

**Zoning Code**  
**Chapter 141 – SHORELINE ADMINISTRATION**

**141.10 User guide.**

This Chapter contains the provisions regarding the City's administration and enforcement of the Shoreline Management Act and Chapter 83 KZC, as well as the permit system applicable to the Shoreline Management Act and shoreline master program of the city.

**141.20 Administrative responsibilities in general.**

Except as otherwise specifically established in this Chapter or Chapter 83 KZC, the Department of Planning and Community Development of the City is responsible for the administration of the Shoreline Management Act and the shoreline master program of the city.

**141.30 Review Required.**

1. Within the shoreline jurisdiction, as described in KZC 83.90, development shall be allowed only as authorized in a shoreline substantial development permit, shoreline conditional use permit or shoreline variance permit, unless specifically exempted from obtaining such a permit under KZC Section 141.40.
2. Chapter 83 KZC specifies which permit is required. Enforcement action by the City or Department of Ecology may be taken whenever a person has violated any provision of the Shoreline Management Act or any City of Kirkland shoreline master program provision, or other regulation promulgated under the Shoreline Management Act. Procedures for enforcement action and penalties shall be as specified in WAC 173-27-240 through 173-27-310, which are hereby adopted by this reference.
3. Where a proposed development activity encompasses shoreline and non-shoreline areas, a shoreline substantial development permit or other required permit must be obtained before any part of the development, even the portion of the development activity that is entirely confined to the upland areas, can proceed.

**141.40 Exemption from permit requirements.**

1. General - Proposals identified under WAC 173-27-040 are exempt from obtaining a shoreline substantial development permit; however, a shoreline variance or shoreline conditional use may still be required. Proposals that are not permitted under the provisions of Chapter 83 KZC shall not be allowed under an exemption. Applicants shall have the burden to demonstrate that the proposal complies with the requirements for the exemption sought as described under WAC 173-27-040. A proposal that does not qualify as an exemption may still apply for a shoreline substantial development permit.
2. Special Provisions – The following provides additional clarification on the application of the exemptions listed in WAC 173-27-040:
  - a. Residential Appurtenances -
    - 1) Normal appurtenances to a single-family residence, referred to in KZC 83 as a detached dwelling unit on one lot, are included in the permit exemption provided in WAC 173-27-040(2)(g). For the purposes of interpreting this provision, normal appurtenances shall include those listed under WAC 173-14-040(2)(g) as well as tool sheds, greenhouses, swimming pools, spas, accessory dwelling units and other accessory structures common to a single family residence located landward of the OHWM and the perimeter of a wetland.
    - 2) Normal appurtenant structures to a single-family residence, referred to in KZC 83 as a detached dwelling unit on one lot, are included in the permit exemption provided in WAC 173-27-040(2)(b). For the purposes of interpreting this provision, normal appurtenant shall be limited to the following structures listed under WAC 173-14-040(2)(g): a garage; deck; driveway; and utilities.
  - b. Normal maintenance or repair of existing structures or developments - Normal maintenance or repair of existing structures or developments, including some replacement of existing structures, is included in the permit exemption provided in WAC 173-27-040(2)(b). For the

purposes of interpreting this provision, the following replacement activities shall not be considered a substantial development:

