

ORDINANCE NO. 3528

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ZONING, PLANNING, AND LAND USE AND AMENDING ORDINANCE 2740 AS AMENDED, THE KIRKLAND ZONING ORDINANCE (FILE NO. IV-95-116), CHAPTERS 5, 142, 145, 150, 152, 155, AND 170.

WHEREAS, the City Council has received from the Kirkland Planning Commission a recommendation to amend certain sections of the text of the Kirkland Zoning Code, Ordinance 2740 as amended, all as set forth in the minutes of the Planning Commission hearing dated March 14, 1996, and bearing Kirkland Department of Planning and Community Development File No. IV-95-116; and

WHEREAS, prior to making said recommendation, the Planning Commission, following notice thereof as required by RCW 35A.63.070, on March 14, 1996, held a public hearing on the amendment proposals and considered the comments received at said hearing; and

WHEREAS, in regular public meeting the City Council considered the recommendation of the Planning Commission.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Zoning text amended: The following specified sections of the text of Ordinance 2740 as amended, the Kirkland Zoning Ordinance, be and they hereby are amended to read as follows:

As set forth in Attachment A which by this reference is incorporated herein.


Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. To the extent the subject matter of this ordinance, pursuant to Ordinance 2001, is subject to the disapproval jurisdiction of the Houghton Community Council, this ordinance shall become effective within the Houghton Community Municipal Corporation only upon approval of the Houghton Community Council or the failure of said Community Council to disapprove this ordinance within 60 days of the date of the passage of this ordinance.

Section 4. Except as provided in Section 3, this ordinance shall be in full force and effect five days from and after its passage by the Kirkland City Council and publication, pursuant to Section 1.08.017 Kirkland Municipal Code, in the summary form attached to the original of this ordinance and by this reference approved by the City Council, as required by law.


PASSED by majority vote of the Kirkland City Council in regular, open meeting this 2nd day of April, 1996.

SIGNED IN AUTHENTICATION thereof this 2nd day of April, 1996.




Mayor

Attest:



City Clerk

Approved as to Form:



City Attorney

ATTACHMENT A

AMENDMENT TO SECTION 5.10 OF THE
KIRKLAND ZONING CODE

Add a new paragraph 5.10.217 to read as follows:

217 Development Regulations - This Code, the Zoning Map, regulations relating to water and sewer extensions established in Title 15 of the Kirkland Municipal Code, Title 20 of the Kirkland Municipal Code (Development Projects), Title 21 of the Kirkland Municipal Code (Buildings and Construction), Title 22 of the Kirkland Municipal Code (the Subdivision regulations), Chapters 24.05 and 24.06 of the Kirkland Municipal Code (Shoreline regulations), and all other codes, ordinances or regulations of the City containing regulation regarding the use, development and/or modification of land and/or structures.

CHAPTER 142 - ADMINISTRATIVE DESIGN REVIEW

142.05	User Guide
142.10	Proposal Requiring Approval Through Process I, IIA, IIB, or III
142.15	Development Activities Requiring A.D.R. Approval
142.20	Timing
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142.60	Bonds

142.05 User Guide

Various places in this Code indicate that certain developments, activities, or uses are permitted only if they are approved through Administrative Design Review or A.D.R. This chapter describes A.D.R.

~~142.10 Proposal Requiring Approval Through Process I, IIA, IIB, or III~~

~~For proposals that require approval through both A.D.R. and Process I, IIA, IIB, or III, the Planning Official may determine that the A.D.R. decision be reviewed concurrently with the Process I, IIA, IIB, or III decision if this will result in more efficient decision making.~~

~~However, modifications to existing permits which required approval through Process I, IIA, IIB, or III under an earlier code, may be processed through A.D.R. if A.D.R. would be the required process under this code.~~

142.15 Development Activities Requiring A.D.R. Approval

1. All development activities subject to Sections 50.65.6.b, e, and f and Sections 52.50.6.b, e, and f need not be reviewed through A.D.R., but shall comply with these sections.
2. The following development activities are subject to A.D.R. unless subsection 142.15.3 applies:
 - a. The development of an undeveloped site.
 - b. The addition of new floor area to an existing building.
 - c. A change to the exterior appearance of over 25% of a facade visible from a street or park.
3. The following activities are not subject to A.D.R.:
 - a. Any activity which does not require a Building Permit.
 - b. Any activity on the exterior of a building of which the total cost or fair market value, whichever is higher, does not exceed \$10,000.

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- c. Interior work which does not alter the exterior of the structure.
 - d. Normal building maintenance including the repair or maintenance of structural members.
4. See also Section 162.35, Certain Non-Conformances Specifically Regulated, for additional information regarding the application of design regulations to existing development and remodels. The City encourages voluntary compliance with the Design Regulations even for projects which do not require A.D.R. approval according to the terms of this subsection.

142.20 Timing

The applicant must comply with the provisions of this chapter before ~~submitting an application for a permit under the Uniform Building Code for any development activity that requires A.D.R. approval~~ can be considered complete. The City will not ~~accept~~ consider any ~~building permit application for a development activity requiring A.D.R. approval~~ complete until ~~before~~ that development activity has been granted A.D.R. approval.

142.25 Pre-Design Conference

Before applying for A.D.R. approval, the applicant shall schedule and attend an A.D.R. pre-design meeting with the Planning Official. The purpose of this meeting is to provide an opportunity for an applicant to discuss the project concept with the Planning Official and--

1. To discuss how the design regulations, design guidelines and other applicable provisions of this Code and Comprehensive Plan affect or pertain to the proposed development;
2. For the Planning Official to designate which design regulations apply to the proposed development based primarily on the location and nature of the proposed development; and
3. For the Planning Official to determine what models, drawings, perspectives, 3-D CAD model, or other application materials the applicant will need to submit with the A.D.R. application.

This pre-design meeting may be combined with a pre-submittal meeting, if applicable.

142.30 Application

Following the ~~pre-application conference~~ pre-design meeting, the applicant shall submit the A.D.R. application on the form provided by the Planning Department. The application shall include all documents and exhibits listed on the application, as well as all application materials required as a result of the ~~pre-application conference~~ pre-design meeting.

142.35 Decision

After reviewing the A.D.R. application and other application materials, the Planning Official may grant, deny or conditionally approve subject to modifications the A.D.R. approval for the proposer's development. No development permit for the subject property requiring A.D.R. approval will be issued until the proposed development is granted A.D.R. approval or conditional approval. The terms of A.D.R. approval or conditional approval will become a condition of approval on each subsequent

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development permit and no subsequent development will be issued unless it is consistent with the A.D.R. approval or conditional approval. The Planning Official shall send written notice of the A.D.R. decision to the applicant. If the A.D.R. is denied, the decision shall specify the reasons for denial.

142.40

Requests for Reconsideration and Appeals

~~The reconsideration and appeal provisions of Process I, Chapter 145 of this Code, apply to requests for reconsideration and appeals of A.D.R. decisions, except that—~~

1. ~~Only~~ The applicant and any interested person may request reconsideration of or appeal the A.D.R. decision; and,
2. ~~Only the City, and the applicant and the person requesting reconsideration or appealing may participate in the request for reconsideration, or appeal, as applicable.~~
3. The applicant may request the Planning Director to reconsider any aspect of the Planning Official's A.D.R. decision by delivering a written request for reconsideration to the Planning Department within seven (7) calendar days following the postmarked date of distribution of the Planning Official's written decision. The applicant shall specify in the request what aspect of the decision he/she wishes to have reconsidered and the reason for the request.
4. Within seven (7) calendar days after receiving a request for reconsideration, the Planning Director shall notify the applicant whether or not the Planning Director will reconsider the decision. The Planning Director may reconsider the decision only if he/she concludes that there is substantial merit in the request.
5. If the Planning Director reconsiders the decision, the Planning Director shall send written notice of the final A.D.R. decision to the applicant. The decision shall specify the reasons for modifications, if applicable.

142.45

Design Departure

1. General - This section provides a mechanism for obtaining approval from the City for departing from strict adherence to the design regulations.
2. Process - If a design departure is requested, the A.D.R. decision, including the design departure, will be reviewed and decided upon using Process I, Chapter 145 of this Code. However, when a design regulation permits the applicant to propose an alternate method for complying with it, the decision on any such proposal will be made through the general A.D.R. provision described in this chapter.
3. Application Information - In addition to the application materials required in Chapter 145 of this Code, the applicant shall submit a complete application on the form provided by the Planning Department, along with all information listed on that form, including a written response to the criteria in Section 142.45.4, below.
4. Criteria - The City may grant a design departure only if it finds that either—
 - a. All of the following requirements are met:

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- 1) The request is consistent with and fulfills the policy basis for the applicable design regulations and design guidelines,
 - 2) The departure will not have any substantial detrimental effect on nearby properties and the City as a whole,
 - 3) The departure manifests high quality design and/or innovative and appropriate use of materials that will create a high quality development; or
- b. All of the following requirements are met:
- 1) The size, configuration, topography or location of the subject property is unusual and was not contemplated in the design regulations.
 - 2) Because of these unusual circumstances, application of the design regulations to the subject property would not result in a project that fulfills the policy basis for the design regulation.
 - 3) The proposed departure will result in a development which fulfills the policy basis for the design regulations and will result in high quality development sensitive to its surroundings.

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Modifications

1. The Planning Official may approve a modification to the A.D.R. approval for the proposed development if—
 - a. The need for the modification was not known and could not reasonably have been known before the A.D.R. approval was granted;
 - b. The modification is minor and will not, in any substantial way, change the proposed development; and
 - c. The development that will result from the modification will be consistent with the design regulations and design guidelines.
2. Any modification, other than as specified in paragraph 1 of this Section, must be reviewed and decided upon as a new A.D.R. approval under this Chapter.

142.55

Lapse of Approval

1. General - Unless otherwise specified in the decision granting A.D.R. approval, the applicant must begin construction or submit to the City a complete Building Permit application for development of the subject property consistent with the A.D.R. approval within one (1) year after the final decision granting the A.D.R. approval or that decision becomes void. The applicant must substantially complete construction consistent with the A.D.R. approval and complete all conditions listed in the A.D.R. approval decision within three (3) years after the final decision on the A.D.R. approval or the decision becomes void. "Final decision" means the final decision of the Planning Official or, if applicable, as specified in Chapter 145 of this Code.
2. Extensions
 - a. Application - The applicant may apply for a one-time extension, of up to one year, of the time limits under paragraph 1 of this Section. The

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application for the extension must be submitted by letter prior to the expiration of the applicable time limit under paragraph 1 of this Section. The letter of application must be submitted to the Planning Department and, along with any other supplemental documentation, must demonstrate that the applicant is making substantial progress toward developing the subject property consistent with the A.D.R. approval and that circumstances beyond his/her control prevent compliance with the applicable time limit under paragraph 1 of this Section.

- b. Fee - The applicant shall include with the letter of request the fee as established by ordinance.
- c. Review Process - An application for a time extension will be reviewed by the Planning Official.

3. Appeals

- a. Who Can Appeal - Any person who is aggrieved by a time extension or denial of a time extension under this Section may appeal that determination.
- b. How to Appeal - The applicant must file a letter of appeal within fourteen (14) days of the approval or denial of the time extension indicating how the determination affects his/her property and presenting any relevant arguments or information on the correctness of the determination. The applicant shall include the appeal fee as established by ordinance.
- c. Applicable Procedures - All appeals of decisions under this Section will be reviewed and decided upon using Process IIA, described in Chapter 150 of this Code.

142.60 Bonds

The Planning Official may require a bond under Chapter 175 of this Code to ensure compliance with any aspect of an A.D.R. approval.

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AMENDMENTS TO CHAPTER 145 OF THE ZONING CODE

1. Section 145.05 is hereby amended to read as follows:

145.05 User Guide

Various places of this Code indicate that certain developments, activities or uses are permitted only if approved using Process Number I. This Chapter describes how Process I works.

If you are interested in obtaining approval for something through Process I or if you wish to participate in a decision that will be made using this Process, you should read this Chapter. However, this Chapter only applies if another provision of this Code specifically states that a decision will be made using Process I. Please review Title 20 of the Kirkland Municipal Code for additional information regarding the City's processing of project permits.

