



MEMORANDUM

To: Planning Commission

From: Jon Regala, Senior Planner
Joan Lieberman-Brill, AICP, Senior Planner
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Eric Shields, AICP, Planning Director

Date: May 20, 2010

Subject: PUBLIC HEARING - 2010 ZONING CODE AMENDMENTS PHASE I
FILE ZON10-00002

I. RECOMMENDATION

Hold a public hearing on the proposed Phase I Kirkland Zoning Code (KZC) amendments. After considering the proposed amendments and public comment make a recommendation to the City Council for their consideration.

II. BACKGROUND DISCUSSION

At your May 13, 2010 study session Planning staff received direction to proceed with the proposed revisions to the KZC as explained in the memorandum provided for that meeting. The rationale for each proposed amendment can be viewed here:

http://www.ci.kirkland.wa.us/depart/Planning/Planning_Commission.htm

Based on your direction, the proposed Phase I draft amendments are provided as attachments to this memorandum. Since the Phase I amendments are not applicable within the HCC jurisdiction, they require only the review of the Planning Commission and City Council. City Council's consideration of the Phase I code amendments is tentatively scheduled for July 6, 2010.

III. PHASE I AMENDMENTS

A No Policy Changes

1. *KZC 53.59.010(2) RH 5C Zoning District – Eliminate outdated references to KZC 95.25 and 95.45 and replace with the actual landscape buffer standard and easement dedication language.*

The RH 5C zoning chart currently contains inaccurate references to landscape buffer requirements in KZC Chapter 95 as a result of changes made to the chapter in 2006. The inaccurate reference can be found in special regulation #2 for the RH 5C use zone listing: *Accessory parking for commercial use located in RH 5A fronting on NE 85th Street.*

Staff recommends adding the previously referenced code language to RH 5C special regulation #2 to be consistent with the intent of the code section prior to the 2006 amendments. Attachment 1 is the recommended change to codify this approach.

2. Codify Interpretation 09-3 – make KZC 115.20 Special Regulation 6 applicable to lots northeast of Bridle Trails Park (in the Bridle View Annexation)

The Bridle View Annexation became effective on October 2, 2009. Interpretation 09-3 determined that because the intent of the annexation is to protect and preserve the equestrian character of Bridle View the same as properties immediately north of the Bridle Trails State Park and since the zoning in the two areas is the same, the City will apply the existing KZC regulations to the Bridle View annexation, which is located *northeast* of the Bridle Trails State Park. Staff therefore recommends codifying the interpretation to explicitly include the newly annexed Bridle View equestrian subdivision by expanding its application to include the area **northeast** of the Park.

Attachment 2 is the recommended amendment to codify this interpretation.

3. Codify Interpretation 09-3 – make KZC 17.10.010 Special Regulation 5 applicable to lots northeast of Bridle Trails Park (in the Bridle View Annexation)

Similar to the previous proposed amendment, staff recommends including the area **northeast** of Bridle Trails Park to be regulated by KZC 17.10.010 Special Regulation 5, to implement the intent of the Bridle View annexation.

Attachment 3 is the recommended amendment to codify this interpretation.

4. Add references to KZC Section 50.62 - Building Height Provisions in the CBD

Kirkland's downtown is made up of 8 zoning districts, CBD 1 through 8 with the development regulations listed in use zone charts KZC Sections 50.05 through 50.52. However, additional height provisions for all CBD zones are located in a separate section *after* the CBD use zone charts (KZC Section 50.62). These height provisions provide additional detail on measuring building height, ground floor story height requirements, and exceptions to the height regulations. While this section applies to the CBD zones, not all CBD use zone charts reference this section. Therefore, staff recommends that a reference to KZC Section 50.62 be added to the general regulations of the appropriate CBD use zone charts.

Attachment 4 contains the recommended changes to the various CBD use zone charts.

B. Process Related Changes

1. KZC 105.103.2 - Remove the Design Review Board (DRB) as the decision maker of modifications to KZC Chapter 105 and replace the DRB with the Planning Official.

KZC Section 105.103 contains the review process and criteria required to modify regulations in KZC Chapter 105 – *Parking Areas, Vehicle and Pedestrian Access, and Related Improvements*. If the proposed development requires approval through Process I (Planning Director), IIA (Hearing Examiner), or IIB (City Council), then a modification to the parking and related standards is required to

be reviewed as part of that process, otherwise, the Planning Official makes the final decision.

In June 2007, the City Council adopted miscellaneous KZC code amendments (Ordinance O-4097). One of the changes inadvertently added Design Review to the list of review processes described above. Consequently, the DRB is now required to review proposed modifications to parking and access related standards as part of a Design Board Review application. While it makes sense for the DRB to decide on design related modifications to pedestrian access issues, it was not the intention for the DRB to decide on modifications to more technical standards found in this chapter. As an example, a modification to the number of required parking spaces is based upon a recommendation of the Public Works traffic engineer pursuant to KZC Chapter 105 decisional criteria. Depending on the review process, the Planning Official, Planning Director, Hearing Examiner, or Planning Commission are responsible for considering technical code requirements. Having the DRB decide on a parking reduction modification is not within their expertise.

Staff recommends that the DRB only be involved with modifications regarding KZC 105.18 – *Pedestrian Access* since the other code sections were not intended to be a part of the DRB's purview with the June 2007 code amendments.

Attachment 5 contains the recommended change.

2. *KZC 142.40 - Change Design Response Conference (DRC) appeal hearing from City Council to Hearing Examiner*

KZC 142.40 requires that an appeal of a DRB decision be heard at an open public record hearing conducted by the City Council. Recently, the majority of the City Council expressed concern that being the hearing body for a DRB appeal does not fit their legislative role. Therefore, City Council asked staff to look at changing the open record appeal hearing process so that DRB appeals are heard by the Hearing Examiner instead of the City Council.

The Hearing Examiner currently holds appeal hearings for a variety of Kirkland land use permits and SEPA appeals. Additional background for using a Hearing Examiner for appeal hearings can be found in Attachment 6 which contains a report by Municipal Research and Services Center (MRSC). The pros and cons described in the report are summarized below.

Pros

- *More professional and timely decisions insuring fairness and consistency*
- *Time-saving for legislative body, freeing legislators to focus on legislative policy and other priority issues*
- *Separation of policy-making or advisory functions from quasi-judicial functions*
- *Improved compliance with legal requirements, including due process, appearance of fairness, and record preparation*
- *Reduced liability relating to land use decisions and/or procedural challenges to decisions*

- *Removal of quasi-judicial decision-making from the political arena*

Cons

- *Cost to City for hiring a hearing examiner and recording secretary*
- *Increased cost to the parties due to more formal decision-making procedures*
- *Lack of accountability to voters for appointed hearing examiner making decision or hearing administrative appeals*

Attachment 7 contains the changes required to make the Hearing Examiner the hearing body for appeals of DRB decisions.

3. *KZC Chapter 150 - Change Process IIA appeal hearing from City Council to Hearing Examiner*

The City Council is also the hearing body for appeals of Process IIA zoning permits. This type of zoning permit requires a public hearing and decision by a hearing examiner. Process IIA permits within the City of Kirkland can be classified as conditional use permits and include some variances (regarding height and variances within commercial zones).

Conditional use permits are typically required for uses that are not outright allowed within a particular zone but are usually found within communities. Examples of such uses include: schools, churches, gas stations, cell phone towers, public utilities, and government facilities. With a conditional use permit, the applicant is required to show compliance with established criteria at a public hearing. The criteria usually revolve around neighborhood compatibility and address solutions to potential adverse impacts associated with a particular use. The following chart provides background on other jurisdiction's conditional use process. The chart lists Kirkland along with neighboring cities, the associated decision maker, and the appeal hearing body for conditional use permits.

