

# Article 2: Permits and Procedures

Draft, April 13, 2011

NOTE: THIS IS A VERY EARLY ROUGH DRAFT - MAKERS AND STAFF WILL BE UPDATING THE MATERIAL HERE OVER THE NEXT FEW WEEKS PER SOME CITY COUNCIL INPUT AT THEIR APRIL 25 MEETING. HOWEVER, IT IS NOT ANTICIPATED THAT WE WILL DISCUSS THIS ARTICLE AT THE MAY 9 MEETING.

THE INTENT IS TO CONSOLIDATE AND RE-ORGANIZE THE PERMITS/PROCEDURES INTO ONE ARTICLE AND USING A SYSTEM OF PERMIT REVIEW PROCESS "TYPES" LIKE MANY OTHER COMMUNITIES. AFTER EACH SECTION, THERE'S A REFERENCE IN PARENTHESES THAT NOTES WHETHER THE SECTION IS COMPLETELY NEW, OR DRAWN FROM A CURRENT CODE SECTION. FOR NEW MATERIAL, WE'VE TRIED TO NOTE WHERE SOME/ALL OF THE LANGUAGE CAME FROM.

## 15.20 Purpose/Administration

### 15.00.000 Purpose . (NEW)

The purpose of this Chapter is to establish standard procedures for land use permit applications, public notice, hearings and appeals in the City. These procedures are designed to promote timely and informed public participation in discretionary land use decisions; eliminate redundancy in the application, permit review, hearing and appeal processes; provide for uniformity in public notice procedures; minimize delay and expense; and result in development approvals that implement the policies of the comprehensive plan. These procedures also provide for an integrated and consolidated land use permit and environmental review process. (COVINGTON)

### 15.20.020 Administration . (NEW)

The provisions of this chapter supersede all other procedural requirements that may exist in other sections of the City Code. When interpreting and applying the standards of this Code, its provisions shall be the minimum requirements. Where conflicts occur between provisions of this Code and/or between the Code and other City regulations, the more restrictive provisions shall apply. Where conflict between the text of this Code and the zoning map ensue, the text of this Code shall prevail. (SHORELINE)

## 15.21 Permit Review Process "Types"

### 15.21.010 Classification of permit review process types. (NEW)

Decisions on permit applications shall be classified as either Type 1, 2, 3 or 4, based on the amount of discretion associated with each decision. Procedures for the four

different types are distinguished according to who makes the decision, whether public notice is required, whether a public hearing is required before a decision is made, and whether an administrative appeal process is provided. The types of decisions are set forth in EMC 15.21.030 and the requirements for each type are set forth in EMC 15.21.040. (COVINGTON)

### **15.21.020 Determination of proper permit review process type. (NEW)**

- A. Determination by Director.** The Director shall determine the proper procedure for all permit applications. If there is a question as to the appropriate type of process, the Director shall resolve it in favor of the higher type number.
- B. Optional Consolidated Permit Processing.** An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified by the code. The applicant may determine whether the application shall be processed collectively or individually. If the application is processed under the individual procedures option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure. If the individual procedure option is chosen, the applicant will be eligible for any fee reduction contained in the current fee resolution.
- C. SEPA Review.** SEPA review shall be conducted concurrently with development project review. The following are exempt from concurrent review: **NOTE - TO BE REVIEWED/ REFINED TOGETHER WITH CURRENT SEPA PROVISIONS, AS NEEDED.**
  - 1. Projects categorically exempt from SEPA; and
  - 2. Components of previously completed planned actions, to the extent permitted by law and consistent with the EIS for the planned action.
- D. Decisionmaker (s).** Applications processed in accordance with subsection B of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decisionmaker(s). The City Council is the highest, followed by the Hearing Examiner or Planning Commission, as applicable, and then the Director.
- E. Hearings.** Permits are allowed only one open record hearing and one closed record appeal hearing, except for the appeal of a determination of significance.  
(COVINGTON)

### **15.21.030 Permit review process types. (NEW)**

**NOTE - AN ALTERNATIVE TO THE NAME ABOVE, THEY COULD BE CALLED "DECISION TYPES", A TERM USED BY MANY OTHER COMMUNITIES. ALL SEPA PROVISIONS TO BE CLOSELY REVIEWED TOGETHER WITH REFINEMENTS TO CURRENT SEPA LANGAUGE.**

- A. Review Process Type I.** These decisions are based on compliance with specific, nondiscretionary and/or technical standards that are clearly enumerated. These decisions are made by the Director and are exempt from notice requirements.

