

ORDINANCE NO. 2002-10-069

AN ORDINANCE RELATING TO ADMINISTRATIVE DETERMINATIONS—AMENDING TITLE 2, CHAPTER 56 AND VARIOUS SECTIONS OF THE BELLINGHAM MUNICIPAL CODE TO CLARIFY THE RESPECTIVE JURISDICTIONS OF THE HEARING EXAMINER AND CITY COUNCIL, PROVIDE FOR JUDICIAL APPEAL OF CERTAIN DETERMINATIONS OF THE HEARING EXAMINER, AND SETTING FORTH PROCEDURES FOR NON-LEGISLATIVE DETERMINATIONS BY THE CITY COUNCIL.

WHEREAS, on May 15, 2000, the City of Bellingham adopted Ordinance 2000-05-023, establishing a Hearing Examiner system; and

WHEREAS, Ordinance 2000-05-023 was codified as BMC Chapter 2.56 and BMC 2.56.050 describes the jurisdiction of the Hearing Examiner; and

WHEREAS, it is in the public interest to conserve legislative resources by directing quasi-judicial determinations to the Hearing Examiner and directing appeals of such Hearing Examiner decisions to Superior Court; and

WHEREAS, the City Council does not have formal procedures for determinations that are based on an administrative record and adoption of such procedures and making them a part of the Bellingham Municipal Code will facilitate public participation and promote fairness regarding non-legislative decision-making by City Council; and

WHEREAS, as provided by RCW 36.70A.106, on May 7, 2002, the City sent notice of the proposed changes to the appropriate State agencies; and

WHEREAS, City Council reviewed the ordinance in open session on August 19, August 26, and September 16, 2002.

NOW, THEREFORE THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. BMC 2.56.050 is amended as follows:

2.56.050 - Powers And Jurisdiction

The Hearing Examiner shall have the power to receive and examine available information, conduct public hearings and prepare a record thereof and enter decisions as provided by ordinance.

A. The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner notwithstanding any other provision of the Bellingham Municipal Code shall be final unless such decision is appealed to the City Council as provided in section 2.56.080 of this Title.

1. Applications for preliminary plat approval for subdivisions exceeding nine lots under BMC Chapter 18.16;

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2. Applications regarding and 2-4 lot cluster subdivisions with density bonus under BMC 18.32.050 and 5-9 lot cluster subdivisions;
3. Appeals from decisions regarding General Binding Site Plans under BMC 18.24.040 (M);
4. Variances from the terms of Title 18 of the Bellingham Municipal Code relating to preliminary plats, 2-4 lot cluster subdivisions with density bonus, and 5-9 lot cluster subdivisions;

B. The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner, notwithstanding any other provision in the Bellingham Municipal Code, shall be final, subject only to judicial challenge:

1. Appeals provided for in BMC 4.74.155 (admission tax) and Title 6 of the Bellingham Municipal Code (business taxes, licenses and regulations), except only as specifically provided by the Code with respect to cable, utility, and telecommunication franchises under BMC Chapters 6.17 and 6.70;
2. Appeals of determinations of the Parks and Recreation Director provided for in Title 8 or Chapter 13.40 of the Bellingham Municipal Code;
3. Appeals and applications provided for in Title 10 of the Bellingham Municipal Code (criminal code);
4. Appeals as provided by BMC 11.38.09 and hearings related to towing and impoundment, pursuant to Chapter 11.18 of the Bellingham Municipal Code, subject to appeal as provided by sections 11.18.040 and 11.18.050;
5. Appeals of determinations and variances by the Public Works Director or other decision making body or board provided for in Title 13 of the Bellingham Municipal Code, including BMC Chapter 13.60 (traffic impact fees);
6. Applications for variances and other determinations by the Hearing Examiner as provided for in Title 13 of the Bellingham Municipal Code;
7. Appeals of the interpretation and/or decisions of the Public Works Department BMC regarding local improvement districts pursuant to BMC 14.02.150;
8. Appeals from the decisions of the Utility Hearings Board relating to water and sewer services as provided by section 15.04.120 of the Bellingham Municipal Code;
9. Unless otherwise provided by law, appeals as provided in Title 16 of the Bellingham Municipal Code, including but not limited to condition or denial of a proposal or action on the basis of SEPA by a nonelected official as provided by 16.04.160(E);
10. The following matters as provided by Title 18 of the Bellingham Municipal Code:
 - a. Appeals from determinations of the Planning Director regarding lot line adjustments under Chapter 18.10, and short subdivisions under Chapter 18.12 including 2-4 lot cluster subdivisions;

- b. Applications for 2-4 lot cluster subdivisions with hearing under BMC 18.32.060 (B);
 - c. Applications for minimum lot size exception under BMC 18.36.020 (A)(4)(c);
 - d. Variances relating to lot line adjustments and short subdivisions including 1-4 lot cluster subdivisions;
- 11. Applications for home occupation permits shall be referred to the Hearing Examiner by the Planning Director, pursuant to section 20.10.045 of the Bellingham Municipal Code;
 - 12. Applications for conditional use permits pursuant to Chapter 20.16, and Landmark adaptive use permits and Landmark special valuation pursuant to sections 17.80.110 and 17.80.130, respectively, of the Bellingham Municipal Code;
 - 13. Applications for variance pursuant to Chapter 20.18 of the Bellingham Municipal Code;
 - 14. Appeals from decisions relating to permits, administrative determinations, and interpretations of the Planning Director provided for in Title 20 of the Bellingham Municipal Code.
 - 15. Applications for co-housing developments pursuant to Bellingham Municipal Code 20.10.048.

C. On the following matters, which shall be within the jurisdiction of the Hearing Examiner notwithstanding any other provision in the Bellingham Municipal Code, the Hearing Examiner shall enter findings of fact, conclusions of law, and recommendations to the City Council:

- 1. Applications for rezoning of property, except when such rezoning is to be considered as part of adoption or amendment of an area-wide comprehensive plan;
- 2. Formation of a local improvement district;
- 3. Approval of local improvement district assessments, including contests of the preliminary assessment reimbursement area and preliminary assessment for local improvement districts pursuant to BMC 14.02.060;
- 4. Petitions for street and alley vacations;

D. Notwithstanding provisions of other Chapters of the Bellingham Municipal Code the following matters shall be determined by the City Council. Council may in its discretion refer any of the following matters to the Hearing Examiner for a recommended decision:

- 1. Approval of final plats.
- 2. Applications for utility and telecom franchises as provided by BMC Chapters 6.17 and 6.70;
- 3. Expansion of existing water and sewer service zones outside the city limits as provided by BMC 15.36.060;

4. Appeals from determination of the City Attorney on applications for remission and mitigation of civil penalties relating to stormwater management pursuant to BMC 15.42.070 (4.2)(D).

E. In the performance of duties prescribed by this chapter or other ordinances, the Hearing Examiner may:

1. Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive relevant evidence, and conduct discovery procedures which may include propounding interrogatories and taking oral depositions pursuant to Washington State Court Rules; provided, that no person shall be compelled to divulge information which he could not be compelled to divulge in a court of law;
2. Upon the request of the Planning Department or any party, or upon the Hearing Examiner's own volition, issue and cause to be served subpoenas for the attendance of witnesses and for the production for examination of any books, records, or other information in the possession or under the control of any witness; provided that such subpoena shall state the name and address of the witness sought, and if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved;
3. Regulate the course of the hearing in accordance with this chapter and other applicable ordinances;
4. Hold conferences for the settlement or simplification of the issues by consent of the parties;
5. Dispose of procedural requests or similar matters;
6. Take any other action authorized by ordinance.

In case of failure or refusal without lawful excuse of any person duly subpoenaed to attend pursuant to such subpoena, or to be sworn, or to answer any material and proper question, or to produce upon reasonable notice any material, books, records or other information in his possession and under his control, the Hearing Examiner may invoke the aid of the City Attorney who shall apply to the appropriate court for an order or other court action necessary to secure enforcement of the subpoena.

F. The Hearing Examiner is hereby empowered to act in lieu of the Board of Adjustment, the City Council, the Planning Commission and such other officials, Boards or Commissions as may be assigned for those matters listed in subsections A., B., and C., above. Wherever existing ordinances, codes or policies authorize or direct the Board of Adjustment, or other officials, Boards or Commissions to undertake certain activities which the Hearing Examiner has been assigned, such ordinances, codes or policies shall be construed to refer to the Hearing Examiner.

G. The Hearing Examiner may include in a decision any conditions of approval that are necessary to insure that the proposal complies with all applicable code criteria and comprehensive plan policies and does not adversely affect surrounding properties.

Section 2. BMC 2.56.070 is amended as follows:

The Hearing Examiner shall adopt rules concerning procedures for scheduling and conduct of hearings, including providing for waiver of filing fees upon proof of indigence, and as otherwise related to the duties of the office, not inconsistent with the terms of this chapter.

Section 3. BMC 2.56.080 is amended as follows:

2.56.080 - Appeals To City Council

The decision of the Hearing Examiner on those matters specified in section 2.56.050 of this chapter shall be final excepting those matters for which appeal of the decision of the Hearing Examiner to City Council is permitted and then only in the event that an aggrieved party or a city department file a written notice of appeal with the City Council within fourteen days, or as otherwise provided by this Code or RCW 36.70B.110, of the final decision of the Hearing Examiner.

Section 4. New Chapter 1.26 of the Bellingham Municipal Code provides as follows:

1.26.010 Procedures for Filing and Dismissal of Closed-Record Appeals of Hearing Examiner Decisions Under BMC 2.56.050(A)

Closed-record appeals pursuant to BMC 2.56.050(A) shall be as provided in this section. In the event of a conflict with procedures for appeal to City Council set forth elsewhere in the Bellingham Municipal Code, the procedures set forth in this chapter shall supercede those procedures consistent with the laws of the State of Washington.

A. Unless otherwise specifically provided by this code or by RCW 36.70B.110, an aggrieved party or a city department shall file an original and two copies of the notice of appeal or other docketing request with the City Council within fourteen (14) days after the date that the decision of the Hearing Examiner is mailed to the appellant. The notice shall contain a statement of the legal authority for bringing the matter to City Council. The appellant shall also send the notice, along with procedural information provided by the City, to participants of record in the proceeding before the Hearing Examiner.

B. A copy of the notice of appeal shall be provided to the Hearing Examiner and the City Attorney. City Council may on its own motion or upon motion of a party to the appeal dismiss the appeal if it finds that the notice of appeal was not timely filed or that closed-record review is not authorized by law. Upon joint request of the appellant and city staff City Council may also decline to hear the appeal thereby rendering the quasi-judicial process final for the purposes of judicial review.

C. A fee, as prescribed by resolution of the City Council, shall be paid upon filing the notice of appeal. The fee shall not apply to appeals taken by a City department. Upon submittal of proof of payment of the fee, the Hearing Examiner shall cause the administrative record or portions of the record as may be designated by stipulation of the parties, to be transmitted to City Council.

D. Upon transmittal of the record of the proceedings before the Hearing Examiner, director, commission, or board to the City Council, the appeal proceeding shall be scheduled as soon as reasonably possible, but in any event, no sooner than the first regularly scheduled meeting falling after twenty-one (21) days from the delivery of the record of proceedings to City Council. Appropriate notice of the date and time of the appeal proceedings shall be sent to the parties who participated in the proceeding before the Hearing Examiner or as otherwise required by ordinance and the laws of the State of Washington.

1.26.020 Rules of Decision for Closed Record Appeals to the City Council Under BMC 2.56.050(A)

A. The decision of the City Council shall be based upon the record established in the Hearing Examiner's proceedings, written argument submitted by the parties of record, and such oral argument as may be allowed at the discretion of the City Council.

B. Discretion of Council. With regard to the matters described in BMC 2.56.050(A), the City Council may affirm the decision of the Hearing Examiner, or modify or reverse the decision of the Hearing Examiner, or remand the matter to the Hearing Examiner with instructions for further proceedings.

C. Standard of Review. Review by the City Council shall be a closed record review. Appellate review by Council shall be limited to argument regarding the legality and sufficiency the record of the proceedings before the Hearing Examiner and no new evidence shall be considered. The City Council must affirm the decision of the Hearing Examiner unless the Council concludes that the that the decision is contrary to law, or that substantial evidence on the record supports a different decision, or that the proceedings before the Hearing Examiner are inconsistent with the appearance of fairness. Substantial evidence on the record means that there must be credible evidence on the record sufficient to support the Hearing Examiner's decision.

D. Burden of Proof. The decision of the Hearing Examiner is presumed to be sufficient, legal and regular. Appellant has the burden of demonstrating that the decision of the Hearing Examiner is contrary to law, is not supported by substantial evidence on the record, violates appellant's right to due process or otherwise so deviates from the appearance of fairness that appellant was denied the opportunity to be heard.

E. Decision of the Council

1. City Council may modify or reverse the decision of the Hearing Examiner and shall make findings of fact and conclusions of law to explain its decision if it finds:
 - (a) That the decision of the Hearing Examiner is contrary to law, or
 - (b) That substantial, relevant, and probative evidence on the record supports a decision different from that of the Hearing Examiner.
2. The Council may remand the matter to the office of the Hearing Examiner if it finds:
 - (a) That evidence in existence at the time of proceedings before the Hearing Examiner was omitted from the record and that a reasonable person could

conclude that the Hearing Examiner may have reached a different decision had the omitted evidence been considered; or

- (b) That the record, in whole or in part, is not sufficient for the Council to make a reasoned decision on the appeal; or
- (c) That the proceedings before the Hearing Examiner exhibited the absence of the appearance of fairness.

1.26.030 Hearing Procedures for Closed Record Appeal to City Council.

A. In the absence of an order of City Council providing otherwise, the appellant and parties of record who are challenging the decision of the Hearing Examiner shall cause written argument to be delivered to Council and other parties, by no later than the end of the business day of the second Tuesday before the appeal is scheduled to be heard. Written argument shall be limited to ten (10) pages typed, double-spaced with specific reference being made to the record where appropriate.

B. In the absence of an order of City Council providing otherwise, the parties supporting the decision of the Hearing Examiner or who are otherwise offering argument in opposition to appellant shall cause written responses be delivered to Council by no later than 10:00 A.M. of the Wednesday before day the appeal is scheduled to be heard. Written argument by respondents and responding parties shall be limited to ten (10) pages typed, double-spaced with specific reference being made to the record where appropriate.

C. Council has discretion to dismiss any appeal upon failure of the appellant to timely submit written argument on time. Council shall disregard any argument based on facts or evidence that is outside the record. Council may also disregard any argument that does not appropriately reference the portions of the record upon which argument is being made, or that fails to clearly specify the provision of law being argued.