<u>CITY</u>	<u>CONDITIONAL USE DECISION MAKER</u>	<u>APPEAL HEARING BODY</u>
Kirkland	Hearing Examiner	City Council
Redmond	Hearing Examiner recommendation to City Council	Superior Court
Edmonds	Hearing Examiner	Superior Court
Issaquah	Planning Director or Development Commission	Hearing Examiner
Mercer Island	Planning Commission	Hearing Examiner
Mill Creek	Planning Director or Planning Commission	City Council
Seattle	Planning Director	Hearing Examiner
Bellevue	Hearing Examiner	City Council
Kenmore	Planning Director	Hearing Examiner

Does the Planning Commission recommend that, based on the reasons for removing City Council from hearing quasi-judicial type appeals, the City Council should also be removed from hearing Process IIA zoning permit appeals? If so, an appeal would go directly to Superior Court and changes to the KZC would need to be made as shown in Attachment 8. Or does the Planning Commission recommend that such a directive should instead come directly from the City Council?

IV. CRITERIA FOR AMENDING ZONING CODE TEXT

KZC 135.25 establishes the criteria by which changes to the Zoning Code text must be evaluated. These criteria and the relationship of the proposal to them are as follows:

1. *The proposed amendment is consistent with the applicable provisions of the Comprehensive Plan*

The proposed amendments are consistent with the Comprehensive Plan. The proposed amendments are needed to clarify existing regulations and to fix unintended changes with previous amendments to the KZC. The proposed changes do not fundamentally change the City's policy.

2. *The proposed amendment bears a substantial relation to public health, safety, or welfare*

The proposed amendments bear a substantial relation to public health, safety, and welfare. The amendments further clarify existing regulations which are based on the goals and policies of the Comprehensive Plan.

3. *The proposed amendment is in the best interest of the residents of Kirkland*

The proposed amendments are in the best interest to the residents of Kirkland. The amendments seek to clarify the existing regulations and review processes which were previously created based on balancing the needs of various stakeholder groups and the policies of the Comprehensive Plan. The result of the changes should create more certainty and predictability in terms of regulations and process for both the residential and development community.

V. ENVIRONMENTAL REVIEW

A Draft and Final Environmental Impact Statement (EIS) on the City's Comprehensive Plan 10-year Update was published in 2004. The EIS addressed the 2004 Comprehensive Plan, Zoning Code and Zoning Map updates required by the Washington State Growth Management Act (GMA). An EIS Addendum was issued on May 20, 2010 for the Miscellaneous Zoning Code Amendments – Phase I (see Attachment 9). According to SEPA rules, an EIS addendum provides additional analysis and/or information about a proposal or alternatives where their significant environmental impacts have been disclosed and identified in a previous environmental document. An addendum is appropriate when the impacts of the new proposal are the same general types as those identified in the prior document, and when the new analysis does not substantially change the analysis of significant impacts and alternatives in the prior environmental document. The EIS Addendum fulfills the environmental requirements for the proposed changes.

VI. ATTACHMENTS

1. Proposed amendment to KZC 53.59.010(2) RH 5C Zoning District
2. Proposed amendment to KZC 115.20 – Special Regulation 6
3. Proposed amendment to KZC 17.10.010 – Special Regulation 5
4. Proposed amendments to CBD use zone charts
5. Proposed amendment to KZC 105.103.2 – DRB Modifications
6. MRSC Hearing Examiner Report dated May 1999
7. Proposed amendment to KZC 142.40 – DRB appeals
8. Proposed amendments to KZC Chapter 150
9. EIS Addendum issued May 20, 2010



DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 53.59	USE REGULATIONS	Required Review Process	MINIMUMS			MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)	
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage					Height of Structure
				Front	Side	Rear						
.010	Accessory parking for commercial use located in RH 5A fronting on NE 85th Street	None	None	20'	15'	10'	80%	If adjoining a low density zone other than RSX, then 25' above average building elevation. Otherwise, 35' above average building elevation.	See Spec. Reg. 2.	E See Spec. Reg. 9.	See KZC 105.25.	1. No new above-grade structures are permitted. 2. If landscape buffer KZC 95.25(1)(b) is chosen, the required fence shall be allowed to meander through the buffer or otherwise be placed so as to minimize impacts on adjoining property. The landscape buffer shall be contained in an easement pursuant to KZC 95.45, and the easement language should prohibit relocation, alteration, or relinquishment of the easement without a majority affirming vote of the City Council. Prior to issuance of construction permits, the applicant shall submit to the Planning Official for approval, a plan indicating compliance with the following standards: e. Trees within the north and east buffers shall be 10 to 12 feet in height at the time of planting; and f. The planting strip between the parking area and 124th Avenue NE shall be at least 10 feet wide; and g. The east property line landscape buffer shall include raised topography, either in the form of fill or a berm at least three feet in height, but taller if feasible, if the raised topography: (1) Is approved in writing by Seattle City Light; and (2) Does not worsen existing drainage conditions; and (3) Does not, in and of itself, result in the loss of on-site significant trees; and h. Landscape islands shall be provided in the parking lot interior and designed and oriented to help shield surrounding properties from light and glare; and i. The large conifer tree adjacent to the north property line shall be retained. 3. Along 124th Avenue NE, no new driveways are permitted. Widening or relocation of the existing driveway located on subject property in RH 5A may occur if such widening or relocation is consistent with City-adopted engineering standards. 4. Changes to the existing site topography shall be minimized. 5. Prior to issuance of construction permits, the applicant shall submit to the Public Works Official for approval a plan demonstrating through appropriate civil engineering drawings and data that the project will comply with City-adopted standards for storm water runoff control and treatment. Storm water control should at a minimum accomplish the following: a. Collect all new storm water runoff from newly introduced impervious surfaces in on-site catch basins; b. Detain collected storm water runoff on-site;

a. Either a 25-foot or 15-foot wide landscape buffer planted along the boundary next to residential properties. If a 15-foot wide buffer is chosen, a six-foot high solid fence is required and shall be allowed to meander through the buffer or otherwise be placed so as to minimize impacts on adjoining property.
 b. The landscape buffer shall be planted with two rows of trees spaced eight feet on-center along the entire length of the buffer.
 c. Shrubs, 18 inches high, shall be planted to attain a coverage of at least 60 percent of the buffer area within two years.
 d. The landscape buffer shall be contained within an easement and the easement language shall prohibit relocation, alteration, or relinquishment of the easement without a majority affirming vote of the City Council.

REGULATIONS CONTINUED ON NEXT PAGE

ATTACHMENT 1
ZONING 00002

KZC Section
115.20 Special
Regulation 6

placed closer than a point equidistant to any adjacent residential structure.

5. For residential lots containing one or more horses other than those regulated below in Special Regulation 6, each lot must contain an area of at least 14,500 sq. ft. capable of being used as a horse paddock area and configured in a contiguous and usable manner to accommodate the feed storage and manure pile for two horses. This area must be exclusive of any structures, including storage sheds, barns, residential units and carports. Direct access to this area must be available for trucks to deliver feed and pick up manure from an alley, easement, or an adjacent right-of-way across a side yard of the lot.

and northeast

6. For residential lots in RS 35 and RSX 35 Zones within the Bridle Trails neighborhood north of Bridle Trails State Park or residential lots in PLA 16 which are not part of a recorded master plan, the required review process shall be "None," and the maximum number of adult animals and minimum lot size and setback regulations shall not apply.

