City of Kenmore

City of Kenmore - 18120 68th Avenue NE - Kenmore, WA 98028
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City of Kenmore
Planning Commission Meeting Agenda

Tuesday, January 5, 2021 @ 7:00 p.m. via Zoom

Log-in Information for the Commission Meeting:
Please click the link below to join the webinar or copy and put this link in your address bar in your web browser:
https://zoom.us/j/98481400337
Or iPhone one-tap :
US: +13126266799,,98481400337# or +19292056099,,98481400337#
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
US: +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 6833 or +1 253 215 8782
Webinar ID: 984 8140 0337
International numbers available: https://zoom.us/u/acu5U92aty

If you have any questions or to confirm agenda items prior to the meeting, or if you require special accommodations, please email Maura Query at mquery@kenmorewa.gov.

1. **CALL TO ORDER**

2. **INTRODUCTION OF NEW COMMISSIONERS**

3. **ELECTION OF OFFICERS**

4. **CITIZEN COMMENTS**
   This is an opportunity to express your views on issues that are important to you and to the community. Please email comments to Maura Query at mquery@kenmorewa.gov by 5:00 p.m. on Tuesday, January 5, 2021. All comments received will be forwarded to the Planning Commission for consideration. You also may use the "raise hand" feature in Zoom during the Citizen Comment portion of the meeting or call in at the number listed above. A 3-minute comment limit applies.

5. APPROVAL OF MINUTES

November 17, 2020 Planning Commission Meeting Minutes

6. AGENDA ITEMS

Introduction to the preliminary 2021 Docket
Staff Memo
Attachment 1 - Missing Middle research paper

Affordable Housing Review Process - Joint meeting presentation
Staff Memo
Attachment 1 - Chapter 18.77 Code Amendments
Attachment 2 - Chapter 19.25 Code Amendments
Attachment 3 - Other consistency amendments
Attachment 4 - Chapter 18.110 Code Amendments

7. ADJOURNMENT

8. UPCOMING MEETINGS:

January 19, 2021 Joint Meeting, 7:00 p.m. – via Zoom
February 2, 2021, 7:00 p.m. – via Zoom

City of Kenmore
Planning Commission Meeting
November 17, 2020 @ 7:00 p.m.

Planning Commission Members – In Attendance (the meeting was held virtually using the Zoom online platform)

Mark Ohrenschall, Chair
Carol Baker
Suzanne Greathouse
Nathan Loutsis
Mike Mulcare
Dennis Olson
Mike Vanderlinde

Consultants & Staff

Lauri Anderson, Principal Planner
Debbie Bent, Community Development Director
Maura Query, Administrative Assistant

1. CALL TO ORDER

The meeting was called to order by Chair Ohrenschall at 7:01 p.m.

2. CITIZEN COMMENTS

Stacey Valenzuela from Kenmore expressed concerns about the City Manager being on the executive board for ARCH as it may be a conflict of interest. She expressed a need for more low to very-low income housing units in Kenmore and more transparency for Public Hearings.

3. APPROVAL OF MINUTES

October 6, 2020 Meeting Minutes – A motion to approve as written was made by Commissioner Baker and seconded by Commissioner Mulcare. Commissioner Loutsis suggested a modification to the wording in the minutes. Commissioner Baker made a motion to accept the minutes as written with the additional wording Commissioner Loutsis suggested. Commissioner Mulcare seconded the motion. The motion passed unanimously by roll call vote.

October 20, 2020 Meeting Minutes – A motion to approved as written was made by Commissioner Vanderlinde. Commissioner Olson seconded the motion. The motion passed unanimously by roll call vote.

4. PUBLIC HEARING

Chair Ohrenschall opened the Public Hearing on the Affordable Housing Review Process at 7:14 p.m.

City Staff presented an overview of the goals for the Affordable Housing Review Process and an overview of the preliminary recommendations.

Chair Ohrenschall opened the meeting to citizen comments at 7:18 p.m.

Stacey Valenzuela from Kenmore expressed that her comments from earlier applied to the Public Hearing and that she hopes the Planning Commission puts forward support for encouraging housing for low and very-low income wage earners. She expressed concern that the City Manager is the approver of the permits and the potential for a conflict of interest as the City Manager is on the executive board for ARCH.

Commissioner Mulcare mentioned the distinction between the City Manager as an individual versus an office. If the City Manager is listed as a decision maker it could be several people that report into the City Manager, rather than the specific individual.

City Staff commented on the City Managers role with ARCH. ARCH's role in affordable housing is to provide funding for projects and assist the City with code amendments. ARCH is not in competition with other organizations that might want to fund a project.

Chair Ohrenschall closed the Public Hearing at 7:25 p.m.

5. AGENDA ITEMS

The meeting was opened to questions, comments, and suggested changes to the proposed recommendations.

Commissioner Baker commented that the Commission is looking at Affordable Housing through the lens of an expedited process. As such, some of the levels of the process do exclude community participation. There is usually advance knowledge of these types of projects and that the Council would do their due diligence to allow the community into that process somehow, and that removing these levels of community participation are helpful in expediting the process.

Commissioner Vanderlinde made a motion to accept the final recommendations and ask that they be presented to City Council. The motion was seconded by Commissioner Loutsis. The motion passed unanimously by roll call vote.

6. ADJOURNMENT

Chair Ohrenschall adjourned the meeting at 8:36 p.m.

_____
Planning Commission
Approved by Planning Commission on: _____

City Of Kenmore, Washington

Memorandum

Date: December 29, 2020

To: Planning Commission

From: Debbie Bent, Community Development Director
Lauri Anderson, Principal Planner

Regarding: Preliminary 2021 Docket

Although the Planning Commission's 2021 docket will not be approved by the City Council until January 25, staff assumes that the remaining item on the 2020 docket will be part of the 2021 work plan. That item is to, "Consider provisions, including design guidelines, to allow some flexibility in single family neighborhoods for small-scale housing (e.g. cottages, duplexes)." This project is Strategy A.1.c from the City's Housing Strategy Plan (see https://www.kenmorewa.gov/government/departments/community-development/planning-initiatives/housing-strategy-plan). A background paper on small-scale housing—also known as "Missing Middle" housing--is provided as Attachment 1. This overview was prepared by the City's Planning Intern, Jordan Woltjer.

