

City of
Bellevue



STAFF REPORT

DATE: July 14, 2022

TO: Mayor Robinson and Members of the City Council

FROM: Kathy Gerla, City Attorney, 452-7220
City Attorney's Office

SUBJECT: Public Hearing on Land Use Code amendment to the quasi-judicial permit process to optimize the legislative role of the City Council, encourage meaningful public engagement early in the land use process, and promote fair, independent and efficient land use decision-making. File No. 22-113932-AD.

I. BACKGROUND

Procedural Information

At its June 9 through 11, 2022 meeting, the City Council requested staff to initiate the process for Council to consider possible amendments to the City's Land Use Code (LUC) that would eliminate appeals to the City Council for Process I and Process III land use matters.

A public hearing is scheduled during the City Council's August 1, 2022 meeting. The Council will then deliberate and consider public comments received between July 7, 2022 and this public hearing, and may take final action on the LUC amendment.

Current Code

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

Process III land use matters include applications for all Site-specific or Project-specific Rezones¹. Under the current LUC, the Hearing Examiner issues a recommendation—not a decision—to the City Council on Process III land use matters. The City Council

¹ LUC 20.35.015.D also currently includes, as Process III matters, all CUPs, Plats, and PUDs proposed within the jurisdiction of the EBCC. However, that language has no legal effect as the EBCC no longer exists. The State Legislature recently passed HB 1796, which eliminated community councils, including the EBCC. At its June 21, 2022 meeting, the City Council directed staff to bring back a LUC amendment for public hearing and action in July that will eliminate the references to the EBCC in LUC Chapter 20.35.

considers the Hearing Examiner's recommendation and issues the final decision on Process III land use matters. Hearing Examiner Process III recommendations go to the City Council irrespective of whether an appeal is filed. If an appeal is filed, Council adjudicates the merits of the appeal contemporaneously with the City Council's final decision on the rezone at issue.

When the City Council hears and decides appeals of Hearing Examiner decisions or recommendations on Process I and Process III appeals, the Council acts in a quasi-judicial capacity, which requires the Council to adjudicate appeals like a judge. The Council is not acting in a policy-making role. The Council may only grant an appeal if the person appealing has carried the burden of proof and the Council finds that the Hearing Examiner's decision or recommendation is not supported by material and substantial evidence in the record. That requires the City Council to review all the evidence in the record developed during the Hearing Examiner process and then apply the controlling law to the evidence to determine the outcome. Every quasi-judicial decision must be supported by written findings of fact and conclusions of law. A quasi-judicial decision that does not correctly apply the law to the facts, or is not supported by substantial evidence, will be overturned by the reviewing court in a subsequent legal challenge.

Proposed Amendment

On several occasions, the City Council has indicated a preference that appeals of Process I decisions should be adjudicated by state courts and there should not be an administrative appeal for Process III recommendations by the Hearing Examiner to the City Council. The draft amendment to Chapter 20.35 LUC preserves the Hearing Examiner decision and recommendation provisions but removes appeals of Hearing Examiner actions to the City Council. A strike-draft of the LUC amendment is provided as Attachment A.

If the proposed LUC amendment is adopted, the City Council would retain its legislative authority to adopt clear and effective policies and codes that govern all land use permits, but the Council would not adjudicate appeals of Hearing Examiner decisions or recommendations under Chapter 20.35 LUC as part of the land use permit review process. The amendment is intended to provide a more efficient and reliable land use permitting process and encourage public participation and citizen engagement to occur early.

Rationale for Process Change

When hearing and deciding appeals from Hearing Examiner decisions or recommendations, the City Council must avoid political influence or pressure from the public. For these actions, the City Council is required to be fair, impartial and unbiased, and must abide by specific rules related to contact with citizens regarding matters that Council will hear on appeal. The Council must make its decision on an appeal based on the evidence in the Hearing Examiner's record and cannot consider new or additional evidence or comments from the public. The Council is required to deny the appeal if the Hearing Examiner's decision is supported by material and substantial evidence in the

record. In this process, Councilmembers are not acting as policy-makers but rather as appellate judges, which is not their normal role.

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

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

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

II. REVIEW PROCESS

At its June 9 through 11, 2022 meeting, the City Council requested staff to initiate the process for Council to consider amendments to the City's LUC that would eliminate appeals to the City Council for Process I and Process III land use matters.

A public hearing is scheduled during the City Council's August 1, 2022 meeting. After the public hearing, the Council will deliberate and consider public comments received between July 7, 2022 and the public hearing. The Council may take final action at any time following the public hearing.

III. PUBLIC ENGAGEMENT

Required Public Notice

The notice required for City Council Legislative Actions (Process IV) is governed by LUC 20.35.415 through 20.35.450. Notice of the LUC amendment application was published in the Weekly Permit Bulletin on July 7, 2022, and availability of the Weekly Permit Bulletin was noticed in the Seattle Times.