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS												
Section 17.10	USE ↓ REGULATIONS →	Required Review Process	MINIMUMS				MAXIMUMS		Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
			Lot Size	REQUIRED YARDS (See Ch. 115)			Lot Coverage	Height of Structure				
				Front	Side	Rear						
.010	Detached Dwelling Unit	None	As established on the Zoning Map. See Spec. Reg. 1.	20' See Spec. Reg. 6.	5' each side. See Spec. Reg. 3.	10'	50% See Spec. Reg. 5.	30' above average building elevation.	E	A	2.0 per dwelling unit.	<ol style="list-style-type: none"> Minimum lot size per dwelling unit is as follows: <ol style="list-style-type: none"> In RSX 35 zones, the minimum lot size is 35,000 square feet. In RSX 8.5 zones, the minimum lot size is 8,500 square feet. In RSX 7.2 zones, the minimum lot size is 7,200 square feet. In RSX 5.0 zones, the minimum lot size is 5,000 square feet. In RSX 35, 8.5, 7.2 and 5.0 zones, not more than one dwelling unit may be on each lot, regardless of the size of the lot. Floor Area Ratio (F.A.R.) allowed for the subject property is as follows: <ol style="list-style-type: none"> In RSX 35 zones, F.A.R. is 20 percent of lot size. In RSX 12.5 zones, F.A.R. is 35 percent of lot size. In RSX 8.5 zones, F.A.R. is 50 percent of lot size. In RSX 7.2 zones, F.A.R. is 50 percent of lot size. In RSX 5.0 zones, F.A.R. is 50 percent of lot size; provided, that F.A.R. may be increased up to 60 percent of lot size for the first 5,000 square feet of lot area if the following criteria are met: <ol style="list-style-type: none"> The primary roof form of all structures on the site is peaked, with a minimum pitch of four feet vertical: 12 feet horizontal; and A setback of at least 7.5 feet is provided along each side yard. See KZC 115.42, Floor Area Ratio (F.A.R.) Calculation for Detached Dwelling Units in Low Density Residential Zones, for additional information. On corner lots, only one front yard must be a minimum of 20 feet. All other front yards shall be regulated as a side yard (minimum five-foot yard). The applicant may select which front yard shall meet the 20-foot requirement. Chapter 115 KZC contains regulations regarding home occupations and other accessory uses, facilities and activities associated with this use. Residential lots in RSX zones within the Bridle Trails neighborhood north of Bridle Trails State Park must contain a minimum area of 10,000 permeable square feet, which shall comply with Special Regulation 6 for large domestic animals in KZC 115.20(4) (chart). Garages shall comply with the requirements of KZC 115.43, including required front yard. These requirements are not effective within the disapproval jurisdiction of the Houghton Community Council.

and northeast

50.14 User Guide.

See also KZC 50.62 for additional building height provisions.

The charts in KZC 50.17 contain the basic zoning regulations that apply in the CBD 2 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

Section 50.15

Zone
CBD-2

Section 50.15 – GENERAL REGULATIONS

The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.
2. See KZC 50.20 for regulations regarding bulkheads and land surface modification.
3. Along Lake Street South, north of Kirkland Avenue, buildings exceeding one story above Lake Street South shall demonstrate compliance with the Design Regulations of Chapter 92 KZC and all provisions of the Downtown Plan. Through Design Review (D.R.) the City shall find that any allowance for additional height is clearly outweighed by identified public benefits such as through-block public pedestrian access or through-block view corridors (does not apply to Public Access Pier or Boardwalk and Moorage Facility for One or Two Boats uses).
4. In no case shall the height exceptions identified in KZC 50.62 and 115.60(2)(d) result in a structure which exceeds 28 feet above the abutting right-of-way (does not apply to Public Access Pier or Boardwalk, Moorage Facility for One or Two Boats uses and General Moorage Facility Uses).
5. South of Second Avenue South, maximum height of structure is 41 feet above Lake Street South as measured at the midpoint of the frontage of the subject property on Lake Street South. Buildings exceeding two stories shall demonstrate compliance with the design regulations of Chapter 92 KZC and all provisions of the Downtown Plan (does not apply to Public Access Pier or Boardwalk and Moorage Facility for One or Two Boats uses).
6. For purposes of measuring building height, if the subject property abuts more than one right-of-way, the applicant may choose which right-of-way shall be used to measure the allowed height of structure (does not apply to Public Access Pier or Boardwalk, Moorage Facility for One or Two Boats, and General Moorage Facility uses).
7. May not use land waterward of the high waterline to determine lot size or to calculate allowable density.
8. Development in this zone may also be regulated under the City's Shoreline Master Program; consult that document.

50.24 User Guide.

The charts in KZC [50.27](#) contain the basic zoning regulations that apply in the CBD 3 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

Section 50.25



Section 50.25 – GENERAL REGULATIONS
The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter [1](#) KZC to determine what other provisions of this code may apply to the subject property.
2. No portion of a structure within 100 feet of the southerly boundary of 2nd Avenue South abutting Planned Area 6C may exceed 25 feet above average building elevation (does not apply to Detached Dwelling Unit uses).
3. Site and building design must include installation of pedestrian linkages consistent with the major pedestrian routes in the Downtown Plan chapter of the Comprehensive Plan (does not apply to Detached Dwelling Unit uses).

4. See KZC 50.62 for additional building height provisions.

50.29 User Guide.

The charts in KZC 50.32 contain the basic zoning regulations that apply in the CBD 4 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

Section 50.30



Section 50.30 – GENERAL REGULATIONS

The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.
2. Structures east of Second Street South shall be set back 10 feet from Second Avenue South (does not apply to Detached Dwelling Unit and Public Park uses).
3. Ground floor porches and similar entry features may encroach into the required front yard, provided the total horizontal dimensions of such elements may not exceed 25 percent of the length of the facade of the structure (does not apply to Public Park uses).
4. Maximum height of structure is 55.4 feet above average building elevation west of Second Street South, including any adjacent structure in CBD-1 west of 2nd Street South developed with a structure in this zone.
5. No portion of a structure within 100 feet of the southerly boundary of Second Avenue South abutting Planned Area 6C shall exceed 35 feet. No portion of a structure within 40 feet of First Avenue South shall exceed 41 feet (does not apply to Detached Dwelling Unit uses).
6. Development shall not isolate any existing detached dwelling unit in this zone (does not apply to Detached Dwelling Unit and Public Park uses).

7.

6. See KZC 50.62 for additional building height provisions.

50.33 User Guide.

The charts in KZC [50.35](#) contain the basic zoning regulations that apply in the CBD 5 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

Section 50.34



Zone
CBD-5

Section 50.34 – GENERAL REGULATIONS

The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter [1](#) KZC to determine what other provisions of this code may apply to the subject property.
2. No portion of a structure above the elevation of Kirkland Way as measured at the midpoint of the frontage of the subject property on Kirkland Way may exceed the following:
 - a. Within 20 feet of Kirkland Way, 2 stories;
 - b. Within 40 feet of Kirkland Way, 4 stories;
 - c. Within 50 feet of Kirkland Way, 5 stories.
3. Buildings exceeding two stories above average building elevation shall demonstrate compliance with the design regulations of Chapter [92](#) KZC and the provisions of the Downtown Plan Chapter of the Comprehensive Plan. The City will use Design Review (D.R.) to determine compliance.
4. The minimum required yard abutting Peter Kirk Park is 10 feet. The required front yard is 0 feet for those portions of buildings with continuous retail or restaurant uses at street level. Kirkland Way shall be considered a pedestrian-oriented street if the front yard is less than 20 feet.
5. No portion of a structure within 100 feet of Peter Kirk Park shall exceed three stories above average building elevation.
6. Ground floor porches and similar entry features may encroach into the required front yard, provided the total horizontal dimensions of such elements may not exceed 25 percent of the length of the facade of the structure (does not apply to Public Park uses).
7. The entire zone must be physically integrated both in site and building design. Also, site design must include installation of pedestrian linkages consistent with the major pedestrian routes in the Downtown Plan chapter of the Comprehensive Plan, between public sidewalks and building entrances, and between walkways on the subject property and existing or planned walkways on abutting properties (does not apply to Public Utility, Government Facility or Community Facility and Public Park uses).