- 1) Replacement of an existing hard structural shoreline stabilization measure with a soft shoreline stabilization measure consistent with the provisions contained in KZC 83.300.
  - 2) Replacement of pier or dock materials consistent with the provisions contained in KZC 83.270 through 83.290.
3. Authority - The Planning Official shall review the proposed development activity for compliance with the shoreline regulations contained in Chapter 83 KZC. All proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and the provisions of Chapter 83 KZC, whether or not a permit is required.
  4. Application –
    - a. As part of any request for a determination of exemption, the applicant shall show compliance with the regulations in Chapter 83 KZC by submitting an application on a form provided by the Planning Department. The application shall include all documents and exhibits listed on the application form. Alternatively, the applicant may use the joint aquatic resources permit application form and any other application forms deemed appropriate by the Planning Official. Applications may be deemed complete when required forms and attachments are provided consistent with a shoreline exemption development application checklist.
    - b. The applicant shall identify whether the proposal requires an Army Corps of Engineers Section 10 or Section 404 approval. The Planning Official may waive the application for any proposal that does not require an Army Corps of Engineers Section 10 or Section 404 approval. In these circumstances, the Planning Official shall conduct a review for compliance with the shoreline regulations contained in Chapter 83 KZC in conjunction with a related development permit.
  5. Decision - The Planning Official may grant, deny, or conditionally approve the shoreline exemption request. The approval or conditional approval will become conditions of approval for any related development permit, and no development permit will be issued unless it is consistent with the shoreline exemption approval or conditional approval. A copy of the City's letter of exemption shall be filed with the Department of Ecology.
  6. Appeal - Any person aggrieved by the Planning Official's determination on a shoreline exemption request may be appealed using, except as stated below, the applicable appeal provisions of Chapter 145 KZC. If a proposed development activity also requires approval through Process IIA, IIB, or III (as described in Chapters 150, 152, and 155 KZC, respectively), any appeal of a shoreline exemption request will be heard as part of that other process.
  7. Lapse of Approval – The lapse of approval for the shoreline exemption approval shall be the same as the expiration date of the development permit and all conditions of the approval shall be included in the conditions of approval granted for that development permit.
  8. Revisions to WAC 173-27-040 - With subsequent revisions to WAC 173-27-040, the Planning Director shall determine administratively whether a letter of exemption is required and issue said decision as an administrative interpretation under KZC Section 83.50.

#### **141.50 Pre-Submittal**

1. General – Before applying for a permit or approval under this Chapter, the applicant shall attend a pre-submittal meeting with the Planning Official consistent with the provisions of this section.
2. Scheduling – The Planning Department will arrange a time for the pre-submittal meeting as soon as is reasonably practicable after the meeting is requested by the applicant.
3. Purpose – The purpose of the pre-submittal meeting is for the Planning Official to provide information to the applicant regarding what information needs to be submitted for a complete application.
4. Time Limits – The City will not process an application under this Chapter unless the applicant attended a pre-submittal meeting under this section, regarding the proposal for which application is made, within the six (6) months immediately prior to the date the application is submitted.

#### **141.60 Applications**

1. Who May Apply – Any person may, personally or through an agent, apply for a decision regarding property he/she owns.

2. How To Apply – The applicant shall file the following information with the Planning Department:
  - a. A complete application, with supporting affidavits, on forms provided by the Planning Department. Alternatively, the applicant may use the joint aquatic resources permit Application form;
  - b. Any information or material that is specified in the provisions of Chapter 83 KZC; and
  - c. Any additional information or material that the Planning Official specifies at the pre-submittal meeting.
3. Fee – The applicant shall submit the fee established by ordinance with the application.

#### 141.70 Procedures

##### 1. Substantial development permits.

- a. General –
  - 1) Applications for a shoreline substantial development permit shall follow the procedures for a Process I Permit pursuant to Chapter 145 KZC, except as otherwise provided in this Section.
  - 2) If the proposal that requires a substantial development permit is part of a proposal that requires additional approval through Process IIA or Process IIB under Chapter 150 KZC or Chapter 152 KZC, respectively, the entire proposal will be decided upon using that other process.
  - 3) If the proposal that requires a substantial development permit is part of a proposal that requires additional approval through the Design Review Board (DRB) under Chapter 142 KZC, the design review proceedings before the DRB shall be conducted in accordance with Chapter 142 KZC.
- b. Notice of Application and Comment Period –
  - 1) In addition to the notice of application content established in Chapter 145 KZC, notice of applications for shoreline substantial development Permits must also contain the information required under WAC 173-27-110.
  - 2) The minimum notice of application comment period for shoreline substantial development permits shall be no fewer than thirty (30) days. However, the minimum comment period for applications for shoreline substantial development permits for limited utility extensions and bulkheads, as described by WAC 173-27-120, shall be twenty (20) days.
- c. Burden of Proof –
  - 1) WAC 173-27-140 establishes general review criteria that must be met.
  - 2) WAC 173-27-150 establishes that a substantial development permit may only be granted when the proposed development is consistent with all of the following:
    - a) The policies and procedures of the Shoreline Management Act;
    - b) The provisions of Chapter 173-27 WAC;
    - c) Chapter 83 KZC.
- d. Decision -
  - 1) At the time of a final decision, the Planning Official shall mail a copy of the decision, staff advisory report, transmittal sheet and shoreline checklist to the applicant, Department of Ecology, and the Washington State Attorney General's Office, pursuant to RCW 90.58.140 and WAC 173-27-130. The permit shall state that construction pursuant to a permit shall not begin or be authorized until twenty-one (21) days from the date the permit decision was filed as provided in RCW 90.58.140(6); or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of filing as defined in RCW 90.58.140(5) and (6). "Date of Filing" is that date that the Department of Ecology received a copy of the decision.
  - 2) An appeal of a shoreline substantial development permit shall be to the State Shorelines Hearings Board and shall be filed within twenty-one (21) days of the receipt of the City's decision by the Department of Ecology as set forth in RCW 90.58.180.
- e. Effect of Decision – For shoreline substantial development permits, no final action or construction shall be taken until the termination of all review proceedings initiated within twenty-one (21) days after notice of the final action taken by the City is filed with the Department of Ecology.
- f. 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 authorized by that approval.
- 2) Exception – Subsequent Modification – WAC 173-27-100 establishes the procedure and criteria under which the City may approve a revision to a permit issued under the Shoreline Management Act and the shoreline master program.
- g. Time Limits – Construction and activities authorized by a shoreline substantial development permit are subject to the time limitations of WAC 173-27-090.