- B. Review Process Type II.** The Director makes these decisions based on standards and clearly identified criteria. Projects are reviewed by the Landmarks and Design Commission at a public meeting requiring public notice. This process type requires that the Director issues a written report that sets forth a decision to approve, approve with modifications, or deny the application. The Director’s report will also include the City’s decision under any required SEPA review. Such projects are appealable to the City Council in an open record appeal hearing. Such hearing shall consolidate with any appeals of SEPA negative threshold determinations. SEPA determinations of significance are appealable in an open record appeal prior to the project decision.
- C. Review Process Type III.** These are quasi-judicial decisions are made by the Hearing Examiner or City Council (OR WE COULD SPLIT THESE INTO DIFFERENT DECISION TYPES ALTOGETHER) and involve the use of discretionary judgment in the review of each specific application. Type III decisions require findings, conclusions, an open record public hearing and recommendations prepared by the review authority for the final decision made by the City Council or Hearing Examiner. Any administrative appeal of a SEPA threshold determination shall be consolidated with the open record public hearing on the project permit, except a determination of significance, which is appealable under \_\_\_\_\_.
- D. Review Process Type IV.** These are legislative, non-project decisions made by the City Council under its authority to establish policies and regulations regarding future private and public developments, and management of public lands.

**15.21.040 Requirements by permit review process types. (NEW)**

Table 15.21.040 Requirements by permit review process types.

	Type I	Type II	Type III	Type IV
Pre-application meeting required?	No	Yes	Yes	Yes
Recommendation made by:	N/A	Landmarks & Design Commission	Director	Director/Planning Commission (?)
Final decision made by:	Director	Director	City Council or Hearings Examiner	City Council
Notice of permit application:	No	Yes	Yes	Yes
Notice of decision:	No	Yes	Yes	Yes
Open record public hearing:	No	No	Yes	Yes
Closed record appeal hearing:	No			

	Type I	Type II	Type III	Type IV
Judicial appeal:				

### 15.21.050 Projects under permit review process types. (NEW)

Table 15.21.050 Projects under permit review process types. NOTE - MIKE - THIS IS JUST A CRUDE FIRST STAB - THIS IS WHERE YOUR HELP/COUNCIL DISCUSSION WILL BE MOST USEFUL.

Type I	Type II	Type III	Type IV
Building Permit (___)	Design review	Preliminary Plat (___)	Comprehensive Plan Amendments (___)
Grading Permit (___)	(REFINE NAME)	Plat Alterations (___)	Zoning Code
Boundary Line Adjustment (___)	(___) (THIS INCLUDES	Preliminary Plat Revisions (___)	Amendments (___)
Right-of-Way Use Permit (___)	LANDMARKS AND OTHER C/MF	Zoning Variance (___)	Zoning Map Amendments (___)
Design and Construction Standards	PROJECTS OVER CERTAIN	Conditional Use Permits (___)	Annexations (___)
Deviation (___)	THRESHOLD + IT COULD INCLUDE	Final Subdivision (___)	
Code Interpretation (___)	PROJECTS BELOW THRESHOLD WHO	Plat or Short Plat Vacations (___)	
Miscellaneous Administrative Decisions (___)	PROPOSE ONE OR MORE DEPARTURES)	Street Vacations (___)	
	Short Plat (Including Revisions and Alterations) (___)	(AGAIN - THIS COULD BE SPLIT INTO TWO TYPES BASED ON WHICH SHOULD GO TO HEARING EX VS COUNCIL)	

## 15.22 Permit Review Procedures

### 15.22.010 Pre-application meeting (New)

A pre-application meeting is required prior to submitting an application for any Type II, III, or IV permit and/or for an application for a project located within a critical area or its buffer.