2. Section 145.10 is hereby amended to read as follows:

145.10 Proposal Requiring Approval Through Process IIA, IIB or III.

If the development, use or activity that requires approval through Process I is part of a proposal that requires additional approval through Process IIA, Process IIB or Process III, the entire proposal will be decided upon using that other process, ~~if the Planning Director determines that this will result in more efficient decision making.~~

3. A new Section 145.12 is hereby added to read as follows:

145.12 Pre-Submittal Meeting.

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 accept 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 three months immediately prior to the date the application is submitted.

4. Section 145.15 is hereby amended to read as follows:

145.15 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 a-completed application in the Planning Department on the form provided by the Department.
 - b. Any information or material that is specified in the provision of this Code that describes the applied for decision.
 - c. Any additional information or material that the Planning Official specifies at the pre-submittal meeting.
 - d. Any additional information or material which must be submitted in order to have a complete application under Title 20 of the Kirkland Municipal Code. The applicant shall include with the application any information or material that is specified in the provision of this Code that describes the decision applied for. The Planning Official may also require the applicant to provide any additional information or material that the Director determines is reasonably necessary for a decision on the matter.
3. Fee - The applicant shall submit the fee established by ordinance with the application.

5. A new Section 145.17 is hereby added to read as follows:

145.17 Determination of Completeness of Application.

1. General - Within twenty-eight (28) calendar days after the date of submittal of the application, the Planning Official shall mail to the applicant, or provide in person to the applicant, a written determination of whether the application is complete, and, if the application is not complete, what must be submitted by the applicant in order for the application to be complete. In this written determination, the Planning Official shall also identify, to the extent known to the City, the other agencies of local, state or federal government that may have jurisdiction over some aspect of the proposed development activity. The Planning Official may also include other information with this determination that will assist in the review and decision upon the application.
2. Standard for Determining Completeness - An application is complete for purposes of this Section when it contains the information required by Section 15 of this Chapter and is sufficient for continued processing even though additional information may be required or modification of the proposal may be subsequently undertaken. A determination of completeness under this Section does not preclude the City from requesting additional information or studies either at the time of providing the written determination of completeness or subsequently if new information is required.
3. Review of Additional Information - The Planning Official shall provide a written determination under paragraph 1 of this Section within fourteen (14) calendar days of the date the applicant submits additional information required under this Section.
4. Application Considered Withdrawn - Unless the notice specifying additional information to be submitted for a complete application establishes a longer period, the application will be considered withdrawn for all purposes if the Applicant has not submitted the required information to the City within ninety (90) days after the date of the notice or, if applicable, after any extension granted in writing by the Planning Director. The

Planning Director may grant an extension if, based on information submitted by the Applicant with the request for the extension, the Planning Director concludes that the Applicant is making reasonable progress toward submitting the required information.

6. Section 145.20 is hereby amended to read as follows:

145.20 Compliance with SEPA

The State Environmental Policies Act (RCW 43.21c) applies to some of the decisions that will be made using this Chapter. The Planning Official shall evaluate each application and, where applicable, comply with SEPA and with State Regulation and City Ordinances issued under the authority of SEPA.

7. A new Section 145.22 is hereby added as follows:

145.22 Notice of Application and Comment Period

1. Contents - The Planning Official shall prepare a notice of each application containing the following information:

- a. The street address of the subject property, or if this is not available, a locational description of non-legal language along with a vicinity map that identifies the subject property.
- b. The date of application.
- c. The date of the Notice of Completeness under Section 17 of this Chapter.
- d. The date of this notice.
- e. A description of the proposed development activity and the decision that will be made under this Chapter; a list of the permits and approvals included in the application; and an identification of other necessary permits not included in the application to the extent known by the City.
- f. A list of any studies requested by the City pertinent to the application.
- g. Identification of existing environmental documents that evaluate the proposed

development activity.

- h. The location where the official file may be examined.
- i. The time limit, which will not be less than eighteen (18) days nor more than thirty (30) days after the date of the notice, for submitting comments to the Planning Director, which the Planning Director shall consider before making the decision on the application.
- j. information regarding how to request a copy of the decision once it is made.
- k. General information regarding how to appeal decisions made under this Chapter.
- l. A statement of any preliminary determination, if any, made by the Planning Official at the time of the notice regarding the development regulations that the Planning Official will propose as mitigation of project impact and the consistency of the proposed development activity with those development regulations.

2. Distribution -

- a. Not more than ten (10) calendar days after the Planning Official determines that the application is complete, and at least eighteen (18) calendar days prior to the end of the comment period, the Planning Official shall distribute this notice as follows:
 - 1) A copy of the notice will be published in the official newspaper of the City. The published notice does not require a vicinity map.
 - 2) A copy of the notice, including a vicinity map, will be posted on each of the official notification boards of the City.
- b. Not more than ten (10) calendar days after the Planning Official determines that the application is complete, and at least eighteen (18) calendar days prior to the end of the comment period, the applicant shall provide for and erect public notice signs as follows:

- 1) The signs shall be designed and constructed to City standards. A copy of the notice described in paragraph 1 of this Section and a vicinity map shall be attached to each sign.
 - 2) The Department of Planning and Community Development is authorized to develop the standards for the public notice signs necessary for implementation of this Section.
 - 3) One (1) sign shall be erected on or near the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property. The Department of Planning and Community Development shall approve the location of each sign.
 - 4) The applicant shall post a bond pursuant to Chapter 175 of this Code to ensure proper maintenance and removal of the signs. The bond shall be posted prior to erection of the sign.
 - 5) The signs may not be removed until twenty-one (21) calendar days after the final decision of the City on the application, and the applicant shall remove the signs within seven (7) calendar days thereafter.
8. Section 145.30 is hereby eliminated in its entirety.
9. Section 145.40 is hereby eliminated in its entirety.
10. Section 145.45 is hereby amended to read as follows:
- 145.45 Planning Director's Decision
1. General - Within ten (10) working days aAfter the deadline for submitting comments and after considering all of the information and comments submitted on the matter, the Planning Director shall issue a written decision either--

- a. Granting the application; or
 - b. Modifying and granting the application; or
 - c. Denying the application.
2. Decisional Criteria - The Planning Director shall use the criteria listed in the provision of this Code describing the requested decision in deciding upon the application. In addition, the Planning Director may approve the application only if+ ==
- a. ~~It is consistent with the intent of the goals and policies and of the applicable neighborhood plan provisions of the Comprehensive Plan~~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 all applicable Zoning Code regulations, including those adopted by reference from the Comprehensive Plan; and~~
 - e. ~~It is consistent with the public health, safety and welfare.~~
3. Conditions and Restrictions - The Planning Director 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.
4. Contents - The Planning Director shall include in the 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; and
 - d. A statement of the Director's conclusions based on those facts;
 - e. A statement of the criteria used by the

Director in making the decision; and

- f. A summary of the ~~rights~~ procedures, as established in this Chapter, ~~of the applicant and others~~ to appeal the decision of the Director.
5. Issuance Notice of Written Decision - Within ~~two~~ four (~~24~~) working calendar days after the Planning Director's written decision is issued, ~~the Director shall distribute the decision as follows~~ the Planning Official shall mail a copy of the decision to the following persons:
- a. ~~A copy will be mailed to~~ The applicant.
 - b. ~~A copy will be mailed to any~~ Each person who submitted written ~~testimony~~ comments to the Director.
 - c. Each person who has requested notice of the decision.

In addition, within four (4) calendar days after the Planning Director's decision is issued, the Planning Official shall post a summary of the decision, along with a summary of any threshold determination under SEPA and the procedures for appealing the decision under this Chapter, on the public notice sign erected under Subsection 22.2.b of this Chapter.

6. The Planning Director retains jurisdiction to correct errors in and/or to clarify the decision until the appeal period under Section 60 of this Chapter has expired.

11. Section 145.55 is hereby eliminated in its entirety:

12. Section 145.60 is hereby amended to read as follows:

145.60 Appeals

1. Who May Appeal - The decision of the Planning Director may be appealed by--
 - a. The applicant, or
 - b. Any person who submitted written comments or information ~~testimony~~ to the Planning Director.

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 ~~ten~~fourteen (14) ~~working~~calendar days following the postmarked date of distribution of the Planning Director's written decision; provided that the appeal letter must be delivered to the Planning Department within twenty-one (21) calendar days of the postmarked date of distribution of the Planning Director's decision if state or local rules adopted pursuant to SEPA allow for public comment on a declaration of non-significance issued on the proposed development activity on either the approval or the request for reconsideration. It must contain--
- a. A clear reference to the matter being appealed; and
 - b. A statement of the specific elements ~~factual findings or conclusions~~ of the Planning Director's decision disputed by the person filing the appeal.
3. Notice of Appeal --
- a. ~~Any person filing an appeal shall, prior to delivery of the letter of appeal to the Planning Department, mail or personally deliver a copy of such appeal letter and a notice of the deadline for responding to the appeal as established in paragraph 3.b. of this Section to those persons described in paragraph 1. of this Section. Proof of service by mail or personal delivery shall be, by affidavit, attached to the copy of the appeal letter delivered to the Planning Department pursuant to this subsection.~~
 - b. ~~Any person receiving a copy of the letter of appeal pursuant to paragraph 3.a. of this Section may file a written response to the letter of appeal. Such response shall be submitted to the Planning Department within five (5) working days after the appeal letter was filed with the Planning Department.~~
 - c. ~~Any person filing a response pursuant to this section shall mail or personally deliver a copy of the response to those persons described in paragraph 1 of this Section. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of~~

~~the response to the letter of appeal filed with the Planning Department pursuant to paragraph 2. of this Section.~~

4. ~~Fees~~ - The person filing the appeal shall include with the letter of appeal the fee as established by ordinance.
54. Jurisdiction - Appeals from the decision of the Planning Director will be heard by the Hearing Examiner.

13. Section 145.70 is hereby amended to read as follows:

145.70 Participation in the Appeal

Only those persons entitled to appeal the decision under Section 60 of this Chapter may participate in the appeal. These persons may participate in either or both of the following ways:

1. By submitting written comments or testimony to the Hearing Examiner~~Planning Department within the timeline established by Section 145.60.3. prior to the commencement of the hearing.~~
2. By appearing in person, or through a representative, at the hearing and submitting oral testimony directly to the Hearing Examiner. The Hearing Examiner may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

14. Section 145.75 is hereby amended to read as follows:

145.75 Scope of the Appeal

The appeal will be an open record appeal hearing. The scope of the appeal is limited to the specific factual findings and conclusions~~elements of the Planning Director's decision~~ disputed in the letter of appeal, and the Hearing Examiner may only consider comments, testimony and arguments on these factual findings and conclusions~~specific elements.~~ ~~Persons participating in the appeal may present new information to the Hearing Examiner that was not presented to the Planning Director only if it is relevant to the specific factual findings~~

~~and conclusions disputed in the letter of appeal.~~

15. Section 145.80 is hereby amended to read as follows:

145.80 Staff Report on the Appeal

1. Content - The Planning Official shall prepare a staff report containing the following:
 - a. The written decision of the Planning Director.
 - b. All written comments submitted to the Planning Director.
 - c. The letter of appeal.
 - d. All written comments on the appeal received by the Planning Department from persons entitled to participate in the appeal and within the scope of the appeal.
 - e. An analysis of the specific ~~factual findings and conclusion elements~~ of the Planning Director's decision disputed in the letter of appeal.
2. Distribution - At least seven (7) calendar days before the hearing, the Planning Official shall distribute copies of the staff report as follows:
 - a. A copy will be sent to the Hearing Examiner.
 - b. A copy will be sent to the applicant.
 - c. A copy will be sent to the person who filed the appeal.
 - d. A copy will be sent to any person who received a copy of the Director's decision.

16. Section 145.95 is hereby amended to read as follows:

145.95 Burden of Proof

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

17. Section 145.105 is hereby amended to read as follows:

145.105 Decision on the Appeal

1. General - The Hearing Examiner shall consider all information and material within the scope of the appeal submitted by persons entitled to participate in the Appeal. ~~The Hearing Examiner shall either affirm or change the findings and conclusions of the Planning Director that were appealed.~~ Based on the Hearing Examiner's findings and conclusions, he/she shall either--
 - a. Affirm the decision being appealed; ~~or~~
 - b. Reverse the decision being appealed; or
 - c. Modify the decision being appealed.