Notice of the Public Hearing was published in the Weekly Permit Bulletin on July 14, 2022, along with availability of this Staff Report, and availability of the Weekly Permit Bulletin was noticed in the Seattle Times. The notice of public hearing was also provided to those individuals who have subscribed to receive these notices and those who have expressed interest on this topic. Notice of the Public Hearing will also be published in the Seattle Times on July 18, 2022.

Department of Commerce Notice

Pursuant to the Washington State Growth Management Act, proposed amendments to the LUC must be sent to the Washington State Department of Commerce to review and comment on the proposed amendments to the LUC. The required notice to the Department of Commerce and the initial draft LUC amendment were transmitted on July 14, 2022, and a copy of both documents is available for review in the code amendment file. No comments have been received by Commerce as of the date of this Report.

Enhanced Public Engagement

In addition to the requirements of LUC 20.35.415 *et seq* for City Council Legislative Actions under Process IV, staff has provided enhanced public engagement for this LUC amendment to include an online presence. A webpage was launched for this LUC amendment to provide opportunity for the public to learn about the LUC amendment, with sections regarding LUC amendment background, how to get involved, and staff contact information to submit written comments.

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

IV. DECISION CRITERIA

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

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

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

Comprehensive Plan Policy CE-5:

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

Comprehensive Plan Policy ED-6:

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

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

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

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

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

- Councilmembers are elected as legislators, not as judges. The LUC amendment would optimize the legislative role of the City Council because the Council would retain its primary, legislative role to adopt comprehensive plan policies and development regulations to achieve the city vision.
- The City Council would no longer adjudicate complicated land use issues without the necessary expertise. Hearing Examiners, who have expertise in conducting quasi-judicial proceedings on land use issues, would adjudicate land use matters during the permit review process to ensure

that the policies and regulations adopted by the City Council are applied correctly and lawfully.

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

- The public benefits from a Hearing Examiner conducting the public hearing, considering all the evidence, and applying the laws and policies adopted by the City Council to reach a decision. This process ensures fairness to all parties because the Hearing Examiner is a trained expert who is impartial and objective. The public is ill-served by the appearance of bias during a quasi-judicial appeal, or by a final decision that is not supported by the requisite legal analysis and expertise.
- Under the current LUC, quasi-judicial appeals to the City Council in Process I and Process III land use matters are closed-record appeals. This means that the Council cannot consider new testimony, public comment or evidence in addition to the evidence previously submitted to the Director and the Hearing Examiner. If the public fails to engage in the process early, its voice may not be memorialized in the closed record later considered by the quasi-judicial body hearing an appeal of the Hearing Examiner's decision. The amendment would encourage public participation early in the land use process—*i.e.*, during the time period when public comment, community engagement, and relevant evidence is presented and considered—and prior to a closed-record appeal that does not provide for public comment or the submission of additional evidence outside of the record developed before the Director's recommendation and the Hearing Examiner's action.

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

Finding: The amendment is not contrary to the interests of citizens and property owners as it will optimize the role of the City Council to shape City policy, encourage meaningful public engagement early in the land use process when the record is open for public comment and evidence, and promote fair, independent and efficient land use decision-making. Finally, all citizens and property owners in the City of Bellevue benefit from trained, expert quasi-judicial decision-making that ensures the integrity of the land use process.

V. STATE ENVIRONMENTAL POLICY ACT

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

VI. RECOMMENDATION

Staff has concluded that the Quasi-Judicial LUC Amendment, as drafted in Attachment A, is consistent with the decision criteria required for adoption of amendments to the text of the LUC, pursuant to Part 20.30J LUC. Staff recommends the LUC amendment to the City Council for approval.

ATTACHMENT:

A. Proposed Quasi-Judicial LUCA Strike-Draft

NOTE: The East Bellevue Community Council (EBCC) no longer exists. The City Council is expected to adopt a separate ordinance in July eliminating the language in Chapter 20.35 concerning the EBCC. For completeness, that language is also stricken here.