The context for the Missing Middle housing discussion likely will be the updating of the Land Use and Housing Elements of the Comprehensive Plan--the next steps in Kenmore's State-mandated June 2024 Comprehensive Plan update. As you know, the Comprehensive Plan is the City's 20-year policy guide and it directs the City's land use regulations. It includes several chapters (or elements) addressing how the City should grow and develop.

The last major update was finalized in 2015. Since that time, the City has completed updates to the Natural Environment, Shoreline, and Parks, Recreation and Open Space chapters. In 2021, updates to the Land Use and Housing Elements would lay the foundation for the updated Transportation Element—scheduled for late 2021/2022. The City's current Comprehensive Plan can be found at https://www.kenmorewa.gov/government/departments/community-development/comprehensive-plan.

Over the past several years, most of the City's commercial zones have been reviewed and policy directions revised. Consideration of changes to the City's residential areas to potentially increase density and provide more affordable housing would be a logical focus of the updated Land Use and Housing Elements.

At your meeting on January 5, staff will describe the next steps in the Comprehensive Plan update process and provide an overview of regional growth policy, particularly Vision 2050 (see below). We also will provide background information on "Missing Middle" housing.

Commissioners should be prepared to identify and, if time allows, discuss some of the most significant Comprehensive Plan policy issues facing the community and the role of "Missing Middle" housing in the update. This is an introductory discussion only; no decisions or recommendations are expected.

Background

Growth management planning in Washington State is a multi-layered process. The State requires first that "multicounty planning policies" be developed, followed by "countywide planning policies" and then by local jurisdictions' comprehensive plans. All of these documents must be consistent in intent and direction.

In October 2020, the Puget Sound Regional Council (PSRC) adopted Vision 2050, the updated multicounty planning policies (https://www.psrc.org/sites/default/files/vision-2050-plan.pdf). Vision 2050 covers four counties: King, Pierce, Snohomish, and Kitsap. These policies set out the Regional Growth Strategy (described starting on page 26 of the plan) and provide policy direction for land use, housing, transportation, economic development, and other growth-related topics. Vision 2050 identifies Kenmore as an HCT (High Capacity Transit) community, with expectations for new job and housing growth to support Bus Rapid Transit on SR-522.

With the multicounty planning policies in place, countywide planning policies, consistent with Vision 2050, must be adopted to further guide Kenmore's efforts. In King County, revisions to the Countywide Planning Policies (CPPs) presently are underway and adoption is scheduled for summer 2021, with ratification to follow by all of the King County cities. The CPPs will provide information on housing and job growth targets for each jurisdiction, including affordable housing expectations.

Staff is working on a recommended approach to effectively integrate the Missing Middle project with the Comprehensive Plan Land Use and Housing Element updates. Along with an intensive public kickoff to this project, staff is recommending that a statistically valid survey of the community identify priorities, tradeoffs and recommendations for planning for Kenmore's next 20 years. This survey would help in reassessment of the City's 20-year Vision Statement—the introduction to, and foundation for, the Comprehensive Plan.

Attachments
Attachment 1: Missing Middle research paper

MISSING MIDDLE HOUSING

Introduction

Missing Middle Housing (MMH) refers to housing units that are mid-density options between detached single-family homes and mid-rise apartments. Proponents of Missing Middle Housing options characterize them as "gentle density" and "gentle" infill housing strategies—compatible in scale and character with detached single-family homes while still increasing the density of residential neighborhoods in accord with urban growth mandates.

THIS IMAGE MAY ONLY BE USED WITH ACCOMPANYING ILLUSTRATION ATTRIBUTION TO OPTICOS DESIGN, INC.

MMH housing types include: duplexes, triplexes, and fourplexes; accessory dwelling units; townhouses; courtyard apartments; bungalow courts or cottage housing; multiplexes; and live/work units.

Architect Daniel Parolek of Opticos Design coined the term Missing Middle Housing in 2010. The "missing" section of the title denotes this housing option's current status. Up to the 1940s, MMH types constituted a significant share of the nation's housing stock (Wegman, 2006). The subsequent disappearance of MMH in new construction, it is argued, was facilitated by the erection of zoning barriers to MMH and the financial incentivization of detached single-family units over other housing types.

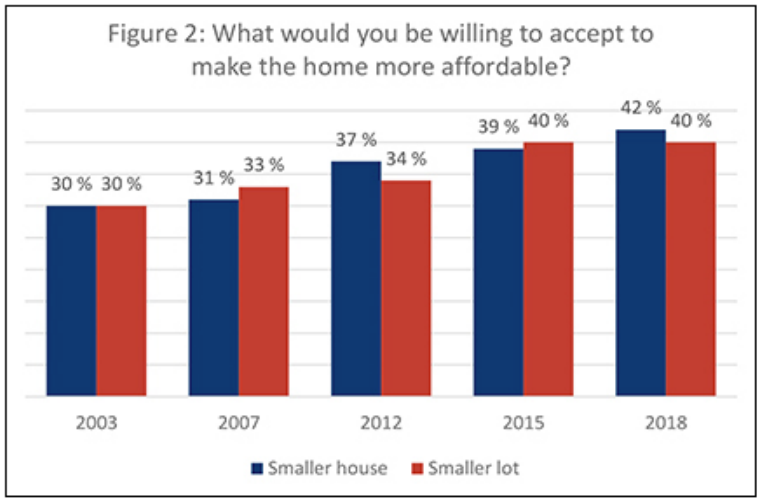
The National Housing Act of 1934 created the Federal Housing Administration (FHA) which implemented programs to stimulate the home-construction industry after the conclusion of World War II. The FHA's focus aligned with the popular image of the American dream--the detached single-family house (Monroe, 2001). The FHA is "credited with helping to increase the national homeownership rate from under 40% during the Great Depression to almost 67% [in 2001]" (Monroe, 2001). As of 2001, the FHA insured about 18% of mortgages made in a particular year, most of which were granted to homebuyers purchasing a detached single-family unit (Monroe, 2001). Other New-Deal era institutions were also created with the mandate of expanding ownership of single-family houses, typically detached units. Freddie Mac and Fannie Mae continue to negotiate conventional loans and lack unique financial instruments for non-conventional housing types. The non-availability of financing is one cause of the lack of production of MMH housing types (Chapple, 2018).