D. Oral argument will be heard at the discretion of Council. Unless Council decides otherwise, oral argument is limited to the petitioning party and respondent and argument shall not exceed fifteen (15) minutes for each. Appellant shall argue first and may reserve 5 minutes for rebuttal.

E. Council may issue its determination after oral argument is heard or may take the matter under advisement. If Council modifies the decision or remands the matter to the Hearing Examiner, such determination will be reduced to writing by the Office of the City Attorney as soon as reasonably practicable and upon approval by Council a notice and the written decision shall be mailed to parties of record who participated in the review proceeding.

F. The decision of the City Council shall be final and for the purposes of judicial appeal as provided by the laws of the State of Washington.

1.26.040 Procedures for Decisions Based on Recommendation of the Hearing Examiner or Other Determination of City Council.

A. Upon application or submittal of the recommendation of the Hearing Examiner, other recommending body, or department, Council shall cause a hearing date to be set as soon as reasonably practicable or as otherwise required by law.

B. Appropriate notice of the date and time of the appeal proceedings shall be sent to the parties who participated in the proceeding before the Hearing Examiner, other recommending body, or department, or as otherwise required by ordinance and the laws of the State of Washington.

C. Applicants or parties of record desiring to submit written materials shall cause the same to be delivered to Council by no later than 10:00 A.M. on the Wednesday before day the appeal is scheduled to be heard. Written argument by respondents and responding parties shall be limited to ten (10) pages typed, double-spaced with specific reference being made to the record or other evidence where appropriate.

D. Council has discretion to dismiss any matter upon failure of the applicant to submit written materials on time.

E. Council may issue its determination after oral argument is heard or may take the matter under advisement. City Council's decision shall be reduced to writing by the Office of the City Attorney as soon as reasonably practicable and upon approval by Council a notice and the written decision shall be mailed to parties of record who participated in the proceeding.

1.26.050 Rules of Decision for Decisions Based on Recommendation of the Hearing Examiner or Other Determination of City Council.

The rules of decision for quasi-judicial, open-record hearings before City Council as provided by BMC 2.56.050(C),(D) or other ordinance shall be as follows:

A. Quasi-judicial decisions of the City Council shall be based upon the record established in the Hearing Examiner's proceedings or proceedings before another recommending body or department, oral and written testimony, evidence, and written argument submitted by the parties of record, and such oral argument as may be allowed at the discretion of the City Council.

B. Discretion of Council.

1. With regard to the matters described in BMC 2.56.050(C) and (D), City Council may accept the recommendation or reject the same in whole or in part. If Council rejects the recommendation in whole or in part, then it shall make findings and conclusions explaining its decision.
2. For other quasi-judicial matters in which no recommendation of a director, commission, or board is part of the record the City Council shall make findings of fact and conclusions of law and shall issue its decision consistent with the same.

C. The decision of the City Council shall be final and for the purposes of judicial appeal as provided by the laws of the State of Washington.

1.26.060 Ex Parte Contact With Council Members.

After a matter described in BMC 2.56.050(A) or (C) is filed for docketing with the City Council for a determination on the record, or otherwise upon submittal of a quasi-judicial matter to Council for determination, and until such time as the Council disposes or is otherwise foreclosed from review of any such matter, an applicant or proponent, or anyone acting on behalf of an applicant or proponent, or staff witness shall refrain from communicating or attempting to communicate regarding the substance or the merits of the matter with any member of the City Council. If

communication or an attempt to communicate is made regarding the substance of a pending matter, the Council member shall disclose the nature of the communication by no later than the beginning of the proceeding and the Council member may recuse himself or herself if the member believes that he or she is unable to exercise detachment and objectivity regarding the pending matter or if the member believes that the ex parte contact has created an appearance of unfairness. The Council may in its discretion dismiss any review proceeding on the basis of violation of this section. This section shall not be construed as to inhibit or foreclose communications with Council members regarding purely procedural issues or with regard to any legislative issue or matter.

Section 5. BMC 4.74.155 regarding appeals arising from determinations of the admission charge tax is amended as follows:

4.74.155 - Administrative Review

Any person or corporation upon whom this tax is imposed by the Finance Director may appeal such determination to the Hearing Examiner, by filing a notice of appeal with the Hearing Examiner within 30 days of the time notice is received that the tax is due, or where it is believed that a certification of registration is not required.

Section 6. Title 6, Chapter 4, of the Bellingham Municipal Code relating to appeals arising from determinations of business taxes and license fees is amended as follows:

6.04.190 - Returns Confidential - Reciprocal Agreement

A. Subject to the Washington Public Disclosure Act (RCW 42.17), returns made to the Finance Director shall not be made public, nor shall they be subject to the inspection of any person except the Mayor, Finance Director or authorized agent, the Hearing Examiner, and the chairman of the Finance Committee of the City Council (other than in an appeal of any decision under this chapter).

[no further changes]

6.04.220 - Appeals of Determinations of the Finance Director

A. Any taxpayer aggrieved by the amount of the fee or tax found by the Finance Director to be required under the provisions of this chapter or by the application of the tax to his or her business activity may appeal to the Hearing Examiner by filing a written notice of appeal with the Finance Director within 30 days from the time such taxpayer was given notice of such amount. The taxpayer shall be notified of the time and place of the hearing and is entitled to be heard and to introduce evidence in his or her behalf. The Hearing Examiner shall thereupon ascertain the correct amount of the fee or tax and shall issue an order supported by findings of fact and conclusions of law. The Hearing Examiner shall notify the appellant by mail of the amount due, together with costs of the appeal if appellant is unsuccessful therein, which total amount must be paid within 15 days after such notice is given.

B. The Hearing Examiner may by subpoena require the attendance thereat of any person, and may also require him or her to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the Hearing Examiner as to any matter required of him or her pertinent to the appeal, and it shall be unlawful for him or her to fail or refuse so to do.

Section 7. BMC 6.06.140 relating to occupation licenses and taxes is amended as follows:

6.06.140 - Appeals To Council

A. Any taxpayer aggrieved by the amount of the fee or tax found by the Finance Director to be required under the provisions of this chapter may appeal to the Hearing Examiner from such finding by filing a written notice of appeal with the Hearing Examiner within 5 days from the time such taxpayer was given notice of such amount. The Hearing Examiner shall schedule the hearing and cause a notice of the time and place thereof to be delivered or mailed to the appellant. At such hearing the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The Hearing Examiner shall thereupon ascertain the correct amount of the fee or tax in an order supported by findings of fact and conclusions of law and shall immediately notify the appellant thereof, which amount, together with costs of the appeal if appellant is unsuccessful therein, must be paid within 3 days after such notice is given.

B. The Hearing Examiner may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the Hearing Examiner as to any matter required of him pertinent to the appeal; and it is unlawful for him to fail or refuse so to do.

Section 8. BMC 6.08.025 regarding business licenses and fees is amended as follows:

6.08.025 - License Appeals

Any person applying for, or holding, a license under this chapter, who is aggrieved by an action of the Finance Director or other city official in connection with a license, may appeal the matter to the Hearing Examiner by filing a notice of appeal with the Hearing Examiner, stating the matter complained of, within 30 days of the action complained of, which filing shall thereupon stay any license revocation or forfeiture.

Section 9. BMC 6.10.120 providing for regulation of ambulance services is amended as follows:

6.10.120 - Appeals

Any person applying for or holding a license under this chapter who believes he or she is aggrieved by an action of any City official in connection with a license may timely appeal the matter to the Hearing Examiner for review.

Section 10. Title 6, Chapter 17 regarding cable television franchises is amended as follows:

6.17.430 - Forfeiture And Termination.

A. In addition to all other rights and powers retained by the city under a franchise agreement or this chapter, the city reserves the right to forfeit and terminate any franchise and all rights and privileges of the company hereunder in the event of a substantial breach of the terms and conditions of any franchise agreement or of this chapter. A substantial breach by company shall include, but shall not be limited to, the following:

[no further changes until]

C. The city may make a written demand that the company comply with any such provision, rule, order or determination under this chapter, or pursuant to the franchise. If the violation by the company continues for a period of 30 days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city may place the issue of termination of the franchise before the Hearing Examiner. The city shall cause to be served upon company, at least 20 days prior to the date the Hearing Examiner considers the issue of termination, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the hearing and issue which the Hearing Examiner is to consider.

D. The Hearing Examiner shall hear and consider the issue and shall hear any person interested therein, and shall determine whether or not any violation by the company has occurred.

E. The Hearing Examiner shall issue an order supported by findings of fact, conclusions of law determining whether the company has violated the terms of its franchise or provisions of this Chapter and whether any such violation was the fault of company and within its control, and if the Hearing Examiner finds that such violation occurred, the Hearing Examiner shall declare that the franchise of the company shall be forfeited and terminated unless there is compliance within such period as the Hearing Examiner may fix, such period not to be less than 90 days, provided no opportunity for compliance need be granted upon a finding of fraud or misrepresentation by the company.

F. The issue of forfeiture and termination shall be scheduled for hearing before the Hearing Examiner at the expiration of the time set by the Hearing Examiner for compliance. The Hearing Examiner may then issue an order terminating the franchise forthwith upon finding that company has failed to achieve compliance, or may further extend the compliance period, upon demonstration that granting an extension is in the public interest.

6.17.450 - Receivership.

The Hearing Examiner may issue an order canceling the franchise 120 days after the appointment of a receiver or trustee to take over and conduct the business of the company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

[no further changes until]

Section 11. BMC 6.18.110 providing for regulation of canvassers and solicitors is amended as follows:

6.18.110 - Appeal Procedure

Any person aggrieved by denial or revocation of a license may file an appeal with the Hearing Examiner. The notice of appeal must be filed within 14 days after notice of the denial or revocation has been mailed to the person's last known address. The request must be in writing and must explain the grounds for appeal.

Section 12. BMC 6.26.050 relating to licenses for handbill distribution is amended as follows:

6.26.040 - License – Revocation

Whenever it appears that any licensee has violated any provision in this chapter, or in the manner as provided by Chapter 6.08, the Hearing Examiner may issue an order revoking the license issued to such holder, but such decision to revoke or not to revoke for violation of the provisions of this chapter shall not relieve the licensee from liability to punishment under penalties provided in 6.26.050.

Section 13. Title 6, Chapter 30 of the Bellingham Municipal Code providing for regulation of adult entertainment businesses is amended as follows:

6.30.150 - Suspension or Revocation of License

A license granted under this chapter may be suspended or revoked by the Finance Director, after investigation and upon the recommendation of the City Attorney, Police Chief, Fire Chief, Planning Director or the Whatcom County Health Officer, where one or more of the following conditions exist:

[no further changes until]

The Finance Director shall provide at least 10 days prior written notice to the licensee of the decision to suspend or revoke the license. Such notice shall inform the licensee of the right to appeal the decision to the Hearing Examiner as provided in this chapter, and shall state the effective date of such revocation or suspension and the grounds for revocation or suspension.

[no further changes until]

6.30.160 - Appeals

Any applicant or licensee aggrieved by a decision of the Finance Director regarding a license denial, refusal to renew, revocation or suspension may, within 10 days of the date of the written notice of such action, file a notice of appeal with the Hearing Examiner. Such notice of appeal shall contain a concise statement of the action from which the appeal is taken, the grounds for the appeal, and the relief requested.

Within 10 days of receipt of a timely appeal the Finance Director shall forward to the Hearing Examiner the administrative record of the licensing decision to the Hearing Examiner.

The Hearing Examiner shall schedule a public hearing to consider the appeal. The appellant shall be provided at least 7 days written notice of the date of the hearing. The Hearing Examiner's review shall be de novo. The action of the Finance Director shall be stayed upon filing of the appeal, pending the decision of the Hearing Examiner.

Section 14. BMC 6.54.170 providing for revocation of licenses for taxi cabs and for-hire vehicles is amended as follows:

6.54.170 - Appeal Procedure

Any person aggrieved by denial or revocation of a license may file a notice of appeal with the Hearing Examiner within fourteen days after the notice of denial has been mailed to the person's last known address. The request must be in writing and must explain the grounds for appeal.

Section 15. BMC 8.04.200 providing for appeals from determinations of the Director of Parks and Recreation is amended as follows:

8.04.200 - Appeal Procedure

Any person aggrieved by a decision of the Director of the Parks and Recreation Department under this chapter may appeal the decision to the Hearing Examiner by filing a notice of appeal. The appeal notice shall be in writing and submitted to the Hearing Examiner.

Section 16. BMC 10.28.035 providing for appeals arising from orders to remove or abate nuisances is amended as follows:

10.28.035 - Civil Abatement Appeal

Any person who has been notified by the City to remove or abate a nuisance under this Chapter may, within the time period for abatement stated on the notice, appeal the abatement order to the Hearing Examiner by filing with the Hearing Examiner a written notice of appeal stating the grounds for the appeal and attaching thereto a copy of the abatement order. Civil abatement proceedings by the City shall be held in abeyance until the Hearing Examiner has heard and determined the appeal. The decision of the Hearing Examiner shall be final. If no timely appeal is filed the decision of the

administrative officer issuing the notice to abate shall be final. An appeal filed pursuant to this section shall not affect or delay any criminal proceedings.

An action seeking to modify, reverse, set aside or enjoin an action of the City under this chapter shall be filed in a court of competent jurisdiction within 14 days of the date of the final decision of the Hearing Examiner.

Section 17. BMC 10.32.060 providing for appeals from denial of application for parade permits is amended as follows:

10.32.060 - Permit--Rejection--Appeal

Any person aggrieved shall have the right to appeal the denial of a parade permit to the Hearing Examiner. The appeal shall be taken within 3 days after notice.

Section 18. Title 10, Chapter 56 of the Bellingham Municipal Code regarding aerial activities is amended as follows:

10.56.030 - Aerial Activities Permit - Fee

Any person or organization who wishes to engage in any aerial activity for which a permit is required by this chapter shall submit an application to the Chief of Police, together with a fee of \$50 to cover the cost of processing such application. The Chief of Police shall act upon applications governed by Section 10.56.020A, B and C or, in his discretion, may refer any such application to Hearing Examiner for review. Applications governed by Section 10.56.020D shall be referred to the Hearing Examiner for approval.

10.56.040 - Aerial Activities Permit - Applications

The application shall contain the following information:

[no further changes until]

H. Such other information as the chief of police or the Hearing Examiner may require.

[no further changes]

10.56.050 - Aerial Activities Permit - Issuance - Revocation - Appeal

A. The Chief of Police or the Hearing Examiner shall act upon such applications as soon as is administratively possible and may place such conditions upon the permit issued as will insure that the aerial activity will be conducted in an orderly manner and as will be necessary to maintain and preserve the public health, safety and welfare; provided, that the Chief of Police or his designee, upon receipt of an application, shall cause notice of such application to be given by publication in the official city newspaper not less than 48 hours prior to its consideration of the application. The Chief of Police shall further cause notice of such application to be mailed to all property owners located

within 300' of the boundaries of the property where the landing/takeoff area is located, if such area is other than a licensed airport facility. Such notice shall be mailed not less than 1 week prior to consideration of the application. In addition, notice of the application shall be posted in at least 3 conspicuous public places at least 1 week prior to consideration of the application. The city's cost of providing notice shall be reimbursed by the permit applicant.