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
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- 20.35.120 Notice of application
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- 20.35.130 Director’s recommendation
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- 20.35.137 Hearing Examiner public hearing
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- 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 Community Council review and decision~~
- 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 ~~Community Council courtesy hearing~~Reserved
- 20.35.440 City Council action
- ~~20.35.450 Community Council review and action~~
- 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

20.35.010 Purpose and scope.

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

20.35.015 Framework for decisions.

- A. Land use decisions, other than decisions on applications for Shoreline Conditional Use Permits, Shoreline Substantial Development Permits, and variances to the Shoreline Master Program, are classified into five processes based on who makes the decision, the amount of discretion exercised by the decisionmaker, the level of impact associated with the decision, the amount and type of public input sought, and the type of appeal opportunity. Refer to LUC 20.25E.100 through 20.25E.200 for procedures, permits, and decisions related to Shoreline Conditional Use Permits, Shoreline Substantial Development Permits, and variances to the Shoreline Master Program.
- B. Process I decisions are quasi-judicial decisions made by the Hearing Examiner on project applications. The following types of applications require a Process I decision:
 - 1. Conditional Use Permits (CUPs);
 - 2. Preliminary subdivision approval (plat); and
 - 3. Planned unit development (PUD) approval; ~~provided, that applications for CUPs, preliminary plats, and PUDs, within the jurisdiction of a Community Council pursuant to RCW 35.14.040, shall require a Process III decision.~~
- C. Process II decisions are administrative land use decisions made by the Director. Threshold determinations under the State Environmental Policy Act (SEPA) made by the Environmental Coordinator and Sign Code variances are also Process II decisions. (See the Environmental Procedures Code, BCC 22.02.034, and Sign Code, BCC 22B.10.180.) The following types of applications require a Process II decision:
 - 1. Administrative amendments;
 - 2. Administrative conditional use;

3. Design review;
 4. Home Occupation Permit;
 5. Interpretation of the Land Use Code;
 6. Preliminary short plat;
 7. Variance;
 8. Critical Area Land Use Permits;
 9. Master Development Plans;
 10. Design and Mitigation Permits required pursuant to Part 20.25M LUC, Light Rail Overlay District; and
 11. Review under State Environment Policy Act (SEPA) when not consolidated with another permit.
- D. Process III decisions are quasi-judicial decisions made by the City Council. The following types of applications require a Process III decision:
1. Site-specific or project-specific rezone; [and](#)
 2. ~~Conditional use, preliminary plat, and Planned Unit Development projects subject to the jurisdiction of a Community Council pursuant to RCW 35.14.040; and~~
 3. A rezone of any property to the OLB-OS Land Use District designation.
- E. Process IV decisions are legislative nonproject decisions made by the City Council under its authority to establish policies and regulations regarding future private and public development and management of public lands. The following are Process IV decisions:
1. Consideration of suggestions for amendments to the Comprehensive Plan;
 2. Amendments to the text of the Land Use Code or Comprehensive Plan;
 3. Amendments to the Comprehensive Plan Map;
 4. Amendments to the Zoning Map (rezones) on a Citywide or areawide basis.
- F. Process V decisions are administrative land use decisions made by the Director, for which no administrative appeal is available. The following are Process V decisions:
1. Temporary Encampment Permits.
- G. Other types of land use applications and decisions made by the Director, including those set forth below, are minor or ministerial administrative decisions, exempt from the above land use processes. Notice and an administrative appeal opportunity are

not provided. LUC 20.35.020 through 20.35.070, however, apply to all land use applications.

1. Boundary Line Adjustment;
2. Final Plat (also requires Hearing Examiner approval prior to recording);
3. Final Short Plat;
4. Land Use Exemption;
5. Temporary Use Permit;
6. Vendor Cart Permit;
7. Requests for Reasonable Accommodation as defined by Part 20.30TLUC*;
8. Applications and decisions for activities for which the Director of the Utilities Department has granted an exemption to the “minimum requirements for new development and redevelopment” pursuant to BCC 24.06.065.C.

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

20.35.020 Pre-application conferences.

A pre-application conference is required prior to submitting an application for Conditional Use Permits, preliminary subdivision approval, planned unit developments, Master Development Plans, Design and Mitigation Permits required pursuant to Part 20.25M LUC, Light Rail Overlay District, and design review projects, unless waived by the Director.

20.35.030 Applications.

A. Who May Apply.

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

1. The property owner, authorized agent of the owner, or Regional Transit Authority authorized by LUC 20.25M.010.C to apply for permits may apply for any type of Process I, Process II, or Process III land use decision.
2. A resident of the dwelling may apply for a Home Occupation Permit.
3. The City Council, the Director of the Development Services Department or the Planning Director may apply for a project-specific or site-specific rezone or for an areawide (Process IV) rezone.
4. The Planning Commission may propose site-specific and non-site-specific amendments to the Comprehensive Plan Map or to the text of the

Comprehensive Plan for consideration pursuant to the procedure for consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.B.2.

5. City Council, the Planning Commission, or the Director with the concurrence of either body, may initiate an amendment to the text of the Land Use Code.
6. A property owner or authorized agent of a property owner may apply to propose a site-specific amendment to the Comprehensive Plan pursuant to the annual procedure for consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.A.
7. Any person may apply to propose a non-site-specific amendment to the Comprehensive Plan pursuant to the annual procedure for consideration of Comprehensive Plan Amendments set forth in LUC 20.30I.130.A.
8. Any person may request an interpretation of the Land Use Code. In addition, the Director may issue interpretations of the Land Use Code as needed.