See also KZC 50.62 for additional building height provisions.

50.36 User Guide.

The charts in KZC [50.38](#) contain the basic zoning regulations that apply in the CBD 5A zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

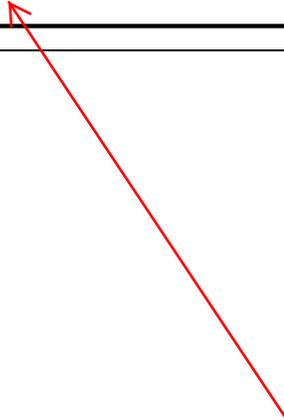
Section 50.37



Section 50.37 – GENERAL REGULATIONS
The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter [1](#) KZC to determine what other provisions of this code may apply to the subject property.

2. See KZC 50.62 for additional building height provisions.



50.39 User Guide.

The charts in KZC [50.42](#) contain the basic zoning regulations that apply in the CBD 6 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

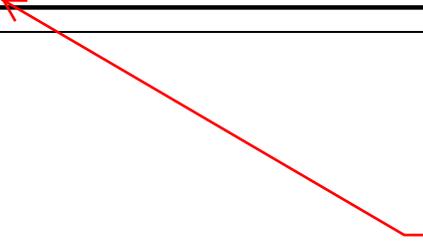
Section 50.40



Section 50.40 – GENERAL REGULATIONS
The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter [1](#) KZC to determine what other provisions of this code may apply to the subject property.
2. The entire zone must be physically integrated both in site and building design. In addition, the design and development of the subject property must provide pedestrian linkage through this zone and between Central Way and areas to the north of this zone, consistent with the major pedestrian routes in the Downtown Plan chapter of the Comprehensive Plan.
3. The City may require that areas of the northeastern and southeastern portions of the subject property be developed with pedestrian scale amenities and landscaping to enhance the entryway into the Central Business District.

4. See KZC 50.62 for additional building height provisions.



50.44 User Guide.

The charts in KZC 50.47 contain the basic zoning regulations that apply in the CBD 7 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

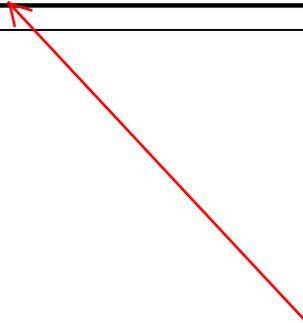
Section 50.45



Section 50.45 – GENERAL REGULATIONS
 The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.
2. Site design must include installation of pedestrian linkages between public sidewalks and building entrances and between walkways on the subject property and existing or planned walkways on abutting properties consistent with the major pedestrian routes in the Downtown Plan chapter of the Comprehensive Plan (does not apply to Public Utility, Government Facility or Community Facility and Public Park uses).
3. No setback is required adjacent to Third Street (does not apply to Vehicle Service Station and Public Park uses).

4. See KZC 50.62 for additional building height provisions.



50.49 User Guide.

The charts in KZC 50.52 contain the basic zoning regulations that apply in the CBD 8 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

Section 50.50



Zone
CBD-8

Section 50.50 – GENERAL REGULATIONS

The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.
2. The maximum height of a facade along Central Way is three stories above the elevation of Central Way as measured above the midpoint of the frontage of the subject property on Central Way.
3. A minimum 20-foot front yard setback is required adjacent to:
 - a. Fourth Avenue between 2nd Street and 3rd Street;
 - b. Third Street between 3rd Avenue and 4th Avenue;
 - c. Market Street.
4. The minimum required side and/or rear yard abutting the PR 3.6 and PLA 7A zones is five feet.
5. No portion of a structure shall exceed the height established by a 3:1 angle starting at a point 41 feet above the elevation of Central Way as measured at the projected midpoint of the subject property on Central Way and continuing to a point which intersects the established 30-foot height limit above 3rd Avenue or 4th Avenue.
6. For properties on the west side of 1st Street, the 30-foot height limit shall be measured above the midpoint of the intersection of 1st Street and 3rd Avenue. For properties with frontage on Market Street, the 30-foot height limit shall be measured above the midpoint of the subject property bordering the PR zone to the north. For properties fronting on 3rd Avenue between 2nd Place and 3rd Street, the 30-foot height limit shall be measured above the projected midpoint on 4th Avenue (does not apply to Public Park uses).
7. Site design must include installation of pedestrian linkages between public sidewalks and building entrances and between walkways on the subject property and existing or planned walkways on abutting properties consistent with the major pedestrian routes in the Downtown Plan chapter of the Comprehensive Plan (does not apply to Public Utility, Government Facility or Community Facility and Public Park uses).
8. The site must be designed so that vehicles coming from and going to the site will be directed away from residential neighborhoods to the north of this zone (does not apply to Stacked or Attached Dwelling Units or Assisted Living Facilities uses).

See also KZC 50.62 for additional building height provisions.

REMOVING DRB AS DECISION MAKER FOR CERTAIN KZC CHAPTER 105 PROVISIONS

105.103 Modifications

1. General – The provisions of this section establish under what circumstances the requirements of this chapter may be modified.
2. Authority To Grant and Duration
 - a. If the proposed development of the subject property requires approval through ~~Design Review~~, Process I, IIA, IIB, or III, described in Chapters ~~142, 145~~, 150, 152 and 155 KZC, respectively, a request for a modification will be considered as part of that process under the provisions of this section. The City must find that the applicant meets the criteria listed below in subsection (3) of this section. If granted under ~~Design Review~~, Process I, IIA, IIB or III, the modification is binding on the City for all development permits issued for that development under the Building Code within five years of the granting of the modification.
 - b. For projects requiring Design Review described in Chapter 142, a request to modify the requirements in KZC 105.18 – Pedestrian Access will be considered as part of the Design Review process. The Design Review Board must find that the applicant meets the criteria listed below in subsection (3)(b) of this section.
 - ~~bc.~~ If subsection (2)(a) and/or (2)(b) of this section does not apply, the Planning Official may grant a modification in writing under the provisions of this section.

Use of Hearing Examiners by Cities and Counties in Washington

What is a Hearing Examiner and Hearing Examiner System?

Local governments in Washington State have the option of hiring or contracting with a hearing examiner to conduct required quasi-judicial hearings, usually in place of local bodies such as the planning commission, the board of adjustment, the board of county commissioners, or the city council. A hearing examiner is an appointive officer who acts in a manner similar to a judge and typically is an attorney. The basic purpose of having a hearing examiner conduct these hearings is to have a professionally-trained individual make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows local legislative and advisory bodies that might otherwise conduct these hearings to better concentrate on policy-making, and it can reduce local government liability exposure.