[no further changes until]

C. If the Chief of Police or Hearing Examiner has reasonable grounds to believe that the activity will violate any ordinance or statute, or if after issuance of the permit there are reasonable grounds to believe the activity will be in violation of any condition placed upon the permit, or if there are reasonable grounds to believe that the public health, safety and welfare will be endangered by the activity, then the chief of police or Hearing Examiner may deny or revoke the permit.

D. Any person aggrieved by any decision of the chief of police relating to a permit issued under this chapter may appeal that decision to the Hearing Examiner by filing a timely notice of appeal with the Hearing Examiner within ten days of the date of such decision.

Section 19. BMC 10.60.225 regarding appeals from orders to remove litter is amended as follows:

10.60.225 - Appeal

Any person who has been provided with a notice to remove litter pursuant to Section 10.60.220 may, within 10 days of the date of the notice, appeal the order to abate to the Hearing Examiner by filing with the Hearing Examiner a written notice stating the grounds for the appeal and attaching thereto a copy of the order. Further abatement proceedings by the City shall be held in abeyance until the Hearing Examiner has heard the appeal and rendered its decision, which shall be final. If no appeal is filed in a timely manner, the decision of the administrative officer issuing the notice to abate shall be final.

An action seeking to modify, reverse, set aside or enjoin an action of the City under this chapter shall be filed in a court of competent jurisdiction within 14 days of the date of the final decision of the Hearing Examiner.

Section 20. Title 11, Chapter 38 of the Bellingham Municipal Code providing for residential parking zones is amended as follows:

11.38.080 - Revocation Of Permits

Permits and/or visitor's permits may be revoked by the Finance Director for any of the following reasons:

[no changes until]

C. Termination of the residential parking zone.

If the Finance Director finds that a residential permit or a visitor's permit should be revoked for any of the reasons set forth above, the Finance Director shall send a written notice to the permit holder, which notice shall contain the following information:

1. That the permit will be revoked not sooner than 10 days from the date of the letter.
2. That unless a written notice of appeal is filed with the Hearing Examiner not later than 10 days from the date of the letter, the permit will be deemed revoked.
3. That if a written notice of appeal is filed within the required time, a hearing will be set.
4. The reasons for the revocation.

11.38.090 - Appeal

An applicant aggrieved by action of the Finance Director under this chapter may file a notice of appeal with the Hearing Examiner. The Hearing Examiner may affirm, reverse or modify the revocation decision, or order suspension for a specified period.

Section 21. BMC 11.48.180 providing for permits for bicycle races is amended as follows:

11.48.180 - Bicycle Racing

(1) No person shall engage in or sponsor a bicycle race upon the highways of the city except pursuant to approval by the Chief of Police or his designee.

[no further changes until]

(4) Any person aggrieved by any decision of the Chief of Police or his designee relating to a permit under this section may appeal that decision to the Hearing Examiner by filing a notice of appeal with the Hearing Examiner within 10 days of the date of such decision.

Section 22. BMC 13.04.110 providing for variances from street standards is amended as follows:

A variance from any of the standards specified by this chapter may be granted by the Hearing Examiner. Such variance may be granted when practical difficulties arise in the design and construction of streets due to topography, geological limitations, and other problems inherent or peculiar to the area upon the recommendation from the city staff and when in the best interest of the public welfare.

Section 23. BMC 13.08.050 relating to variances from requirements to improve substandard streets is amended as follows:

A variance from any of the requirements specified by this chapter may be granted by the Hearing Examiner upon the recommendation of the staff and when in the best interest of the public welfare. Such variance may be granted when practical difficulties arise in the design and construction of

streets due to topographic geological limitations or other problems inherent or peculiar to the area, or where the Council finds that imposition of the required street width would be detrimental to the interest of the neighborhood.

Section 24. BMC 13.12.110 for appeals regarding street obstruction permits is amended as follows:

Any action, permit denial or revocation under this chapter shall be appealable to the Hearing Examiner within ten days of notice of the action, revocation or denial by giving written notice of such intent to the council secretary.

Section 25. BMC 13.14.050 regarding City right-of-way permits is amended as follows:

13.14.050 - Appeals

Any action, permit denial or revocation shall be appealable to the Hearing Examiner within 10 days of notice of the action, revocation or denial by giving written notice of such intent to the Council secretary.

Section 26. Title 13, Chapter 15 of the Bellingham Municipal Code regarding applications to locate telecommunications facilities in City rights-of-way is amended as follows:

13.15.030 - Notice of Permit Application

Notice of application for a permit pursuant to this chapter shall be published at least once per week for two weeks prior to the granting of such permit. The notice shall briefly describe the nature of the application, and the cost of publication thereof shall be borne by the applicant. If at any time prior to granting of the permit the City receives a signed request in writing for a hearing on the permit, the Hearing Examiner shall set the matter for timely hearing and take whatever action thereon it deems appropriate. However, the Department of Public Works may develop a procedure for dispensing with this notice procedure in situations where the impact of the work to be performed is not substantial.

[no further changes until]

13.15.090 - Location of Facilities

All facilities shall be constructed, installed, and located in accordance with the following terms and conditions:

A. Poles, wires and appurtenances shall be located, erected and maintained so that no facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City, county or state may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

[no further changes until]

E. Erection, removal, and common uses of poles.

[no further changes until]

(2) Where the City or a person subject to this chapter desires to make use of the poles or other wire holding structures of one or more other persons subject to this chapter, but agreement thereof among such parties cannot be reached, the City may require the person whose structures are sought to be used to permit use by another for such consideration and upon such terms as the Hearing Examiner shall determine to be just and reasonable, if the Hearing Examiner determines that (a) the use would enhance the public convenience, (b) the use would not unduly interfere with the operations of the person whose structures are sought to be used, and (c) such requirement by the City is permitted under applicable law.

[no additional changes, until]

13.15.240 - Department Action And Hearing

A. In the event that a person who holds a permit fails to provide evidence reasonably satisfactory to the City, the City department which issued the permit may terminate it or take other reasonably necessary action based on the criteria and goals set out in this chapter.

B. In the event that a person holding a franchise fails to provide evidence reasonably satisfactory to the City, the City department responsible for administration of the franchise shall refer the apparent violation or non-compliance to the Hearing Examiner. The Hearing Examiner shall provide such person with notice and a reasonable opportunity to be heard concerning the matter.

Section 27. BMC Title 13 Chapter 40 regarding street trees and other vegetation is amended as follows:

13.40.060 - Street Tree Permits Required

A. Trimming and Removal of Trees. No person shall perform major pruning or remove trees in planting strips, improved right-of-ways, or other public places, or cause or authorize any person to trim, prune or remove trees in public places, without first filing an application and procuring a street tree permit from the City.

[no further changes until]

F. Denial of Permit - Appeal Process. A decision denying a request for a street tree permit may be appealed to the Hearing Examiner. The appeal notice shall be in writing and submitted to the Hearing Examiner. The notice shall include, at a minimum, the following information: name, address, telephone number of applicant, location of trees involved in the appeal, decision being appealed, reference to any applicable code or ordinance, and a concise statement of the reasons for appeal.

[no further changes until]

13.40.090 - Treatment and Removal of Infected or Infested Trees

The following rules shall govern the treatment or removal of infected or infested trees:

[no further changes until]

B. On any Right-of-Way Not Included in the City Maintenance Responsibility List. It shall be the responsibility of any person having trees, plants or shrubs, grass or other vegetation growing on abutting rights-of-way to treat or remove any tree or plant so diseased or insect-infested as to be a hazard to other trees and plants. The Parks and Recreation Director shall have authority to require the abutting property owners to take such action as is necessary to control insects, scales, parasites, fungus, and other injurious pests or diseases that would cause serious injury to trees and other plant material within the City.

The Parks and Recreation Director shall notify the abutting property owner in writing, describing the conditions and stating the control necessary for correction, and establishing a reasonable time within which the required steps should be taken or an appeal filed before the Hearing Examiner. If the property owner questions the necessity of such action, the Parks Department Director may refer to a qualified plant pathologist for confirmation of his judgment and continue the appeal to a reasonable time after the owner has been provided with the report of said expert. In the event that effective steps are not taken within the time specified, the City may enter the property in question to spray, trim, prune, treat or remove all or any part of the tree, plant or shrub determined to be infested or infected and the costs thereof shall be assessed to the owner.

[no further changes until]

13.40.150 - Enforcement

This chapter may be enforced by one or more of the following:

A. Stop Work Orders - In the case of a violation of any provisions of this chapter, a failure to comply with the terms of a permit, or in the case of removal of trees in violation of this chapter, the Parks Director may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Parks Director or the Hearing Examiner to proceed with the work.

[no further changes until]

C. Violation - Civil Remedies and Penalty -

[no further changes until]

(5) Any person aggrieved by a final order of the Director of Parks and Recreation with respect to replacing trees shall have 20 days to appeal to the Hearing Examiner pursuant to the procedure outlined in Section 6(F).

(6) In addition to any other sanction or remedial injunctive procedure which may be available at law or equity, any person failing to comply with the final order issued by the Parks Director or Hearing Examiner shall be subject to a cumulative civil penalty in an amount not to exceed \$100 per day from the date set for compliance until such order is complied with. Such civil penalty shall be collected by civil action brought in the name of the City. The Parks Director shall notify the City Attorney in writing the name of any such

person subject to such penalty and the amount thereof; appropriate action shall be taken to collect the same.

Section 28. Title 13 Chapter 52 Bellingham Municipal Code regarding plans for improving driveway access is amended as follows:

BMC 13.52.130

When the city undertakes to improve an arterial street, including improvements to curbing, gutters, drainage, widening, or major changes in traffic flow controls, the Department of Public Works may, as part of the improvement project, present a plan for improving driveway access to the Hearing Examiner, which shall hold a public hearing on the plan, after providing no less than 15 days' notice to owners of parcels abutting the arterial to be improved.

13.52.140 - Driveway Improvement Plan - City Council Hearing And Decision

A. The Hearing Examiner, after hearing on the driveway access plan, shall declare its findings, and thereupon may:

- (1) Approve the plan, and direct its carrying out;
- (2) Modify the plan or require its modification; or,
- (3) Reject the plan.

B. The driveway improvement plan as finalized by Hearing Examiner action must comply with all relevant conditions set forth in this chapter, unless it is rejected.

13.52.150 - Driveway Improvement Plan - Owner Responsibility

Owners of driveways affected by a driveway improvement plan finalized by the Hearing Examiner shall bear such costs of improvements as the Hearing Examiner shall direct; and shall do such other things to improve driveway access to their parcels as shall be required by the Hearing Examiner, and shall ensure that such work is inspected by and approved by the Public Words Department. (Ord. 8760 §14, 1979.)

13.52.170 - Unsafe Driveway - Public Hearing

After at least 15 days' notice to the owner of the parcel served by the driveway access deemed by the Public Works Department to be unsafe, the Hearing Examiner shall hold a public hearing thereon. After public hearing, the Hearing Examiner shall declare its findings, and as a result thereof, may:

- A. Direct improvement of the driveway in accordance with the standards set forth in this chapter; or
- B. Direct that the driveway be closed or barricaded in accordance with the provisions of this chapter; and

- C. Declare who shall bear the cost of such barricading, closing, or improvement.

13.52.180 - Unsafe Driveway - Improvements Must Be Approved

The Public Works Department shall be responsible for inspection and approval of all improvements to driveways found by the Hearing Examiner to be unsafe, and no driveway improvements undertaken after a declaration that they are unsafe shall be deemed completed until the Public Works Department approves the work.

13.52.200 - Prohibited Acts

It is a misdemeanor:

- A. For any person to construct, reconstruct, or cause to be constructed a driveway providing access to an arterial street without first obtaining a permit therefor;
- B. For any person who is the owner of a parcel abutting on an arterial street, to occupy the parcel while it is served by a driveway that was constructed or reconstructed after the effective date of the ordinance codified in this chapter, without first obtaining a permit required by this chapter;
- C. For any person who is the owner of a parcel abutting on an arterial street to allow the existence of an abandoned or unused driveway that provides access to the arterial street; or
- D. To fail to comply with the directions of the Hearing Examiner relating to the improvement, barricading, or closing of any driveway.

13.52.210 - Nuisances Designated - Abatement

The City may undertake an action to abate nuisance driveways in accordance with the procedure for abatement of nuisances provided by the City's criminal code, or otherwise by law. Nuisance driveways are those driveways providing access from a parcel to an arterial street that:

- A. Have been constructed or reconstructed after the effective date of the ordinance codified in this chapter, without first having obtained a permit as required by this chapter; or
- B. Have been abandoned or have fallen into disuse, but are still passable to vehicular traffic; or
- C. Have been allowed by the parcel's owner to continue to exist unchanged for more than 120 days after the Hearing Examiner has directed that the driveway be improved, closed, or barricaded.

13.52.230 - Driveways Accessing Certain Rights-Of-Way Prohibited - Variance

- A. No driveway shall be constructed which provides vehicular access to the following rights-of-way:
 - 1. Garden Terrace (alley between Garden Street and Morey Avenue - Highland Drive) between 17th Street and Garden Street.
- B. Any driveway which was lawfully constructed prior to the effective date of this section may be reconstructed, resurfaced or otherwise modified, notwithstanding the provisions of subsection A of

this section, provided that such action may not generate additional vehicular traffic accessing the rights-of-way listed above.

C. The Hearing Examiner may grant a variance to permit construction of a driveway accessing a right-of-way listed in subsection A if the applicant demonstrates (1) that without a variance the applicant's property cannot be reasonably used, (2) that the lot for which the driveway would provide access either legally existed on the effective date of this section or was proposed in a complete short plat application filed with the City on or before January 28, 1991, and (3) that the granting of the variance will not be unduly detrimental to the public welfare. The Hearing Examiner may condition a variance so as to mitigate any adverse impacts which might otherwise result from granting the variance. Conditions may include, but are not limited to, erosion control, additional right-of-way dedications, street improvements, vision clearance and other mitigating measures.

Section 29. BMC 13.56.060 regarding driveways in the parking management zone is amended as follows:

13.56.070 - Administration, Enforcement, and Appeals

The Parking Systems Division shall administer this chapter. Enforcement and issuance of citations shall be by regularly appointed inspectors or law enforcement officers of the following City Departments:

- A. Department of Planning;
- B. Department of Public Works;
- C. Any governmental agency having authority to enforce the building codes;
- D. Legal Department; and
- E. Police Department.