Now, responding to the problems of affordability and sprawl, communities are revisiting MMH. Much MMH is compact and land-efficient resulting in densification and the creation of moderately affordable housing. MMH is being promoted as part of a strategy to create compact and walkable mixed-use neighborhoods. It is the hope that MMH may increase density such that transit and locally serving commerce/retail become viable. The densification of single-family neighborhoods accompanied by the reduction in average per unit size also yields significant environmental benefits. And this is especially so should the goals of walkability and increased transit use be accomplished to any significant degree.

Promotion of MMH is also congruent with current demographic shifts—growth in the share of single person households; a reduction in average family size; and an increase in the proportion of the elderly in the total population. These shifts support the diversification of the housing stock. The relative decline of the prototypical nuclear family renders its attendant housing choice, detached single-family residences, no longer fit for fulfilling all housing needs. "While only 20 percent of American households are nuclear families, for example, the housing market largely remains fixated on their needs" (AARP, 2018). Fifty percent of the U.S. housing stock is detached single-family residences located on large lots (Mich, 2017). But single-family development's limitations in supplying affordable and appropriate housing to all are stimulating a critical reappraisal of zoning codes around the country.

Shifts in Public Opinion towards MMH

MMH proponents argue that an increasing market demand among millennials for compact urban living in walkable and amenity rich neighborhoods prefigures a reversion to MMH (Parolek, 2012). The desire among the elderly to remain in age-diverse neighborhoods provides further support (AARP, 2018).

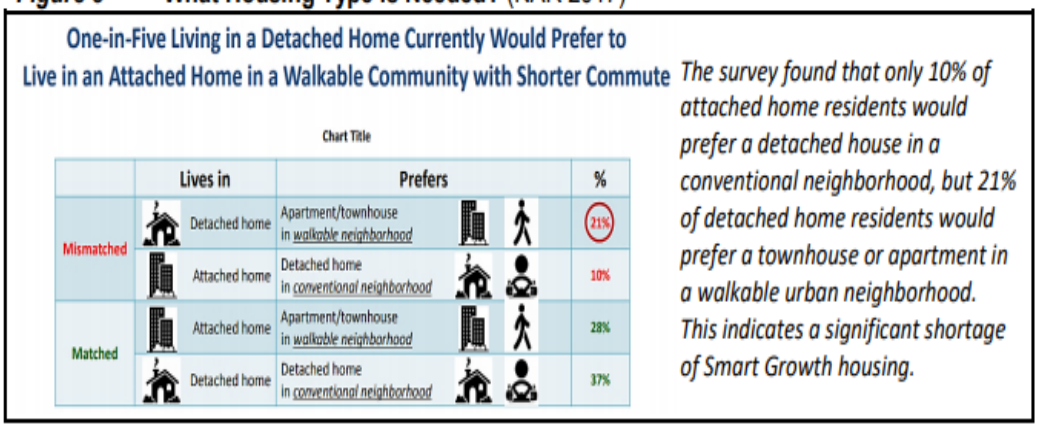


Survey performed by National Association of Home Builders (NAHB), 2018

A survey by NAHB asked respondents about house and lot size tradeoffs to address housing affordability. They summarized the results stating, “Buyers are increasingly willing to sacrifice the size of the home and lot in order to achieve affordability” (NAHB, 2018).

The annual survey performed by the National Association of Realtors showcases the growing consumer preference for walkable housing options. This survey found that 21% of those who lived in a detached home would prefer to live in an apartment/townhouse in a walkable neighborhood as compared to 10% of those who live in an apartment/townhouse that would prefer to live in a detached single-family residence.

Figure 3 **What Housing Type is Needed?** (NAR 2017)



Mich summarized the survey data relating to the mismatch between MMH demand and supply as follows: “demand for attached housing types ranges from 34-39% while supply (using Census American Housing Survey estimates) of the same is 30% nationwide.

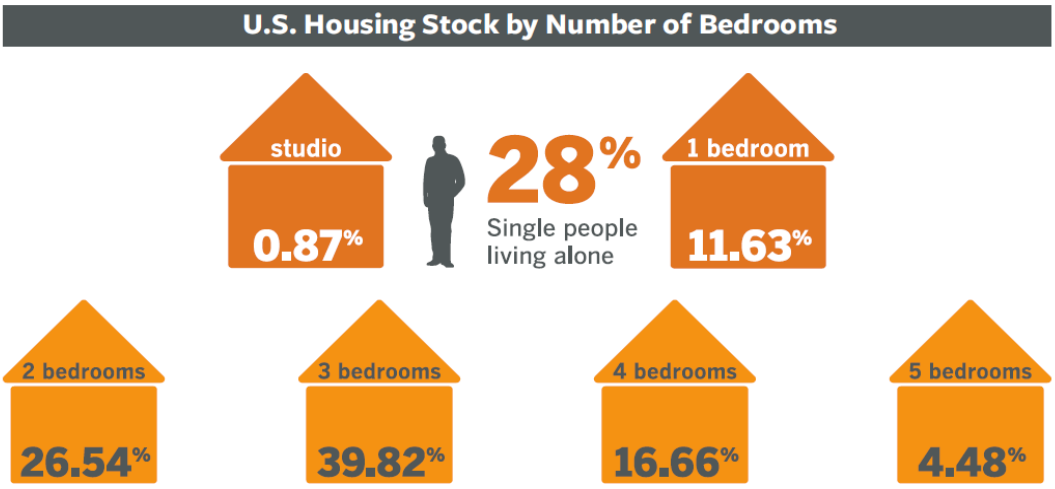
AARP regularly gauges elderly opinion on housing choices to inform AARP’s housing policy. Their 2018 AARP Home and Community Preferences Survey recorded that 77% of those aged 50 plus wish to remain in their current neighborhoods for as long as possible. This number rose to 86 percent for those above the age of 65. AARP warns that “most homes in the United States are not designed for aging in place, stating that only about one percent of U.S. housing is elderly appropriate. AARP has identified “Bring Back Missing Middle Housing” as a “rallying cry for a wider menu of housing options”.