A board of county commissioners or a city council has considerable discretion in drafting an ordinance creating a local hearing examiner system. The position of hearing examiner, the type of issues the hearing examiner is authorized to consider and decide, the effect of the hearing examiner's decision, and whether an appeal of any final decision is provided should all be determined by the local legislative body and set out in the enabling ordinance. A hearing examiner's decision, as defined by the local legislative body, can have the effect of either a recommendation to or a decision appealable to the ultimate decision-maker (typically the board of county commissioners or the city council), or it can be a final decision (appealable to superior court).

Counties and cities use hearing examiners, often in place of planning commissions, primarily for hearing and deciding land development project applications and/or administrative appeals of land use decisions. Hearing examiners are particularly useful where the rights of individual property owners and the concerns of citizens require formal hearing procedures and preparation of an official record. State land use planning and growth management laws provide cities and counties with specific

authority to establish a hearing examiner system to conduct hearings and make recommendations or decide a variety of land use issues. Hearing examiners may also conduct hearings and make recommendations or decisions on other local matters.

This focus paper describes the use of a hearing examiner, the pros and cons of such systems, and options available to Washington counties and cities. References are provided for further information available from the MRSC library and through our Web site.

Establishing a Hearing Examiner System

The office or position of hearing examiner must be established by ordinance. That ordinance should identify what matters the examiner is empowered to hear and what will be the effect of the examiner's decision on those matters. A common approach in such an ordinance is to establish the framework for the hearing examiner system, while leaving it to the examiner to adopt specific, detailed rules for the conduct of hearings. Hearing examiner ordinances typically address: the appointment and term of the hearing examiner; qualifications of the examiner; conflicts of interest and freedom from improper influence; powers and duties, including matters heard; hearing requirements; effect of decisions; reconsideration of decisions, if allowed; and appeals. MRSC has many examples of hearing examiner ordinances and has a compilation of articles and ordinances relating to the hearing examiner system in this state. See <http://www.mrsc.org/library/compil/cphearex.htm>.

Use of the Hearing Examiner System for Land Use, Environmental, and Related Decisions

Most commonly, hearing examiners are used to hear and decide land use project permit applications where a hearing is required, such as in the case of applications for subdivisions, shoreline permits, conditional use permits, rezones, and variances. The recent trend in state law, particularly in conjunction with regulatory reform, has been to allow local governments to give more authority to the hearing examiner to make final decisions on quasi-judicial project permit applications. For example, RCW 58.17.330, as amended by 1995 regulatory reform legislation, provides that the local legislative body can specify that the legal effect of a hearing examiner's decision on a preliminary plat approval is that of "a final decision of the legislative body."

The hearing examiner's role in the project permit process can include:

- open record hearings on project permit applications;

- appeals of administrative SEPA determinations, which in most cases are combined with the open record hearing on the application;
- closed record appeals of administrative decisions made by the local planning staff, including appeals of SEPA determinations where an administrative appeal is provided;
- land use code interpretations to satisfy the statutory requirement that cities and counties planning under the Growth Management Act adopt procedures for such “administrative interpretations” (RCW 36.70B.110(11));
- land use code enforcement proceedings.

Other Issues Assigned to Hearing Examiners

The local legislative body may, by ordinance, authorize a hearing examiner to hear other types of contested matters, in addition to land use permit applications and code enforcement. Examples of other types of decisions and/or administrative appeals that could be handled by a local hearing examiner include:

- discrimination complaints under local personnel policies;
- employment decisions and personnel grievances;
- ethics complaints by citizens or employees;
- local improvement districts – formation hearing and/or assessment roll determinations;
- public nuisance complaints;
- civil infractions;
- property forfeiture hearings under the Uniform Controlled Substances Act (RCW 69.50.505(e));
- tax and licensing decisions and appeals;
- whistleblower retaliation claims.

Pros and Cons of Using Hearing Examiners

Pros

- More professional and timely decisions insuring fairness and consistency.

A professional hearing examiner prepares for and conducts hearings in a manner insuring procedural fairness. Hearings are less emotional and more expeditious. Hearing examiners develop a high level of expertise and specialization, saving time in making decisions and improving their quality and consistency.

- Time-saving for legislative body, freeing legislators to focus on legislative policy and other priority issues.

Conducting public hearings and making quasi-judicial decisions is time-consuming. Local legislators can free themselves from many of their hearing duties by delegating them to a hearing examiner. The local legislative body can still choose to make final decisions or to hear appeals of the examiner's decisions, and those appeals will be facilitated by a thorough and organized record. The use of hearing examiners is especially time-saving for routine decisions and for complex land use decisions requiring formal hearings, citizen participation, and subject matter expertise.

- Separation of policy-making or advisory functions from quasi-judicial functions.

Use of hearing examiners for quasi-judicial hearings separates legislative and administrative functions from quasi-judicial functions. This can improve decision-making by clarifying roles and avoiding conflicts. For jurisdictions with planning commissions, use of a hearing examiner system allows the planning commission to function as an advisory body. The legislative body can focus on policy-making while the planning department concentrates on administration. For counties with three-member boards of commissioners, use of a hearing examiner to conduct quasi-judicial proceedings can greatly assist commissioners who already responsible for a number of legislative and administrative functions.

- Improved compliance with legal requirements, including due process, appearance of fairness, and record preparation.

Hearing examiners have special expertise in managing legal procedural requirements and avoiding appearance of fairness and conflict of interest

issues. The hearing examiner assures procedural fairness, especially in cases where one side is represented by an attorney while the other side is not. Participants are often more satisfied with the proceedings, regardless of the outcome. A properly conducted hearing also results in a complete and well organized written record.

- Reduced liability relating to land use decisions and/or procedural challenges to decisions.

Using a hearing examiner system has been shown to reduce land use liability exposure. Improved hearing procedures, better records, and more consistent and documented decisions are typical of professional hearing examiners. At least one local government insurance authority has officially endorsed the use of hearing examiners for land use decisions based on a survey providing evidence of a lower risk profile for jurisdictions using a hearing examiner system for land use proceedings.

- Improved land development review integration under chapter 36.70B RCW (ESSB 1724).

A number of jurisdictions have adopted hearing examiner systems since the 1995 regulatory reform legislation mandating integration and consolidation of environmental and land use regulatory review for development projects. Use of a specialized land use hearing examiner is an effective method of consolidating and coordinating multiple review processes. For jurisdictions with a mandatory board of adjustment, adoption of a hearing examiner system eliminates the requirement for a board of adjustment.

- Opportunity for feedback to improve plans and regulations from professional hearing officer familiar with comprehensive plans and development regulations.

A professional hearing examiner has familiarity with the local comprehensive plan and development regulations and possibly those of other jurisdictions. Areas where plans, regulations, and policies are weak or inconsistent can be identified and referred to the planning staff, planning commission, or legislative body, providing feedback for continuous improvement.

- Removal of quasi-judicial decision-making from the political arena.

It may be difficult for elected local government officials to entirely eliminate political considerations from their quasi-judicial decision-making. Professional hearing examiners should be immune from political pressures.

Cons

- Cost to county or city for hiring a hearing examiner and staff.

There are costs in hiring hearing examiners and, if necessary, support staff. Counties and cities should consider whether savings in council and commission time, improvements in decision-making, and reduced liability justify the costs. Alternatives such as use of personal service contracts for hearing examiners can reduce costs.

- Increased cost to the parties due to more formal decision-making procedures.

Hearing examiners can increase the formality of the hearing process, although many of the procedural requirements and formalities are already required under state law. This formality can provide the advantage of increased appearance of fairness and impartiality in decision-making.

- Lack of accountability to voters for appointed hearing examiner making decisions or hearing administrative appeals.