B. Submittal Requirements.

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

C. Notice of Complete Application.

1. Within 28 days after receiving a land use permit application, the Director shall mail, fax, or otherwise provide to the applicant a written determination that the application is complete, or that the application is incomplete and what is necessary to make the application complete.
2. If the Director does not provide a written determination within the 28 days, the application shall be deemed complete as of the end of the 28th day.
3. If additional information is needed to make the application complete, within 14 days after an applicant has submitted the information identified by the Director as being needed, the Director shall notify the applicant whether the application is complete or what additional information is necessary.
4. A land use application is complete for purposes of this section when it meets the submittal requirements established by the Director and is sufficient for continued processing even though additional information may be required or project

modifications may be undertaken subsequently. The determination of completeness shall not preclude the Director from requesting additional information or studies either at the time of the notice of completeness or subsequently, if new information is required to complete review of the application or substantial changes in the permit application are proposed.

D. Project Timelines.

Subject to Chapter 36.70B RCW, the Director shall establish reasonable and predictable timelines for review of land use applications and shall provide target dates for decisions on such applications. The project timelines established by the Director may be modified for a proposal including a critical areas report as set forth in LUC 20.25H.270.

20.35.035 Method of mailing and publication.

A. Mailing.

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

B. Publication.

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

20.35.040 Construction notices.

The Director may require construction posting and neighborhood notification for any development on real property. Removal of or failure to post a construction notice required by the Director shall constitute a violation of this section and otherwise is enforceable under Chapter 1.18 BCC.

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

20.35.045 Land use decisions – When final.

When a decision is made to approve, conditionally approve, or deny an application, the applicant shall be notified. Process V decisions and minor or ministerial administrative

land use decisions that are not subject to administrative appeal shall be final at the time of the Director's decision that the application conforms to all applicable codes and requirements. Process I decisions are final ~~upon expiration of any applicable City administrative appeal period, or, if appealed,~~ on the date ~~of the City Council's Hearing Examiner's final-written~~ decision on the application ~~is mailed~~. Process II decisions are final upon expiration of any applicable City administrative appeal period, or, if appealed, on the day following issuance of a final City decision on the administrative appeal. Process III and IV decisions are final on the date of the City Council's final decision or action on the application or proposal, ~~subject to LUC 20.35.355.G, 20.35.365 and 20.35.450 regarding Community Council jurisdiction.~~

20.35.070 Appeal of City land use decisions to Superior Court.

A. General.

A final City decision on a land use permit application (Processes I through III and V) may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040. Notwithstanding the provisions of this subsection, the time for filing an appeal of a final Process II land use action that has been merged with a Process I or III application will be tolled until the Process I or III decisions are final. Requirements for fully exhausting City administrative appeal opportunities, if any are available, must be fulfilled.

B. A final City action on a legislative nonproject land use proposal (Process IV) may be appealed by petition to the Growth Management Hearings Board as set forth in LUC 20.35.440.C and RCW 36.70A.290.

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.~~450~~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.

20.35.120 Notice of application.

- A. Notice of application shall be provided, pursuant to the requirements of this section, within 14 days of issuance of the notice of completeness for an application for a Process I land use decision. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats).
- B. The Director shall provide notice of the application as follows:
 - 1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed in a newspaper of general circulation in the City;
 - 2. Mailed notice to owners of real property within 500 feet of the project site including the following information:
 - a. The date of application;
 - b. The project description and location;
 - c. The types of City permits or approvals applied for;
 - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits or approvals required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings or public hearings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation;

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

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

1. Posting of two signs or placards on the site or in a location immediately adjacent to the site that provides visibility to motorists using adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards.

20.35.125 Minimum comment period.

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

20.35.127 Public meetings.

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

20.35.130 Director's recommendation.

A written report of the Director making a recommendation to the Hearing Examiner for approval, approval with conditions or with modifications, or for denial shall be prepared.

The Director's recommendation shall be based on the applicable Land Use Code decision criteria, shall include any conditions necessary to ensure consistency with City development regulations, and may include any mitigation measures proposed under the provisions of the State Environmental Policy Act (SEPA).

20.35.135 Public notice of Director's recommendation.

A. Notice of Recommendation, SEPA Determination, and Hearing Examiner Hearing.

1. Public Notice of the availability of the Director's recommendation shall be published in a newspaper of general circulation. If a Determination of Significance (DS) was issued by the Environmental Coordinator, the notice of the Director's recommendation shall state whether an EIS or Supplemental EIS was prepared or whether existing environmental documents were adopted. If a Determination of Nonsignificance (DNS) is issued, the DNS may be issued and published in conjunction with the Director's recommendation except as provided in the Environmental Procedures Code, BCC 22.02.031 and 22.02.160. The notice of recommendation shall also include the date of the Hearing Examiner public hearing for the application, which shall be scheduled no sooner than 14 days following the date of publication of the notice.
2. The Director shall mail notice of the recommendation and public hearing to each owner of real property within 500 feet of the project site.
3. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of recommendation.
4. The Director shall mail notice to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be ~~all members of a Community Council and~~ a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use decisions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.
5. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats).