**2. Conditional use permits.**

- a. General - Applications for a shoreline conditional use permit shall follow the procedures for a Process IIA Permit review pursuant to Chapter 150 KZC, except as otherwise provided in this section. If the proposal that requires a conditional use permit is part of a proposal that requires additional approval through a Process IIB, the entire proposal will be decided upon using that process.
- b. Notice of Application and Comment Period –
  - 1) In addition to the notice of application content established in Chapter 150 KZC, notice of applications for shoreline conditional use permits must also contain the information required under WAC 173-27-110.
  - 2) The minimum notice of application comment period for shoreline conditional use permits shall be no fewer than thirty (30) days.
- c. Notice of Hearing – The Planning Official shall distribute notice of the public hearing at least fifteen (15) calendar days before the public hearing.
- d. Burden of Proof –
  - 1) WAC 173-27-140 establishes general review criteria that must be met.
  - 2) WAC 173-27-160 establishes criteria that must be met for a conditional use permit to be granted.
  - 3) In addition, the City will not issue a conditional use permit for a use which is not listed as allowable in the shoreline master program unless the applicant can demonstrate that the proposed use has impacts on nearby uses and the environment essentially the same as the impacts that would result from a use allowed by the shoreline master program in that shoreline environment.
- e. Decision -
  - 1) Once the City has approved a conditional use permit it will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-27-200.
  - 2) At the time of a final decision by the State Department of Ecology for a shoreline conditional use permit, the Planning Official shall, pursuant to RCW 90.58.140 and WAC 173-27-130, mail a copy of the decision, staff advisory report, transmittal sheet, and Shoreline Checklist to the applicant, Department of Ecology, and the State of Washington's Office of the Attorney General. The permit shall state that construction pursuant to a permit shall not begin or be authorized until twenty-one (21) days from the date the permit decision was filed as provided in RCW 90.58.140(6); or until all review proceedings are terminated if the proceedings were initiated within twenty-one (21) days from the date of filing as defined in RCW 90.58.140(5) and (6). "Date of Filing" is that date that the Department of Ecology received a copy of the decision.
  - 3) Appeals of a shoreline conditional use permit or shall be to the State Shoreline Hearings Board and shall be filed within twenty-one (21) days of the receipt of the City's decision by the Department of Ecology, as set forth in RCW 90.58.180.
- f. Effect of Decision – For shoreline conditional use permits, no final action or construction shall be taken until the termination of all review proceedings initiated within twenty-one (21) days from the date Department of Ecology transmits its decision on the shoreline conditional use permit.
- g. Complete Compliance Required –

- 1) General – Except as specified in subsection 2) below 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 – WAC 173-27-100 establishes the procedure and criteria under which the City may approve a revision to a permit issued under the Shoreline Management Act and this Chapter.
- h. Time Limits – Construction and activities authorized by a shoreline conditional use permit are subject to the time limitations under WAC 173-27-090.