Applicants for development permits under Type I permits are encouraged to participate in pre-application meetings with the City. Pre-application meetings with staff provide an

opportunity to discuss the proposal in general terms, identify the applicable City requirements and the project review process including the permits required by the action, timing of the permits and the approval process.

Pre-application meetings are required prior to the neighborhood meeting.

The Director shall specify submittal requirements for pre-application meetings, which shall include a critical areas checklist. Plans presented at the pre-application meeting are nonbinding and do not “vest” an application.

### **15.22.030 Application (New)**

#### 14.05.010 Designation.

Each applicant submitting a project permit to the city shall designate a single person or entity to receive determinations and notices under this title. The applicant shall include the name, current address and current telephone number of the designated person or entity. The applicant shall be responsible for immediately notifying the city of any change of name, address or telephone number of the designated person or entity.

#### 14.05.020 Submittal requirements.

A. The city shall specify submittal requirements, including, but not limited to, the type of project permit application, detail required in application and number of application copies. The city, at its sole discretion, may waive specific submittal requirements which it determines to be unnecessary for review of an application. Applicants may obtain application materials from the city.

B. The city may require additional material from applicants, including, but not limited to, maps, studies or models when the city determines such material(s) is needed to adequately assess the proposed project.

C. Applicants seeking approval of permits must complete an application form furnished by the city and comply with any requirements set forth in applicable city ordinances and any referenced design manuals. (AUBURN)

### **15.22.040 Determination of completeness (current 1.68.120)**

### **15.22.050 Public notices of application (New)**

### **15.22.060 Optional consolidated permit process (current 1.68.080)**

### **15.22.070 Permit processing time limits (current 1.68.240)**

15.22.080 Public notice of decision (New)

15.22.080 Expiration of vested status of land use permits and approvals  
(New)

15.22.080 Permit expiration timelines for clearing & grading & site  
development permits (New)

15.22.080 Public notice of decision (New)

## **15.23 General Provisions for Land Use Hearings & Appeals**

15.23.010 Limitations on the number of hearings (current 1.68.200 and 13.56)

15.23.020 Public notice of public hearing (current 13.56)

15.23.030 Effective date of decision (current 13.56)

15.23.040 General description of appeals (current 13.63)

15.23.050 Grounds for administrative appeal (current 13.63)

15.23.060 Filing administrative appeals (current 13.63)

15.23.070 Appeal process (current 13.63)

15.23.080 Judicial review (New)

15.23.090 Judicial appeals (New)

15.23.100 Conflicts (New)

15.23.110 Dismissals (New)

## 15.24 Nonconformance, Temporary Uses, And Re-Use Of Facilities (current 13.46)

- 15.24.010. Purpose. (update from current 13.46.020)
- 15.24.020. Applicability. (NEW)
- 15.24.030. Nonconforming use. (NEW)
- 15.24.040. Nonconforming structure. (NEW)
- 15.24.050. Nonconforming lots. (NEW)
- 15.24.060. Continuance under variance. (current 13.46.080)

### 15.24.010 Intent. (updated from current 13.46.020)

**NOTE - SUGGEST COMING UP WITH A TWO-TIERED APPROACH THAT DIFFERENTIATES BENIGN AND DETRIMENTAL NONCONFORMANCES - BUT NEED TO FIGURE OUT THE RIGHT THRESHOLDS FOR EBURG.**

- A. Establish the legal status of a nonconformance by creating provisions through which a nonconformance may be maintained, altered, reconstructed, expanded or terminated; (COVINGTON)
- B. Encourage the eventual replacement of nonconforming uses having potentially undesirable impacts on conforming uses; (KENT)
- C. Provide for the temporary establishment of uses that are not otherwise permitted in a zone and to regulate such uses by their scope and period of use; and (COVINGTON - MAYBE WE WANT TO ADDRESS THIS SIMILARLY HERE?)
- D. Encourage the adaptive re-use of existing public facilities, which will continue to serve the community, and to ensure public review of redevelopment plans by allowing:
  - 1. Temporary re-uses of closed public school facilities retained in school district ownership, and the reconversion of a temporary re-use back to a school use;
  - 2. Permanent re-use of surplus nonresidential facilities (e.g., schools, fire stations, government facilities) not retained in school district ownership; or
  - 3. Permanent re-use of historic structures listed on the National Register or designated as City landmarks by the City Historian and accepted by the City Council. (COVINGTON)