2. Issuance of Written Decision Time Limits - The Hearing Examiner shall issue his/her decision within ninety (90) calendar days of the date the letter of appeal was filed under Section 60 of this Chapter.

3. Issuance Notice of Written Decision - Within fourteen (14) calendar days after the public hearing, the Hearing Examiner shall issue a written decision on the appeal. Within two (2) working calendar days after it is issued, the Hearing Examiner shall distribute the decision as follows: mail a copy of his/her decision to the following persons:
 - a. ~~A copy will be mailed to~~ The applicant.
 - b. ~~A copy will be mailed to~~ The person who filed the appeal.
 - c. ~~A copy will be mailed to~~ All other persons who participated in the appeal.
 - d. Each person who has requested notice of the decision.

In addition, within four (4) calendar days after the Hearing Examiner's decision is issued, the Planning Official shall post a summary of the decision, along with a summary of any threshold determination under SEPA, on the public notice signs erected under Subsection 22.2.b of this Chapter.

34. Effect - The decision by the Hearing Examiner is the final decision of the City.

18. Section 145.110 is hereby amended to read as follows:

145.110 Judicial Review

The action of the City in granting or denying an application under this Chapter may be reviewed for ~~illegal, corrupt or arbitrary or capricious~~ action pursuant to the standards set forth in RCW 36.21C.130 in the King County Superior Court. The petition for review and use petition must be filed within ~~thirty~~ thirtytwo-one (3021) calendar days of the final decision of issuance of the final land use decision by the City. For more information on the judicial review process for land use decisions, see RCW 36.70C.

19. Section 145.115 is hereby amended to read as follows:

145.115 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 (4) 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 Section 145.110, 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 ~~Approval~~ Decision within six (6) 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 ~~Approval~~ Decision.

20. A new Section 145.130 is hereby added to read as follows:

145.130 Time Limits.

Any time limit, pursuant to RCW 36.70B, 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 RCW 36.70B are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

AMENDMENTS TO CHAPTER 150 OF THE ZONING CODE

1. Section 150.05 is hereby amended to read as follows:

150.05 User Guide

Various places in this Code indicate that certain developments, activities or uses are permitted only if approved using Process IIA. This Chapter describes Process IIA.

If you are interested in obtaining approval for something through Process IIA or if you wish to participate in a decision that will be made using this Process, you should read this Chapter. However, this Chapter only applies if another provision of the Code specifically states that a decision will be made using Process IIA. Please review Title 20 of the Kirkland Municipal Code for additional information regarding the City's processing of project permits.

In addition, please refer to Section 10 of this Chapter to see if that section applies.

2. Section 150.10 is hereby amended to read as follows:

150.10 Proposals Requiring Approval Through Process IIB or III.

If the development, use or activity that requires approval through Process IIA is part of a proposal that requires additional approval through Process IIB or Process III, the entire proposal will be decided upon using that other Process, ~~if the Planning Director determines that this will result in more efficient decision making. However, Variances, Chapter 120 of this Code, may not be decided upon using Process III.~~

3. A new Section 150.12 is hereby added to read as follows:

150.12 Pre-Submittal Meeting.

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 reasonable 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 accept 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 three months immediately prior to the date of the application is submitted.

4. Section 150.15 is hereby amended to read as follows:

150.15 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 completed application, with supporting affidavits, on forms provided by the Planning Department.
 - b. Address labels ~~obtained from King County~~ containing the names and addresses of the owners of all property, including the subject property, within 300 feet of any boundary of the subject property. Address labels must be no more than six (6) months old.
 - c. Address labels marked "resident" or "tenant" for all addresses located:
 - 1) On the subject property, and
 - 2) Adjoining the subject property.
 - d. A copy of the King County Assessor's Map identifying the properties specified in paragraphs 2b and 2c of this Section.
 - e. A vicinity map showing the subject property and all property within 400 feet of any boundary of the subject property.
 - f. Any information or material that is specified in the provision of this Code that describes the applied for decision.

- g. Any additional information or material that the Planning Official determines is reasonably necessary for a decision on the matter specified at the pre-submittal meeting.
 - h. Any additional information or material which must be submitted in order to have a complete application under Title 20 of the Kirkland Municipal Code.
3. Fee - The applicant shall submit the fee established by ordinance with the application.
5. A new Section 150.17 is hereby added to read as follows:

150.17 Determination of Completeness of Application.

- 1. General - Within twenty-eight (28) calendar days after the date of submittal of the application, the Planning Official shall mail to the applicant, or provide in person to the applicant, a written determination of whether the application is complete, and, if the application is not complete, what must be submitted by the applicant in order for the application to be complete. In this written determination, the Planning Official shall also identify, to the extent known to the City, the other agencies of local, state or federal government that may have jurisdiction over some aspect of the proposed development activity. The Planning Official may also include other information with this determination that will assist in the review and decision upon the application.
- 2. Standard for Determining Completeness - An application is complete for purposes of this Section when it contains the information required by Section 15 of this Chapter and is sufficient for continued processing even though additional information may be required or modification of the proposal may be subsequently undertaken. A determination of completeness under this Section does not preclude the City from requesting additional information or studies either at the time of providing the written determination of completeness or subsequently if new information is required.
- 3. Review of Additional Information - The Planning

Official shall provide a written determination under paragraph 1 of this Section within fourteen (14) calendar days of the date the applicant submits additional information required under this Section.

4. Application Considered Withdrawn - Unless the notice specifying additional information to be submitted for a complete application establishes a longer period, the application will be considered withdrawn for all purposes if the Applicant has not submitted the required information to the City within ninety (90) calendar days after the date of the notice or, if applicable, after any extension granted in writing by the Planning Director. The Planning Director may grant an extension if, based on information submitted by the Applicant with the request for the extension, the Planning Director concludes that the Applicant is making reasonable progress toward submitting the required information.

6. Section 150.20 is hereby amended to read as follows:

150.20 Compliance with SEPA

The State Environmental Policies Act (RCW 43.21c) applies to some of the decisions that will be made using this Chapter. The Planning Official shall evaluate each application and, where applicable, comply with SEPA and with State regulations and City ordinances issued under the authority of SEPA. See Section 24.02.105 of the Kirkland Municipal Code regarding consolidation of certain appeals hearings under SEPA with the hearing required under this Chapter.

7. A new Section 150.22 is hereby added to read as follows:

150.22 Notice of Application

1. Contents - The Planning Official shall prepare a notice of each application containing the following information:
- a. The street address of the subject property, or if this is not available, a locational description in non-legal language along with a vicinity map that identifies the subject property.
 - b. The date of application.

- c. The date of the Notice the Completeness under Section 17 of this Chapter.
- d. The date of this notice.
- e. A description of the proposed development activity and the decision that will be made under this Chapter; a list of the permits and approvals included in the application; and an identification of other necessary permits not included in the application to the extent known by the City.
- f. A list of any studies requested by the City pertinent to the application.
- g. Identification of existing environmental documents that evaluate the proposed development activity.
- h. The location where the official file may be examined.
- i. The time limit, which will not be less than eighteen (18) calendar days nor more than thirty (30) calendar days after the date of the notice, for submitting comments to the Planning Official, which the Planning Official shall consider prior to making a recommendation on the application.
- j. Information regarding how to request a copy of the decision once it is made.
- k. General information regarding how to appeal decisions made under this Chapter.
- l. A statement of any preliminary determination, if any, made by the Planning Official at the time of the notice regarding the development regulations that the Planning Official will propose as mitigation of project impact and the consistency of the proposed development activity with those development regulations.

2. Distribution -

- a. Not more than ten (10) calendar days after the Planning Official determines that the application is complete, and at least eighteen

(18) calendar days prior to the end of the comment period, the Planning Official shall distribute this notice as follows:

- 1) A copy of the notice, including a vicinity map, will be sent to the owners of all property within 300 feet of any boundary of the subject property.
- 2) A copy of the notice, including a vicinity map, will be sent to the residents of each piece of property adjacent to or directly across the street from the subject property.
- 3) A copy of the notice will be published in the official newspaper of the City. The published notice does not require a vicinity map.
- 4) A copy of the notice, including a vicinity map, will be posted on each of the official notification boards of the City.
- 5) A copy of the notice will be sent to each local, state and federal agency that the City knows has jurisdiction over the proposed development activity.

b. Not more than ten (10) calendar days after the Planning Official determines that the application is complete, and at least eighteen (18) calendar days prior to the end of the comment period, the applicant shall provide for and erect public notice signs as follows:

- 1) The signs shall be designed and constructed to City standards. A copy of the notice described in paragraph 1 of this Section and a vicinity map shall be attached to each sign.
- 2) The Department of Planning and Community Development is authorized to develop the standards for the public notice signs necessary for implementation of this Section.
- 3) One (1) sign shall be erected on or near the subject property facing each public right-of-way adjacent to the subject

property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property. The Department of Planning and Community Development shall approve the location of each sign.

- 4) The applicant shall post a bond pursuant to Chapter 175 of this Code to ensure proper maintenance and removal of the signs. The bond shall be posted prior to erection of the sign.
- 5) The signs may not be removed until twenty-one (21) calendar days after the final decision of the City on the application, and the applicant shall remove the signs within seven (7) calendar days thereafter.

8. Section 150.25 is hereby amended to read as follows:

150.25 Official File

1. Contents - The Planning Official shall compile an official file on the application containing the following:
 - a. All application materials submitted by the applicant.
 - b. The staff report.
 - c. All written comments and testimony received on the matter.
 - d. The electronic recording of the public hearing on the matter.
 - e. The decision of the Hearing Examiner.
 - f. If the decision of the Hearing Examiner is appealed, the following will be added to the file:
 - (1) The letter of appeal.
 - (2) All written comments submitted regarding

the appeal.

- (3) The staff report on the appeal.
- (4) The electronic sound recording and minutes of the hearing on the appeal.
- (5) The decision of the City Council on the appeal.

g. Any other information relevant to the matter.

- 2. Availability - The official file is a public record. It is available for inspection and copying in the Planning Department during regular business hours.

9. Section 150.30 is hereby amended to read as follows:

150.30 Notice of Hearing

- 1. Contents - The Planning Official shall prepare a notice of ~~each application~~ the hearing of the Hearing Examiner containing the following information:
 - a. The name of the applicant and, if applicable, the project name.
 - b. The street address of the subject property, or if this is not available, a locational description in non-legal language along with a vicinity map that identifies the subject property.
 - c. The citation of the provision of this Code describing the applied for decision.
 - d. A brief verbal description of the requested decision.
 - e. The time and place of the ~~public~~ hearing.
 - f. A statement of the availability of the official file.
 - g. A statement of the right of any person to submit written comments or testimony to the Hearing Examiner and to appear at the public hearing of the Hearing Examiner to give comments or testimony orally.

h. A statement that only persons who submit written or oral comments or testimony to the Hearing Examiner may appeal the Hearing Examiner's decision.

2. Distribution -

a. ~~—~~ The Planning Official shall distribute this notice at least fourteen (14) calendar days before the public hearing as follows:

a. ~~1)~~ A copy of the notice, including a vicinity map, will be sent to the owners of all property within 300 feet of any boundary of the subject property.

b. ~~2)~~ A copy of the notice, including a vicinity map, will be sent to the residents of each piece of property adjacent to or directly across the street from the subject property.

c. ~~3)~~ A copy of the notice will be published in the official newspaper of the City. The published notice does not require a vicinity map.

d. ~~4)~~ A copy of the notice, including a vicinity map, will be posted on each of the official notification boards of the City.

e. A copy of the notice will be posted on each of the public notice signs erected under Subsection 22.2 of this Chapter.