Appeals arising from denials of permits or forfeiture determinations pursuant to this Chapter shall be heard by the Hearing Examiner.

Section 30. BMC 13.60.050 regarding appeals of determinations of traffic impact fees is amended as follows:

13.60.050 - Appeals

- A. Any person aggrieved by a determination of a TIF may appeal to the Public Works Director in writing describing the alleged defect of the TIF determination.
- B. Appeals not satisfied by the Public Works Director shall be forwarded to the Bellingham Hearing Examiner for resolution.

C. The following determinations may be appealed pursuant to this sections:

- (1) TIF rate.
- (2) Total number of PMPHV.
- (3) Interpretation of the ITE trip generation manual.
- (4) Reduction of the TIF rate.

D. Technical evidence shall be presented to the Public Works Department that clearly shows the basis and substantiation of the appeal upon submittal.

E. The Public Works Director and the Hearing Examiner shall have authority to affirm, modify or reverse the determination upon appeal. The TIF may be modified upon a finding that the original determination was erroneous or when, due to unique circumstances of the development, the TIF as determined by this ordinance imposes upon the development more than its fair pro rata share of the cost of facilities in the TCIP.

F. A TIF may be paid under protest in order to obtain a permit or approval.

Section 31. Title 14, Chapter 2 of the Bellingham Municipal Code providing for assessment reimbursement for street, drainage, water, and sewer improvements is amended as follows:

14.02.060 Preliminary Determination Notice

A. The preliminary assessment reimbursement area and the preliminary assessment formulated by the Public Works Department shall be sent by certified mail to the property owners of record within the preliminary assessment reimbursement area in accordance with RCW 35.72, as from time to time amended.

B. The applicant or any property owner within the preliminary assessment reimbursement area may, in writing within 20 days of mailing the notice, request a hearing to be held before the City Council to contest the preliminary assessment reimbursement area and preliminary assessment. Notice of such hearing shall be given to all property owners within the assessment reimbursement area. Public hearing before the City Council shall be conducted as soon as is reasonably practical. After public hearing the City Council shall establish the assessment reimbursement area and the assessment for each property within the assessment reimbursement area applying the standards set forth in this ordinance. The City Council's determination of assessment shall be as provided by BMC 1.26.010 and shall be determinative and final.

C. In the event no written request is received as required, the determination of the Public Works Department shall be final.

BMC 14.02.150 is amended as follows:

With the exception of determination of the preliminary assessment reimbursement area and preliminary assessment as provided by BMC 14.02.060 B., a developer may appeal the interpretation and/or decisions of the Public Works Department concerning any aspect of this chapter to the Hearing Examiner as provided by BMC Chapter 2.56.050 A. 9.

Section 32. BMC 15.04.120 providing for water and sewer administration and rates is amended as follows:

15.04.120 – Appeals

- A. Any person objecting to any water or sewer charge or fee imposed under this chapter may request a hearing before the City's Utility Hearing Board (the "Board") by filing a written request with the Finance Director within 5 business days of notice of the charge. The City shall make forms available for that purpose. Any persons objecting to surface and storm water utility charges or fees shall use the procedure outlined in BMC 15.16.060.
- B. Services shall not be shut off while a hearing is pending. However, the Finance Director may require that payment of any outstanding balance, or portion thereof, be made pending the outcome of the hearing.
- C. The members of the hearing Board shall be the Finance Director, the Director of Public Works, and the Assistant Directors of Public Works, or their designees. The City Attorney or a representative of the City Attorney's Office shall serve as the Board's Legal Advisor.
- D. At the hearing, the Board will consider the objections made by the applicant and will correct, revise, raise, lower, change, or modify the charge or fee, or set aside the charge or fee, as deemed appropriate by the Board and as allowed by law.
- E. Decisions of the Board may be appealed to the City's Hearing Examiner by filing a written request with the Office of the Hearing Examiner within 5 business days of the date of the Board's written decision.

Section 33. Title 15, Chapter 42 of the Bellingham Municipal Code providing for stormwater management is amended as follows:

15.42.070 - Maintenance, Inspection And Enforcement

(1) General Requirements

[no changes until]

(4) Enforcement

[no changes until]

(4).2 Civil penalty

In addition to any other remedy or sanction available, a person who fails to comply with a final order issued by the Director or City Council pursuant to this chapter, or who fails to conform to the terms of an approval issued, shall be subject to a civil penalty.

- A. Amount of Penalty. The penalty shall be not less than \$100 or exceed \$5000 for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.

[no further changes until]

- D. Application for Remission or Mitigation. Any person incurring a penalty may apply in writing within 10 days of receipt of the penalty to the Director of Public Works (or designee) for remission or mitigation of such penalty. Upon receipt of the application, the Director of Public Works may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The Director's decision may be appealed to the Hearing Examiner within 10 days of the decision.

- E. Appeal of Civil Penalty. Persons incurring a penalty imposed by the Director may appeal in writing within 10 days of the receipt of the notice of penalty to the Hearing Examiner. The Hearing Examiner shall hold a de novo hearing to consider the appeal and may affirm, modify or reverse the penalty. The decision of the Hearing Examiner may be appealed to Superior Court within 10 days of the date of the Hearing Examiner's decision.

[no further changes]

15.42.090 - Variances And Appeals

(1) Authority

The Public Works Director may grant a variance from the requirements of this Ordinance. In granting any variance, the director may prescribe conditions that are deemed necessary or desirable for the public interest.

[no further changes until]

(5) Right of appeal

Except as otherwise provided in this chapter, all actions of the director in the administration and enforcement of this chapter shall be final and conclusive, unless within 30 days of the date of the director's action, the original applicant or an aggrieved party files a notice of appeal with the Hearing Examiner for review of the action as provided by BMC 2.56.050. The decision of the Hearing Examiner shall be final and conclusive unless, within ten days after the decision of the Hearing Examiner, an aggrieved party appeals the same to Whatcom County Superior Court.

Section 34. Title 17, Chapter 80 of the Bellingham Municipal Code providing for review by the Landmark Review Board is amended as follows:

17.80.030 - Landmark Review Board; Powers And Duties

A Landmark Review Board, consisting of nine members selected according to Bellingham Municipal Code 2.54.020 (B), shall have the following powers and duties:

- A. Recommend for action by the City Council the designation of landmarks and removal from such designation.
- B. Prepare a survey of sites and structures in Bellingham for recommended landmark designation if a roster has not been completed by the Municipal Arts Commission pursuant to Ordinance 8042. All existing surveys, studies and registers shall be utilized as much as possible.
- C. Maintain a local register of the City's landmarks.
- D. Review and determine the appropriateness of any Building Permit or any permit which would alter a designated landmark.
- E. Endeavor to avail itself of financial assistance from Federal, State and private funding to carry out the functions of the Board; and investigate and report to the City on outside funding sources for landmark preservation.
- F. Recommend to the City the purchase of fee or less than fee interest (including scenic easements) in significant landmarks or adjacent properties.
- G. Correspond and make recommendations to the Building Services Division pursuant to Section 104 (f) of the Uniform Building Code as amended, or any other such provision allowing for flexibility in meeting Code requirements for landmarks.
- H. Nominate City landmarks to the State and Federal registers.
- I. Promote public education and awareness of landmarks.
- J. Cooperate with Local, County, State and Federal governments in pursuit of the objectives of historic preservation.

17.80.050 - Landmark Designation Procedures

Landmarks shall be established by resolution by the City Council in the following manner:

- A. The property owner (or the Board or City Council by their motion) may make application for an object, site or improvement to be designated as a landmark.

B. If the Board or Council nominates, the application fee shall be waived, but the written consent of the property owner shall nevertheless be obtained prior to processing the application.

C. The Board shall process the application, give notice and conduct a public hearing in the same manner as a Conditional Use Application. Following the hearing, the Board shall formulate its recommendation based on the criteria of Section 5 and transmit same to the City Council. The recommendation shall include a range of appropriate adaptive uses if no specific application accompanies the request for designation.

D. The City Council has the sole authority to establish the local landmark register by resolution. The City Council shall consider the recommendation of the Landmark Review Board at a public meeting. All properties (exclusive of districts) presently on the State or Federal Historic Register shall be automatically included on the local register if written consent to have any such property placed on such register is filed by the property owner not later than December 31, 1986.

[no further changes]

17.80.070 - Certificate of Alteration Procedures

The following procedures shall be followed in processing applications for Certificates of Alteration.

A. The Planning Director shall report any application for a permit to work on a designated landmark to the Board. The Building official shall continue to process such Building Application but shall not issue any such Building Permit until a Certificate of Alteration is issued by the Board. In review of applicable building codes, the Building Official shall make allowances for standard materials, methods and construction components consistent with the period of the structure insofar as the public's health, safety and welfare are not immediately compromised. Any conditions on the Certificate of Alteration shall become conditions of approval of any permits granted.

B. If no permit is required to pursue work on a designated landmark but the proposed work alters a designated landmark as defined herein, application for a Certificate of Alteration shall be made to the Board.

C. Application for a Certificate of Alteration shall be processed, noticed and a public hearing conducted by the Board in the same manner as a Conditional Use application. Following the public hearing, the Board shall make the findings and decision based on the criteria of Section 9. The Board's decision shall be final.

D. Applications for Certificate of Alteration may not be refiled on a property within one year of denial of such application unless the application addresses the concerns of the Board or involves a different landmark feature.

E. In review of permits sought in order to wholly or partially remove or demolish a designated landmark, the Board may approve or disapprove the issuance of said permit or may delay the demolition to require the owner to make good faith efforts for a period of 180 days to sell the landmark at no more than fair market value.

Any such disapproval shall be based upon the criteria enumerated under Section 5 herein.

17.80.080 - Certificate of Alteration Criteria

The Board shall issue an approval for any proposed work as described in Section 7, if and only if it determines:

A. The proposed work would not detrimentally alter, destroy or adversely affect any landmark feature; or

B. In the case of construction of a new improvement, building or structure upon a landmark site, the exterior of such construction will not adversely affect and will be compatible with the external appearance of existing designated improvements, buildings and structures on said site.

17.80.110 - Adaptive Use Permit Criteria:

In considering any applications for an Adaptive Use Permit, the Hearing Examiner shall consider the following criteria:

A. Whether the proposed use is within the range of uses determined upon placement on the registry.

[no further changes until]

17.80.120 - Special Valuation For Historic Property

The Hearing Examiner shall serve as the local review body for applications made to the county assessor's office for historic property located within the corporate city limits seeking special valuation pursuant to R.C.W. 84.26.

17.80.130 - Special Valuation Procedure

A. Upon transmittal by the county assessor of an application request made for special valuation, the Hearing Examiner shall conduct a public meeting.

B. The Hearing Examiner shall approve the application if the property meets the criteria of RCW 84.26 and Section 17.80.140 herein; has not been altered in a way which adversely affects those elements which qualify it as historically significant and the owner enters into an agreement which requires the owner for the 10 year period of classification to:

- (1) Monitor the property for its continued qualification for the special valuation;
- (2) Comply with rehabilitation plans and minimum standards of maintenance as approved by the Hearing Examiner and specified in the agreement;

- (3) Make the historic aspects of the property accessible to public view one (1) day a year, if the property is not visible from the public right-of-way;
- (4) Apply to the Hearing Examiner for approval of any demolition permit or alteration; and
- (5) Comply with any other restrictions and conditions placed on the property by the Hearing Examiner pursuant to this chapter.

C. Once an agreement between the owner and the City has become effective, there shall be no changes in standards of maintenance, public access, alteration, or report requirements, or any other provisions of the agreement, during the period of the classification without the approval of all parties to the agreement.

D. An application for classification as an eligible historic property shall be approved or denied by the Hearing Examiner before December 31 of the calendar year in which the application is made.

E. The Hearing Examiner is authorized to examine the records of applicants in its determination.

F. The Hearing Examiner shall notify the county assessor and the applicant in writing of the approval or denial of the application.

If the Hearing Examiner determines that the property qualifies as eligible historic property, the Hearing Examiner shall certify that fact in writing and shall cause a copy of the certificate to be filed with the county assessor within 10 days. The certificate shall state the facts upon which the approval is based.

17.80.140 - Special Valuation Criteria

The Hearing Examiner must find that the real property, together with improvements thereon, meets all of the following criteria for special valuation:

[no further changes until]

C. Be protected by an agreement between the owner and the Hearing Examiner as described in Section 17.80.130(B) herein.

[no further changes until]

17.80.150 - Ordinary Maintenance

A. Nothing in this ordinance shall be construed to prevent the ordinary maintenance of any property covered by this ordinance that does not alter any landmark feature, nor does this ordinance prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when the Building Official or Fire Marshal certifies to the Board that such action is required for the public safety due to an unsafe or dangerous condition.

[no further changes until]

17.80.160 - Penalties

A. Every offense defined by this ordinance shall constitute a violation of the Bellingham City Code, and charged as a misdemeanor with a maximum fine not to exceed \$500.

In addition to any other sanction or remedial injunctive procedure which may be available at law or equity, any person failing to comply with the final order issued by the City may be subject to a cumulative civil penalty in an amount not to exceed \$100 per day from the date set for compliance until such order is complied with. Such civil penalty shall be collected by civil action brought in the name of the City.

Section 35. Title 18, Chapter 16 of the Bellingham Municipal Code regarding approval of preliminary plats is amended as follows:

18.16.040 - Submission Time Limitation

Preliminary plats containing all of the information required by Sections 18.16.020 and 18.16.030 must be submitted to the Planning Department no less than 6 weeks prior to the Hearing Examiner hearing at which consideration is sought.

[no further changes until]

18.16.050 - Public Hearing

Upon receipt of determination of complete application of a proposed preliminary plat, a public hearing before the Hearing Examiner shall be scheduled. Notice of such hearing shall be given by publication of at least 1 notice not less than 10 days prior to the hearing in a newspaper in general circulation in the City. Individual notice shall be mailed to all property owners within 300' of any portion of the proposed plat or any other land owned by the applicant that is adjacent to the proposed plat not less than 10 days prior to the hearing. The actual cost of public notice, mailing and publication shall be borne by the applicant.

If the threshold determination requires public notice under Chapter 43.21C RCW, the City shall issue its threshold determination at least 15 days prior to the Hearing Examiner hearing.

18.16.060 - Notification of Affected Agencies

Upon receipt of a preliminary plat for approval, the following agencies and organizations shall be notified of the date, place and hour of the public hearing before the Hearing Examiner and such notifications shall be accompanied by a copy of the proposed plat:

- A. Department of Public Works and Utilities
- B. Fire Department

- C. Police Department
- D. Parks Department
- E. The electrical distribution company
- F. The telephone company
- G. The gas company
- H. Whatcom County (if plat adjoins City limits)
- I. The television cable company
- J. For preliminary plats adjacent to the right-of-way of a State highway or within 2 miles of the boundary of a State or Municipal airport, written notice including a legal description of the short subdivision and a location map shall be sent to the Secretary of Transportation. The Secretary shall respond within 15 days of said notice as to the effect that the proposed subdivision will have on the State highway or the State or Municipal airport. Notice of intent to short subdivide shall also be sent to the local airport authority.