### 15.24.020. Applicability. (New)

Any use, structure, lot or other site improvement (e.g., landscaping or signage), which was legally established prior to the effective date of a land use regulation that rendered it nonconforming, shall be considered nonconforming if:

- A. The use is now prohibited or cannot meet use limitations applicable to the zone in which it is located; or
- B. The use or structure does not comply with the development standards or other requirements of this Code;

A change in the required permit review process shall not create a nonconformance.  
(SHORELINE)

### 15.24.030. Benign and detrimental nonconformities. (New)

The provisions of this chapter often distinguish benign nonconformities from detrimental nonconformities based on the differing levels of impacts that the various types of nonconformities may cause to surrounding uses that conform to the land use code.

**A. Benign nonconformity.** A nonconformity that does not have a negative impact on the health and safety of the public but may have an impact on public welfare. Examples may include not enough landscaping, too few parking spaces, or minimal deviation from dimensional standards. ALSO TO ADD THESE INTO THE DEFS SECTION. IDEALLY WE NOTE THAT THE COMMUNITY DEVELOPMENT DIRECTOR MAKES THE DETERMINATION AS TO WHETHER A NONCONFORMITY IS BENIGN FOR DETRIMENTAL, BUT IS THAT GOING TO BE WORKABLE?

**B. Detrimental nonconformity.** A nonconformity that has a negative impact on the health and safety of the public. Examples include uses involving hazardous materials, such as gasoline, in single family neighborhoods, uses that produce significant noise, such as body shops or paint shops, uses that have been deemed incompatible, such as adult entertainment establishments near schools, or uses that have large trip generation characteristics such as drive through restaurants. PERHAPS SOME EXAMPLES OF DETRIMENTAL NONCONFORMING STRUCTURES? LET'S DISCUSS POSSIBLE EXAMPLES.

### 15.24.040. Nonconforming use. (New)

**A. Applicability of restrictions.** Regulations applicable to nonconforming uses are in addition to regulations applicable to nonconforming structures, lots, and signs, and in the event of any conflict the most restrictive provisions shall apply. (KENT - NOT SURE WE ACTUALLY NEED TO SAY THIS THOUGH)

**B. Expansion of nonconforming uses.** No existing building, structure, or land devoted to a nonconforming use shall be expanded, enlarged, extended, reconstructed, intensified, or structurally altered unless the use thereof is changed to a use permitted in the district in which such building, structure, or land is located except as follows: When authorized by conditional use permit, a nonconforming use may be expanded, enlarged, extended, reconstructed, intensified, or structurally altered. (KENT - STANDARD LANGUAGE)

### ALTERNATIVE APPROACH

- Allow "benign" non-conforming uses to be enlarged, extended, reconstructed, intensified, or structurally altered consistent with other applicable development and design standards. QUESTION IS WHICH PROCESS - ADMINISTRATIVE, CONDITIONAL, OR OTHER? ALSO - IF THERE ARE SOME HISTORIC NONCONFORMING USES THAT ARE ARGUABLY NOT BENIGN, BUT AN IMPORTANT PART OF THE AREA CHARACTER -

PERHAPS SOME EXTRA FLEXIBILITY IS WARRANTED? IS THERE MUCH OF THIS IN EBURG IN TERM OF USES?