Some people maintain that important decisions should be made by elected officials who are accountable to the voters. However, these concerns can be addressed by making the hearing examiner's decision a recommendation to the council or commissioners or by providing for an administrative appeal to the legislative body.

Options for Efficient and Effective Use of Hearing Examiners for Smaller Counties and Cities

Smaller local governments may be reluctant to establish a hearing examiner system because of cost considerations and concerns about whether there will be enough occasions to justify using a hearing examiner. Here are some ideas about addressing these concerns:

- Contract for hearing examiner services. Counties and cities may establish a contractual relationship with a hearing examiner in which the examiner is compensated, on an hourly or other basis, only as needed.
- Share use of a hearing examiner with other jurisdictions. Some local governments in the state have entered into interlocal agreements to contractually share the services of a hearing examiner.
- Increase the number of matters heard by hearing examiner. Doing this could reduce costs relating to use of staff that would otherwise be occupied with those matters.
- Fund the hearing examiner system from permit review fees. Local governments can add and/or increase permit fees and appeal fees to help cover the cost of maintaining a hearing examiner system.

Qualifications of Hearing Examiners

There are no state statutes that establish the minimum qualifications of hearing examiners. As noted above, hearing examiners are often attorneys; however, a law degree is not required. A background in the area in which the examiner will perform would obviously be helpful. Since hearing examiners operate mostly in the land use arena, some local governments use examiners with a planning, rather than legal, background. Keep in mind that the land use decision-making process requires a thorough knowledge of legal procedures, and relevant statutes, local ordinances, and case law. In the ordinance establishing the office of hearing examiner, it is a good idea to identify the minimum qualifications that the legislative body deems necessary for a hearing examiner.

Support, Resources, and Training for Hearing Examiners

- Washington Association of Professional Hearing Examiners; Jim Driscoll, President; 101 Yesler, Suite 607; Seattle, WA 98104; (206) 628-0039. This organization provides periodic training conferences and maintains a list of hearing examiners in the state.

MRSC Library Resources

The following MRSC Library resources provide more detailed information concerning use of hearing examiners and the land use hearing examiner system, including sample ordinances and rules of procedure:

- “Hearing Examiner System in Washington State: A Compilation of Articles and Ordinances,” MRSC, July 1997.
- “A Citizen Guide to the Office of Hearing Examiner,” City of Seattle, revised 1994.
- “The Hearing Examiner in Washington State: A Reference Manual for Local Government,” Washington State Planning and Community Affairs Agency (no longer in existence), June 1980.
- A Short Course on Local Planning, Planning Association of Washington and the Washington Department of Community, Trade and Economic Development, Version 3.2, March 1997.
- “You Be the Judge: A Handbook for the Land Use Decision Maker,” by Jim Driscoll and Ted Hunter, prepared for the Association of Washington Cities (1993).
- Other MRSC Library resources, including sample ordinances establishing the office of hearing examiner, hearing examiner rules of practice and procedure, hearing examiner job descriptions, hearing examiner contracts, and citizens’ guides to the hearing examiner process.

REMOVING CITY COUNCIL AS DRB APPEAL HEARING BODY AND REPLACING WITH HEARING EXAMINER

142.40 Appeals of Design Review Board Decisions

1. Jurisdiction – Appeals of the decision of the Design Review Board will be heard as follows:
 - a. If a related development permit requires an open record public hearing, then the appeal shall be heard at that hearing and decided upon by the hearing body or officer or officer hearing the related development permit.
 - b. If there are no other open record hearings required for related development permits, then the decision of the Design Review Board shall be heard according to the Process I appeal and judicial review procedures and provisions in KZC Chapter 145.~~at an open record hearing by the City Council.~~

Only those issues under the authority of the Design Review Board as established by KZC 142.35(3) and (4) are subject to appeal.

REMOVING CITY COUNCIL AS APPEAL HEARING BODY FOR PROCESS IIA ZONING PERMITS

150.65 Hearing Examiner's Decision

1. General – After considering all of the information, testimony and comments submitted on the matter, the Hearing Examiner shall issue a written decision either:
 - a. Granting the application; or
 - b. Modifying and granting the application; or
 - c. Denying the application.
2. Time Limits – The Hearing Examiner shall issue his/her decision within eight calendar days of the date of the open record hearing, as stated in the notice provided under KZC 150.30, except as follows:
 - a. If the Hearing Examiner and the applicant agree in writing on an extension of the time limit for the Hearing Examiner to issue his/her decision, the Hearing Examiner has the additional agreed-upon time to issue his/her decision.
 - b. If the proposed development activity presents a special circumstance, as defined below, the Hearing Examiner shall issue his/her decision within 21 calendar days of the date of the open record hearing as stated in the notice provided under KZC 150.30. For the purposes of this section, a permit for a proposed development activity presents a special circumstance under RCW 36.70B.140 when, because of the unusually large size of the subject property, the unusual complexity of what the applicant is proposing, the unusually large number of discretionary permits or approvals that are required and/or other unusual characteristics stated on the record by the Hearing Examiner, the proposed development activity requires more in-depth review and/or analysis than could reasonably be conducted under the time frame that would otherwise apply.
3. Decisional Criteria – The Hearing Examiner shall use the criteria listed in the provision of this code describing the requested decision in deciding upon the application. In addition, the Hearing Examiner may approve the application only if:
 - a. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
 - b. It is consistent with the public health, safety and welfare.
4. Conditions and Restrictions – The Hearing Examiner shall include in the written decision any conditions and restrictions that he/she determines are necessary to eliminate or minimize any undesirable effects of granting the application. Any conditions and restrictions that are imposed become part of the decision.
5. Contents – The Hearing Examiner shall include the following in his/her written decision:
 - a. A statement granting, modifying and granting, or denying the application.
 - b. Any conditions and restrictions that are imposed.

- c. A statement of facts presented to him/her that support the decision, including any conditions and restrictions that are imposed.
 - d. A statement of the Hearing Examiner's conclusions based on those facts.
 - e. A statement of the criteria used by the Hearing Examiner in making the decision.
 - f. A summary of the rights, as established in this chapter, of the applicant and others to appeal the decision of the Hearing Examiner.
6. Notice of Decision – Within four business days after the Hearing Examiner's written decision is issued, the Planning Official shall distribute the decision, or a summary thereof, along with a summary of any threshold determination under SEPA and the procedures for appealing the decision under this chapter, to the following parties:
- a. The applicant.
 - b. Each person who submitted written or oral testimony to the Hearing Examiner on the application. The Planning Official is not required to distribute a notice of decision to a party who signed a petition, unless such party also submitted independent written comments or information.
 - c. Each person who has requested notice of the decision.

The decision shall be posted on the City's website.

7. The Hearing Examiner retains jurisdiction to correct errors in and/or to clarify the decision within 14 calendar days following the date of the distribution of the Hearing Examiner's decision until the appeal period under KZC 150.80 has expired.

