
- 20.35.440 City Council action
- 20.35.450 Reserved
- 20.35.500 Process V: Administrative decisions with no administrative appeal
- 20.35.510 Notice of application
- 20.35.520 Minimum comment period
- 20.35.525 Public meetings
- 20.35.530 Director's decision
- 20.35.535 Notice of decision
- 20.35.540 Appeal of Process V decisions

Chapter 20.35 Review and Appeal Procedures

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20.35.045 Land use decisions – When final.

When a decision is made to approve, conditionally approve, or deny an application, the applicant shall be notified. Process V decisions and minor or ministerial administrative land use decisions that are not subject to administrative appeal shall be final at the time of the Director's decision that the application conforms to all applicable codes and requirements. Process I decisions are final ~~upon expiration of any applicable City administrative appeal period, or, if appealed,~~ on the date of the City Council's Hearing Examiner's final-written decision on the application is mailed. Process II decisions are final upon expiration of any applicable City administrative appeal period, or, if appealed, on the day following issuance of a final City decision on the administrative appeal. Process III and IV decisions are final on the date of the City Council's final decision or action on the application or proposal.

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20.35.080 Merger of certain decisions.

A. Process I and III and Process II, Including SEPA Threshold Determinations.

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

B. SEPA Threshold Determination with Process IV or Process V Decisions.

The SEPA threshold determination associated with a Process IV or Process V action shall be merged with the Process IV and Process V action, and processed according to the notice, decision, appeal and other procedures set forth in LUC 20.35.400 through 20.35.~~450~~440 (Process IV) or LUC 20.35.500 through 20.35.540 (Process V).

20.35.085 Appeals of nonland use matters.

Certain other appealable administrative decisions are made by City departments, including but not limited to decisions pursuant to the City's Traffic Standards Code, Chapter 14.10 BCC; Transportation Improvement Impact Fee Program, Chapter 22.16 BCC; the School Impact Fees for Issaquah School District No. 411 and Renton School District No. 403, Chapter 22.18 BCC; the Sewer Utility Code, Chapter 24.04 BCC; the

Storm and Surface Water Utility Code, Chapter 24.06 BCC; the Sign Code, Chapter 22B.10 BCC; and the Environmental Procedures Code, Chapter 22.02 BCC. These types of non-Land Use Code appeals are heard and decided by the City Hearing Examiner. When associated with a consolidated Land Use permit application, the appeal will be heard in conjunction with any appeal on the Land Use application. In some cases, the relevant code modifies the appeal process slightly compared to Land Use Code appeals. (See e.g., Transportation Improvement Impact Fee Program: only applicant-developer may appeal.) In such cases, and as to those codes only, the procedures governing other appeals shall control. In all cases, however, the final City decision on the administrative appeal is made by the Hearing Examiner. Information on non-Land Use Code appeals is available from the department administering the relevant code and from the City Hearing Examiner.

20.35.100 Process I: Hearing Examiner quasi-judicial decisions.

- A. LUC 20.35.100 through 20.35.~~150~~140 contain the procedures the City will use in implementing Process I. This process begins with a complete application, followed by notice to the public of the application and a public comment period, during which time an informational meeting will be held. If required by the State Environmental Policy Act (SEPA) a threshold determination will be issued by the Environmental Coordinator. The threshold determination may be issued in conjunction with issuance of the Director's recommendation on the application. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to issuance of the Director's recommendation. If the requirement to prepare an EIS or a supplemental EIS is appealed by the applicant, that appeal will also be resolved prior to issuance of the Director's recommendation.
- B. Following issuance of the Director's recommendation, a public hearing will be held before the City Hearing Examiner. If a SEPA Determination of Nonsignificance (DNS) was issued (no EIS required) and an appeal of the DNS has been filed, the appeal hearing on the DNS will be combined with the public hearing on the Director's recommendation. Following the public hearing, the Hearing Examiner will issue a written report which will set forth a decision to approve, approve with modifications, or deny the application. The Examiner's report will also include a final City decision on any DNS or other Process II appeal.
- C. The decision of the Hearing Examiner on a Process I application is ~~appealable to the City Council. The City Council action deciding the appeal and approving, approving with modifications, or denying a project is~~ the final City decision on a Process I application. A final decision by the Hearing Examiner on a Process I application may be appealed to Superior Court as set forth in LUC 20.35.070.