- C. **Change of nonconforming use.** When authorized by the **community development director**, a nonconforming use may be changed to a **similar use** that does not increase the intensity of impacts on surrounding conforming uses. For example, a change from a benign non-residential use in a residential zone to another benign use shall be acceptable. (CLOSE REVIEW OF WORDING HERE - WE'VE UPDATED SOME OF KENT'S PROVISIONS WITH NEW LANGUAGE)
- D. **Extension of nonconforming use.** When authorized by the **community development director**, a nonconforming use (MAYBE WE CLARIFY THAT THIS APPLIES TO "BENIGN" NC USES?) may be extended throughout those parts of a building which were manifestly designed or arranged for such use prior to the date when such use of such building became nonconforming, if no structural alterations except those required by law are made therein.
- E. **Discontinuance of nonconforming use.** When a **detrimental** nonconforming use of land or a nonconforming use of all or part of a structure is discontinued or a bandoned for a period of six months, such use shall not be resumed, notwithstanding any reserved intent not to abandon such use. Normal seasonal cessation of use, or temporary discontinuance for purposes of maintenance or improvements, shall not be included in determination of the six month period of discontinuance. (NOTE - FOR BENIGN NON-CONFORMING USES - ACCORDING TO LANGUAGE IN F BELOW, THE USE NEEDS TO BE REPLACED BY A PERMITTED USE FOR THE STATUS TO CHANGE.....EXTRA FLEXIBILITY?)
- F. **Reversion to nonconforming use.** If a nonconforming use is changed to a permitted use, the nonconforming use shall not be resumed.
- G. **Residential exception to nonconforming use status.** Legally established residential uses located in any residential zoning district shall not be deemed nonconforming in terms of density provisions and shall be a legal use. (KENT - THIS SOLVES A LOT OF PROBLEMS - ELIMINATES THE NEED TO INCLUDE "EXISTING SINGLE FAMILY" IN SOME OF THE COMMERCIAL/INDUSTRIAL DISTRICTS)

#### 15.24.050. Nonconforming structure. (New)

- A. **Applicability of restrictions.** Regulations applicable to nonconforming structures are in addition to regulations applicable to nonconforming uses, lots, and signs, and in the event of any conflict the most restrictive provisions shall apply. (KENT - NOT SURE WE NEED TO SAY THIS)
- B. **Detrimental nonconforming buildings and structures.** No detrimental nonconforming structure may be expanded, enlarged, extended, reconstructed, or structurally altered or changed, nor may any major nonconforming building, structure, or lot be occupied after discontinuance of change in use, unless the structure, use, and associated grounds and development are brought into compliance with use and minimum development standards of the district in which such structure is located, except as follows:

1. Any detrimental nonconforming structure damaged by fire, flood, explosion, wind, earthquake, war, riot, or other natural disaster, may be restored, reconstructed, and used as before; provided, that the work be vested by permit application within one (1) year of such happening; any restoration or reconstruction not vested by permit application within twelve (12) months from the date of the fire or other casualty shall be deemed abandoned and not allowed to be restored.
2. Such repairs and maintenance work as required to keep the structure in sound condition may be made to a detrimental nonconforming structure, provided no such structural alterations shall be made except such as are required by law or ordinance or authorized by the planning manager. (KENT - EXCEPT "MAJOR" IS REPLACED WITH "DETRIMENTAL")

MIKE/LANCE - THE CHALLENGE HERE IS DISTINGUISHING A DETRIMENTAL FROM A BENIGN NC STRUCTURE - AS IT MAY BE MORE MURKY IN REALITY. PERHAPS THERE'S A NEED TO PROVIDE MORE EXAMPLES. WE'VE MENTIONED SOME FOR USES, BUT NOT STRUCTURES.

**C. Benign nonconforming buildings and structures.** No benign nonconforming structure may be expanded, enlarged, or extended, ~~reconstructed or otherwise structurally altered or changed,~~ nor may any benign nonconforming building, structure, or lot be occupied after discontinuance or change in use, unless the structure and associated grounds and development are brought into compliance with the minimum development standards of the district in which such structure is located, **except as follows:** (KENT - NOTE SUGGESTED CHANGES FOR MORE FLEXIBILITY)