18.16.070 - Technical Review Committee Action

Upon receipt of a preliminary plat, the Technical Review Committee consisting of the Planning Director as Chair, Public Works Director, Assistant Public Works Director, Engineering, City Attorney, Fire Chief, Police Chief, Parks and Recreation Director or an authorized representative of each and other administrative staff as determined by the Mayor, shall, after receipt of a complete application for the preliminary plat, conduct an informal meeting with the developer(s) for the purpose of reviewing and pointing out what, if any, corrections, additions, deletions, etc., should be made to the preliminary plat prior to the Hearing Examiner public hearing. The recommendation of the Technical Review Committee shall be included in the staff report to the Hearing Examiner and forwarded to the developer(s).

18.16.080 -- Hearing Examiner Action

The Hearing Examiner shall hold a public hearing on each preliminary plat and shall review such plat to assure conformance with the policies as reflected by the Comprehensive Plan and with the planning standards and specification of the City, including the Comprehensive Utility Plan. The Hearing Examiner shall issue findings of fact, conclusions of law, and order approving, denying, or conditioning the preliminary plat. The findings shall include determination of whether appropriate provisions have been made for drainage, streets, alleys, other public ways, water, sewer, parks, playgrounds, sites for schools, and any other relevant features necessary to serve the public interest.

[no further changes until]

18.16.110 - Time Limits

A. Approval of a preliminary plat shall expire 5 years from the date of Hearing Examiner approval, provided that it may be extended in the following ways:

1. Upon application by the subdivider, the Planning Director shall have the authority to grant an extension for 1 additional year. The applicant must file a written request with the Director at least 30 days before the expiration of the 5 year period. A 1 year extension shall be granted upon a showing that the applicant has attempted in good faith to submit the final plat within the 5 year period.

2. Upon application by the subdivider, the Planning Director may, at any time within 1 year of the end of the 5 year period, grant an extension for 1 year from the date the preliminary plat would have expired, even though the applicant has not filed a timely written request for extension as provided in subsection A.1. Such an extension may be granted if it is shown that the proposed plat is still in conformance with the City's Comprehensive Plan, that the plat will meet all subdivision requirements and environmental regulations which are in effect at the time the extension is granted, and that the applicant has attempted in good faith to submit the final plat within the 5 year period.

B. The preliminary plat shall be extended for a period of 1 year each time a division or phase of a subdivision is filed in accordance with a plan approved by the City.

C. In the event a portion of an approved preliminary plat is developed and recorded as a final plat and the remainder of the overall plat is left undeveloped for a period of 5 years from the date of the recording of the divisions, then the approval of the preliminary plat shall expire. The time limit may be extended as provided for in Subsection "A" of this section.

[no further changes until]

18.16.130 - Modification of Standards - Procedure

In the event the Technical Review Committee, in its review of the preliminary plat proposed as provided for in Section 18.16.070, finds that variances from the literal requirements of Chapter 18.28.200, "Street Trees," would better serve the needs of the ultimate occupants of the subdivision, as well as the adjacent community and the City generally, it shall make a specific finding thereof specifying the alternative standard to be met and the reasons for such proposal. Such condition shall thereafter become part of the preliminary plat proposal and unless modified by the Planning or the Hearing Examiner, shall become a part of the preliminary plat.

18.16.140 - Modification of Standards - Limitation

A. In no event shall the street standards contained in Chapter 13.04 be modified so as to diminish the quality of required streets. Where an applicant is authorized to reduce the width of a proposed street, such street shall nevertheless be placed in the standard width right-of-way. Where such a proposal contains a request for street standard modification, it shall further be the responsibility of the

applicant to prepare for the Hearing Examiner's consideration a diagram showing a cross section of the roadway as proposed.

B. In the event the Technical Review Committee proposes some alternative to standard sidewalks, adequate provision shall nevertheless be made for the movement of pedestrians within the plat.

Section 36. Title 18, Chapter 24 of the Bellingham Municipal Code regarding binding site plans is amended as follows:

18.24.040 - General Binding Site Plan Review Procedure

A. Purpose: To establish necessary requirements for site development which will include but are not limited to:

[no further changes until]

K. After receipt of TRC recommendations if processed administratively or Planning Commission recommendations, if any, the Director shall have the authority to approve, condition or deny the general binding site plan. The decision to approve and/or condition shall be in the form of a development contract approved by the Director and sent to the applicant for their signature. The contract shall include infrastructure requirements, special building restrictions (if any), general land use regulations, a phasing plan with appropriate provisions for known parcels not abutting a public street right-of-way, buffers and/or setback requirements and the minimum level of services and access requirements that must be in place prior to the approval of a specific binding site plan. In those areas designated "planned" and when the applicant utilizes the binding site plan process, the binding site plan contract shall supersede the need for a planned development contract. Any decision to deny a binding site plan shall be in the form of a letter sent to applicant which outlines the reasons for the denial and provides information regarding the appeal process.

[no further changes until]

M. Within 10 days of approval of the contract by the Director as described in subsection 3 above, a notice of decision shall a) be mailed to the applicant and to any person who, prior to rendering the decision, requested notice of the decision or submitted substantive comments on the application, and b) sent for publication. The time frames for making decisions on permit applications set forth in BMC 21.01.050 D shall apply.

The notice of decision shall include a copy of the contract, a statement of any threshold determination made under SEPA (Chapter 43.21 RCW) and the procedures for administrative appeal. Any party aggrieved by the Planning Director's decision may file a notice of appeal with the Hearing Examiner within 14 days of the notice of the Planning Director's decision. Appeals shall be submitted to the Hearing Examiner on forms provided by the Hearing Examiner. Appeals of an administrative decision shall be heard by the Hearing Examiner.

[no further changes]

Section 37. Title 18, Chapter 32 of the Bellingham Municipal Code regarding cluster short subdivisions is amended as follows:

18.32.050 - Density Bonus Earned

A density bonus of up to 50% maximum may be earned, at the discretion of the Hearing Examiner, if the options listed below are provided in addition to the minimum cluster performance criteria listed in .040 #1 through #4 above. The minimum lot area requirement may be waived by the City Council if any of the following are achieved:

Bonus up to the amount listed below may be granted by the Hearing Examiner based on the quality of the features offered, the extent to which the development exceeds the minimum level which qualifies for a bonus and extent to which the public will benefit from the offered option. The Hearing Examiner may impose conditions to ensure a public benefit of approved bonuses.

A. Up to a 50% bonus for the purchase and transfer of all or part of the development rights of a parcel identified as meeting any of the following criteria:

1. A parcel, tract or land area declared as a suitable density donor by City Council Resolution.
2. A parcel with a valid Planned Development Contract which provides for a development right transfer.
3. A parcel previously zoned for residential uses that, due to the adoption of subsequent governmental regulations and as determined by City Council, is unlikely to achieve even 50% of the original allowable density, resulting in the loss of the City's potential infill capacity.

B. Up to a 50% bonus when a project is able to provide at least 1/2 of the total unit count of the project as affordable housing, as defined by the City Council Resolution, inclusive of a provision to maintain said housing as such for a reasonable duration determined by City Council.

C. Up to a 50% bonus for the redevelopment of an area considered in need of revitalization as declared by City Council Resolution.

D. Up to a 25% bonus for the development of a neighborhood park and related improvements that satisfies the needs of the immediate neighborhood as determined by the Parks and Recreation Department except when approval of the City Council is required.

[no further changes until]

G. Up to a 10% bonus for providing enhanced perimeter buffering of adjacent, less compatible uses that the Hearing Examiner determines would make a cluster subdivision a more compatible neighbor.

18.32.060 - Administrative Approval of 1-4 Lot Cluster Short Subdivisions

- A. Cluster short subdivision proposals with 4 or fewer lots shall be considered and approved administratively. Said proposals shall be consistent with cluster subdivision criteria outlined in Chapter 18.32.040 and follow the approval procedure of Chapter 18.12. and as provided below.
- B. Notification of the proposal shall be sent to property owners within 300' of the project boundary, the Planning Commission, and the Hearing Examiner. A public hearing shall be scheduled if it is determined there are significant planning issues or significant neighborhood opposition in which case the proposal shall be approved by the Hearing Examiner with appeal only to Whatcom County Superior Court as provided by BMC 2.56.050(B).
- C. Appeals of an administrative decision for approval of a cluster short subdivision shall be forwarded to the Hearing Examiner and a public hearing shall be scheduled to consider the matter.
- D. Any bonus requested in a 4 or fewer lot cluster subdivision shall require Hearing Examiner approval.

Section 38. Bellingham Municipal Code 18.36.020 regarding lot design is amended as follows:

18.36.020 - Lot Design

A. All lots shall be of sufficient size to meet the site area requirements specified within the area's land use designation under "density" found within the applicable Neighborhood Plan in which the property is located; provided, however, that this minimum shall not be required in the following instances:

[no further changes until]

(4) For existing lots of record not located in the Lake Whatcom Watershed and under single ownership having a total site area in excess of the required neighborhood density in which the case the number of possible lots shall be determined by dividing the total amount of site area by the specified neighborhood density. Property which contains existing structures that straddle common property lines shall be consolidated and considered on lot of record.

- a. Proposals with a fraction of less than 1/2 shall be rounded down to the next lower whole number.
- b. Proposals with a fraction of 3/4 or greater shall be rounded to the next higher whole number and can be approved administratively.
- c. Proposals with a fraction equal to 1/2 and less than 3/4 may be rounded to the next higher whole number upon site plan approval by the Hearing Examiner provided all of the following criteria are met:

- i. Be harmonious with the general policies and specific objectives of the Comprehensive Plan.
- ii. Enable the continued orderly and reasonable use of adjacent properties by providing a means for expansion of public roads, utilities, and services.
- iii. Be designed so as to be compatible with the essential character of the neighborhood.
- iv. Be adequately served by public facilities and utilities including drainage provisions.
- v. Not result in the destruction, loss, or damage to any natural, scenic, or historic feature of major consequence.

Section 39. Title 18, Chapter 44 of the Bellingham Municipal Code regarding the provision of parks, open space, and public areas is amended as follows:

18.44.010 - Provision For Parklands--Methods

In each subdivision hereafter approved, appropriate provisions shall be made for parks, playgrounds, open space and other public areas. Provision of such areas may be made in one of the two following ways:

A. A minimum of 100 square feet of ground area per lot shall be provided in a location predetermined by the city park plan.

B. In the event no proposed park or planned expansion of an existing park is located within the boundaries of a subdivision, then the developer shall pay into a Special Park Site Acquisition Fund in an amount as determined in the City's Park Impact Fee Ordinance or in the absence of such an ordinance, an amount equal to the assessed value of 100 square feet of ground area per lot in the subdivision as determined by the Hearing Examiner. Such fund is to be used to acquire land for parks, playgrounds, open space or greenbelts in areas deemed appropriate by the City Council.

18.44.020 - Substitution of Greenbelts For Required Park Lands

The developer may substitute open space or greenbelts for the above required park lands if, in the opinion of the Hearing Examiner, such areas are necessary for public welfare or safety. Open spaces or greenbelts need not be dedicated to and maintained by the public and any substituted in lieu of park lands shall be a continuing obligation of the owners of the subdivision.

Section 40. Title 18, Chapter 48 of the Bellingham Municipal Code providing for variances from the terms of Title 18 is amended as follows:

18.48.010 - Variances

A. A modification of the terms of this title may be granted by the Hearing Examiner when:

1. a. Because of unusual shape, exceptional topographic conditions, geological problems, environmental constraints or other extraordinary situation or condition in connection with a specific piece of property, the literal enforcement of this title would involve difficulties or result in an undesirable plat.

- OR -

b. The granting of the variance results in better lot design than previously existed. Better lot design is defined as meaning such items as larger in area, more practical site design because of topography, wetland or other environmental constraints, or the lot design will result in lots nearer to conformance to required standards.

- AND -

2. The granting of any variance will not be unduly detrimental to the public welfare nor injurious to the property or improvements in the vicinity and subarea in which the subject property is located.

B. Applicants seeking a variance shall detail their proposal and explain how the proposal meets the variance criteria. The notice area shall be 300' from the boundary of the subject property being divided, including adjacent property under same ownership. A nonrefundable filing fee in an amount determined by City Council shall accompany the variance application.

C. An approved variance shall expire after one year from the date of authorization unless either construction has been begun or complete permit applications have been submitted for the required plat improvements.

18.48.015 - Appeals

Any applicant for a short subdivision or lot line adjustment aggrieved by any decision made by the Planning Director in the administration of this title may appeal the decision to the Hearing Examiner as provided by BMC 2.56.050(B), who shall determine after an advertised public hearing that said decision was made pursuant to the purpose and intent of this ordinance and that any discretionary power exercised is reasonably attributable to the impact generated by the subject short subdivision.

Section 41. BMC 20.10.035 providing for approval of accessory dwelling units is amended as follows:

20.10.035 - Accessory Dwelling Units

A. Purpose and Authority

[no further changes until]

10. Permitting Process

(a) An Accessory Dwelling Unit permit application must be submitted to the Department of Planning on such forms as to be determined by the Planning Director along with a list of property owners within 300' of the subject site based on current records of the Whatcom County Assessor, and an application fee in the amount established by Council Resolution. The application form shall contain information that the rental of an accessory dwelling unit may be subject to the provisions of the Landlord Tenant Act, RCW 59.18.

(b) A complete application shall consist of the following:

- (1) Application form with required plans and information.
- (2) Fee payment.

(c) The Department of Planning will send notice of the proposed ADU to affected City Departments and property owners within 300' of the site, as shown on the list provided by the applicant. In addition, the site shall be posted in conformance with the provisions outlined in Chapter 20.10.015.

(d) The Director of the Planning Department shall make a decision on the project no sooner than 20 days and no later than 30 days from the mailing of the notice, based on the information contained in the application and comments received from City staff and neighboring property owners.

(e) Notice of the decision will be sent to the applicant, property owners on the list provided by the applicant, and any other person who has requested said notice in writing. The notice shall contain information about the Administrative Appeal process and the deadline to appeal the decision to the Hearing Examiner.

[no further changes]

Section 42. BMC 20.10.045 regarding home occupation permits is amended as follows:

20.10.045 - Home Occupations

A. Authority: The Director is authorized to approve home occupation permits consistent with the regulations and provisions herein.