20.35.137 Hearing Examiner public hearing.

A. Participation in Hearing.

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

B. Transmittal of File.

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

C. Hearing Record.

The Hearing Examiner shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing.

20.35.140 Hearing Examiner decision.

A. Criteria for Decision.

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

B. Limitation on Modification.

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

C. Conditions.

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

D. Written Decision of the Hearing Examiner.

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

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

E. Distribution.

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

20.35.150—Appeal of Hearing Examiner decision.

~~A. A Process | 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 LUG 20.35.137, or by the applicant or the City.~~
- ~~2. Form of Appeal. A person appealing the decision of the Hearing Examiner must file with the City Clerk a written statement of the findings of fact or conclusions which are being appealed and must pay a fee, if any, as established by ordinance or resolution. The written statement must be filed together with an appeal notification form available from the Office of the City Clerk.~~
- ~~3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 14 days following the date the decision of the Hearing Examiner was mailed.~~
- ~~4. Hearing Required. The City Council shall conduct a closed record appeal hearing in order to decide upon an appeal of the decision of the Hearing Examiner. The decision on any such appeal shall be made within such time as is required by applicable state law.~~
- ~~5. Public Notice of Appeal Hearing.~~
 - ~~a. Content of Notice. The City Clerk shall prepare a notice of an appeal hearing containing the following:~~
 - ~~i. The name of the appellant, and if applicable the project name, and~~

- ~~ii. The street address of the subject property, and a description in nonlegal terms sufficient to identify its location, and~~
 - ~~iii. A brief description of the decision of the Hearing Examiner which is being appealed, and~~
 - ~~iv. The date, time and place of the appeal hearing before the City Council.~~
 - ~~b. Time and Provision of Notice. The City Clerk shall mail notice of the appeal hearing on an appeal of the decision of the Hearing Examiner no less than 14 days prior to the appeal hearing to each person entitled to participate in the appeal pursuant to LUC 20.35.150.A.6.a.~~
- ~~6. Closed Record Hearing on Appeal to City Council.~~
 - ~~a. Who May Participate. The applicant, the appellant, the applicable Department Director, or representative of these parties may participate in the appeal hearing.~~
 - ~~b. How to Participate. A person entitled to participate may participate in the appeal hearing by: (1) Submitting written argument on the appeal to the City Clerk no later than the date specified in the City Council's Rules of Procedure; or (2) making oral argument on the appeal to the City Council at the appeal hearing. Argument on the appeal is limited to information contained in the record developed before the Hearing Examiner and must specify the findings or conclusions which are the subject of the appeal, as well as the relief requested from the Council.~~
 - ~~c. Hearing Record. The City Council shall make an electronic sound recording of each appeal hearing.~~
- ~~7. City Council Decision on Appeal.~~
 - ~~a. Criteria. The City Council may grant the appeal or grant the appeal with modifications if the appellant has carried the burden of proof and the City Council finds that the decision of the Hearing Examiner is not supported by material and substantial evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner.~~
 - ~~b. Conditions. The City Council may impose conditions as part of the granting of an appeal or granting of an appeal with modifications to ensure conformance with the criteria under which the application was made.~~
 - ~~c. Findings. The City Council shall adopt findings and conclusions which support its decision on the appeal.~~

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

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

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

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

~~**C. **Required Vote.****~~

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

~~**D. **Effect of Decision.****~~

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

~~**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.~~

20.35.200 Process II: Administrative decisions.

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

in the Code for each type of Process II application. Public notice of the decision is provided, along with an opportunity for administrative appeal of the decision.

- B. If required by the State Environmental Policy Act (SEPA), a threshold determination will be issued by the Environmental Coordinator. The threshold determination is also a Process II decision, except as set forth in LUC 20.35.015.C, and may be issued in conjunction with the Director’s decision on the accompanying land use decision. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to the issuance of the accompanying land use decision. If the requirement to prepare an EIS or a supplemental EIS is appealed by the applicant, that appeal will be resolved prior to the issuance of the land use decision. (See BCC 22.02.031 and 22.02.160 regarding timing of issuance of the threshold determination.)
- C. Process II decisions of the Director and SEPA threshold determinations are final decisions, effective on the day following the expiration of any associated administrative appeal period, except that for projects where no person or entity submitted comments prior to the date the final decision was issued pursuant to LUC 20.35.250.A.1, the Process II decision is a final decision effective on the date of issuance. If an administrative appeal is filed by a person or entity that submitted comments prior to the date the final decision was issued as set forth in LUC 20.35.250.A.1, the decision is not final until the appeal is heard and decided by the City Hearing Examiner, or the Growth Management Hearings Board pursuant to LUC 20.35.250.C and RCW 36.70A.290.
- D. Where no person or entity has submitted comments prior to the date the final decision was issued, as set forth in LUC 20.35.250.A.1, the City may issue project permits during the appeal period, provided the applicant submits a waiver of appeal statement to the City. Nothing in this provision shall require the City, however, to issue project permits prior to the expiration of the appeal period.