150.70 Effect of the Decision

The applicant may not engage in any activity based on the decision granting the application until 21 days following the final decision of the City.~~the time to appeal has expired. If the decision is appealed, the applicant may not engage in any activity based on the decision granting the application until the City issues a final decision on the matter. If the decision of the Hearing Examiner is not appealed, that decision is the final decision of the City.~~

150.80 Appeals

- ~~1. Who May Appeal – The decision of the Hearing Examiner may be appealed by:
 - a. The applicant; and
 - b. Any person who submitted written or oral testimony or comments to the Hearing Examiner on the application. A party who signed a petition may not appeal unless such party also submitted independent written comments or information.~~
- ~~2. Time To Appeal/How To Appeal – The appeal, in the form of a letter of appeal, must be delivered to the Planning Department within 14 calendar days following the date of distribution of the Hearing Examiner's decision; provided, that the appeal letter must be delivered to the Planning Department within 21 calendar days of the date of distribution of the Hearing Examiner's decision if state or local rules adopted pursuant to SEPA allow for public comment on a declaration of nonsignificance issued on the proposed development activity; and provided further, that if the fourteenth or twenty-first day, as~~

~~applicable, of the appeal period falls on a Saturday, Sunday, or legal holiday, the appeal period shall be extended through the next day on which the City is open for business. It must contain:~~

- ~~a. A clear reference to the matter being appealed; and~~
- ~~b. A statement of the specific factual findings and conclusions of the Hearing Examiner disputed by the person filing the appeal.~~
- ~~3. Fee — The person filing the appeal shall include with the letter of appeal the fee established by ordinance.~~
- ~~4. Jurisdiction — Appeals from the decision of the Hearing Examiner will be considered and decided upon by the City Council.~~

~~150.85 Notice of Consideration of the Appeal~~

- ~~1. Contents — The Planning Official shall prepare a notice of the appeal containing the following:
 - ~~a. The file number and a brief verbal description of the matter being appealed.~~
 - ~~b. A statement of the scope of the appeal including a summary of the specific factual findings and conclusions disputed in the letter of appeal.~~
 - ~~c. The time and place of the consideration of the appeal by the City Council.~~
 - ~~d. A statement of who may participate in the appeal.~~
 - ~~e. A statement of how to participate in the appeal.~~~~
- ~~2. Distribution — At least 14 calendar days before the City Council's consideration of the appeal, the Planning Official shall distribute this notice, or a summary thereof, to each person entitled to appeal the decision under KZC 150.80(1).~~

~~150.90 Participation in the Appeal~~

~~Only those persons entitled to appeal the decision under KZC 150.80(1) who file an appeal under KZC 150.80(2) may participate in the appeal; provided, that the applicant may submit a written response to an appeal filed by an appellant, regardless of whether the applicant filed an appeal. These persons may participate in either or both of the following ways:~~

- ~~1. By submitting written arguments to the City Council prior to the commencement of the City Council's consideration of the appeal.~~
- ~~2. By appearing in person, or through a representative, at the City Council's consideration of the appeal and providing oral or written arguments directly to the City Council. The City Council shall allow each side (proponents and opponents) to speak for a maximum of 10 minutes each.~~

~~150.95 Nature of the Appeal and Scope of the Appeal~~

~~The appeal will be a closed record appeal. The scope of the appeal is limited to the specific factual findings and conclusions disputed in the letter of appeal, and City Council may only consider arguments on these factual findings and conclusions. The appeal will be~~

~~considered only on the record developed in the hearing before the Hearing Examiner. No new evidence may be presented.~~

~~150.100 Staff Report on the Appeal~~

- ~~1. Contents — The Planning Official shall prepare a staff report on the appeal containing the following:
 - ~~a. The staff report prepared for the public hearing before the Hearing Examiner.~~
 - ~~b. The written decision of the Hearing Examiner.~~
 - ~~c. All written testimony and comments submitted to the Hearing Examiner.~~
 - ~~d. A summary of the testimony, comments and discussion at the hearing of the Hearing Examiner and a statement of the availability of the electronic sound recording of the hearing.~~
 - ~~e. The letter of appeal.~~
 - ~~f. All written arguments received by the Planning Department from persons entitled to participate in the appeal and within the scope of the appeal.~~
 - ~~g. An analysis of the specific factual findings and conclusions disputed in the letter of appeal.~~~~
- ~~2. Distribution — The Planning Official shall distribute the staff report as follows:
 - ~~a. Prior to the City Council's consideration of the appeal, the staff report will be distributed to each member of the City Council.~~
 - ~~b. At least seven calendar days before the City Council's consideration of the appeal, the staff report will be distributed to:
 - ~~1) The applicant;~~
 - ~~2) The person who filed the appeal; and~~
 - ~~3) Any person who received the Hearing Examiner's decision.~~~~~~

~~150.105 City Council Consideration of the Appeal~~

- ~~1. General — City Council shall hold a closed record appeal procedure on the appeal.~~
- ~~2. Consideration Declared Open — The consideration of the appeal by the City Council is open to the public.~~

~~150.110 Electronic Sound Recordings~~

~~City Council shall make a complete electronic sound recording of each consideration of an appeal.~~

~~150.115 Burden of Proof~~

~~The person filing the appeal has the responsibility of convincing the City Council that the Hearing Examiner made an incorrect decision because of erroneous findings of fact or conclusions.~~

~~150.120 Continuation of the Consideration of the Appeal~~

~~City Council may continue their consideration if, for any reason, they are unable to receive all of the comments on the appeal or if City Council determines that they need more information within the scope of the appeal. If, during their consideration, the time and place of the next consideration of the matter is announced, no further notice of that consideration need be given.~~

~~150.125 Decision on the Appeal~~

~~Within 60 calendar days of the date the letter of appeal was filed under KZC 150.80 and after considering all arguments within the scope of the appeal submitted by persons entitled to participate in the appeal, the City Council shall, by motion approved by a majority of its total membership, take one of the following actions:~~

- ~~1. If City Council determines that disputed findings of fact and conclusions of the Hearing Examiner are the correct findings of fact and conclusions, the Council shall affirm the decision.~~
- ~~2. If City Council determines that the disputed findings of fact and conclusions of the Hearing Examiner are not correct and that correct findings of fact and conclusions do not support the decision of the Hearing Examiner, the Council shall modify or reverse the decision.~~
- ~~3. In all other cases, the Council shall direct the Hearing Examiner to hold a rehearing on the matter. The motion may limit the scope of the matters to be considered at this rehearing. The provisions of KZC 150.25 through 150.70 apply to a rehearing under this subsection. In the event the City Council orders a rehearing on the matter, this shall constitute a special circumstance under RCW 36.70B.140. The Hearing Examiner shall hold the rehearing within 28 calendar days of the date the City Council orders the rehearing, and the time limits and other pertinent requirements of this chapter shall apply to the rehearing.~~
- ~~4. Notice of Decision~~
 - ~~a. General — Following the final decision of the City Council, the Planning Official shall prepare a notice of the City's final decision on the application.~~
 - ~~b. Distribution — Within four business days after the City Council's decision is made, the Planning Official shall distribute the decision, or summary thereof, along with a summary of any threshold determination under SEPA, to the following persons:~~
 - ~~1) The applicant.~~
 - ~~2) The person who filed the appeal.~~
 - ~~3) Each person who submitted written or oral comments to the City Council.~~
 - ~~4) Each person who has requested notices of the decision.~~

~~The decision shall be posted on the City's website.~~

~~5. Effect – The decision of City Council is the final decision of the City.~~

150.130-80 Judicial Review

The action of the City in granting or denying an application under this chapter may be reviewed pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The land use petition must be filed within 21 calendar days of the issuance of the final land use decision by the City. For more information on the judicial review process for land use decision, see Chapter 36.70C RCW.

150.135-90 Lapse of Approval

The applicant must begin construction or submit to the City a complete building permit application for the development activity, use of land or other actions approved under this chapter within four years after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC ~~150.130~~150.80, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. The applicant must substantially complete construction for the development activity, use of land, or other actions approved under this chapter and complete the applicable conditions listed on the notice of decision within six years after the final approval on the matter, or the decision becomes void. For development activity, use of land, or other actions with phased construction, lapse of approval may be extended when approved under this chapter and made a condition of the notice of decision.