Issues MMH May Address

Demographic/Housing Mismatch

As mentioned earlier, larger housing units are oversupplied relative to demographic housing demand. According to AARP (2018), the largest single demographic in the U.S. is single

adults who live alone: 28% of total households. The second largest demographic is couples without children. The traditional nuclear family is only the fourth largest demographic. A visual comparison of U.S. housing stock to the single adult demographic is provided by AARP here:



These numbers don't reflect the 32.1 percent of 18 to 34-year-olds that live with parent(s) at home (AARP, 2018). AARP does not provide an explanation for this unprecedented pattern. It is plausible that chronic rises in housing and rent prices coupled with the long-lasting financial strain of contemporary student loans induces university students and young professionals to economize by living with their parents.

Continuing with demographic bases that argue for a greater focus on MMH is information provided by AARP: Homes suitable for aging in place are compact, require little maintenance, lack stairs, and are wheelchair accessible. Information from the 2018 American Community Survey found that households with one or more persons 65 and older made up more than 25 percent of the households in Kenmore.

Overall, average household size has been decreasing. The 1960 census reports the average household size in King County as 3.2. ACS sampling estimates that in 2018 Kenmore's average household size was 2.57. Contributing to this trended decline in household size are the "increasing numbers of single-person households, decreasing family size preferences, and high divorce rates."

According to AARP analysis, in 1950 the average square footage of new single-family homes was 983, whereas this has increased to 2,571 in 2017 despite the reduction in average household size.

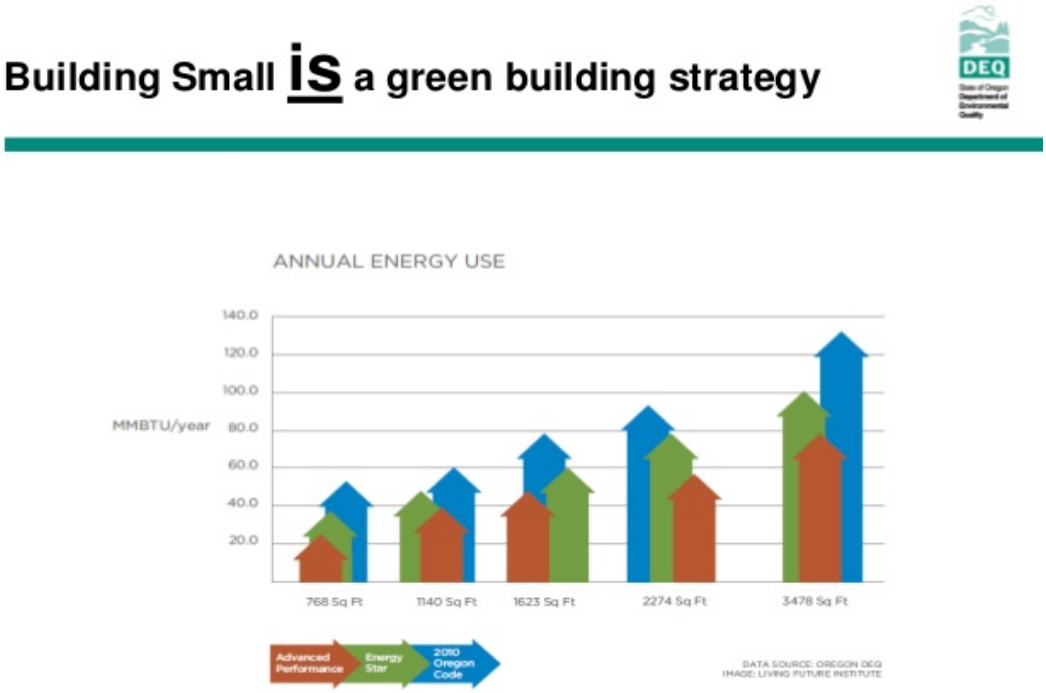
Housing Affordability Crisis

There exists a well-documented shortage of affordable housing in Washington state. The Washington Growth Management Act (1990) requires cities to facilitate the creation of affordable housing. The King County Countywide Planning Policies assign Kenmore residential growth targets and require that the City accommodate affordable housing. MMH is another axis by which Kenmore's housing stock can be enlarged to help satisfy these requirements.

More recently, HB 1923 was passed by the Washington State legislature and signed into law by Governor Jay Inslee. HB 1923 provided funding of up to $100,000 for cities that voluntarily selected action measures to produce affordable housing (Bicknell, 2019). Several of the "menu options" available to cities to qualify for state funding were ways of promoting MMH types, including authorization of duplexes, triplexes, and courtyard apartments in single-family zoned areas; or authorization of duplexes on each corner lot within all single-family zoned areas." (Bicknell, 2019). HB 1923 was supported by a bi-partisan coalition of politicians seeking to address housing affordability in Washington State. MMH is now recognized as a tool for affordable housing generation at the state level.

Environmental Sustainability

MMH tends to be smaller and more land-efficient than single-family detached residences (Montgomery, 2018). Research by the Oregon Department of Environmental Quality (DEQ) found that building smaller homes was among the best practices to reduce the lifetime carbon and energy impacts of single-dwelling housing (DEQ, 2016). The DEQ then recommended that regulatory code be tailored to increase production of cottage clusters, corner duplexes, accessory dwelling units, and internal house divisions to produce environmental benefits. The following DEQ graphic illustrates the correlative relationship between dwelling size and energy use.



Community Cohesion

Several variations of MMH possess communal spaces that advocates claim "stimulate social interaction, promote safety and security, and create a sense of community for young and old alike" (Montgomery, 2018). This claim of communal vibrancy is also attached to the neighborhood level in areas experiencing MMH developments. MMH promotive policy is envisioned as densification aimed at achieving walkable, mixed-use communities like those described by urbanist Jane Jacobs: "The more successfully a city mingles everyday diversity of uses and users in its everyday streets, the more successfully, casually (and economically) its people thereby enliven and support well-located parks that can thus give back grace and delight to their neighborhoods instead of vacuity." And on walkability's importance, "Not TV or illegal drugs but the automobile has been the chief destroyer of American communities."