20.35.210 Notice of application.

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

Table 20.35.210.A.

| Application Type | Publish | Mail | Sign |
|--------------------------------|----------------|-------------|-------------|
| Administrative Amendment | X | X | X |
| Administrative Conditional Use | X | X | X |

| | | | |
|---|---|---|---|
| Design Review | X | X | X |
| Home Occupation Permit | X | X | |
| Interpretation of Land Use Code | X | | |
| Preliminary Short Plat | X | X | X |
| Variance | X | X | |
| Critical Areas Land Use Permit | X | X | |
| SEPA Review (When Not Consolidated with Another Permit) | X | | |

1. For Process II decisions not included in Table 20.35.210.A, notice of application shall be provided by publication and mailing.
2. When required by Table 20.35.210.A, publishing shall include publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed, in a newspaper of general circulation in the City.
3. Mailing shall include mailed notice to owners of real property within 500 feet of the project site including the following information:
 - a. The date of application;
 - b. The project description and location;
 - c. The types of City permit(s) or approval(s) applied for;
 - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings or public hearings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation.
4. If signs are required, two signs or placards shall be posted by the applicant on the site or in a location immediately adjacent to the site that provides visibility to motorists using adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards.

5. Mailings shall also include mailing notice of the application including at least the information required in subsection A.2 of this section to each person who has requested such notice for the calendar year and paid any fee as established by the Director. This mailing shall also include ~~all members of a Community Council~~ and a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested notice of land use activity. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

20.35.225 Minimum comment period.

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

20.35.227 Public meetings.

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

20.35.230 Director's decision.

A written record of the Process II decision shall be prepared in each case. The record may be in the form of a staff report, letter, the permit itself, or other written document and shall indicate whether the application has been approved, approved with conditions or denied. The Director's decision shall be based on the applicable Land Use Code decision criteria, shall include any conditions to ensure consistency with City

development regulations, and may include mitigation measures proposed under the provisions of the State Environmental Policy Act (SEPA).

20.35.235 Notice of decision.

- A. Public notice of all Process II decisions shall be published in a newspaper of general circulation.
- B. The Director shall mail notice of the decision to each person who submitted comments during the public comment period or at any time prior to issuance of the decision.
- C. The Director shall mail notice to each person who has requested such notice and paid any fee as established by the Director. Included in this mailing shall be ~~all members of a Community Council and~~ a representative from each of the neighborhood groups, community clubs, and other citizens' groups who have requested regular notice of land use decisions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

20.35.250 Appeal of Process II decisions.

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

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

- 3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk

no later than 5:00 p.m. on the fourteenth day following the date of publication of the decision of the Director; except that if the Director's decision is consolidated with a threshold Determination of Nonsignificance under the State Environmental Policy Act for which a comment period pursuant to WAC 197-11-340 must be provided, the appeal period for the consolidated decision shall be 21 days.

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

1. Process IV. An appeal of a SEPA threshold determination on a Process IV action shall be filed together with an appeal of the underlying Process IV action. The appeal shall be by petition to the Growth Management Hearings Board and shall be filed within the 60-day time period set forth in RCW 36.70A.290.
2. Process V. An appeal of a SEPA threshold determination on a Process V action shall be filed together with an appeal of the underlying Process V action. The appeal shall be as set forth in LUC 20.35.070 and 20.35.540.

C. Notice of Appeal Hearing.

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

D. Hearing Examiner Hearing.

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

E. Hearing Examiner Decision on Appeal.

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

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

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

F. Appeal of Hearing Examiner Decision.

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

G. Time Period to Complete Appeal Process.

In all cases except where the parties to an appeal have agreed to an extended time period, the administrative appeal process shall be completed within 90 days from the date the original administrative appeal period closed. Administrative appeals shall be deemed complete on the date of issuance of the Hearing Examiner's decision on the appeal.