### 3. Variances.

- a. General - Applications for a shoreline variance permit shall follow the procedures for a Process IIA Permit review pursuant to Chapter 150 KZC, except as otherwise provided in this section. If the proposal that requires a shoreline variance is part of a proposal that requires additional approval through a Process IIB, the entire proposal will be decided upon using that other process.
- b. Notice of Application and Comment Period –
  - 1) In addition to the notice of application content established in KZC Chapter 150, notice of applications for shoreline variance permits must also contain the information required under WAC 173-27-110.
  - 2) The minimum notice of application comment period for shoreline variance permits shall be no fewer than thirty (30) days.
- c. Notice of Hearing – The Planning Official shall distribute notice of the public hearing at least 15 calendar days before the public hearing.
- d. Burden of Proof –
  - 1) WAC 173-27-140 establishes general review criteria that must be met.
  - 2) WAC 173-27-170 establishes criteria that must be met for a variance permit to be granted.
- e. Decision -
  - 1) Approval by Department of Ecology. Once the City has approved a variance permit it will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-27-200.
  - 2) At the time of a final decision for a shoreline variance permit, the Planning Official shall, pursuant to RCW 90.58.140 and WAC 173-27-130, mail a copy of the decision, staff advisory report, transmittal sheet, and Shoreline Checklist to the applicant, Department of Ecology, and the State of Washington’s Office of the Attorney General. The permit shall state that construction pursuant to a permit shall not begin or be authorized until twenty-one (21) days from the date the permit decision was filed as provided in RCW 90.58.140(6); or until all review proceedings are terminated if the proceedings were initiated within twenty-one (21) days from the date of filing as defined in RCW 90.58.140(5) and (6). “Date of Filing” is that date that the Department of Ecology received a copy of the decision.
  - 3) Appeals of a Shoreline Variance Permit shall be to the State Shoreline Hearings Board and shall be filed within twenty-one (21) days of the receipt of the City’s decision by the Department of Ecology, as set forth in RCW 90.58.180.
- f. Effect of Decision – For shoreline variance permits, no final action or construction shall be taken until the termination of all review proceedings initiated within twenty-one (21) days from the date DOE transmits its decision on the shoreline variance permit.
- g. 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 as authorized by that approval.
  - 2) Exception – Subsequent Modification – WAC 173-27-100 establishes the procedure and criteria under which the City may approve a revision to a permit issued under the Shoreline Management Act and the shoreline master program.
- h. Time Limits – Construction and activities authorized by a shoreline variance permit are subject to the time limitations under WAC 173-27-090.

4. **Request for Relief from Standards**

- a. **General** - When shoreline stabilization measures intended to improve ecological functions result in shifting the OHWM landward of the pre-modification location, the City may propose to grant relief from additional or more restrictive standards and use regulations resulting from the shift in OHWM, such as but not limited to an increase in shoreline jurisdiction, shoreline setbacks, or lot coverage.
- b. **Burden of Proof** – Relief may be granted when:
  - 1) The proposed relief is the minimum necessary to relieve the hardship;
  - 2) The restoration project will result in a net environmental benefit; and
  - 3) The proposed relief is consistent with the objectives of the City’s restoration plan and shoreline master program.
- c. **Decision** - Approval by Department of Ecology. Once the City has approved a permit it will be forwarded to the State Department of Ecology for its review and approval/disapproval. The application review must occur during the Department of Ecology’s normal review of a shoreline substantial development permit, conditional use permit, or variance. If a permit is not required for the restoration project, the City shall submit separate application and necessary supporting information to the Department of Ecology.

**141.80 Enforcement authority.**

WAC Chapter 173-27 contains enforcement regulations, including authority for the City to issue regulatory orders to enforce the Shoreline Management Act and the shoreline master program. In addition, the City shall have any and all other powers and authority granted to or devolving upon municipal corporations to enforce ordinances, resolutions, regulations, and other laws within its territorial limits.

**141.90 Annexation**

The City may adopt shoreline environment pre-designations for shorelines located outside of city limits but within the urban growth area. In the event of annexation of a shoreline not pre-designated in the shoreline master program, the City shall develop or amend shoreline policies and regulations to include the annexed area. Such policies and regulations for annexed areas shall be consistent with RCW 90.58 and WAC 173-26 and shall be submitted to the Department of Ecology for approval.