[no further changes until]

C. Permit Procedure.

[no further changes until]

(2) For home occupations which exceed the exempt limitations, the following process and procedure apply:

(a) Following submittal of an application on forms provided by the Department, and payment of a filing fee as established by Council resolution, the Director shall have the authority to approve a temporary home occupation permit for a period not to exceed 1 year. In approving the Permit, the Director must find that:

- i. The application is consistent with the regulations of Subsection "B" above, and
- ii. The request will not cause detrimental effects to the surrounding neighborhood.

The Director shall have the authority to place such restrictions or conditions on the Permit as deemed necessary to protect the neighborhood from any detrimental, effects which may arise from the home occupation, or may schedule a public hearing for consideration by the Hearing Examiner.

If, after issuance of a permit, the temporary home occupation violates any of the conditions placed upon home occupations by this title or by the Director in granting this permit, or if the temporary home occupation is otherwise found to have detrimental effects on the surrounding neighborhood, the Director shall have the authority to place additional restrictions on the use, to revoke the permit, or schedule a public hearing so that the Hearing Examiner may consider the detrimental impact resulting from the use and condition or revoke the permit.

(b) Permanent Permit.

- i. Upon expiration of the temporary permit, an application may be filed on forms provided by the Department for a permanent home occupation permit. A fee as established by Council resolution shall accompany the application.

[no further changes until]

- ii. Within 7 days from submittal, a copy of the application shall be mailed to area property owners, the Technical Review Committee, and any other affected governmental agencies. The Notice shall state the proposed action of the Director, comments will be considered, and final action taken within 15 days of the mailing. Any affected party may request a hearing in front of the Hearing Examiner if the Home Occupation has caused any problems in the neighborhood during the temporary period.

iii. The application shall be processed in the same manner as a Conditional Use except for the reduced mailing list.

[no further changes until]

v. Appeals. Actions taken by the Director under this ordinance shall be appealable to the Hearing Examiner, according to procedures set forth in Bellingham Municipal Code 20.24.020 (B).

Section 43. BMC 20.10.046 providing for approval community facilities is amended as follows:

20.10.046 - Community Public Facilities Approval

A. 1. Applicability. When a community public facility (CPF) approval is required for the location of a community public facility as defined in Section 20.08.020 C. (14), the procedures contained in this section shall apply. Storm water detention facilities or water storage facilities that are approved by the City as part of a preliminary plat, binding site plan contract or planned contract shall not require a separate CPF approval. In these cases, any additional submittal requirements in Section 20.10.046 C. shall apply and the factors listed in Section 20.10.046 D. (a-i) shall be considered.

[no further changes until]

D. Standards and Evaluation. The City Council shall have the authority to require standards more stringent than the zone's development regulations or allow relief from these standards if the Council finds that such modifications are necessary to accommodate the special needs of an appropriate use and/or mitigate impacts from the use.

The following factors shall be considered during evaluation of the proposal:

[no further changes until]

E. Planning Commission Review. The Planning Commission shall hold a public on any proposed CPF before making a recommendation.

1. Advertising. The City shall advertise the public meeting in a newspaper of general circulation at least 15, and not more than 30 days before the scheduled hearing date.

2. Written Notice. Written notice of the meeting shall be mailed by the Department of Planning no less than 15 days before the date of the meeting to the applicant, to other reviewing agencies, to all property owners directly affected by the request, to all property owners and/or residents within at least 300' of the request as measured from the exterior boundary line of the proposal, and to all other individuals and groups who have filed a written request with the Department. A list of property owners for an area larger than the 300' boundary may be required in cases where the proposal clearly has impacts outside the 300'

area. The notification list shall be from the latest available records of the Whatcom County Assessor's Office. No responsibility will be assumed by the applicant, Commission, Council or City staff in the event the County Assessor's records contain inaccurate or incomplete information, and any such deficiencies will not invalidate any proceedings conducted in reliance of such information. However, failure to notify the affected parties within the guidelines prescribed, when the County Assessor's records are accurate, shall constitute grounds for a rehearing. The applicant and city staff shall make every reasonable effort to notify property owners and residents within the established notification area.

3. Posting. The applicant shall post public notice (signs) on the property no less than 30 days before the Planning Commission meeting. The sign(s) shall be of a size, material and content as specified by the Planning Department. The sign(s) shall be posted at an area of the site adjoining public rights-of-way and/or at other locations where the signs will be most visible to the public. Larger sites will require more than one sign as determined by the department. The applicant is responsible for posting and maintaining the sign(s) at the site until the City has completed action on the request and for removing the sign(s) thereafter and returning them to the department.

4. Public Meeting. The Commission, in holding the public meeting, shall listen to all relevant arguments for, against, or neutral to the request and thereafter forward their findings and recommendations to the City Council.

F. City Council Action. After proper notice and posting in the same manner as for the Planning Commission meeting, the Council will hold a public hearing(s) and work sessions as necessary to consider the findings and recommendations of the Planning Commission. The City Council shall have the authority to confirm, alter, modify or deny any of the Planning Commission's recommendations in making their decision. The City Council may also condition any approval if they determine the conditions are necessary to satisfy applicable regulations or criteria. The Council's decision shall be in the form of a resolution.

Section 44. BMC 20.10.048 providing for permitting for co-housing developments is amended as follows:

20.10.048 - Co-Housing

A. Co-housing developments may be allowed in use districts where listed as a permitted use if they comply with the following requirements listed in this subsection. Co-housing projects that comply with the standard residential development regulations within a use district are exempt from this subsection.

B. Approval Process. Co-housing projects opting to develop under this subsection and located in the Residential Single, Residential Multi Duplex or Residential Multi Multiple use district shall be processed as follows:

[no further changes until]

(6) A public meeting shall be held before the Planning Commission. Notice of such meeting shall be given by publication of at least one notice not less than 10 days prior to the meeting in a newspaper in general circulation in the City. Individual notice of the meeting shall be mailed to property owners as specified in 20.10.048 B. 4 above. This notice may be combined with the notice of application. If the SEPA threshold determination requires public notice under Chapter 43.21C RCW, the City shall issue its threshold determination at least 15 days prior to the Commission meeting unless alternative threshold procedures are allowed under WAC 197-11.

(7) The Commission shall hold a public meeting on each co-housing application and shall review such application to assure conformance with the policies contained in the Comprehensive Plan, Neighborhood Plan and the criteria in Chapter 20.10.048 D. The Commission shall include in their review consideration of the staff recommendations and proposed co-housing development contract. The Commission shall make a recommendation to the Hearing Examiner as to their findings. Such recommendation shall be advisory only.

(8) The Hearing Examiner shall schedule a public hearing to consider the application. The Hearing Examiner shall develop a record, including the recommendation of the Commission, and issue findings of fact, conclusions of law and order approving, disapproving, or otherwise conditioning the proposed co-housing project and associated co-housing development based on substantial evidence in the record.

(9) The procedures regarding a notice of decision and contained in Chapter 21.01.050 C. shall apply. The notice of decision shall also be published in a newspaper in general circulation in the City. The date of the decision shall be the date of the Hearing Examiner decision.

(10) If application is approved, the contract shall be routed for signature and recorded.

[no further changes until]

D. Special requirements. The Hearing Examiner may approve an application for a co-housing project if it is found to comply with the following criteria:

[no further changes until]

7. Parking. Co-housing developments shall satisfy all parking regulations contained in Chapter 20.12, provided that the Hearing Examiner may increase or decrease the required number in order to mitigate expected impacts based on the proposed development design and/or occupancy or based on proposed use and occupancy restrictions. Open parking areas shall not be located within 15' of any property line unless the Hearing Examiner determines that a reduced setback will provide adequate buffering to protect adjacent properties and uses. In no case shall the setback be reduced below 5' without variance approval.

[no further changes until]

E. Any exceptions to the standards in Section 20.10.048 (D) must be approved by the Hearing Examiner only after written submittal by the applicant detailing the reasons why the standards cannot be met. Grounds for exceptions shall be limited to those justifications for variances contained within Chapter 20.18. Exceptions to allowed uses or density may not be granted.

Section 45. BMC 20.12.010 providing for parking requirements is amended as follows:

20.12.010 - Parking

A. Applicability.

[no further changes until]

B. Number of Spaces Required.

(1) All uses shall provide, at a minimum, the number of spaces required herein.

[no further changes until]

(3) Any use clearly similar to the uses listed below, shall meet the requirements specified. If the similarity is not apparent, then the Planning Director shall determine the standards which shall be applied.

[no further changes]

Section 46. Title 20, Chapter 14 Bellingham Municipal Code regarding non-conforming buildings and structures is amended as follows:

20.14.010 - Buildings and Structures

A. Any existing building or structure or portion thereof lawfully erected or altered which does not meet all of the zoning requirements found in this ordinance is hereby declared a nonconforming building or structure and not in violation of this ordinance.

[no further changes until]

C. In the event a nonconforming building or structure is less than 50% destroyed by any cause, nothing in this ordinance shall prevent the securing of a building permit within 1 year from the date of destruction for the restoration of the building or structure. The determination of the percentage of destruction shall rest with the Building Official and shall be based upon the actual cost of repairing the portion of the building or structure destroyed in relation to the estimated replacement cost of the entire building or structure.

Any nonconforming building or structure more than 50% or more destroyed may be reconstructed provided it meets all of the regulations of the Use District in which it is located or the structure is

rebuilt according to a plan approved by the Hearing Examiner. Such a plan may be approved by the Hearing Examiner if it finds that the proposed reconstruction minimizes infringement of this ordinance consistent with the specific reconstruction needs of the structure. The Hearing Examiner may condition such approval to mitigate the detrimental effects of infringement of this ordinance by any portion of the nonconforming building or structure.

20.14.020 - Uses

A. Any existing use lawfully established prior to the passage of this ordinance which is not permitted in the Use District in which it is located is hereby declared a nonconforming use and not in violation of this ordinance.

[no further changes until]

C. The Hearing Examiner may grant a Conditional Use Permit for a period not more than 5 years permitting a nonconforming use to change to another use not permitted in the Use District in which it is located provided the owner clearly demonstrates (1) that the structure, because of its particular design, cannot be reasonably used to house a Permitted Use, (2) that the proposed use will be more compatible with the Permitted Uses of the Use District than was the existing use. The Hearing Examiner may condition such permit if it finds that provisions have to be taken to safeguard adjoining properties from detrimental effects that might result from the proposed use.

D. The Hearing Examiner may extend such conditional use permit for an additional period or may declare such use a permanent nonconforming use provided the owner clearly demonstrates that the structure cannot be reasonably used for a permitted use because of its particular design. In determining whether to grant such an extension, and if so, for what period, the Hearing Examiner shall take into account the following:

(1) If the Hearing Examiner finds that the nonconforming use's contribution to the welfare of the community at its present site outweighs detriment to the neighborhood, then the Hearing Examiner may declare such use a permanent nonconforming use.

(2) If the Hearing Examiner finds that the detriment to the surrounding properties outweighs the nonconforming uses contribution to the general welfare of the community, then a period should be set which provides (a) a reasonable allowance of time for amortization of investments in the building and improvements, while (b) minimizing future detriment to the surrounding properties.

(3) If the Hearing Examiner finds that the detriment to the surrounding properties significantly outweighs any deprivation of the property owners rights in the nonconforming uses caused by termination of such use, the Hearing Examiner may order that the use be terminated within a period of one year or longer.

The Hearing Examiner may otherwise condition the use so as to minimize detriment to the neighborhood. A time period shall be set so that the public benefit exceeds any private loss. No further extension shall be granted.

E. The Hearing Examiner may grant a Conditional Use Permit allowing a nonconforming use to expand, enlarge, or increase in intensity provided that:

(3) The proposed modification will not result in further infringement of the provisions of this ordinance; modifications shall comply with all regulations (other than use restrictions) including but not limited to lot coverage, yard, height, open space, density provisions, or parking requirements unless waived by the Hearing Examiner through variance as provided by this ordinance,

[no further changes]

20.14.030 - Termination of Nonconforming Uses

A. A discontinued or abandoned nonconforming use shall not be resumed. Discontinuation or abandonment shall be construed as follows:

[no further changes until]

B. Between the effective date of this ordinance and the end of 1990, the City Planning Department shall notify each nonconforming use located in a Residential Single or Multi General use type and which engages in the operations hereinunder specified that it must, within 30 days of notification, apply for a Certificate of Nonconforming Use which shall be granted only upon the following procedures:

[no further changes until]

(2) The Hearing Examiner shall hold a public hearing and, after consideration of any required Environmental Impact Statement, shall impose conditions necessary to minimize detriment to the surrounding properties and neighborhoods.

If the conditions imposed by the Hearing Examiner are not followed or instituted by the nonconforming user, the Planning Director or Building Official may request and the City Attorney's Office shall prepare and prosecute a complaint for permanent injunction to terminate the nonconforming use or eliminate detrimental effects or nuisance caused thereby.

The nonconforming uses subject to the review of the Hearing Examiner under this section shall be limited to those which engage as its primary function the following operations:

[no further changes until]

C. In the event a building or structure which houses a nonconforming use is less than 50% destroyed by any cause, nothing in this ordinance shall prevent the securing of a building permit within 1 year from the date of destruction for the restoration of the building or structure. The determination of the percentage of destruction shall rest with the Building Official and shall be based upon the actual cost of repairing the portion of the building or structure destroyed in relation to the estimated replacement cost of the entire building or structure. Any building or structure which houses a nonconforming use which is 50% or more destroyed may be rebuilt according to a plan approved by the Hearing Examiner. Such a plan may be approved by the Hearing Examiner if he finds that the proposed reconstruction minimizes detriment to the surrounding properties or the general welfare consistent with the reconstruction needs for the nonconforming use. The Hearing Examiner may condition such approval to mitigate such detrimental effects caused by the nonconforming use.

Section 47. Title 20, Chapter 16 of the Bellingham Municipal Code regarding conditional use permits is amended as follows:

20.16.010 - General Provisions

A. Certain uses because of their unusual size, infrequent occurrence, special requirements, possible safety hazards or detrimental effects on surrounding properties and other similar reasons, are classified as conditional uses.

B. Certain uses may be allowed in certain General Use Types by a Conditional Use Permit granted by the Hearing Examiner provided such use is specified under the Conditional Use subsection of the appropriate General Use Type Handbook and it is clearly shown that:

[no further changes until]

C. Nonconforming uses may be allowed to expand, enlarge, or increase in intensity by a Conditional Use Permit granted by the Hearing Examiner provided that the added impacts from the proposed modification are shown to be consistent with the standards set forth in Section 20.14.020.E. and in paragraph B(1) and (3) above.

D. Prior to the granting of such permit, the Hearing Examiner shall hold a public hearing as provided herein and such permit shall only be issued if it shall be evident that all conditions for that particular use have been satisfied. Any request for a conditional use permit or variance which is part of a Consolidated Permit Process as provided in Chapter 21 of the Bellingham Municipal Code shall be reviewed under the procedures of said chapter.