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.~~

20.35.320 Notice of application.

- A. Notice of application shall be provided, pursuant to the requirements of this section, within 14 days of issuance of the notice of completeness for an application for a Process III land use decision. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats).
- B. The Director shall provide notice of the application as follows:
 1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed in a newspaper of general circulation in the City.
 2. Mailed notice to owners of real property within 500 feet of the project site including the following information:
 - a. The date of application;
 - b. The project description and location;

- c. The types of City permits or approvals applied for;
 - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits or approvals required; related permits from other agencies or jurisdictions not included in the City permit process; the dates for any public meetings or public hearings; identification of any studies requested for application review; any existing environmental documents that apply to the project; and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation.
3. Mailed notice of the application including at least the information required in subsection B.1 of this section to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be ~~all members of a Community Council and~~ a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested regular notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.
- C. The Applicant shall provide notice of the application as follows:
1. Posting of two signs or placards on the site or in a location immediately adjacent to the site that provides visibility to motorists using adjacent streets. The Director shall establish standards for size, color, layout, design, wording, placement, and timing of installation and removal of the signs or placards.

20.35.325 Minimum comment period.

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

20.35.327 Public meetings.

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

B. Community Council Meetings.

~~If an application is within the jurisdiction of a Community Council pursuant to Chapter 35.14 RCW, the public meeting shall be held as part of that Community Council's regular meeting. The meeting may be conducted according to the Community Council's rules for a courtesy public hearing or otherwise coordinated with that Council's meeting schedule.~~

20.35.330 Director's recommendation.

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

20.35.335 Public notice of Director's recommendation.

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

- A. Public notice of the availability of the Director's recommendation shall be published in a newspaper of general circulation. If a Determination of Significance (DS) was issued by the Environmental Coordinator, the notice of the Director's recommendation shall state whether an Environmental Impact Statement (EIS) or Supplemental EIS was prepared or whether existing environmental documents were adopted. If a Determination of Nonsignificance (DNS) is issued, the DNS may be issued and published in conjunction with the Director's recommendation. The notice of recommendation shall also include the date of the Hearing Examiner public hearing for the application, which shall be scheduled no sooner than 14 days following the date of publication of the notice.
- B. The Director shall mail notice of the recommendation and public hearing to each owner of real property within 500 feet of the project site.
- C. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of recommendation.

- D. The Director shall mail notice to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be ~~all members of a Community Council and~~ a representative from each of the neighborhood associations, community clubs, or other citizens' groups who have requested notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.
- E. See additional noticing requirements in LUC 20.45A.110 for preliminary subdivisions (plats).

20.35.337 Hearing Examiner public hearing.

A. Participation in Hearing.

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

B. Transmittal of File.

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

C. Hearing Record.

The Hearing Examiner shall create for the City Council a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing.

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 LUG-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 LUG 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; ~~and~~
3. ~~The comments of a Community Council with jurisdiction pursuant to Chapter 35.14 RCW; and~~
4. ~~The City Council decision on any appeal of the recommendation of the Hearing Examiner.~~

C. Decision.

The City Council shall either:

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

D. Ordinance.

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

E. Required Vote.

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

F. Distribution.

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

G. Effect of Decision.

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

H. Commencement of Activity.

Subject to LUC ~~20.35.365~~ and 20.35.070 the applicant may commence activity or obtain other required approvals authorized by the Process III decision the day following the effective date of the ordinance approving the project or approving it with modifications. Activity commenced prior to the expiration of the full appeal period, LUC 20.35.070, is at the sole risk of the applicant.

~~20.35.365~~ — **Community Council review and decision.**

- ~~A. If the City Council approves, or approves with modifications, an application within the jurisdiction of a Community Council pursuant to RCW 35.14.040, that approval is not effective within the jurisdiction of the Community Council until the Community Council votes to approve the ordinance, or the Community Council fails to disapprove the ordinance within 60 days of the enactment of that ordinance.~~
- ~~B. The applicable Department Director shall prepare and distribute notice of the public hearing at which the Community Council will take action in accordance with the Community Council's Rules of Procedure.~~
- ~~C. The decision of the Community Council may be appealed to Superior Court as provided for in state law under the Land Use Petition Act, Chapter 36.70C RCW.~~

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. ~~An action by a Community Council may also be required, in which case the Community Council may hold a courtesy public hearing at any time prior to the City Council action.~~

20.35.410 Planning Commission procedure.

A. General.

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

B. Criteria.

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

C. Limitation on Modification.

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

D. Required Vote.

A vote to recommend adoption of the proposal or adoption with modification must be by a majority vote of the Planning Commission members present and voting.