150.140-100 Bonds

The Hearing Examiner and City Council may require a bond under Chapter 175 KZC to insure compliance with any aspect of a permit or approval.

150.145-110 Complete Compliance Required

1. General – Except as specified in subsection (2) of this section, the applicant must comply with all aspects, including conditions and restrictions, of an approval granted under this chapter in order to do everything authorized by that approval.

2. Exception – Subsequent Modification

If a specific use or site plan is approved through this process, or any quasijudicial process under previous zoning codes, the applicant is not required to apply for and obtain approval through this process for a subsequent change in use or site plan unless:

- a. There is a change in use and this code establishes different or more rigorous standards for the new use than for the existing use; or
- b. The Planning Director determines that there will be substantial changes in the impacts on the neighborhood or the City as a result of the change.

150.150-120 Time Limits

Any time limit, pursuant to Chapter 36.70B RCW, upon the City's processing and decision upon applications under this chapter may, except as specifically otherwise stated in this chapter, be modified by a written agreement between the applicant and Planning Director. In the event a permit constitutes or presents a special circumstance under the provisions of this

chapter, the time limits for the City to make a final decision and issue its notice of decision under Chapter 36.70B RCW are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

Reference change in KZC Chapter 90 shown below is required if the above changes to KZC Chapter 150 are adopted.

| KZC 90.140.8.c - The lapse of approval period provided in this section is shorter than the lapse of approval period in KZC 150.~~135-90~~ generally applicable to Process IIA approvals and this shorter period shall control for reasonable use exception approvals.



FACT SHEET

Action Sponsor and Lead Agency

City of Kirkland Department of
Planning and Community
Development

Proposed Action

Legislative adoption of Miscellaneous
Amendments to the Kirkland Zoning
Code pursuant to Chapter 160 KZC
(Process IV).

Responsible Official

A handwritten signature in black ink, appearing to read "E.R. Shields", is written over a horizontal line.

Eric R. Shields, AICP
Planning Director

Contact Person

Jon Regala, Senior Planner
City of Kirkland (425) 587-3255.

Required Approvals

Adoption by Kirkland City Council

Location of Background Data

File ZON10-00002
City of Kirkland
Department of Planning and
Community Development
123 Fifth Avenue
Kirkland, WA 98033

Date of Issuance

May 20, 2010



City of Kirkland

Process IV – Miscellaneous Zoning Code Amendments EIS Addendum dated May 20, 2010 File No. ZON10-00002

I. Background

The City of Kirkland proposes to amend several provisions of the Kirkland Zoning Code. The amendments are selected from an on-going list of issues, code interpretations, requests from the public, requests from City Council, and needs identified by staff. The amendments will be reviewed using the Chapter 160 KZC, Process IV with adoption by the City Council. Section V below contains additional information regarding the proposed changes.

This Environmental Impact Statement (EIS) Addendum is intended to fulfill the environmental requirements pursuant to the State Environmental Policy Act (SEPA) for the proposed Zoning Code amendments.

II. EIS Addendum

According to the SEPA Rules, an EIS addendum provides additional analysis and/or information about a proposal or alternatives where their significant environmental impacts have been disclosed and identified in a previous environmental document (WAC 197-11-600(2)). An addendum is appropriate when the impacts of the new proposal are the same general types as those identified in the prior document, and when the new analysis does not substantially change the analysis of significant impacts and alternatives in the prior environmental document (WAC 197-11-600(4)(c), -625 and -706).

The City published the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*. This EIS addressed the 2004 Comprehensive Plan, Zoning Code and Zoning Map updates required by the Washington State Growth Management Act (GMA). Elements of the environment addressed in this EIS include population and employment growth, earth resources, air quality, water resources, plants and animals, energy, environmental health (noise, hazardous materials), land use, socioeconomics, aesthetics, parks/recreation, transportation, and public services/utilities.

This addendum to the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update* is being issued pursuant to WAC 197-11-625 to meet the City's SEPA responsibilities. The EIS evaluated plan alternatives and impacts that encompass the same general policy direction, land use pattern, and environmental impacts that are expected to be associated with the proposed amendments to Kirkland Zoning Code as

discussed herein. While the specific location, precise magnitude, or timing of some impacts may vary from those estimated in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*, they are still within the range of what was evaluated and disclosed there. No new significant impacts have been identified.

III. Non-Project Action

Decisions on the adoption or amendment of zoning ordinances are referred to in the SEPA rules as "non-project actions" (WAC 197-11-704(2)(b)). The purpose of an EIS in analyzing a non-project action is to help the public and decision-makers identify and evaluate the environmental effects of alternative policies, implementation approaches, and similar choices related to future growth. While plans and regulations do not directly result in alteration of the physical environment, they do provide a framework within which future growth and development – and resulting environmental impacts – will occur. Both the adoption of the Comprehensive Plan evaluated in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update* and eventual action on the amendments to the Kirkland Zoning Code are "non-project actions".

IV. Environmental Analysis

The *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update* evaluated the environmental impacts associated with adoption of proposed policies and land use designations. The plan's policies are intended to accomplish responsibilities mandated by the Washington State Growth Management Act (GMA), and to mitigate the impacts of future growth. In general, environmental impacts associated with the proposed Zoning Code amendment are similar in magnitude to the potential impacts disclosed in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*. As this proposal is consistent with the policies and designations of the Comprehensive Plan and the environmental impacts disclosed in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*, no additional or new significant impacts beyond those identified in the EIS for the Comprehensive Plan are anticipated.

V. Description of the Proposal

The proposal would modify, add, and/or delete several provisions of the Kirkland Zoning Code. The following is a summary of the proposed changes:

1. KZC 53.59.010(2) RH 5C Zoning District – Eliminate outdated references to KZC 95.25 and 95.45 and replace with the actual landscape buffer standard and easement dedication language.
2. Codify Interpretation 09-3 – make KZC 115.20 Special Regulation 6 applicable to lots northeast of Bridle Trails Park (in the Bridle View Annexation)
3. Codify Interpretation 09-3 – make KZC 17.10.010 Special Regulation 5 applicable to lots northeast of Bridle Trails Park (in the Bridle View Annexation)
4. Add references to KZC Section 50.62 - Building Height Provisions in the CBD

5. KZC 105.103.2 - Remove the Design Review Board (DRB) as the decision maker of modifications to KZC Chapter 105 and replace the DRB with the Planning Official.
6. KZC 142.40 - Change Design Response Conference (DRC) appeal hearing from City Council to Hearing Examiner
7. KZC Chapter 150 - Change Process IIA appeal hearing from City Council to Hearing Examiner

The Planning Commission public hearing staff report has been included as Exhibit A to this memo and provides additional background on the proposed code amendments. As a result of the upcoming public hearing, it is possible that some of the proposed amendments will not be adopted and others may change due to public input.

VI. Public Involvement

The Planning Commission will hold a hold public hearing on May 27, 2010. Public notice of the hearing is being provided in accordance with State law. The City Council will take final action on the proposal in July 2010. All dates are subject to change.

VII. Conclusion

This EIS Addendum fulfills the environmental review requirements for the proposed amendments to Kirkland Zoning Code. The impacts of the proposal are within the range of impacts disclosed and evaluated in the *City of Kirkland 2004 Draft and Final Comprehensive Plan 10-year Update*; no new significant impacts have been identified. Therefore, issuance of this EIS Addendum is the appropriate course of action.

Exhibit A: Planning Commission public hearing staff memo dated May 20, 2010