Historical Existence of MMH

Cities that experienced high-growth patterns in the late 19th century and early 20th century relied heavily on MMH to house their increasingly large workforces (Wegmann, 2006). Much of the MMH currently available was constructed during that period before land-use legislation prohibited numerous MMH types (Badger & Graham, 2015). MMH is virtually nonexistent in

new construction; “between 2% and 5% [of newly constructed housing is MMH] in most large metros” (Mich, 2017).

Emily Badger and Christopher Ingraham made use of 2014 American Community Survey results to tabulate the housing makeup of large American cities in their 2015 housing analysis for the Washington Post. This analysis measured the proportional preponderance of different types of housing, including MMH types; The categories: single unit attached, two units, three or four units, and five to nine units all correlate to different variations of MMH.

Their research showed that several older cities exhibit large residual concentrations of MMH stock. Over 50% of Philadelphia’s housing stock is composed of MMH (Badger & Ingraham, 2014). Commenting on this data in his doctoral dissertation, Mich found that “Philadelphia, Baltimore, and Washington, D.C. are marked by large percentages (25-60%) of attached single-family units - townhouses, rowhouses, and the like - while 20-30% of occupied units in Boston, Milwaukee, and Chicago are in 2-4 unit structures” (Mich, 2017). Mich extended his analysis to encompass the national housing market. He found the exceptional result that missing middle housing provides more housing nationwide as compared to large multi-family apartment buildings: 18.7% to 13.2% (Mich, 2017).

Regulatory Barriers to MMH

MMH requires a zoning code that allows its development in single-family residential neighborhoods. The high cost of multi-family zoned land results in developers electing to build large/midrise apartment buildings to maximize per unit profit. MMH is not practicable as a competitive alternative on multi-family residential land from the developer’s perspective; it does not offer high enough returns. “Missing Middle housing is often just as risky as high-density development projects to build and maintain, yet these projects yield much lower returns over the long run” (City of Montgomery, 2018). Missing Middle Housing is considered “risky” because the market for it is not well established, it requires higher initial investments than detached single-family houses, and the increased length of its construction projects relative to detached single-family houses make them less predictable from a developmental perspective.

Beyond making the use, itself, allowable in single-family neighborhoods, other common regulatory barriers to MMH housing include “off-street parking minimums, dimensional limits, [and]setback requirements,” (Mich, 2017). A private-sector stakeholder focus group which assisted the City of Montgomery’s MMH research identified the regulatory barriers that pose the greatest deterrent effect: “parking requirements; building height limitations; structure setback requirements; [and] lot coverage ratios” (Montgomery, 2018).

Modern building codes have been written in relation to the bifurcation of the U.S. housing market into low- and high-density typologies. Multi-family building and fire codes are “aimed at larger multi-family structures” (Mich, 2017). As multifamily development, some MMH categories are required to install fire protections not required in single family residences, even though lower-density MMH has more in common with single family residences than high-rise apartments. The high cost of compliance with strict building codes that regulate MMH types

as if they were high-rise apartment buildings is that “costs [are increased] beyond what is financially feasible for developers” (Mich, 2017).

There exist available solutions to the economic challenges posed by restrictive building codes and utility regulation costs. Using accessory dwelling units as an example, the State of Washington’s building code amends the definition of dwelling units so that a building which contains an attached ADU and a dwelling unit are together categorized as a single-dwelling unit thereby lowering the cost of compliance for fire-safety separations, etc. The Northshore Utility District now allows attached ADUs to make cost-effective indirect water/sewer connections to the main. And Kenmore’s impact fee waiver makes ADU development significantly more financially accessible.

Regulatory Paths Forward

City of Olympia

The City of Olympia has developed a comprehensive missing middle housing program that is a possible model for Kenmore to consider. Regulatory burdens to MMH types deemed most relevant to the city included cottage housing, duplexes, townhouses, triplexes & fourplexes, and courtyard apartments, among others. Amendments were adopted in 2018.

Although the regulations were ultimately invalidated by a GMA hearings board for inconsistency with provisions in Olympia’s Comprehensive Plan, the Board stated that Olympia’s “goal of infilling is necessary, laudable and achievable.” The increase in density established by the MMH reforms conflicted with PL 14.3 of Olympia’s Comprehensive Plan, “Preserve and enhance the character of existing established low-density neighborhoods. Disallow medium or high-density development in existing Low-density Neighborhood areas…” (GMHB, 2019). Kenmore’s code reform must determine the extent to which the Comprehensive Plan is consistent with regulatory promotion of MMH.

City of Tacoma

Tacoma’s Residential Infill Pilot Program was created to sponsor the development of four Missing Middle Housing types within the City, with each unique type limited to a maximum of three projects (City of Tacoma, 2016). Tacoma decided to include accessory dwelling units, two-family housing, small multi-family housing, and cottage housing in their Pilot Program.

Such a pilot program is a potent vehicle to test new housing concepts and determine their compatibility with the local urban framework. Also, it may allay citizens’ concerns about missing middle housing categories and provide a means to gauge/activate support for the concept. The challenges and successes experienced over the duration of the program can be refined into insights that may inform forthcoming code creation planning segments. “Once staff and Council know the best of what is possible, we will be able to create code and design guidelines that will encourage consistent, good-quality projects of these types” (City of Tacoma, 2016).

John Owen, an award-winning urban designer selected to participate in Kenmore's 2019 MMH discussion panel (https://www.youtube.com/watch?v=DU9zU52_BoA), cautioned the City of Kenmore not to view neighborhoods as opponents in their goal of leveraging MMH to increase the diversity of housing options and stock of affordable housing in the city. Mr. Owen commented that a pilot program akin to Tacoma's is an excellent way to involve the public in the MMH code-tailoring process.

6.Introduction to the preliminary 2021 Docket

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City Of Kenmore, Washington

Memorandum

Date: December 29, 2020

To: Planning Commission

From: Debbie Bent, Community Development Director
Lauri Anderson, Principal Planner

Regarding: Affordable Housing Review Process

On November 17, the Planning Commission approved final recommendations for amending the affordable housing permit review processes. The recommended amendments are included as attachments 1-4. As you know, the overall goal of the affordable housing special permit review process is to make it make it easier and faster to permit affordable housing projects, particularly projects on tax-exempt properties and on parcels owned by public agencies.