~~b. Public Notice Sign - The applicant shall provide for and erect public notice signs at least fourteen (14) calendar days before the public hearing as follows:~~

~~1) The signs shall be designed and constructed to City standards. A copy of the notice described in paragraph 2 of this Section and a vicinity map shall be attached to each sign.~~

~~2) The Department of Planning and Community Development is authorized to develop the standards for the public notice signs necessary for implementation of this Section.~~

~~3) One (1) sign shall be erected on or near~~

~~the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property. The Department of Planning and Community Development shall approve the location of each sign.~~

~~4) The applicant shall post a bond pursuant to Chapter 175 of this Code to ensure proper maintenance and removal of the signs. The bond shall be posted prior to erection of the sign.~~

~~5) The signs shall be removed within seven (7) calendar days after the final public hearing.~~

3. Combined Notice - The Planning Official may combine the notice required under this Section with the notice required under Section 22 of this Chapter.

10. Section 150.40 is hereby amended to read as follows:

150.40 Public Open Record Hearing

1. General - The Hearing Examiner shall hold an public open record hearing on each application.
2. Hearing Declared Open - The hearings of the Hearing Examiner are open to the public.

11. Section 150.55 is hereby amended to read as follows:

150.55 Public Comments and Participation at the Hearing

Any person may participate in the ~~public~~ hearing in either or both of the following ways:

1. By submitting written testimony or comments to the Hearing Examiner, either by delivering ~~these~~ the testimony or comments to the Planning Department prior to the hearing or by giving ~~these~~ it directly to the Hearing Examiner at the hearing.
2. By appearing in person, or through a representative, at the hearing and ~~making~~ providing oral testimony or comments directly to the Hearing Examiner. The Hearing Examiner may reasonably limit the extent of oral testimony and comments to facilitate the orderly and timely conduct of the hearing.

12. Section 150.60 is hereby amended to read as follows:

150.60 Continuation of the Hearing

The Hearing Examiner may continue the hearing if, for any reason, he/she is unable to hear all of the public comments on the matter or if the Hearing Examiner determines that he/she needs more information on the matter. However, if the continuation of the hearing would result in the Hearing Examiner not complying with the time limit for issuing his/her decision consistent with Section 65 of this Chapter, the Hearing Examiner may continue the hearing only if the time limit for issuing his/her decision is extended under the provisions of that Section. If, during the hearing, the Hearing Examiner announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

13. Section 150.65 is hereby amended to read as follows:

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.

~~If the Hearing Examiner issues the decision more than ten (10) working days after the public hearing, he/she shall state in writing or on the record, the reason for the delay and the approximate date of issuing the decision. In no event may the Hearing Examiner take more than twenty (20) working days after the public hearing to issue his/her decision unless agreed to by the applicant.~~

2. Time Limits - The Hearing Examiner shall issue his/her decision within eight (8) calendar days of the date of the open record hearing, as stated in the notice provided under Section 30 of this Chapter, 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 twenty-one (21) calendar days of the date of the open record hearing as stated in the notice provided under Section 30 of this Chapter. 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 indepth 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 the intent of the goals and policies and of the applicable neighborhood plan provisions of the Comprehensive Plan;~~ 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 all applicable Zoning Code regulations, including those adopted by reference from the Comprehensive Plan; and~~
- e. —It is consistent with the public health, safety and welfare.

34. 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.

45. 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 condition 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.

56. Issuance Notice of Written Decision - Within ~~two~~ four (~~24~~) working calendar days after the Hearing Examiner's written decision is issued, the Planning Official shall ~~distribute the decision as follows~~ mail a copy of the decision to the following persons:

- a. ~~A copy will be mailed to t~~The applicant.
- b. ~~A copy will be mailed to any~~Each person who submitted written or oral testimony to the Hearing Examiner.
- c. Each person who has requested notice of the decision.

In addition, within four (4) calendar days after the Hearing Examiner's decision is issued, the Planning Official shall post a summary of the decision, along with a summary of any threshold determination under SEPA and the procedures for appealing the decision under this Chapter, on the public notice signs erected under Subsection 22.2.b of this Chapter.

7. The Hearing Examiner retains jurisdiction to correct errors in and /or to clarify the decision until the appeal period under Section 80 of this Chapter has expired.

14. Section 150.70 is hereby amended to read as follows:

150.70 Effect of the Decision

The applicant may not engage in any activity based on the decision granting the application until the time to appeal has expired. If the decision is appealed ~~or if a request for reconsideration is granted~~, 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 ~~or reconsidered~~, that decision is the final decision of the City.

15. Section 150.75 is hereby eliminated in its entirety.

16. Section 150.80 is hereby amended to read as follows:

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.
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 ~~ten~~fourteen (~~10~~14) ~~working~~calendar days following the postmarked date of distribution of the Hearing Examiner's ~~written~~ decision; provided that the appeal letter must be delivered to the Planning Department within twenty-one (21) calendar days of the postmarked 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 non-significance issued on the proposed development activity on either the approval or on the request for reconsideration. 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. ~~Notice of Appeal~~

a. ~~Any person filing an appeal shall, prior to delivery of the letter of appeal to the Planning Department, mail or personally deliver a copy of such appeal letter and a notice of the deadline for responding to the appeal as established in paragraph 3.b. of this Section to those persons described in paragraph 2. of this Section. Proof of service by mail or personal delivery shall be, by affidavit, attached to the copy of the appeal letter delivered to the Planning Department pursuant to this subsection.~~

b. ~~Any person receiving a copy of the letter of appeal pursuant to paragraph 3.a. of this Section, may file a written response to the letter of appeal. Such response shall be submitted to the Planning Department within five~~seven~~ (57) working~~calendar~~ days after the appeal letter was filed with the Planning Department.~~

c. ~~Any person filing a response pursuant to this section shall mail or personally deliver a copy of the response to those persons described in paragraph 1 of this Section. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the response to the letter of appeal filed with the Planning Department pursuant to subsection 150.80.2 above.~~

4. ~~Fee~~ - The person filing the appeal shall include with the letter of appeal the fee established by ordinance.

5. ~~Request to Reconsider Not Required~~ - The decision of the Hearing Examiner may be appealed whether or not there was a request for the Hearing Examiner to reconsider the decision.

6.4. Jurisdiction - Appeals from the decision of the Hearing Examiner will be heard by City Council.

17. Section 150.90 is hereby amended to read as follows:

150.90 Participation in the Appeal

Only those persons entitled to appeal the decision under Section 80.1 of this Chapter may participate in the appeal. These persons may participate in either or both of the following ways:

1. By submitting written ~~comments~~arguments to the ~~Planning Department, within the timeline established by Section 150.80.3~~City Council prior to the commencement of the hearing.
2. By appearing in person, or through a representative, at the hearing and ~~making~~providing oral or written ~~comments~~arguments directly to the City Council. The Council may reasonably limit the extent of the oral ~~comments~~arguments to facilitate the orderly and timely conduct of the hearing.

18. Section 150.95 is hereby amended to read as follows:

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 ~~comment~~arguments on these factual findings and conclusions. The appeal will be considered only on the record developed in the hearing before the Hearing Examiner.

19. Section 150.100 is hereby amended to read as follows:

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 ~~comments~~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 copies of the staff report as follows:
- a. Prior to the hearing, a copy will be sent to each member of the City Council.
 - b. At least seven (7) calendar days before the hearing, a copy will be sent to:
 - 1) the applicant;
 - 2) the person who filed the appeal; and
 - 3) A copy will be sent to any person who received a copy of the Hearing Examiner's decision.

20. Section 150.105 is hereby amended to read as follows:

150.105 Public Hearing

- 1. Hearing in General - City Council shall hold a ~~public~~closed record appeal hearing on the appeal.
- 2. Hearing Declared Open - The hearings of the City Council are open to the public.

21. Section 150.125 is hereby amended to read as follows:

150.125 Decision on the Appeal

Within sixty (60) calendar days of the date the letter of appeal was filed under Section 80 of this Chapter and
~~After~~ after considering all ~~comments~~arguments within the scope of the appeal submitted by persons entitled to

participate in the appeal, 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 ~~either direct the Hearing Examiner to hold a re-hearing on the matter or decide to hold a City Council hearing on the matter.~~ The motion may limit the scope of the matters to be considered at this re-hearing ~~or City Council hearing.~~ With the exception listed below, the provisions of Sections 25 through 75 of this Chapter apply to a re-hearing or City Council hearing under this paragraph. In the event the City Council orders a re-hearing on the matter, this shall constitute a special circumstance under RCW 36.70B.140. The Hearing Examiner shall hold the re-hearing within twenty-eight (28) calendar days of the date the City Council orders the re-hearing, and the time limits and other pertinent requirements of this Chapter shall apply to the re-hearing.
 - a. ~~If City Council holds a hearing on the matter, it may either grant or deny the permit or approval only by motion approved by a majority of its total membership. This motion replaces the written decision required in Section 65 of this Chapter. City Council shall issue a written notice containing its decision.~~
 - b. ~~If City Council holds a hearing on the matter, their decision is the final decision of the City.~~
4. Notice of Final 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 ~~two~~^{four} (24) ~~working~~^{calendar} days after the City Council's decision is made, the Planning Official shall ~~distribute a copy of the notice of the decision as follows~~^{mail a copy of the decision to the following persons}:

- 1) ~~A copy will be sent to t~~The applicant.
- 2) ~~A copy will be sent to t~~The person who filed the appeal.
- 3) ~~A copy will be sent to any~~^{Each} person who submitted written or oral comments to the City Council.
- 4) Each person who has requested notices of the decision.

In addition, within four (4) calendar days after the City Council's decision is issued, the Planning Official shall post a summary of the decision, along with a summary of any threshold determination under SEPA, on the public notice signs erected under Subsection 22.2.b of this Chapter.

5. Effect - The decision of City Council is the final decision of the City.

22. Section 150.130 is hereby amended to read as follows:

150.130 Judicial Review

The action of the City in granting or denying an application under this Chapter may be reviewed ~~for illegal, corrupt or arbitrary or capricious action~~^{pursuant to the standards set forth in RCW 36.70C.130} in the King County Superior Court. The ~~petition for review~~^{land use petition} must be filed within ~~thirty~~^{twenty-one} (30~~21~~) calendar days of the ~~final decision~~^{issuance of the final land use decision} by the City. For more information on the judicial review process for land use decision, see RCW 36.70C.

23. Section 150.135 is hereby amended to read as follows:

150.135 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 (4) 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 Section 150.130, 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 ~~Approval~~Decision within six (6) 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 ~~Approval~~Decision.

24. A new Section 150.150 is hereby added to read as follows:

150.150 Time Limits. Any time limit, pursuant to RCW 36.70B, 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 RCW 36.70B are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

AMENDMENTS TO CHAPTER 152 OF THE ZONING CODE

1. Section 152.05 is hereby amended to read as follows:

152.05 User Guide

Various places in this Code indicate that certain developments, activities or uses are permitted only if approved using Process IIB. This Chapter describes Process IIB.

If you are interested in obtaining approval for something through Process IIB or if you wish to participate in a decision that will be made using this Process, you should read this Chapter. However, this Chapter only applies if another provision of the Code specifically states that a decision will be made using Process IIB. Please review Title 20 of the Kirkland Municipal Code for additional information regarding the City's processing of project permits.

In addition, please refer to Section 10 of this Chapter to see if that section applies.

2. Section 152.10 is hereby amended to read as follows:

152.10 Proposals Requiring Approval Through Process III.

If the development, use or activity that requires approval through Process IIB is part of a proposal that requires additional approval through Process III, the entire proposal will be decided upon using Process III. ~~if the Planning Director determines that this will result in more efficient decision-making. This Section does not apply to Variances, Chapter 120 of this Code.~~

3. A new Section 152.12 is hereby added to read as follows:

152.12 Pre-Submittal Meeting.

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 accept 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 three months immediately prior to the date the application is submitted.

4. Section 152.15 is hereby amended to read as follows:

152.15 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 completed application, with supporting affidavits, on forms provided by the Planning Department.
 - b. Address labels ~~obtained from King County~~ containing the names and addresses of the owners of all property, including the subject property, within 300 feet of any boundary of the subject property. Address labels must be no more than six (6) months old.
 - c. Address labels marked "resident" or "tenant" for all addresses located:
 - 1) On the subject property, and
 - 2) Adjoining on the subject property.
 - d. A copy of the King County Assessor's Map identifying the properties specified in paragraphs 2b and 2c of this Section.
 - e. A vicinity map showing the subject property and all property within 400 feet of any boundary of the subject property.
 - f. Any information or material that is specified in the provision of this Code that describes the applied for decision.

g. Any additional information or material that the Planning Official ~~determines is reasonably necessary for a decision on the matters~~ specified at the pre-submittal meeting.

h. Any additional information or material which must be submitted in order to have a complete application under Title 20 of the Kirkland Municipal Code.