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

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

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

- ~~1. Who May Appeal. The decision of the Hearing Examiner may be appealed by any person who participated in the public hearing as provided for in LUC 20.35.137, or by the applicant or the City.~~
- ~~2. Form of Appeal. A person appealing the decision of the Hearing Examiner must file with the City Clerk a written statement of the findings of fact or conclusions which are being appealed and must pay a fee, if any, as established by ordinance or resolution. The written statement must be filed together with an appeal notification form available from the Office of the City Clerk.~~
- ~~3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 14 days following the date the decision of the Hearing Examiner was mailed.~~
- ~~4. Hearing Required. The City Council shall conduct a closed record appeal hearing in order to decide upon an appeal of the decision of the Hearing Examiner. The decision on any such appeal shall be made within such time as is required by applicable state law.~~
- ~~5. Public Notice of Appeal Hearing.~~
 - ~~a. Content of Notice. The City Clerk shall prepare a notice of an appeal hearing containing the following:~~
 - ~~i. The name of the appellant, and if applicable the project name, and~~
 - ~~ii. The street address of the subject property, and a description in nonlegal terms sufficient to identify its location, and~~
 - ~~iii. A brief description of the decision of the Hearing Examiner which is being appealed, and~~
 - ~~iv. The date, time and place of the appeal hearing before the City Council.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~C. Required Vote.~~

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

~~D. Effect of Decision.~~

~~The decision of the City Council on the application is the final decision of the City and may be appealed to Superior Court as provided in LUC 20.35.070.~~

~~E. Commencement of Activity.~~

~~Subject to LUC 20.35.070 the applicant may commence activity or obtain other required approvals authorized by the Process I decision the day following the effective date of the ordinance approving the project or approving it with modifications. Activity commenced prior to the expiration of the full appeal period, LUC 20.35.070, is at the sole risk of the applicant.~~

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20.35.300 Process III: City Council quasi-judicial decisions.

LUC 20.35.300 through 20.35.~~365~~355 contain the procedures the City will use in implementing Process III. The process is similar to Process I, except that the Hearing Examiner makes a recommendation to the City Council following the public hearing. The City Council acts as the final decisionmaker ~~even when no appeal of the Hearing Examiner recommendation is filed.~~

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20.35.340 Hearing Examiner recommendation.

A. Criteria for Recommendation.

The Examiner shall recommend approval or approval with conditions or modification if the applicant has demonstrated that the proposal complies with the applicable

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

B. Limitation on Modification.

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

C. Conditions.

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

D. Written Recommendation of the Hearing Examiner.

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

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

E. Distribution.

The Office of the Hearing Examiner shall mail the written recommendation, bearing the date it is mailed, to each person who participated in the public hearing.

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

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

~~1.—Who May Appeal. The recommendation of the Hearing Examiner may be appealed by any person who participated in the public hearing as provided for in LUC 20.35.337, or by the applicant or the City.~~

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

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

~~4.—Hearing Required. The City Council shall conduct a closed record appeal hearing and shall decide upon an appeal of the recommendation of the Hearing Examiner prior to or in conjunction with taking final action on the application pursuant to LUC 20.35.355. The decision on any appeal of the Hearing Examiner's recommendation and final action on the application shall be made within such time as is required by applicable state law.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20.35.355 City Council decision on the application.

A. General.

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

B. Elements to be Considered.

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

1. The complete record developed before the Hearing Examiner; and
2. The recommendation of the Hearing Examiner.

~~3. The City Council decision on any appeal of the recommendation of the Hearing Examiner.~~

C. Decision.

The City Council shall either:

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

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20.35.400 Process IV: City Council legislative actions.

LUC 20.35.400 through 20.35.~~450~~440 contain the procedures the City shall use to make legislative land use decisions (Process IV actions). The process shall include a public hearing, held by either the Planning Commission or City Council, and action by the City Council. Review under the State Environmental Policy Act (SEPA) and the Bellevue Environmental Procedures Code may be required.