A joint meeting with the City Council to present these recommendations is scheduled for Tuesday, January 19 (Monday, January 18 is a holiday.) At your meeting on January 5, you should discuss the Commission's presentation of the amendments.

As you know, the proposed Zoning Code amendments address three approaches:

1. Reduce the permit review process for some projects including low- or very-low-income affordable housing units in multifamily or commercial zones. Differences from the current process include:

   a. No public notice of the permit application unless State Environmental Policy Act (SEPA) review is required. (The current SEPA threshold is 20 dwelling units.)

   b. b. No local administrative appeal, although a court appeal is always available.

   This reduced process would not allow for a waiver of development standards.

2. Allow a developer of any project including low- or very-low-income affordable housing units to propose an expedited review process to the City. The City could agree to expedite the project or could offer expedited review if a consultant were available to review the project at the developer's expense.

3. For properties owned or under the control of a religious organization (as defined by State law), amend the Development Agreement chapter to allow consideration of a density increase in any zone for 100% affordable housing projects. This process addresses a requirement in State law that the City provide an opportunity for religious organizations to request a density increase for affordable housing on properties they own or control.

To help in your discussion, you may want to consider the guiding principles you developed early in the project:

- The special review process should only be available for developments including low-income or very-low-income housing.
- Housing affordability, rather than housing for certain groups regardless of income (such as seniors or those with disabilities), should be the guide when determining the eligibility of a project for the special review process.
- Developments of any size providing this type of housing should be eligible for the expedited review.
- Development standards, for the most part, should not be waived with the special review process.
- The process should not rely on new staffing.
- Local project notice and appeals, particularly in single-family zoning districts, are an important community benefit.

Attachments
Attachment 1: Chapter 18.77 Code Amendments
Attachment 2: Chapter 19.25 Code Amendments
Attachment 3: Other consistency amendments
Attachment 4: Chapter 18.110 Code Amendments

Proposed amendments are highlighted in yellow

Chapter 18.77
AFFORDABLE HOUSING

Sections:

Sections:

18.77.010 Affordable housing – Purpose and intent.
18.77.015 General provisions.
18.77.020 Downtown residential and downtown commercial zones.
18.77.030 Transit oriented development (TOD) district overlay.
18.77.040 Community business zone, Juanita subarea.
18.77.045 Alternative compliance.
18.77.050 Affordability agreement.
18.77.060 Expedited permit processing.

18.77.010 Affordable housing – Purpose and intent.

The purpose of this chapter is to implement, through regulations, the responsibility of the *City* under the Washington State Growth Management Act to consider the housing needs of all economic segments of the community, and to assure an adequate affordable housing supply in the *City*. The *City* recognizes that the marketplace is the primary supplier of adequate housing for those in the upper economic groups, but that some combination of appropriately zoned land, regulatory incentives, innovative planning techniques, and requirements will be necessary to make adequate provisions for the needs of households whose incomes are at or below median income. [Ord. 19-0481 § 2 (Exh. A); Ord. 11-0329 § 3 (Exh. 1).]

18.77.015 General provisions.

A. Determination of Number of Affordable Housing Units Required – Rounding. See KMC 18.30.020(D) for method of rounding to determine the number of affordable housing units required.

B. Adjacent Developments. Adjacent *developments* by the same or affiliated *developer* will be considered as a single *development* for the purpose of applying the thresholds for compliance.

C. Designation of Affordable Housing Units. Prior to the issuance of any permit(s), the *City* shall review and approve the location and unit mix of the affordable housing units consistent with the following standards:

1. Location. The location of the affordable housing units shall be approved by the *City*, with the intent that they generally be intermingled with all other *dwelling units* in the *development*.

Proposed amendments are highlighted in yellow

2. Tenure. The tenure of the affordable housing units (ownership or rental) shall be the same as the tenure for the rest of the housing units in the *development*.

3. Size (Bedroom). The affordable housing units shall consist of a range of number of bedrooms that is comparable to units in the overall *development*.

4. Size (Square Footage). The size of the affordable housing units, if smaller than the other units with the same number of bedrooms in the *development*, shall be approved by the *city manager*. If there is a proposal that the affordable units be smaller than the market rate units, in no case shall the affordable housing units be less than 500 square feet for a studio unit, 600 square feet for a one-bedroom unit, 800 square feet for a two-bedroom unit, or 1,000 square feet for a three-bedroom unit.

5. Design. The exterior design of the affordable housing units shall be compatible and comparable with the rest of the *dwelling units* in the *development* and shall comply with any applicable design standards. The interior finish and quality of construction of the affordable housing units shall at a minimum be comparable to entry level rental or ownership housing in the *City*.

D. Duration. Housing shall serve only income-eligible households for a minimum period of 50 years from the latter of the date when the affordability agreement between the housing owner and the *City*, as described in KMC 18.77.050, is recorded, or the date when the affordable housing becomes available for occupancy as determined by the *City*.

E. Timing/Phasing. The affordable housing units shall be available for occupancy in a time frame comparable to the availability of the rest of the *dwelling units* in the *development*. [Ord. 19-0481 § 2 (Exh. A).]

18.77.020 Downtown residential and downtown commercial zones.

The provisions of this section shall apply to multifamily residential *developments* proposed on property four acres or greater in size within the downtown residential or downtown commercial zones that lie west of 68th Avenue NE, and which are providing for more than 20 *multiple-family dwelling units*.

A. Twenty-five percent of the total number of units in the *development* shall be *moderate-income affordable housing units*.

B. Subject to *City* authorization, the affordable units need not be provided within the *development*, but must be provided within the downtown commercial, downtown residential, urban corridor, waterfront commercial, or regional business zone. [Ord. 19-0481 § 2 (Exh. A); Ord. 11-0329 § 3 (Exh. 1).]

Proposed amendments are highlighted in yellow

18.77.030 Transit oriented development (TOD) district overlay.

A. Properties developed under the TOD district overlay, Chapter 18.29 KMC, shall include affordable housing units.

B. Cap on Total Number of Affordable Housing Units Required. Affordable housing requirements shall be capped at 10 percent of the total number of *dwelling units* being provided.