E. In applying the standards set forth in paragraph B above the Hearing Examiner shall consider the following factors as to whether the proposed use will:

F. The Hearing Examiner shall not waive or reduce the minimum requirements of this title or any other title of the city code, unless upon proper variance petition.

[no further changes until]

H. Conditional Use Permits shall expire 12 months after the issuance of such permit unless construction or establishment of the use has commenced. The Hearing Examiner may extend the expiration date by 12 months upon due proof the applicant intends to activate the permit within that time limit.

I. An application for a Conditional Use Permit which has been denied in whole or part shall not be resubmitted for a period of 2 years from the date of such denial. Provided, a conditional use application may be resubmitted if it is "sufficiently different."

An application is "sufficiently different" when one of the following has been altered:

[no further changes until]

(4) The application satisfactorily addresses concerns identified by the Hearing Examiner as part of the public hearing preceding denial of the permit in whole or in part.

J. The Director, may, if requested by the applicant, administratively consider and approve, one-time, nonaccumulative additions, modifications or changes when the intent of the Hearing Examiner, or specific conditions required by the Hearing Examiner, shall not be reduced or eliminated, and the modifications meet all of the following criteria:

[no further changes until]

Notification of such determination shall be forwarded to the City Council and Hearing Examiner.

20.16.020 - Conditional Uses

A. (1) Adaptive Use.

[no further changes until]

B. (1) Bank (Automotive drive-up facilities only)

[no further changes until]

(2) Bed and Breakfast Facilities

(c) Special Requirements:

vi. No additional parking needs to be provided unless specifically found to be necessary by the Hearing Examiner in its review process.

[no further changes until]

C. (1) Child Placing Agency.

[no further changes until]

(2) Church.

[no further changes until]

(c) Special requirements:

- i. The border of the parking lot abutting or across the street from any residential use or residential general use type shall be screened. The Hearing Examiner may waive this provision if it specifically finds that such screening is not necessary due to an exceptional situation, and its deletion will not cause hardship or detrimental impact on present or future neighbors.

[no further changes until]

P. (1) Parking Facilities (Non-retail)

[no further changes until]

(c) Special requirements:

- v. Security measures, such as chaining off all access areas, may be required by the Hearing Examiner.

[no further changes until]

(4) Public Utilities

[no further changes until]

(c) Special requirements:

- i. The rationale for the particular facility in the proposed location must be clearly demonstrated by the applicant to the Hearing Examiner's satisfaction.

[no further changes until]

- iii. Complete plans showing the elevations, locations of the proposed structures, and locations of buildings on adjoining properties shall be submitted for approval by the Hearing Examiner. Approval shall be based upon appearance and compatibility with the development of the surrounding properties.

[no further changes until]

R. (1) Recreational Vehicle Parks and Campgrounds

[no further changes until]

- (2) Recycling Collection Center

[no further changes until]

- (c) Special requirements:

[no further changes until]

iii. Hours of operation shall not be longer than 7:00 a.m., to 7:00 p.m.; however, the Hearing Examiner may further adjust such operating hours if deemed necessary.

[no further changes until]

- S. (1) School

[no further changes until]

- (2) Service Care

[no further changes until]

- (c) Special requirements.

[no further changes until]

ii. The Hearing Examiner shall determine the required number of off-street parking spaces.

- (3) Single family residence, containing 5,500 square feet or more.

[no further changes until]

(c) Special requirements: In neighborhood areas with a "view" special condition or other locations which have views of lakes, the bay or mountains, the applicant shall provide an analysis of the anticipated impacts on views from adjacent properties that may be affected by construction of the proposed residence or addition. The Hearing Examiner must find that the proposal will not cause significant adverse impacts on views from other properties that are due to the size or design of the building and which could be reduced by an alternative design.

[no further changes]

Section 48. Title 20, Chapter 18 of the Bellingham Municipal Code regarding variances is amended as follows:

20.18.010 - General Provisions

A. A variance is a modification of the terms of this ordinance. The Hearing Examiner may grant a variance only if the applicant proves to the Hearing Examiner's satisfaction that because of the unusual shape, exceptional topographic conditions, or other extraordinary situation or condition in connection with a specific piece of property the literal enforcement of the ordinance would involve practical difficulties and cause undue hardship unnecessary to carry out the spirit and intent of this ordinance.

[no further changes]

20.18.020 - Variance Criteria

A. Variances can be granted by the Hearing Examiner if the applicant proves to the Hearing Examiner that the following criteria are satisfied:

[no further changes]

Section 49. BMC 20.19.010 regarding Board of Adjustment procedures is amended as follows:

20.19.010 - Procedure

[no further changes until]

B. Application Form. The Planning Director shall prescribe the forms to be used for Conditional Use Applications which come before them for action. The Planning Director may prepare and provide blanks for such purposes and prescribe the type of information and plans to be provided in the application or submitted by the applicant or petitioner.

[no further changes until]

G. Notification Methods.

[no further changes until]

2. Hearing. A notice of public hearing shall be advertised in a newspaper of general circulation in the City by the City at least 10 days prior to the scheduled hearing date. Written notice of the hearing shall be mailed by the Planning Department to the applicant and all property owners within 100' for variances or home occupations and 300' for conditional uses. The distance shall commence from the exterior property line of the proposal. If the hearing date has been scheduled as of the date of the notice of application, the hearing notice may be combined with the notice of application.

No public hearing may be conducted prior to 15 days after the date of the notice of application. If the threshold determination requires public notice under Chapter 43.21C

RCW, the City shall issue its threshold determination at least 15 days prior to the proceeding before the Hearing Examiner.

3. Mailing List Provided by Applicant. The list of all such affected parties shall be submitted by the applicant as part of the application submittal requirements and shall be obtained from the latest available records of the Whatcom County Assessor's Office.

No responsibility will be assumed by the applicant, Hearing Examiner, or Planning Office in the event the County Assessor's records contain inaccurate or incomplete information, and any such deficiencies will not invalidate any proceedings conducted in reliance of such information. However, failure to notify the affected parties within the specified distance when the County Assessor's records are accurate, shall constitute grounds for a rehearing.

H. Hearing Examiner Action. The Hearing Examiner shall hold a public hearing to listen to public input concerning the granting of the permit.

If for any reason, testimony on any case set for public hearing cannot be completed on the day set for such hearing, the person presiding at such hearing may, before adjournment or recess thereof, publicly announce the time and place such hearing shall be continued to and no further notice is required.

After receiving all testimony, the Hearing Examiner shall render a decision based on the criteria listed in the Bellingham Municipal Code sections pertaining to the subject application.

In approving an application, the Hearing Examiner may impose such conditions as it deems appropriate, if such are deemed necessary for the protection of the surrounding properties, or the neighborhood or the general welfare of the public. The Hearing Examiner shall not have the authority to disregard those conditions, if any, imposed by the Responsible official as a means of avoiding adverse environment impact, pursuant to WAC 197-10-370.

The Hearing Examiner shall not waive or reduce the minimum requirements of this ordinance or any other title of the City Code, unless upon proper variance petition.

The Hearing Examiner shall make is findings of fact conclusions of law, and order on each variance application within 30 days following the termination of the public hearing.

I. Notice of Decision. The procedures contained in BMC 21.01.050 D shall apply.

J. Appeals of Hearing Examiner Decision. Any party aggrieved by an action of the Hearing Examiner may file an action in the Superior Court of Whatcom County to review the Board decision. Any such action shall be governed by and filed within the time periods provided by RCW Chapter 36.70C.

Section 50. BMC 20.24.020 providing for Appeals is amended as follows:

20.24.020 - Appeal, Generally

- A. Written response to questions related to the interpretation of this ordinance or action taken or to be taken therefrom shall be delivered within 30 days of said request.
- B. Appeals shall be taken to the Hearing Examiner by any person aggrieved, or by any officer, department, board, or commission of the City affected by any order, requirement, permit, or decision made by an administrative official in the administration or enforcement of this land use development ordinance or any amendment thereto. Such appeals shall be filed in writing, in duplicate, with the Hearing Examiner within 20 days of the date of the action being appealed. If there was a written response, the date of the letter shall constitute "the date of the action."
- C. Upon receipt of such an appeal, the Hearing Examiner shall set the time and place at which the matter will be considered. At least 10 days notice of such time and place shall be given to the adverse parties of record and to the official whose decision is being appealed. The officer from whom the appeal is being taken shall forthwith transmit to the Hearing Examiner all records and proceedings pertaining to the decision being appealed.
- D. In exercising the powers granted herein, the Hearing Examiner may, in conformity with this ordinance reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from, and may make such findings, conclusions, order, requirement, decision, or determination as should be made, and to that end, shall have all powers of the officer from whom the appeal is being taken, insofar as the decision on the particular issue is concerned, and in making its determination the Hearing Examiner may hear any pertinent facts bearing on the case.

Section 51. BMC 20.25.030 providing for design review is amended as follows:

20.25.030 Design Review procedures

[no further changes until]

J. Appeal from the Director's Decision. Any party aggrieved by the decision of the Director may file an appeal within 14 days of the notice of decision, or if no notice was issued, within 14 days of the decision. Any appeal must be filed with the Hearing Examiner with the appropriate forms and be accompanied by a filing fee as established by the City Council.

K. Appeal Hearing. Appeals shall be decided by the Hearing Examiner after a public hearing. Notice of the hearing shall be sent to the parties to the appeal at least 10 days prior to the hearing date. The appeal process shall be subject to the time limits for appeal decisions specified in BMC 21.01.060A.

Section 52. Title 20, Chapter 30 of the Bellingham Municipal Code providing for Residential Single Development is amended as follows:

20.30.030 - Permitted Uses

A. Uses Permitted Outright. No building or land shall be used within an area designated residential single, except as follows:

[no further changes until]

(3) Private Recreation Facilities, Recreational Vehicle Storage Lots and/or Common Open Space (when approved as part of a subdivision).

20.30.040 - Standard Development Regulations

[no further changes until]

C. Main building/Principal Use. There shall be no more than one principal use and/or one main building on a lot; provided however that the Hearing Examiner is authorized to approve additional main buildings for those conditional uses which the Hearing Examiner finds by their nature to function efficiently and appropriately in more than one main building.

20.30.090 - Signs

A. Generally. No signs are permitted in any area designated RS, unless specifically authorized herein. (See also Section 20.30.120, Vision Clearance)

B. Regulations by Use

[no further changes until]

(6) Nonconforming Uses

Signage for nonconforming uses shall be reviewed and approved as a conditional use by the Hearing Examiner and shall meet the sign regulations for other conditional uses within the applicable land use designation.

20.30.100 - Accessory Buildings And Uses

[no further changes until]

B. Regulations

[no further changes until]

(4) An accessory building may not exceed 800 square feet in area, provided the Hearing Examiner may approve, by conditional use permit, larger buildings after proper review and consideration.

Section 53. Title 20, Chapter 32 of the Bellingham Municipal Code providing for Residential Multi Development is amended as follows:

20.32.030 - Permitted Uses

A. Uses Permitted Outright. No building or land shall be used within areas designated RM except as enumerated below corresponding to the applicable use qualifier:

[no further changes until]

- (4) Private Recreational Facilities, recreational vehicle storage lots or common open space (where approved as part of an approved subdivision).

[no further changes until]

20.32.040 - Standard Development/Regulations

[no further changes until]

C. Main Buildings/Principal Use. Within areas designated "Residential Multi-Duplex," no more than one principal use or one main building shall be permitted on a single building site, unless the neighborhood plan for the applicable area provides otherwise. There shall be no limit on the maximum number of main buildings on a single site with areas designated "Residential Multi, Multiple." The Hearing Examiner is authorized to approve more than one main building for those conditional uses which the Hearing Examiner finds to efficiently and appropriately function in more than one building.

[no further changes until]

20.32.100 - Signs

[no further changes until]

B. Regulation by Use

[no further changes until]

(7) Signage for nonconforming uses shall be reviewed and approved as a Conditional Use by the Hearing Examiner and shall meet the sign regulations for other Conditional Uses within the applicable land use designation.

[no further changes]

Section 54. Title 20, Chapter 34 of the Bellingham Municipal Code providing for Commercial Development is amended as follows:

20.34.020 - Purpose And Intent

[no further changes until]

B. Neighborhood, Use Qualifier. The Commercial Neighborhood designation (NC) is intended to accommodate retail and personal service establishments which will primarily serve the immediate neighborhood populous.

To help retain the purpose and integrity of neighborhood commercial areas, two self-limiting actions have been taken.

First, existing neighborhood business areas have been reduced in size within the neighborhood plans. Future land use designation changes to neighborhood commercial should follow these guidelines; (1) Separate NC areas should not be located closer than one mile from each other, (2) NC areas should not contain more than three acres, (3) NC areas should be located only along primary, secondary or collector arterials as identified in the circulation element of the comprehensive plan, (4) NC areas should be limited to 600 feet of frontage along said arterial, (5) NC areas should be located where access and internal circulation patterns can be limited and coordinated. Second, limitations are placed upon a maximum retail building size. This restriction will vary depending upon neighborhood, and will prevent facilities from expanding beyond the intended scope of the neighborhood commercial district without Council review and approval.

20.34.050 - Parking

[no further changes until]

B. Number of Spaces Required

[no further changes until]

(3) Any use clearly similar to the uses listed below, shall meet the requirements specified. If the similarity is not apparent, then the Hearing Examiner shall, upon request, determine the standards which shall be applied.

[no further changes]

Section 55. BMC 20.36.050 regarding Industrial Development is amended as follows:

20.36.050 - Parking

[no further changes until]

B. Number of Spaces Required

[no further changes until]

(2) Any use clearly similar to the uses listed below shall meet the requirements specified. If the similarity is not apparent, then the Hearing Examiner shall determine the standards which shall be applied.

[no further changes]

Section 56. Title 20, Chapter 38 of the Bellingham Municipal Code providing for planned development is amended as follows:

20.38.040 - Procedures

A. Process. Generally, staff approval is all that is required for project proposals which are consistent with applicable standards found herein and are located on property having a Planned use qualifier or Institutional general use type designation (following Plan adoption).

A public meeting conducted by the City Planning Commission may be necessary if required by other City ordinances, or if requested by either the Planning Director or the Planning Commission Chair. The meeting should be reserved to only those projects which could raise significant planning issues.

A public hearing conducted by the Hearing Examiner may also be required if the decision of the staff is appealed by the developer or any other aggrieved party.

[no further changes until]

I. Decision/Planned Development Contract.

[no further changes until]

(6) Applications with variances. If the application includes requests for exceptions from any of the standards contained in BMC 20.38, the draft contract and request for exception shall be subject to approval by the Hearing Examiner after a public hearing. Notice of the hearing shall be provided in the same manner as described in Section 20.38.040 G. above. After approval by the Hearing Examiner the contract shall be sent to the applicant for their signature.