3. Fee - The applicant shall submit the fee established by ordinance with the application.

5. A new Section 152.17 is hereby added to read as follows:

152.17 Determination of Completeness of Application.

1. General - Within twenty-eight (28) calendar days after the date of submittal of the application, the Planning Official shall mail to the applicant, or provide in person to the applicant, a written determination of whether the application is complete, and, if the application is not complete, what must be submitted by the applicant in order for the application to be complete. In this written determination, the Planning Official shall also identify, to the extent known to the City, the other agencies of local, state or federal government that may have jurisdiction over some aspect of the proposed development activity. The Planning Official may also include other information with this determination that will assist in the review and decision upon the application.

2. Standard for Determining Completeness - An application is complete for purposes of this Section when it contains the information required by Section 15 of this Chapter and is sufficient for continued processing even though additional information may be required or modification of the proposal may be subsequently undertaken. A determination of completeness under this Section does not preclude the City from requesting additional information or studies either at the time of providing the written determination of completeness or subsequently if new information is required.

3. Review of Additional Information - The Planning

Official shall provide a written determination under paragraph 1 of this Section within fourteen (14) calendar days of the date the applicant submits additional information required under this Section.

4. Application Considered Withdrawn - Unless the notice specifying additional information to be submitted for a complete application establishes a longer period, the application will be considered withdrawn for all purposes if the Applicant has not submitted the required information to the City within ninety (90) calendar days after the date of the notice or, if applicable, after any extension granted in writing by the Planning Director. The Planning Director may grant an extension if, based on information submitted by the Applicant with the request for the extension, the Planning Director concludes that the Applicant is making reasonable progress toward submitting the required information.

6. Section 152.20 is hereby amended to read as follows:

152.20 Compliance with SEPA

The State Environmental Policies Act (RCW 43.21C) applies to some of the decisions that will be made using this Chapter. The Planning Official shall evaluate each application and, where applicable, comply with SEPA and with State regulations and City ordinances issued under the authority of SEPA. See Section 24.02.105 of the Kirkland Municipal Code regarding consolidation of certain appeal hearings under SEPA with the hearing required under this Chapter.

7. A new Section 152.22 is hereby added as follows:

152.22 Notice of Application

1. Contents - The Planning Official shall prepare a notice of each application containing the following information:
- a. The street address of the subject property, or if this is not available, a locational description in non-legal language along with a vicinity map that identifies the subject property.
 - b. The date of application.

- c. The date of the Notice the Completeness under Section 17 of this Chapter.
- d. The date of this notice.
- e. A description of the proposed development activity and the decision that will be made under this Chapter; a list of the permits and approvals included in the application; and an identification of other necessary permits not included in the application to the extent known by the City.
- f. A list of any studies requested by the City pertinent to the application.
- g. Identification of existing environmental documents that evaluate the proposed development activity.
- h. The location where the official file may be examined.
- i. The time limit, which will not be less than eighteen (18) calendar days nor more than thirty (30) calendar days after the date of the notice, for submitting comments to the Planning Official, which the Planning Official shall consider prior to making a recommendation on the application.
- j. Information regarding how to request a copy of the decision once it is made.
- k. General information regarding how to appeal decisions made under this Chapter.
- l. A statement of any preliminary determination, if any, made by the Planning Official at the time of the notice regarding the development regulations that the Planning Official will propose as mitigation of project impact and the consistency of the proposed development activity with those development regulations.

2. Distribution -

- a. Not more than ten (10) calendar days after the Planning Official determines that the application is complete, and at least eighteen (18) calendar days prior to the end of the comment period, the Planning Official shall

distribute this notice as follows:

- 1) A copy of the notice, including a vicinity map, will be sent to the owners of all property within 300 feet of any boundary of the subject property.
 - 2) A copy of the notice, including a vicinity map, will be sent to the residents of each piece of property adjacent to or directly across the street from the subject property.
 - 3) A copy of the notice will be published in the official newspaper of the City. The published notice does not require a vicinity map.
 - 4) A copy of the notice, including a vicinity map, will be posted on each of the official notification boards of the City.
 - 5) A copy of the notice will be sent to each local, state and federal agency that the City knows has jurisdiction over the proposed development activity.
- b. Not more than ten (10) calendar days after the Planning Official determines that the application is complete, and at least eighteen (18) calendar days prior to the end of the comment period, the applicant shall provide for and erect public notice signs as follows:
- 1) The signs shall be designed and constructed to City standards. A copy of the notice described in paragraph 1 of this Section and a vicinity map shall be attached to each sign.
 - 2) The Department of Planning and Community Development is authorized to develop the standards for the public notice signs necessary for implementation of this Section.
 - 3) One (1) sign shall be erected on or near the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any

property that abuts the subject property. The Department of Planning and Community Development shall approve the location of each sign.

- 4) The applicant shall post a bond pursuant to Chapter 175 of this Code to ensure proper maintenance and removal of the signs. The bond shall be posted prior to erection of the sign.
- 5) The signs may not be removed until twenty-one (21) calendar days after the final decision of the City on the application, and the applicant shall remove the signs within seven (7) calendar days thereafter.

8. Section 152.25 is hereby amended to read as follows:

152.25 Official File

1. Contents - The Planning Official shall compile an official file on the application containing the following:
 - a. All application materials submitted by the applicant.
 - b. The staff report.
 - c. All written comments and testimony received on the matter.
 - d. The electronic recording of the public hearing on the matter.
 - e. The recommendation of the Hearing Examiner.
 - f. The electronic sound recording and minutes of the City Council proceedings on the matter.
 - g. The decision of the City Council.
 - h. If the matter is within the designated jurisdiction of the Houghton Community Council, the electronic sound recording and minutes of its proceedings on the matter, along with action of that CouncilThe recommendation and final action, if any, of the Houghton Community Council.

- j. Any other information relevant to the matter.
2. Availability - The official file is a public record. It is available for inspection and copying in the Planning Department during regular business hours.

9. Section 152.30 is hereby amended to read as follows:

152.30 Notice of Hearing

- 1. Contents - The Planning Official shall prepare a notice of ~~each application~~ the hearing of the Hearing Examiner containing the following information:
 - a. The name of the applicant and, if applicable, the project name.
 - b. The street address of the subject property, or if this is not available, a locational description in non-legal language along with a vicinity map that identifies the subject property.
 - c. The citation of the provision of this Code describing the applied for decision.
 - d. A brief verbal description of the requested decision.
 - e. The time and place of the ~~public~~ hearing.
 - f. A statement of the availability of the official file.
 - g. A statement of the right of any person to submit written comments or testimony to the Hearing Examiner and to appear at the public hearing of the Hearing Examiner to give comments or testimony orally.
 - h. A statement that only persons who submit written or oral comments or testimony to the Hearing Examiner may challenge the recommendation of the Hearing Examiner.
- 2. Distribution -
 - a. ~~—~~ The Planning Official shall distribute this

notice at least fourteen (14) calendar days before the public hearing as follows:

- a.—1) A copy of the notice, including a vicinity map, will be sent to the owners of all property within 300 feet of any boundary of the subject property.
- b.—2) A copy of the notice, including a vicinity map, will be sent to the residents of each piece of property adjacent to or directly across the street from the subject property.
- c.—3) A copy of the notice will be published in the official newspaper of the City. The published notice does not require a vicinity map.
- d.—4) A copy of the notice, including a vicinity map, will be posted on each of the official notification boards of the City.
- e. A copy of the notice will be posted on each of the public notice signs erected under Sub-section 22.2 of this Chapter.

~~b. Public Notice Sign — The applicant shall provide for and erect public notice signs at least fourteen (14) calendar days before the public hearing as follows:~~

- ~~1) The signs shall be designed and constructed to City standards. A copy of the notice described in paragraph 2 of this Section and a vicinity map shall be attached to each sign.~~
- ~~2) The Department of Planning and Community Development is authorized to develop the standards for the public notice signs necessary for implementation of this Section.~~
- ~~3) One (1) sign shall be erected on or near the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property. The Department of Planning and Community~~

~~Development shall approve the location of each sign.~~

~~4) The applicant shall post a bond pursuant to Chapter 175 of this Code to ensure proper maintenance and removal of the signs. The bond shall be posted prior to erection of the sign.~~

~~5) The signs shall be removed within seven (7) calendar days after the final public hearing.~~

3. Combined Notice. The Planning Official may combine the notice required under this Section with the notice required under Section 22 of this Chapter.

10. Section 152.40 is hereby eliminated in its entirety.

11. Section 152.45 is hereby amended to read as follows:

152.45 Public Open Record Hearing

1. General - The Hearing Examiner shall hold an public open record hearing on each application.
2. Hearing Declared Open - The hearings of the Hearing Examiner are open to the public.
3. Effect - The hearing of the Hearing Examiner is the hearing for City Council. ~~City Council need not hold another hearing on the application.~~

12. Section 152.60 is hereby amended to read as follows:

152.60 Public Comments and Participation at the Hearing

Any person may participate in the ~~public~~ hearing in either or both of the following ways:

1. By submitting written testimony or comments to the Hearing Examiner, either by delivering ~~these~~ testimony or comments to the Planning Department prior to the hearing or by giving ~~these~~ it directly to the Hearing Examiner at the hearing.
2. By appearing in person, or through a representative, at the hearing and ~~making~~ providing oral testimony or comments directly to the Hearing Examiner. The Hearing Examiner may reasonably

limit the extent of oral testimony or comments to facilitate the orderly and timely conduct of the hearing.

13. Section 152.65 is hereby amended to read as follows:

152.65 Continuation of the Hearing

The Hearing Examiner may continue the hearing if, for any reason, he/she is unable to hear all of the public comments on the matter or if the Hearing Examiner determines that he/she needs more information on the matter. However, if the continuation of the hearing would result in the Hearing Examiner not complying with the time limit for issuing his/her recommendation consistent with Section 70 of this Chapter, the Hearing Examiner may continue the hearing only if the time limit for issuing his/her recommendation is extended under the provisions of that Section. If, during the hearing, the Hearing Examiner announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

14. Section 152.70 is hereby amended to read as follows:

152.70 Recommendation by the Hearing Examiner

1. General - After considering all of the information, testimony and comments submitted on the matter, the Hearing Examiner shall issue a written recommendation to the City Council to either--

- a. Grant the application; or
- b. Modify and grant the application; or
- c. Deny the application.

~~If the Hearing Examiner will issue the recommendation more than ten (10) working days after the public hearing, he/she shall state in writing or on the record, the reason for the delay and the approximate date of issuing the recommendation. In no event may the Hearing Examiner take more than twenty (20) working days after the public hearing to issue his/her recommendation unless agreed to by the applicant.~~

2. Time Limits - The Hearing Examiner shall issue his/her recommendation within eight (8) calendar days of the date of the open record hearing, as stated in the notice provided under Section 30 of

this Chapter, 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 recommendation, the Hearing Examiner has the additional agreed upon time to issue his/her recommendation.
 - b. If the proposed development activity presents a special circumstances, as defined below, the Hearing Examiner shall issue his/her recommendation within twenty-one (21) calendar days of the date of the open record hearing as stated in the notice provided under Section 30 of this Chapter. 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 indepth review and/or analysis than could reasonably be conducted under the time frame that would otherwise apply.
23. Decisional Criteria - The Hearing Examiner shall use the criteria listed in the provision of this Code describing the requested decision in making a recommendation to City Council on the application. In addition, the Hearing Examiner may recommend approval of that the application be granted only if+
- a. ~~It is consistent with the intent of the goals and policies and of the applicable neighborhood plan provisions of the Comprehensive Plan~~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 all applicable Zoning Code regulations, including those adopted by reference from the Comprehensive Plan; and~~
 - e. ~~It is consistent with the public health, safety and welfare.~~

34. Conditions and Restrictions - The Hearing Examiner shall include in the written recommendation any conditions and restrictions that he/she determines are necessary to eliminate or minimize any undesirable effects of granting the application.
45. Contents - The Hearing Examiner shall include the following in his/her written recommendation to City Council--
- a. A statement of facts presented to the Hearing Examiner that support his/her recommendation, including any conditions and restrictions that are recommended; and
 - b. A statement of the Hearing Examiner's conclusions based on those facts.
 - c. A statement of the criteria used by the Hearing Examiner in making the recommendation.
 - d. A summary of the rights, as established in this Chapter, of the applicant and others to challenge the recommendation of the Hearing Examiner.