C. Number of Affordable Housing Units Required. Affordable housing units shall be provided for any *development* exceeding the base density of the underlying zone as follows:

1. Tier 1. If the number of bonus units is less than or equal to 30 percent of the total number of *dwelling units*, then for every three bonus units, one *dwelling unit* shall be a *moderate-income affordable housing unit* and two bonus *dwelling units* may be bonus market rate *dwelling units*.

2. Tier 2. If the number of bonus units is greater than 30 percent of the total number of *dwelling units* and if the overall project density is less than or equal to 120 *dwelling units* per acre, then a combination of *low-income affordable housing units* and *moderate-income affordable housing units* shall be provided as follows: For every four bonus units allowed beyond that needed to achieve the 10 percent *moderate-income affordable housing units*, one of the *moderate-income affordable housing units* shall be made into a *low-income affordable housing unit* up to a maximum of 33 percent of the affordable housing units (or 3.3 percent of the total *dwelling units* in the *development*).

3. Tier 3. If the overall development density is greater than 120 *dwelling units* per acre, a combination of *very low-income affordable housing units, low-income affordable housing units* and *moderate-income affordable housing units* shall be provided as follows: The required numbers of *low-income affordable housing units* and *moderate-income affordable housing units* shall be equivalent to those that would be required under Tier 2, assuming that the project were to be developed at a density of 120 *dwelling units* per acre. An amount of *very low-income affordable housing* shall be required so that the total combined amount of *very low-income, low-income* and *moderate-income affordable housing units* is equal to 10 percent of the total number of *dwelling units* in the *development*.

4. Affordable Housing Example. Example is a one-and-one-half-acre property with a base density of 48 *dwelling units* (du)/acre. Without the TOD district overlay, the property could achieve up to 72 *dwelling units*.

Tier 1 example: Proposed TOD *development* would achieve 93 *dwelling units* on *site* for 62 du/acre. This provides 21 "bonus" *dwelling units* above the 48 du/acre base density of the zone. Since the number of bonus units (21) is less than 30 percent of the total units (93), seven of the 21 bonus units must be affordable to moderate-income households, meeting Tier 1 affordability requirements.

Proposed amendments are highlighted in yellow

Tier 2 example: Proposed TOD *development* would achieve 113 *dwelling units* on *site* for 75 du/acre. This provides 41 "bonus" *dwelling units* above the 48 du/acre base density of the zone.

Since the number of bonus units (41) is greater than 30 percent of the total units (113), 11 of the 41 bonus units must be affordable, meeting the 10 percent affordability cap. Nine of these are affordable to moderate-income households and two are affordable to low-income households (33 of the bonus units used toward achieving 10 percent affordable units (11*3) plus eight of the bonus units applied toward making two of the affordable units low-income affordable units (8*.25=2).

Tier 3 example: Proposed TOD *development* would achieve 210 *dwelling units* on *site* for 140 du/acre. The first step is to determine how many affordable units would have been required assuming 120 du/acre using the Tier 2 formula This calculation results in 13 *moderate-income affordable housing units* and five *low-income affordable housing units*. To achieve the requirement that 10 percent of the total units in the *development* be affordable, three additional affordable housing units would be needed (21-18=3). These three units would be required to be *very low-income affordable housing units*. In summary, the *development* would provide 13 *moderate-income affordable housing units*, five *low-income affordable housing units*, and three *very low-income affordable housing units*. [Ord. 19-0481 § 2 (Exh. A); Ord. 14-0391 § 2 (Exh. 1); Ord. 13-0363 § 5; Ord. 11-0329 § 3 (Exh. 1).]

18.77.040 Community business zone, Juanita subarea.

A. For properties choosing to develop at higher residential densities in the CB Juanita subarea, Chapter 18.23 KMC, affordable housing units shall be provided for any *development* exceeding the base density of 24 *dwelling units* per acre as follows:

1. For every four bonus units, one bonus *dwelling unit* shall be a *moderate-income affordable housing unit* and three bonus *dwelling units* may be bonus market rate *dwelling units*.

2. Each *low-income affordable housing unit* provided counts as two *moderate-income affordable housing units* for the purpose of satisfying the affordable unit requirement under subsection (A)(1) of this section.

Example: Proposed *development* would achieve 36 *dwelling units* on a one-acre *site* for a density of 36 du/acre. This provides 12 "bonus" *dwelling units* above the 24 du/acre base density of the zone. Three of the 12 bonus units must be *moderate-income affordable housing units*. Alternatively, the project could provide two *low-income affordable housing units* (rounded). [Ord. 19-0481 § 2 (Exh. A).]

18.77.045 Alternative compliance.

Alternative Compliance. The *city manager* may approve a request for satisfying all or part of the affordable housing requirements with alternative compliance methods as follows:

A. Application. Applications for alternative compliance shall be submitted at the time of permit application, and must be approved prior to issuance of any building permit.

Proposed amendments are highlighted in yellow

B. Off-Site Provision. A project proponent may propose to satisfy all or part of affordable housing requirements off site.

1. The project proponent must demonstrate that off-site provision of new affordable housing achieves a result equal to or better than providing affordable housing on site.

2. Affordable housing units provided through this method must be the same type of units as the units in the project which gave rise to the requirement.

3. Priority is for the project to be located within the same zoning district as the *development* responsible for providing affordable housing. However, the *city manager* may approve a project located outside the zoning district if the location has access to commercial *uses* and transit, does not result in an undue concentration of affordable housing, and has adequate infrastructure.

4. The proposal must demonstrate that the affordable units provided off site will be completed before or within the same time period as the *development* generating the affordable housing requirement. For projects approved for off-site affordable housing, there will be a recorded agreement on both the "sending" property and the "receiving" property. The covenant on the sending site will be released once the affordable housing is completed on the receiving property.

C. Contribution to Preservation of Existing Affordable Housing. A project proponent may propose to satisfy all or part of affordable housing requirements through purchase and long-term preservation of existing affordable housing, particularly in the *City's manufactured housing communities*. The *applicant* shall provide information demonstrating affordability of the units to be preserved and a long-term covenant shall be placed over the preserved units, ensuring preservation and maintenance of the affordable units.