[no further changes until]

(8) Within 10 days of approval of the contract by the Director as described in (4) above or approval by the Hearing Examiner as provided in (6) above, a notice of decision shall be mailed to the applicant and to any person who, prior to rendering the decision, requested notice of the decision or submitted substantive comments on the application. The time frames for making decisions on permit applications set forth in BMC Section 21.01.050 D. shall apply.

The notice of decision shall include a copy of the contract, a statement of any threshold determination made under SEPA (Chapter 43.21C RCW) and the procedures for administrative appeal.

J. Appeal from Director's Decision.

- (1) Any party aggrieved by the decision of the Planning Director may file an appeal with the Hearing Examiner within 14 days of the notice of decision of the Director. The appeal shall be accompanied with an appeal fee as established by Council resolution.
- (2) Consistent with BMC 2.56.050 (A) appeal of the decision of the Planning Director may be taken by filing a notice of appeal with the Hearing examiner who shall render a final decision on the record after a public hearing. The notice of appeal shall contain a brief statement explaining the basis for the appeal. Notice of the Hearing Examiner's decision shall be mailed to the applicant and to any person who, prior to rendering the decision, requested notice of the decision or submitted substantive comments on the application. The notice mailing date shall be considered to be the date of the Hearing Examiner's decision. The appeal process shall be subject to the time limits for appeal decisions specified in BMC 21.01.060 A (4).

[no further changes]

20.38.050 - Standards.

A. Generally.

[no further changes until]

- (2) Any exceptions to these standards must be approved by the Planning Director only after written submittal by the applicant detailing the reasons why the standards cannot be met. Grounds for exceptions shall be limited to those justifications for variances, contained within Chapter 20.18. Exceptions to the Comprehensive Plan in regards to use and residential density designations shall not in any instance be granted by Planning Director unless upon proper change of land use classification petition and procedure.

[no further changes until]

B. Planned Residential.

- (1) For all land designated residential, the following standards shall apply.
- (2) Range of Uses Possible. Any of the following uses may be permitted in a planned proposal within a residential general use type designation; provided that any of such uses shall not be permitted where prohibited within the applicable neighborhood plan. Certain uses may also be excluded from a particular planned residential area if such use(s) are found by the Planning Director to be incompatible with the surrounding area or unsuitable to the particular site. The final decision shall set forth the uses permitted for the subject property.

[no further changes until]

- (3) Density.

[no further changes until]

(b) For planned projects within a residential general use type which have no density specified in the neighborhood plan, the number of allowable units shall be determined by Planning Director and specified within the final decision.

[no further changes until]

(4) Building Height.

[no further changes until]

(b) Except for the limitation above, there is no expressed general height standard for the remainder of the property. Final height standards shall be determined by the Planning Director.

(5) Usable Space. Usable space in an amount equal to that required for a proposal the same number of units under Section 20.32.040 F of the Residential Multi Chapter shall be required. Active recreational facilities may replace usable space requirements if approved by the Planning Director.

[no further changes until]

(7) Parking.

[no further changes until]

(c) General "parking areas" shall be illustrated on the planned proposal site plan. Final detailed parking plans shall be submitted for approval at time of building permit application. If at such time the Planning Director determines that there is insufficient space within the area to meet parking requirements, contained in Chapter 20.12, areas designated as building areas may be used, the project may be reduced in size or density so that such parking requirements are met and/or the applicant may apply to the Planning Director for a modification of the site plan exhibit pursuant to procedure set out in Section 20.38.040.

[no further changes until]

(12) Streets, Utilities, Access and Dedications.

[no further changes until]

(c) Streets should be improved to the standard required by Ordinance No. 8027 unless a standard is specified in the circulation plan of the Comprehensive Plan; provided that the Planning Director may approve streets which are consistent with neighborhood standards.

[no further changes until]

C. Planned Commercial.

(1) For all land designated commercial, the following standards shall apply:

(2) Range of Uses Possible. Any of the following uses may be permitted in a planned proposal within a commercial general use type designation; provided that any of such uses shall not be permitted where prohibited within the applicable neighborhood plans. Certain uses may also be excluded from a particular planned area by the Planning Director if such use(s) are found to be incompatible with the surrounding area or unsuitable to the particular site. The final decision shall set forth the uses permitted for the subject property.

[no further changes until]

(4) Building Height.

(a) No structure shall exceed 35' under height definition #1 when within 100' of the site plan boundary lying adjacent to a residential general use type area.

(b) Except for the height limitation above there shall be no expressed general height standard. Final height standards shall be determined by the Planning Director.

[no further changes until]

(6) Parking.

[no further changes until]

(c) General "parking areas" shall be illustrated on the planned proposal site plan. Final detailed parking plans shall be submitted for approval at the time of building permit application. If at such time the Planning Director determines that there is insufficient space within the area to meet parking requirements contained in Section 20.12.010, areas designated as building areas may be used, the project may be reduced in size or density so that such parking requirements are met, and/or the applicant may apply to the Planning Director for a modification of the site plan exhibit pursuant to the procedure set out in Section 20.38.040.

[no further changes until]

(11) Streets, Utilities and Access.

[no further changes until]

(c) Streets should be improved to the standard required by Ordinance No. 8027 unless a standard is specified in the circulation plan of the Comprehensive Plan; provided that the Planning Director may approve streets which are consistent with neighborhood standards.

D. Planned Industrial.

(1) For all land designated industrial, the following standards shall apply.

(2) Range of uses possible. (9173) Any of the following uses may be permitted in a planned proposal within an industrial general use type designation; provided that any of such uses shall not be permitted where prohibited within the applicable neighborhood plan. Certain uses may also be excluded from a particular planned industrial area by the Planning Director if such use(s) are found to be incompatible with the surrounding area or unsuitable to the particular site. The final decision shall set forth the uses permitted for the subject property.

[no further changes until]

(3) Building height.

(a) No structure shall exceed 35' under height definition #1 when within 200' of the site plan boundary which lies adjacent to any residential general use type designation.

(b) Except for the limitation above, there is no expressed general height standard. Final height standards shall be determined by the Planning Director.

[no further changes until]

(5) Parking.

[no further changes until]

(c) General "parking areas" shall be illustrated on the planned proposal site plan. Final detailed parking plans shall be submitted for approval at the time of building permit application. If at such time the Planning Director determined that there is insufficient space within the area to meet parking requirements contained in Section 20.12.010, areas designated as building area may be used, the project may be reduced in size or density so that such parking requirements are met and/or the applicant may apply to the Planning Director for a modification of the site plan exhibit pursuant to the procedure set out in Section 20.38.040 of this handbook.

[no further changes until]

(7) Signs.

. . .
(e) One freeway oriented sign shall be permitted on property abutting the right-of-way of I-5 provided:

. . .
v. The total number of freeway oriented signs shall be limited to one such sign per parcel of record as of June 18, 1984. The Planning Director may further limit the extent and number of such signs if felt to cause adverse impact to the general public.

(10) Streets, Utilities, Access, and Dedications.

[no further changes until]

(c) Streets should be improved to the standard required by Ordinance No. 8027 unless a standard is specified in the greater circulation plan of the Comprehensive Plan; provided that the Planning Director may approve streets which are improved consistent with neighborhood standards.

[no further changes]

Section 57. Title 20, Chapter 40 of the Bellingham Municipal Code regarding institutional development is amended as follows:

20.40.030 - Permitted Uses

A. Prior to approval of an institutional masterplan pursuant to Section 20.40.040 or upon property not included in such master plan, development is allowed in areas designated Institutional as though such area was designated as follows:

[no further changes]

20.40.060 - Development/Application Procedure

A. Process. Generally, staff approval is all that is required for project proposals which are consistent with applicable standards found herein and are located on property having a planned use qualifier or institutional general use type designation (following plan adoption).

A public meeting conducted by the City Planning Commission may be necessary if required by other City ordinances, or if requested by either the Planning Director or the Planning Commission Chair. The meeting should be reserved to only those projects which could raise significant planning issues.

A public hearing conducted by the Hearing Examiner may also be required if the decision of the staff is appealed by the developer or any other aggrieved party.

[no further changes until]

I. Decision/Planned Development Contract.

1. Following the TRC meeting, Planning Commission public meeting if one has been held, and the close of the public comment period the Planning Director shall prepare a planned development contract based upon all comments and recommendations received.

[no further changes until]

J. Appeal from Director's Decision.

1. Any party aggrieved by the decision of the Planning Director may file an appeal with the Hearing Examiner within 14 days of the notice of decision of the Director. The appeal shall be accompanied by a filing fee as established by Council resolution.

2. If an appeal is filed, the Hearing Examiner shall schedule a public hearing to review the decision of the Director. The Hearing Examiner shall issue findings of fact, conclusions of law and order approving, disapproving, or modifying the Planning Director's decision. Notice of the Hearing Examiner's decision shall be mailed to the applicant and to any person who, prior to rendering the decision, requested notice of the decision or submitted substantive comments on the application. The notice mailing date shall be considered to be the date of the Hearing Examiner's decision. The appeal process shall be subject to the time limits for appeal decisions specified in BMC 21.01.060 A (4).

[no further changes]

Section 58. BMC 20.50.010 providing for enforcement of land use regulations is amended as follows:

20.50.010 - Enforcement Officer

A. It shall be the duty of the Director (or authorized employee) to enforce the provisions of this ordinance, or any conditions properly imposed by the Hearing Examiner or Council related to the use of land, and see that any violations are remedied through proper legal channels.

Section 59. BMC 20.52.020 regarding violations and penalties is amended as follows:

20.52.020 - Civil Penalty.

A. In addition to any other sanction or remedial injunctive procedure which may be available at law or equity, any person failing to comply with the final order issued by the Hearing Examiner, Planning Director, or City Council shall be subject to cumulative civil penalty in an amount not to exceed \$100 per day from the date set for compliance till such order is complied with. Such civil penalty shall be collected by civil action brought in the name of the City. The affected body shall

notify the City Attorney in writing the name of any such person subject to such penalty in the amount thereof; such officer shall take appropriate action to collect the same.

[no further changes]

Section 60. Title 21, Chapter 1 of the Bellingham Municipal Code regarding administration of development regulations is amended as follows:

21.01.010 - Permit Applications Subject To Application Processing Procedures.

The following project permit applications shall be subject to the procedures contained in this Title:

1. Preliminary plats.
2. Shoreline substantial development permits, conditional uses and variances.
3. Planned development.
4. Institutional site plan contracts (excluding Institutional Master Plans).
5. Fairhaven design review contracts.
6. Applications reviewed by the Hearing Examiner or Landmark Review Board as follows:
 - Conditional Use
 - Variance
 - Nonconforming Use Alteration
 - Landmark Certificate of Alteration
7. Certain Wireless Communication Facility Permits as prescribed by Chapter 20.13 of the Bellingham Municipal Code.
8. Co-housing applications.
9. Any other permit applications that reference use of Title 21 procedures.

21.01.040 - Optional Consolidated Permit Processing

A. An application that involves two or more procedures may be processed collectively as provided in subsections C, D and E below. The applicant may determine whether the application shall be processed collectively or individually.

B. A single report shall be prepared for the consolidated permit application that states all the decisions made as of the date of the report on all project permits included in the consolidated

permit process that do not require an open record pre-decision hearing and any recommendations on project permits that do not require an open record pre-decision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060. The report may be the permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination.

C. Consolidated Process I.

1. Projects involving more than one of the following applications may use Consolidated Process I:

Shoreline substantial development permits, and/or shoreline conditional use or variance.

Design review.

Institutional site plans.

Planned development.

Wireless communication facility permits decided by the Planning Director.

2. Consolidated Process I shall consist of the permit application review and decision process for Planned Development as set out in BMC 20.38.040 with the following changes:
 - a. If a consolidated permit application includes a shoreline substantial development permit, shoreline conditional use or shoreline variance, the Shoreline Committee of the Planning Commission shall hold a public meeting and make a recommendation to the Planning Director. All notice requirements for a shoreline substantial development permit shall be applied.
 - b. If a consolidated permit application includes a Fairhaven design review application for a project in the Core Area of the Fairhaven Design Review District, the Landmark Review Board may hold an optional public meeting and make a recommendation to the Planning Director.
 - c. If more than one body is required to hold a meeting or opts to hold a meeting, a joint meeting shall be held.
 - d. The City Council shall make the permit decision for a consolidated permit application that includes certain Shoreline Conditional Use approvals that would otherwise require approval by the City Council.

D. Consolidated Process II.

1. Projects involving more than one of the following applications, or a combination of applications listed under BMC 21.01.040 C. and one or more of the following applications, may use Consolidated Process II:

Conditional use permit.

Variance.

Nonconforming use alteration.

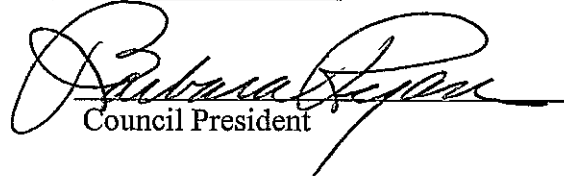
Certificate of Alteration for a Landmark

Preliminary Plat

Co-housing

2. Consolidated Process II shall consist of the Hearing Examiner permit application review and decision process as set out in BMC 20.19 with the following changes:
- a. If a consolidated permit application includes a landmark certification of alteration the Landmark Review Board shall hold a public meeting and make a recommendation to the Hearing Examiner.
 - b. If the consolidated permit application includes a preliminary plat, any additional review procedures required under BMC Chapter 18.16 shall apply.
 - c. If a consolidated permit application includes a shoreline substantial development permit, shoreline conditional use or shoreline variance, the Shoreline Committee of the Planning Commission shall hold a public meeting and make a recommendation to the Planning Director. All notice requirements for a shoreline substantial development permit shall be applied.
 - d. If a consolidated permit application includes a Fairhaven design review application for a project in the Core Area of the Fairhaven Design Review District, the Landmark Review Board may hold an optional public meeting and make a recommendation to the Hearing Examiner.
 - e. If a consolidated permit application includes a planned development or institutional site plan application, the Planning Commission may hold an optional public meeting and make a recommendation to the Hearing Examiner.
 - f. If more than one body is required to hold a meeting or opts to hold a meeting, a joint meeting shall be held.
 - g. The City Council shall make the permit decision for a consolidated permit application that includes certain Shoreline Conditional Use approvals that would otherwise require approval by the City Council.

PASSED by the Council this 7th day of October, 2002


Council President

APPROVED by me this ^{13th}~~7th~~ day of OCTOBER, 2002.

Mark Anderson
Mayor

ATTEST: Therese Holm

APPROVED AS TO FORM:

Joan Horisington
Office of the City Attorney

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