15. Section 152.75 is hereby amended as follows:

152.75 Distribution of Hearing Examiner's Recommendation

The Planning Official shall distribute copies of the recommendation of the Hearing Examiner as follows:

1. Within ~~two~~^{four} (24) ~~working~~^{calendar} days after the Hearing Examiner's written recommendation is issued, a copy will be sent to the applicant, and to any person who submitted written or oral testimony to the Hearing Examiner.
2. Prior to the meeting where City Council considers the application, a copy will be sent to each member of City Council. The Planning Official shall include the following material with the copy of the recommendation sent to each City Council member:
 - a. A draft resolution or ordinance that embodies the Hearing Examiner's recommendation.
 - b. Any challenge to the Hearing Examiner's recommendation filed under Section 85 of this Chapter and received by the Planning

Department before the Hearing Examiner's recommendation is sent to the members of City Council.

16. Section 152.80 is hereby eliminated in its entirety.

17. Section 152.85 is hereby amended to read as follows:

152.85 Challenge to the Hearing Examiner's Recommendation

1. Who May Challenge - The recommendation of the Hearing Examiner may be challenged by--
 - a. The applicant; and
 - b. Any person who submitted written or oral comments or testimony to the Hearing Examiner.
2. Contents of a Challenge - The challenge must be in writing and contain a statement of the factual findings and conclusions made by the Hearing Examiner that are contested. The challenge will be considered only on the record developed in the hearing before the Hearing Examiner.
3. How and When to File a Challenge
 - a. The challenge may be filed by delivering it to the Planning Department, together with the fee established by ordinance, within ~~seven (7)~~ working calendar days following the postmarked date of distribution of the date of the Hearing Examiner's recommendation on the application or on the decision on requests for reconsideration.
 - b. The person filing the challenge shall, prior to delivery under paragraph 3.a of this Section, mail or personally deliver a copy of the challenge and a notice of the deadline for responding to the challenge as established in paragraph 3.c of this Section to those persons described in paragraph 1 of this Section. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the challenge letter filed with the Planning Department pursuant to paragraph 3.a of this Section.
 - c. Any person receiving a copy of the challenge letter pursuant to paragraph 3.b of this

Section, may file a written response to the challenge. Such response shall be submitted to the Planning Department within ~~five~~^{seven} (57) ~~working~~^{calendar} days after the day the challenge letter was filed with the Planning Department.

- d. Any person filing a response pursuant to this section shall mail or personally deliver a copy of the response to those persons described in paragraph 1 of this Section. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the response to the challenge letter filed with the Planning Department pursuant to paragraph 85.3.a above.

~~4. Request to Reconsider Not Required - The recommendation of the Hearing Examiner may be challenged whether or not there was a request for the Hearing Examiner to reconsider his/her recommendation.~~

18. Section 152.90 is hereby amended to read as follows:

152.90 City Council Action

- 1. General - The City Council shall consider the application at a scheduled meeting within ~~ninety~~^{forty-five} (90~~45~~⁴⁵) calendar days of the date of issuance of the Hearing Examiner's recommendations on the proposal. ~~This time period may be extended upon written concurrence of the Planning Director and the applicant.~~
- 2. City Council Decision - After consideration of the entire matter on the record before the Hearing Examiner, the City Council shall, by motion, approved by a majority of the total membership, take one of the following actions:
 - a. Adopt an ordinance or resolution to either--
 - 1) Grant the application; or
 - 2) Modify and grant the application; or
 - 3) Deny the application.
 - b. ~~If the City Council concludes that significant issues have been raised in a challenge or if they are unsatisfied with the Hearing Examiner's recommendation for any other~~

~~reason, they may by motion either direct the Hearing Examiner to hold a rehearing on the matter or decide to hold a City Council hearing on the matter.~~ based on a challenge to the recommendation or it's own review of the recommendation, that the record compiled by the Hearing Examiner is incomplete or inadequate for the City Council to make a decision on the application, the City Council may by motion remand the matter to the Hearing Examiner with the directions to reopen the hearing and provide supplementary findings and conclusions on the matter or matters specified in the motion. Any remand under this Section shall constitute a special circumstance under RCW 36.70B.140. The motion may limit the scope of the issues to be considered at this rehearing or City Council hearing. In the event of a remand, the Hearing Examiner shall hold the rehearing within twenty-eight (28) calendar days of the date of the City Council Motion, and the time limits and other pertinent requirements of this Chapter shall apply to the rehearing.

3. Decisional Criteria - The City Council shall use the criteria listed in Subsection 70.3 ~~the provision of this Chapter~~ ~~describing the requested decision~~ in deciding upon the application. ~~In addition, the City Council may approve the application only if:~~
- a. ~~It is consistent with the intent of the goals and policies and of the applicable neighborhood plan provisions of the Comprehensive Plan;~~
 - b. ~~It is consistent with all applicable Zoning Code regulations, including those adopted by reference from the Comprehensive Plan; and~~
 - c. ~~It is consistent with the public health, safety and welfare.~~
4. Condition and Restriction - The City Council shall include in the ordinance or resolution granting the application any conditions and restrictions they determine 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. Findings of Fact and Conclusion - The City Council shall include in their ordinance or resolution:
 - a. A statement of the facts presented to City Council that support the decision, including any conditions and restrictions that they impose; and
 - b. The City Council's conclusions based on those facts.
6. Effect - Subject to the provision of Sections ~~95~~ and 100 of this Chapter, the ordinance or resolution of City Council is the final decision of the City.

19. Section 152.95 is hereby eliminated in its entirety.

20. Section 152.100 is hereby amended to read as follows:

152.100 Action and Jurisdiction of the Houghton Community Council. The Houghton Community Municipal Corporation is a separate municipal entity, under RCW Chapter 35.14 existing within the Houghton neighborhood of the City. The governing body of the Houghton Community Municipal Corporation is the Houghton Community Council. If the application is within the disapproval jurisdiction of the Houghton Community Council, the provisions of this Section apply to that application:

1. Houghton Community Council Public Meeting - The Houghton Community Council may hold a public meeting, which will be informal in nature, to obtain comments from the public and others on the application, and the following provisions shall apply:
 - a. The public meeting shall be scheduled at the earliest practicable time, based on the schedule of the Houghton Community Council, that will allow for fair and informed deliberation, compliance with all notice

requirements and the orderly processing of the application.

- b. The notice under Section 30 of this Chapter shall include the time, place and other pertinent information about the public meeting.
- c. The Planning Official shall provide a copy of the staff report prepared under Section 35 of this Chapter to each member of the Houghton Community Council prior to the public meeting.
- d. After the Houghton Community Council receives comments and information at the public meeting, it may make any recommendations on the application, in writing, that it deems appropriate.
- e. The Hearing Examiner shall consider any recommendation on the application from the Houghton Community Council that the Hearing Examiner receives within four (4) calendar days following the close of the hearing of the Hearing Examiner, and the City Council shall consider any recommendation from the Houghton Community Council that the City Council receives before the City Council first considers the application.
- f. Neither the lack of a Houghton Community Council quorum at the public meeting nor the lack of a recommendation from the Houghton Community Council in any way effects the jurisdiction of the Hearing Examiner and the City Council under this Chapter or the jurisdiction of the Houghton Community Council under Subsection 2 of this Section.

±2. General Disapproval Jurisdiction - If the City

Council approves an application within the disapproval jurisdiction of the Houghton Community Council, that approval is not effective until--

- a. A majority of the entire membership of the Houghton Community Council vote by resolution to approve it; or
- b. The Houghton Community Council fails to disapprove it within sixty (60) calendar days after City Council adopts the ordinance or resolution granting the application. The vote to disapprove the application must be approved by a majority of the entire membership of the Community Council.

21. Section 152.105 is hereby amended to read as follows:

152.105 Notice of Final Decision

1. General - Following the ~~final~~ decision by City Council, ~~or if applicable, the Houghton Community Council,~~ the Planning Official shall prepare a notice of the City's final decision on the application.
2. Distribution - Within ~~two (2) working~~ four (4) calendar days after the City Council's decision is made, the Planning Official shall ~~distribute a copy of the notice of the decision as follows~~ mail a copy of the decision to the following persons:
 - a. ~~A copy will be sent to~~ The applicant.
 - b. ~~A copy will be sent to any~~ Each person who submitted written or oral comments or testimony

on the application to the Hearing Examiner.

- c. Each person who has requested notice of the decision.

In addition, within four (4) calendar days after the City Council's decision is issued, the Planning Official shall post a summary of the decision, along with a summary of any threshold determination under SEPA, on the public notice signs erected under Subsection 22.2.b of this Chapter.

3. Applications within the Jurisdiction of the Houghton Community Council - If the City Council approves an application within the disapproval jurisdiction of the Houghton Community Council, the notice of decision shall also state that, while the decision of the City Council is the final decision of the City, such decision shall become effective only as specified in Subsection 100.2 of this Chapter.

22. Section 152.110 is hereby amended to read as follows:

152.110 Judicial Review

The action of the City in granting or denying an application under this Chapter may be reviewed for illegal, corrupt or arbitrary or capricious action pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The petition for review and use petition must be filed within thirtytwo-one (3021) calendar days of the final decision of issuance of the final land use decision by the City. The date of the final decision of the City is the date of passage of the City Council ordinance or resolution constituting the City's final decision unless such City Council decision is subject to the disapproval jurisdiction of the Houghton Community Council in which case the petition for judicial review must be filed

within twenty-one (21) calendar days of the date of approval or disapproval action by the Houghton Community Council. For more information on the judicial review process for land use decisions, see RCW 36.70C.

23. Section 152.115 is amended to read as follows:

152.115 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 (4) 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 Section 152.110, 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 ~~Approval~~Decision within six (6) 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 ~~Approval~~Decision.

24. A new Section 152.130 is hereby added to read as follows:

152.130 Time Limits. Any time limit, pursuant to RCW 36.70B, 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 RCW 36.70B are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

AMENDMENTS TO CHAPTER 155 OF THE ZONING CODE

1. Section 155.05 is hereby amended to read as follows:

155.05 User Guide

Various places of this Code indicate that certain developments, activities or uses are permitted only if approved using Process III. This Chapter describes how Process III works.

If you are interested in obtaining approval for something through Process III or if you wish to participate in a decision that will be made using this Process, you should read this Chapter. However, this Chapter only applies if another provision of this Code specifically states that a decision will be made using Process III. Please review Title 20 of the Kirkland Municipal Code for additional information regarding the City's processing of project permits.

In addition, please refer to Section 10 of this Chapter to see if that Section applies.

2. A new Section 155.12 is hereby added to read as follows:

155.12 Pre-Submittal Meeting.

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 accept 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 three months immediately prior to the date the application is submitted.

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3. Section 155.15 is hereby amended to read as follows:

155.15 Applications

1. Who May Apply - Any person may, personally or through an agent apply for a decision regarding property he/she owns. In addition, any person may apply for a decision under this Chapter if this is authorized by another provision of this Code, regardless of whether the decision applies to property owned by the applicant.
2. How To Apply - The applicant shall file the following information with the Planning Department:
 - a. A completed application, with supporting affidavits, on forms provided by the Planning Department.
 - b. Address labels ~~obtained from the King County~~ containing the names and addresses of the owners of all property, including the subject property, within 300 feet of any boundary of the subject property. Address labels must be no more than six (6) months old.
 - c. Address labels marked "resident" or "tenant" for all addresses located:
 - 1) On the subject property, and
 - 2) Adjoining to the subject property.
 - d. A copy of the King county Assessor's Map identifying the properties specified in paragraph 2b and 2c of this Section.
 - e. A vicinity map showing the subject property and all property within 400 feet of any boundary of the subject property.
 - f. Any information or material that is specified in the provision of this Code that describes the applied for decision.
 - g. Any additional information or material that the Planning Official ~~determines is reasonably necessary for a decision on the matters~~ specified at the pre-submittal meeting.
 - h. Any additional information or material which must be submitted in order to have a complete application under Title 20 of the Kirkland

Municipal Code.