1. Any benign nonconforming structure damaged by fire, flood, explosion, wind, earthquake, war, riot, or other natural disaster, may be restored, reconstructed and used as before; provided, that the work be vested by permit application be completed within one year of such happening; any restoration or reconstruction vested by permit application 12 months from the date of the fire or other casualty shall be deemed abandoned and not allowed to be restored.
2. Such repairs and maintenance work as required to keep the structure in sound condition may be made to a benign nonconforming structure, provided no such structural alterations shall be made except such as are required by law or ordinance or authorized by the **community development director**. (KENT - EXCEPT "MINOR" IS REPLACED WITH "BENIGN")

NOTE - PERHAPS WE CAN ELIMINATE 1 AND 2 ABOVE, BY JUST ADDING TO THE TEXT IN PARAGRAPH C: Benign nonconforming structures may be altered or rebuilt provided they do not increase the nonconformity.

**D. Community development director's authority.** The **community development director** may waive specific development standard requirements or impose additional requirements when all the following criteria are met:

1. When owing to special circumstances a literal enforcement of the provisions of this title or other land use regulatory ordinances of the city will result in unnecessary hardship.

2. When the waiver of development requirements is in harmony with the purpose and intent of city ordinances and the comprehensive plan.
3. When the proposed use, building, and development will function without adverse impact upon adjacent property, development in the area or the city as a whole.
4. When a conditional use permit is not required. (KENT - THIS IS SORT OF AN ADMINISTRATIVE VARIANCE - IS THIS WORKABLE?)

#### 15.24.060. Nonconforming lots. (New)

**A. Applicability of restrictions.** Regulations applicable to nonconforming lots are in addition to the regulations applicable to nonconforming uses, structures, and signs, and, in the event of conflict, the most restrictive provisions shall apply. (KENT - AGAIN, NOT SURE WE NEED TO SAY THIS)

#### **B. Nonconforming lots of record. (current 13.46.060)**

1. In any residential zone, and in nonresidential zones where single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected or modified on any nonconforming lot of record, even though such lot fails to meet lot area and width requirements of the zone in which such lot is located; provided that:

a. Such lot is in separate ownership.

b. A minimal variance necessary to relieve the specific hardship has been granted by the board of adjustment.

**ABOVE LANGUAGE FROM EXISTING 13.46.060 - BUT THE VARIANCE LANGUAGE WARRANTS AN ALTERNATIVE:**

b. The proposed development meets other applicable development standards such as setbacks and building height.

2. Other districts. In any other district, permitted building and structures may be constructed on a nonconforming lot of record, provided applicable development standards such as setbacks, landscaping, and off-street parking requirements are met. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership prior to \_\_\_\_\_, and if all or part of the lots do not meet the minimum requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purposes of this title, and no portion of the parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this title, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this title. (KENT) (NOT SURE WE WOULD EVEN NEED GREEN HIGHLIGHTED TEXT)

#### ~~15.24.070 Continuance under variance. (current 13.46.080)~~

~~Nonconforming uses, buildings and structures for which a variance or special use permit has been granted under the terms of any previous ordinance shall be permitted to continue under the conditions imposed in the variance or special use permit. [Ord. 3360 § 1, 1982.] (I~~

WOULDN'T THINK WE'LL NEED TO SAY THIS)

## **15.25 Review and Decision Criteria**

15.25.010 \_\_\_\_\_

15.25.020 \_\_\_\_\_

NOTE - WILL NEED TO DETERMINE WHAT TO DO WITH PUD'S - MOST PARTS GO AWAY - WITH DENSITY BONUS PROVISIONS....

## **15.26 Subdivision Procedures (current Title 12)**

15.26.010 \_\_\_\_\_

15.26.020 \_\_\_\_\_

## **15.27 Environmental Procedures (current Chapter 1.42)**

15.27.010 \_\_\_\_\_

15.27.020 \_\_\_\_\_

## **15.28 Ellensburg Landmark Register & Procedures (current Chapter 1.45)**

15.28.010 Purpose (1.45.080)

15.28.020 \_\_\_\_\_

## **15.29 Code Enforcement (current Chapter 13.64)**

15.29.010 \_\_\_\_\_

15.29.020 \_\_\_\_\_