20.35.415 Notice of application.

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

1. Publication of a brief description of the action or approval requested; if the application involves specific property, the street address of the subject property; name of the applicant and project name; date of application; and location where the complete application file may be reviewed in a newspaper of general circulation in the City.
2. If the proposal involves specific property, rather than an areawide or zonewide change, notice of the application containing at least the information in subsection A.1 of this section shall be mailed to each owner of real property within 500 feet of any boundary of the subject property.
3. The Director shall mail notice containing at least the information in subsection A.1 of this section to each person who has requested such notice for the calendar year and paid any applicable fee as established by the Director. Included in this mailing shall be ~~all members of a Community Council and~~ a representative from each of the neighborhood associations, community clubs, or other citizens' groups who have requested notice of land use actions. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.
4. If the proposal involves specific property, rather than an areawide or zonewide change, two signs or placards shall be posted by the applicant on the site or in a location immediately adjacent to the site that provides visibility to motorists using the adjacent streets. The Director shall establish standards for size, color, layout,

design, wording, placement, and timing of installation and removal of the signs or placards.

20.35.420 Public hearing notice.

A. Content.

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

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

B. Provision of Notice.

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

5. The Director shall mail notice to each person who submitted comments during the comment period or at any time prior to the publication of the notice of public hearing.

20.35.430 Public hearing.

A. Participation.

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

B. Hearing Record.

The Planning Commission or City Council shall compile written minutes of each hearing.

20.35.435 ~~Community Council courtesy hearing.~~Reserved.

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

~~B. The applicable Department Director shall prepare and distribute notice for the courtesy hearing as set forth in the Community Council Rules of Procedure.~~

20.35.440 City Council action.

A. General.

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

B. City Council Action.

The City Council may take one of the following actions:

1. Adopt an ordinance or resolution adopting the proposal or adopting the proposal with modifications; or
2. Adopt a motion denying the proposal; or

3. Refer the proposal back to the Planning Commission for further proceedings, in which case the City Council shall specify the time within which the Planning Commission shall report back to the City Council with a recommendation.

C. Effect of City Council Action.

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

~~20.35.450 — Community Council review and action.~~

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

~~**B. Notice.**~~

~~The applicable Department Director shall prepare and distribute notice of the public meeting at which the Community Council will take action as provided for in the Rules of Procedure of the Community Council.~~

20.35.500 Process V: Administrative decisions with no administrative appeal.

- A. This section through LUC 20.35.540 contain the procedures the City will use in implementing Process V. A Process V land use decision is an administrative decision made by the Director of the Development Services Department. Process V applications go through a period of public notice and an opportunity for public comment. A public meeting may be held for Process V applications where required for each type of Process V application. The Director then makes a decision based upon the decision criteria set forth in the Code for each type of Process V application. Public notice of the decision is provided, but there is no opportunity for administrative appeal of the decision.
- B. If required by the State Environmental Policy Act (SEPA), a threshold determination will be issued by the Environmental Coordinator. The threshold determination for an underlying Process V application is also a Process V decision, and may be issued in conjunction with the Director's decision on the accompanying land use decision. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to the issuance of the accompanying land use decision. If the requirement to prepare an EIS or a

supplemental EIS is appealed by the applicant, that appeal will be resolved prior to the issuance of the land use decision.

20.35.510 Notice of application.

- A. Notice of application for Process V land use decisions shall be provided within 14 days of issuance of a notice of completeness pursuant to the requirements of this section. See additional noticing requirements in LUC 20.30U.122 for Temporary Encampment Permits.
- B. The Director shall provide notice of the application as follows:
 1. Publication of the project description, location, types of City permits or approvals applied for, date of application and location where the complete application file may be reviewed, in a newspaper of general circulation in the City.
 2. Mailed notice to owners of real property within 500 feet of the project site including the following information:
 - a. The date of application;
 - b. The project description and location;
 - c. The types of City permit(s) or approval(s) applied for;
 - d. The Director may, but need not, include other information to the extent known at the time of notice of application, such as: the identification of other City permits required, related permits from other agencies or jurisdictions not included in the City permit process, the dates for any public meetings, identification of any studies requested for application review, any existing environmental documents that apply to the project, and a statement of the preliminary determination, if one has been made, of those development regulations that will be used for project mitigation.
 3. Mailed notice of the application including at least the information required in subsection B.1 of this section to each person who has requested such notice for the calendar year and paid any fee as established by the Director. This mailing shall also include ~~all members of a Community Council and~~ a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested notice of land use activity. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

20.35.520 Minimum comment period.

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

20.35.525 Public meetings.

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

20.35.530 Director's decision.

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

20.35.535 Notice of decision.

- A. Public notice of all Process V decisions shall be published in a newspaper of general circulation.
- B. The Director shall mail notice of the decision to each person who submitted comments during the public comment period or at any time prior to issuance of the decision and who provided an adequate address for mailing.

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

20.35.540 Appeal of Process V decisions.

The Director of the Development Services Department's decision regarding a Process V application may be appealed to Superior Court pursuant to LUC 20.35.070. An appeal of a SEPA Threshold Determination on a Process V action shall be filed together with an appeal of the underlying Process V action.