3. Fee - The applicant shall submit the fee established by Ordinance with the application.
4. A new Section 155.17 is hereby added to read as follows:

155.17 Determination of Completeness of Application.

1. General - Within twenty-eight (28) calendar days after the date of submittal of the application, the Planning Official shall mail to the applicant, or provide in person to the applicant, a written determination of whether the application is complete, and, if the application is not complete, what must be submitted by the applicant in order for the application to be complete. In this written determination, the Planning Official shall also identify, to the extent known to the City, the other agencies of local, state or federal government that may have jurisdiction over some aspect of the proposed development activity. The Planning Official may also include other information with this determination that will assist in the review and decision upon the application.
2. Standard for Determining Completeness - An application is complete for purposes of this Section when it contains the information required by Section 15 of this Chapter and is sufficient for continued processing even though additional information may be required or modification of the proposal may be subsequently undertaken. A determination of completeness under this Section does not preclude the City from requesting additional information or studies either at the time of providing the written determination of completeness or subsequently if new information is required.
3. Review of Additional Information - The Planning Official shall provide a written determination under subsection 1 of this Section within fourteen (14) calendar days of the date the applicant submits additional information required under this Section.
4. Application Considered Withdrawn - Unless the notice specifying additional information to be

submitted for a complete application establishes a longer period, the application will be considered withdrawn for all purposes if the Applicant has not submitted the required information to the City within ninety (90) calendar days after the date of the notice or, if applicable, after any extension granted in writing by the Planning Director. The Planning Director may grant an extension if, based on information submitted by the Applicant with the request for the extension, the Planning Director concludes that the Applicant is making reasonable progress toward submitting the required information.

5. Section 155.20 is hereby amended to read as follows:

155.20 Compliance with SEPA

The State Environmental Policies Act (RCW 43.21C) applies to some of the decisions that will be made using this Chapter. The Planning Official shall evaluate each application and, where applicable, comply with SEPA and with State regulations and City ordinances issued under the authority of SEPA. See Section 24.02.105 of the Kirkland Municipal Code regarding consolidation of certain appeal hearings under SEPA with the hearing required under this Chapter.

6. A new Section 155.22 is hereby added to read as follows:

155.22 Notice of Application

1. Contents - The Planning Official shall prepare a notice of each application containing the following information:
 - a. The street address of the subject property, or if this is not available, a locational description in non-legal language along with a vicinity map that identifies the subject property.
 - b. The date of application.
 - c. The date of the Notice the Completeness under Section 17 of this Chapter.
 - d. The date of this notice.
 - e. A description of the proposed development activity and the decision that will be made under this Chapter; a list of the permits and

approvals included in the application; and an identification of other necessary permits not included in the application to the extent known by the City.

- f. A list of any studies requested by the City pertinent to the application.
- g. Identification of existing environmental documents that evaluate the proposed development activity.
- h. The location where the official file may be examined.
- i. The time limit, which will not be less than eighteen (18) calendar days nor more than thirty (30) calendar days after the date of the notice, for submitting comments to the Planning Official, which the Planning Official shall consider prior to making a recommendation on the application.
- j. Information regarding how to request a copy of the decision once it is made.
- k. General information regarding how to appeal decisions made under this Chapter.
- l. A statement of any preliminary determination, if any, made by the Planning Official at the time of the notice regarding the development regulations that the Planning Official will propose as mitigation of project impact and the consistency of the proposed development activity with those development regulations.

2. Distribution -

- a. Not more than ten (10) calendar days after the Planning Official determines that the application is complete, and at least eighteen (18) calendar days prior to the end of the comment period, the Planning Official shall distribute this notice as follows:
 - 1) A copy of the notice, including a vicinity map, will be sent to the owners of all property within 300 feet of any boundary of the subject property.
 - 2) A copy of the notice, including a

vicinity map, will be sent to the residents of each piece of property adjacent to or directly across the street from the subject property.

- 3) A copy of the notice will be published in the official newspaper of the City. The published notice does not require a vicinity map.
- 4) A copy of the notice, including a vicinity map, will be posted on each of the official notification boards of the City.
- 5) A copy of the notice will be sent to each local, state and federal agency that the City knows has jurisdiction over the proposed development activity.

b. Not more than ten (10) calendar days after the Planning Official determines that the application is complete, and at least eighteen (18) calendar days prior to the end of the comment period, the applicant shall provide for and erect public notice signs as follows:

- 1) The signs shall be designed and constructed to City standards. A copy of the notice described in paragraph 1 of this Section and a vicinity map shall be attached to each sign.
- 2) The Department of Planning and Community Development is authorized to develop the standards for the public notice signs necessary for implementation of this Section.
- 3) One (1) sign shall be erected on or near the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property. The Department of Planning and Community Development shall approve the location of each sign.
- 4) The applicant shall post a bond pursuant to Chapter 175 of this Code to ensure proper maintenance and removal of the

signs. The bond shall be posted prior to erection of the sign.

- 5) The signs shall be removed within seven (7) calendar days after the final decision of the City on the application.

7. Section 155.25 is hereby amended to read as follows:

155.25 Official File

1. Contents - The Planning Official shall compile an official file on the application containing the following:
 - a. The application materials submitted by the applicant.
 - b. The staff report.
 - c. All written comments and testimony received on the matter.
 - d. The electronic recording and minutes of the public hearing on the matter.
 - e. The recommendation of the Planning Commission.
 - f. The electronic sound recording and minutes of City Council proceedings on the matter.
 - g. ~~The report of the Planning Commission.~~
 - h. ~~The decision of City Council.~~
 - ih. ~~If the matter is within the disapproval jurisdiction of the Houghton Community Council, the electronic sound recording and minutes of its proceedings on the matter, along with the recommendations of that Council.~~ The recommendation and final action, if any, of the Houghton Community Council.
 - ji. Any other information relevant to the matter.
2. Availability - The official file is a public record. It is available for inspection and copying in the Planning Department during regular business hours.

8. Section 155.30 is hereby amended to read as follows:

155.30 Notice of Hearing

1. Contents - The Planning Official shall prepare a notice of ~~each application~~ the hearing of the Planning Commission containing the following information.
 - a. The name of the applicant and, if applicable, the project name.
 - b. The street address of the subject property, or if this is not available, a locational description in non-legal language along with a vicinity map that identifies the subject property.
 - c. The citation of the provision of this Code describing the applied for decision.
 - d. A brief verbal description of the requested decision.
 - e. The time and place of the public hearing.
 - f. A statement of the availability of the official file.
 - g. A statement of the right of any person to submit written comments or testimony to the Planning Commission and to appear at the public hearing of the Planning Commission to give comments or testimony orally.
 - h. A statement that only persons who submit written or oral comments or testimony to the Planning Commission may challenge the recommendation of the Planning Commission.
2. Distribution -
 - a. The Planning Official shall distribute this notice at least fourteen (14) calendar days before the public hearing as follows:
 - a.—1) A copy of the notice, including a vicinity map, will be sent to the owners of all property within 300 feet of any boundary of the subject property.
 - b.—2) A copy of the notice, including a

vicinity map, will be sent to the residents of each piece of property adjacent to or directly across the street from the subject property.

c.—3) A copy of the notice will be published in the official newspaper of the City. The published notice does not require a vicinity map.

d.—4) A copy of the notice, including a vicinity map, will be posted on each of the official notification boards of the City.

e. A copy of the notice will be posted on each of the public notice signs erected under Subsection 22.2 of this Chapter.

~~b. Public Notice Sign — The applicant shall provide for and erect public notice signs at least fourteen (14) calendar days before the public hearing as follows:~~

~~1) The signs shall be designed and constructed to City standards. A copy of the notice described in paragraph 2 of this Section and a vicinity map shall be attached to each sign.~~

~~2) The Department of Planning and Community Development is authorized to develop the standards for the public notice signs necessary for implementation of this Section.~~

~~3) One (1) sign shall be erected on or near the subject property facing each public right-of-way adjacent to the subject property and private easement or tract road providing primary vehicular access to the subject property and to any property that abuts the subject property. The Department of Planning and Community Development shall approve the location of each sign.~~

~~4) The applicant shall post a bond pursuant to Chapter 175 of this Code to ensure proper maintenance and removal of the signs. The bond shall be posted prior to erection of the sign.~~

5) ~~The signs shall be removed within seven (7) calendar days after the final public hearing.~~

3. Combined Notice. The Planning Official may combine the notice required under this Section with the notice required under Section 22 of this Chapter.

9. Section 155.40 is hereby eliminated in its entirety.

10. Section 155.45 is hereby amended to read as follows:

155.45 Public Open Record Hearing

1. General - The Planning Commission shall hold an public open record hearing on each application.
2. Hearing Declared Open - The hearings of the Planning Commission are open to the public.
3. Effect - The hearing of the Planning Commission is the hearing for City Council. ~~City Council need not hold another hearing on the application.~~

11. Section 155.60 is hereby amended to read as follows:

155.60 Public Comments and Participation at the Hearing

Any person may participate in the ~~public~~ hearing in either or both of the following ways:

1. By submitting written testimony or comments to the Planning Commission, either by delivering ~~these~~ testimony or comments to the Planning Department prior to the hearing or by giving ~~these~~ it directly to the Planning Commission at the hearing.
2. By appearing in person, or through a representative, at the hearing and ~~making~~ providing oral testimony or comments directly to the Planning Commission. The Planning Commission may reasonably limit the extent of oral testimony and comments to facilitate the orderly and timely conduct of the hearing.

12. Section 155.65 is hereby amended to read as follows:

155.65 Continuation of the Hearing

The Planning Commission may continue the hearing if, for any reason, it is unable to hear all of the public comments on the matter or if the Commission determines

that it needs more information on the matter. However, if the continuation of the hearing would result in the Planning Commission not complying with the time limit for issuing its recommendation consistent with Section 70 of this Chapter, the Planning Commission may continue the hearing only if the time limit for issuing its recommendation is extended under the provisions of that Section. If, during the hearing, the Commission announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

13. Section 155.70 is hereby amended to read as follows:

155.70 Recommendation by the Planning Commission

1. General - After receiving the written and oral testimony and comments at the ~~public~~-hearing, the Planning Commission ~~may~~shall ~~deliberate and discuss~~ the application ~~at the meeting during which the public hearing was held and at subsequent meetings.~~ Following its ~~consideration~~deliberation of the matter, the Planning Commission shall ~~vote~~ en-by a motion approved by a majority of the members present, recommending that City Council take one of the following actions:
 - a. Grant the application.
 - b. Modify and grant the application.
 - c. Deny the application.
2. Vote Required - ~~A motion recommending that City Council grant the application must be approved by a majority of the entire membership of the Planning Commission. All other votes may be approved by a majority vote of the members present at the hearing.~~
3. Decisional Criteria - The Planning Commission shall use the criteria listed in the provisions of this Code describing the requested decision in making a recommendation to City Council on the application. In addition, the Planning Commission may recommend approval of that the application be granted only if+--
 - a. It is consistent with the intent of the goals and policies and of the applicable neighborhood plan provisions of the Comprehensive Plan; 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 all applicable Zoning Code regulations, including those adopted by reference from the Comprehensive Plan; and~~
 - e. It is consistent with the public health, safety and welfare.
43. Conditions and Restrictions - The Planning Commission shall include in the motion containing its recommendation to City Council any conditions and restrictions that the Planning Commission determines are necessary to eliminate or minimize any undesirable effects of granting the application.
54. Findings of Fact and Conclusions - The Planning Commission shall include in the motion containing their recommendations to City Council--
- a. A statement of the facts presented to the Planning Commission that support the Commission's recommendations, including any conditions and restrictions it has recommended; and
 - b. A statement of the Planning Commission's conclusions based on those facts.
65. ~~If the Planning Commission Cannot Agree on a Recommendation - If the Planning Commission is unable to pass a motion containing a recommendation to City Council, the Planning Official shall notify City Council that the Planning Commission is unable to make a recommendation on the matter. City Council shall then take jurisdiction over the matter and hold a public hearing on it. If this occurs, the provisions of Sections 30 and 35 of this Chapter and Sections 45 through 115 of this Chapter will be followed in this hearing process, except that--~~
- a. ~~City Council will act as the Planning Commission; and~~
 - b. ~~City Council shall make and issue a decision rather than a recommendation under Sections 70 and 75 of this Chapter. This decision is the final decision of the City subject to a request for reconsideration, Section 80 of~~

~~this Chapter and, subject to the jurisdiction of the Houghton Community Council, Section 100 of this Chapter, Time Limits - the Planning Commission shall issue its recommendation within eight (8) calendar days of the date of the open record hearing, as stated in the notice provided under Section 30 of this Chapter, except as follows:~~

- a. If the Planning Commission and the Applicant agree in writing on an extension of the time limit for the Planning Commission to issue its recommendation, the Planning Commission has the additional agreed upon time to issue its recommendation.
 - b. If the proposed development activity presents a special circumstance, as defined below, the Planning Commission shall issue its recommendation within twenty-one (21) calendar days of the date of the open record hearing as announced in the notice provided under Section 30 of this Chapter. 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 Planning Commission, the proposed development activity requires more indepth review and/or analysis than could reasonably be conducted under the time frame that would otherwise apply.
7. ~~Planning Commission Report - Within five (5) working days following the day the Planning Commission adopts its recommendation, the Planning Official shall prepare a written report containing the Planning Commission's recommendation to the City Council. If applicable, the Planning Official shall include in the report the recommendations of the Houghton Community Council. The report shall be signed by the Chairman of the Planning Commission or his/her designate before distribution.~~

14. Section 155.75 is hereby amended as follows:

155.75 Distribution of Planning Commission's Report Recommendation

The Planning Official shall distribute copies of the report of the Planning Commission as follows:

1. Within ~~two~~ four (24) ~~working~~ calendar days following the date the Planning Commission issues its written recommendation, a copy will be sent to the applicant, and to any person who submitted written or oral testimony to the Planning Commission.
2. Prior to the meeting where City Council considers the application, a copy will be sent to each member of City Council. The Planning Official shall include the following material with the copy of the Planning Commission report sent to each City Council member:
 - a. A draft resolution or ordinance that embodies the Planning Commission's recommendation.
 - b. Any challenge to the Planning Commission's recommendation filed under Section 85 of this Chapter and received by the Planning Department before the Planning Commission report is sent to the members of City Council.

15. Section 155.80 is hereby eliminated in its entirety.

16. Section 155.85 is hereby amended to read as follows:

155.85 Challenge to the Planning Commission's Recommendation

1. Who May Challenge - The recommendation of the Planning Commission may be challenged by--
 - a. The applicant; and
 - b. Any person who submitted written or oral testimony or comments to the Planning Commission.
2. Contents of a Challenge - The challenge must be in writing and contain a statement of the factual findings and conclusions made by the Planning Commission that are contested. The challenge will be considered only on the record developed in the hearing before the Planning Commission.

3. How and When to File a Challenge -
- a. The challenge may be filed by delivering it to the Planning Department, together with the fee established by ordinance, within ~~seven (7)~~ workingcalendar days ~~following the postmarked date of distribution of the date~~ of the Planning Commission's recommendation on the application ~~or on the decision on requests for reconsideration.~~
 - b. The person filing the challenge shall, prior to delivery under paragraph 3.a. of this Section, mail or personally deliver a copy of the challenge and a notice of the deadline for responding to the challenge, as established in paragraph 1 of this Section, to those persons described in paragraph 3.c. of this Section. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the challenge letter filed with the Planning Department pursuant to paragraph 3.a. of this Section.
 - c. Any person receiving a copy of the challenge letter pursuant to paragraph 3.b. of this Section may file a written response to the challenge. Such response shall be submitted to the Planning Department within ~~five~~ seven (7) workingcalendar days after the Challenge letter was filed with the Planning Department.
 - d. Any person filing a response pursuant to this section shall mail or personally deliver a copy of the response to those persons described in Section 85.1 of this Chapter. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the response to the challenge letter filed with the Planning Department pursuant to paragraph 85.3.a. above.
- ~~4. Request to Reconsider Not Required - The recommendation of the Planning Commission may be challenged whether or not there was a request for the Planning Commission to reconsider the recommendation.~~

17. Section 155.90 is hereby amended to read as follows:

155.90 City Council Action

1. General - The City Council shall consider the application at a scheduled meeting within ~~nineforty-five~~ (9045) calendar days following the date ~~on which the~~ of the Planning Commission's makes its final recommendations on the proposal. ~~This time period may be extended upon written concurrence of the Planning Director and the applicant.~~
2. City Council Decision - After consideration of the entire matter on the record before the Planning Commission, the City Council shall, by motion approved by a majority of its total membership, take one of the following actions:
 - a. Adopt an ordinance or resolution to either--
 - (1) Grant the application;
 - (2) Modify and grant the application; or
 - (3) Deny the application.
 - b. ~~If the City Council concludes that significant issues have been raised in a challenge or if they are unsatisfied with the Planning Commission's recommendation for any other reason, they may by motion either direct the Planning Commission to hold a rehearing on the matter or decide to hold a City Council hearing on the matter.~~ based on a challenge to the recommendation or its own review of the recommendation, that the record compiled by the Planning Commission is incomplete or inadequate for the City Council to make a decision on the application, the City Council may by motion remand the matter to the Planning Commission with the direction to reopen the hearing and provide supplementary findings and conclusions on the matter or matters specified in the motion. Any remand under this Section shall constitute a special circumstance under RCW 36.70B.140. The motion may limit the scope of the issues to be considered at this rehearing or City Council hearing. In the event of a remand, the Planning Commission shall hold the re-hearing within twenty-eight (28) calendar days of the

date of the City Council motion, and the time limits and other pertinent requirements of this Chapter shall apply to the re-hearing.

3. Decisional Criteria

The City Council shall use the criteria listed in ~~the provisions~~ subsection 70.2 of this Code ~~chapter~~ describing the requested decision in deciding upon the application. ~~In addition, the City Council may approve the application only if:~~

- ~~a. It is consistent with the intent of the goals and policies and of the applicable neighborhood plan provisions of the Comprehensive Plan;~~
- ~~b. It is consistent with all applicable Zoning Code regulations, including those adopted by reference from the Comprehensive Plan; and~~
- ~~c. It is consistent with the public health, safety and welfare.~~

4. Condition and Restriction - The City Council shall include in the ordinance or resolution granting the application any conditions and restrictions they determine 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. Findings of Fact and Conclusion - The City Council shall include in their motion--

- a. A statement of the facts presented to City Council that support the decision, including any conditions and restrictions that they impose; and
- b. The City Council's conclusions based on those facts.

6. Effect - Subject to the provision of Section 100 of this Chapter, the ordinance or resolution of City Council is the final decision of the City.

18. Section 155.95 is hereby eliminated in its entirety.

19. Section 155.100 is hereby amended to read as follows:

155.100 Action and Jurisdiction of the Houghton Community Council

The Houghton Community Municipal Corporation is a separate municipal entity, under RCW Chapter 35.14 existing within the Houghton neighborhood of the City. The governing body of the Houghton Community Municipal Corporation is the Houghton Community Council. If the application is within the disapproval jurisdiction of the Houghton Community Council, the provisions of this Section apply to that application:

1. Houghton Community Council Public Meeting - The Houghton Community Council may hold a public meeting, which will be informal in nature, to obtain comments from the public and others on the application, and the following provisions shall apply:
 - a. The public meeting shall be scheduled at the earliest practicable time, based on the schedule of the Houghton Community Council, that will allow for fair and informed deliberation, compliance with all notice requirements and the orderly processing of the application.
 - b. The notice under Section 30 of this Chapter shall include the time, place and other pertinent information about the public meeting.
 - c. The Planning Official shall provide a copy of the staff report prepared under Section 35 of this Chapter to each member of the Houghton Community Council prior to the public meeting.
 - d. After the Houghton Community Council receives comments and information at the public meeting, it may make any recommendations on the application, in writing, that it deems appropriate.
 - e. The Planning Commission shall consider any recommendation on the application from the Houghton Community Council that the Planning Commission receives before the Planning Commission first considers the application, and the City Council shall consider any recommendation from the Houghton Community Council that the City Council receives before the City Council first considers the application.
 - f. Neither the lack of a Houghton Community

Council quorum at the public meeting nor the lack of a recommendation from the Houghton Community Council in any way effects the jurisdiction of the Planning Commission and the City Council under this Chapter or the jurisdiction of the Houghton Community Council under subsection 2 of this Section.

12. General Disapproval Jurisdiction - If the City Council approves an application within the disapproval jurisdiction of the Houghton Community Council, that approval is not effective until--
- a. A majority of the entire membership of the Houghton Community Council vote by resolution to approve it; or
 - b. The Houghton Community Council fails to disapprove it within sixty (60) calendar days after City Council adopts the ordinance or resolution granting the application. The vote to disapprove the application must be approved by a majority of the entire membership of the Community Council.

20. Section 155.105 is hereby amended to read as follows:

155.105 Notice of Final Decision

1. General - Following the ~~final~~ decision by City Council, ~~or if applicable, the Houghton Community Council,~~ the Planning Official shall prepare a notice of ~~the City's final~~ decision on the application.
2. Distribution - Within ~~two~~ four (24) ~~working~~ calendar days after the City Council's decision is made, the Planning Official shall ~~distribute a copy of this notice as follows~~ mail a copy of the decision to the following persons:
 - a. ~~A copy will be sent to t~~ The applicant;
 - b. ~~A copy will be sent to any~~ Each person who submitted written or oral comments or testimony on the application to the Planning Commission.
 - c. Each person who has requested notice of the decision.

In addition, within four (4) calendar days after

the City Council's decision is issued, the Planning Official shall post a summary of the decision, along with a summary of any threshold determination under SEPA, on the public notice signs erected under Subsection 22.2.b of this Chapter.

3. Applications Within the Jurisdiction of the Houghton Community Council - If the City Council approves an application within the disapproval jurisdiction of the Houghton Community Council, the notice of decision shall also state that, while the decision of the City Council is the final decision of the City, such decision shall become affective only as specified in subsection 100.2 of this Chapter.

21. Section 155.110 is hereby amended to read as follows:

155.110 Judicial Review

The action of the City in granting or denying an application under this Chapter may be reviewed—~~for illegal, corrupt or arbitrary or capricious action~~ pursuant to the standards set forth in RCW 36.70C.130 in the King County Superior Court. The ~~petition for review~~land use petition must be filed within ~~thirtytwo-one (3021)~~ calendar days of the ~~final decision of~~issuance of the final land use decision by the City. The date of the final decision of the City is the date of passage of the City Council ordinance or resolution constituting the City's final decision unless such City Council decision is subject to the disapproval jurisdiction of the Houghton Community Council in which case the petition for judicial review must be filed within twenty-one (21) calendar days of the date of approval or disapproval action of the Houghton Community Council. For more information on the judicial review process for land use decision, see RCW 36.70C.

22. Section 155.115 is hereby amended to read as follows:

155.115 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 (4) 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 Section 155.110, 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 ~~Approval~~Decision within six (6) 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 ~~Approval~~Decision.

23. A new Section 155.130 is hereby added to read as follows:

155.130 Time Limits. Any time limit, pursuant to RCW 36.70B, 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 RCW 36.70B are extended by the number of days that the final decision of the City was delayed as a result of that special circumstance.

170.40.8

Judicial Review -The decision of the Hearing Examiner may be reviewed for illegal, corrupt, or arbitrary or capricious action pursuant to the standards set forth in RCW 36.70C.130 in King County Superior Court. The ~~petition for review~~ land use petition must be filed within ~~(30)~~ twenty-one (21) calendar days of the ~~final decision~~ issuance of the final land use decision by of the Hearing Examiner. For more information on the judicial review process for land use decisions, see RCW 36.70C.

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