D. Fee in Lieu. Cash payments in lieu of providing actual housing units may be proposed and, if approved by the *City*, shall be used only for the subsequent preservation or provision of affordable housing units by the *City* or other housing provider approved by the *city manager*. Payments in lieu shall be based on the difference between the cost of construction for a prototype affordable housing unit on the subject property, including land costs and development fees, and the revenue generated by an affordable housing unit. The payment obligation will be established at the time of issuance of building permits for the project. [Ord. 19-0481 § 2 (Exh. A).]

18.77.050 Affordability agreement.

A. Prior to issuing any building permit, an agreement in a form approved by the *city manager* that addresses price restrictions, homebuyer or tenant qualifications, phasing of construction, monitoring of affordability, duration of affordability, and any other applicable topics of the affordable housing units shall be recorded with King County Department of Records and Elections. This agreement shall be a covenant running with the land and shall be binding on the assigns, heirs and successors of the *applicant*. The City may agree, at its sole discretion, to subordinate any affordable housing

regulatory agreement for the purpose of enabling the owner to obtain financing for *development* of the property.

B. Monitoring and Fees. The *City* reserves the right to establish, in the affordability agreement referred to in subsection A of this section, monitoring fees for the affordable housing unit, which can be adjusted over time to account for inflation. The purpose of any monitoring fee is for the review and processing of documents to maintain compliance with income and affordability restrictions of the affordability agreement. [Ord. 19-0481 § 2 (Exh. A).]

18.77.060 Expedited permit processing.

A. Certain projects containing *very low-income* or *low-income affordable housing units* in the R-12, R-18, R-24, NB, CB,DR, DC, UC, WC, RB, and PSP zones that require a Type 2 Land Use Decision as described in KMC 19.25.020 may have that process reduced to a Type 1 Land Use Decision unless the proposal includes any of the following:

1. Short subdivision, including revisions and alterations;

2. Zoning variance;

3. Conditional use permit;

4. Shoreline permit; or

5. Critical area exceptions, variances or modifications under Chapter 18.55 KMC.

B. Any applicant for a project containing *very low-income* or *low-income affordable housing units* may request that review of the project be expedited. The request may be made on forms provided by the *City*. If a determination is made by the *city manager* that *City* staffing or other permit priorities do not allow expedited permit review, the *applicant* may request that the project be reviewed by a consultant working for the City at the *applicant's* expense.

Proposed amendments are highlighted in yellow

19.25.020 Classifications of land use decision processes.

A. Land use decisions are classified into five types, based on the amount of discretion associated with each decision. Procedures for the five different types are distinguished according to who makes the decision, whether public notice is required, whether a public hearing is required before a decision is made and whether administrative appeals are provided. The types of land use decisions are listed in Exhibit A of this section.

1. Type 1 decisions are made by the *city manager*. Type 1 decisions are nonappealable administrative decisions that require the exercise of little or no administrative discretion. Public notice is not required for Type 1 decisions.

2. Type 2 decisions are made by the *city manager*. Type 2 decisions are discretionary decisions that are subject to administrative appeal.

3. Type 3 decisions are quasi-judicial decisions made by the *hearing examiner* following an open record hearing. Type 3 decisions may be appealed directly to King County superior court, pursuant to Chapter 36.70C RCW, the Land Use Petition Act, based on the record established by the *hearing examiner*.

4. Type 4 decisions are quasi-judicial decisions made by the city council based on the record established by the *hearing examiner*.

5. Type 5 decisions are legislative decisions made by the city council.

B. Except as provided in KMC 16.75.060 and 19.35.160 or unless otherwise agreed to by the *applicant*, all Type 2, 3 and 4 decisions included in consolidated permit applications that would require more than one type of land use decision process may be processed and decided together, including any administrative appeals, using the highest-numbered land use decision type applicable to the project application. KMC 16.75.060 sets out the combined hearing authority for shoreline exemptions, shoreline substantial development permits, shoreline variances, and shoreline conditional use permits.

C. Certain development proposals are subject to additional procedural requirements beyond the standard procedures established in this chapter.

D. Land use permits that are categorically exempt from review under SEPA do not require a threshold determination (determination of nonsignificance (DNS) or determination of significance (DS)). For all other projects, the SEPA review procedures in Chapter 19.35 KMC are supplemental to the procedures in this chapter.

Exhibit A

LAND USE DECISION TYPES

TYPE 1[2]	Decision by *city manager*; no administrative appeal	Building; demolition; moving; engineering; clearing and grading; sign; change of use and/or classification under KMC Title 15; accessory dwelling unit; home occupation; boundary line adjustment; right-of-way; street standards variance; adjustment under Chapter 13.35 KMC; shoreline exemption; temporary use; binding site plan; preliminary subdivision or short subdivision revision if not a substantial change; short plat alteration if not a substantial change; affordable housing project as described in KMC 18.77.060.A .
TYPE 2	Decision by *city manager*; appealable to *hearing examiner*; no further administrative appeal[1, 5]	Home industry; short subdivision; preliminary short subdivision revision; short plat alteration; zoning variance; conditional use permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; site plan review for uses allowed by zone; wireless communication facility minor adjustment under Chapter 18.60 KMC; approval of residential density incentives under KMC 18.80.060(A)(2) or transfer of development credits under KMC 18.80.090(A); reuse of public schools; reasonable use exceptions under KMC 18.55.180; public agency and utility exceptions under KMC 18.55.160; other critical areas exceptions, variances and decisions to require studies or to approve, condition or deny a development proposal based on Chapter 18.55 KMC.
TYPE 3	Recommendation by *city manager*; hearing and decision by *hearing examiner*; appealable directly to King County superior court, pursuant to Chapter 36.70C RCW, the Land Use Petition Act, on the record	Preliminary subdivision; plat alteration; preliminary subdivision revision; special use; wireless communication facility major adjustment under Chapter 18.60 KMC.
TYPE 4	Recommendation by *city manager*; hearing and recommendation by *hearing examiner*; decision by city council on the record	Zone *reclassification* not related to a *site-specific comprehensive plan land use map amendment*[3]; shoreline environment redesignation; plat vacation; short plat vacation; site plan review for uses not allowed by zone pursuant to Chapter 18.105 KMC; master plans other than those required in order to obtain a *comprehensive plan* amendment or related zoning map or text amendment.
TYPE 5	Hearing and recommendation by planning commission or other city council-appointed advisory body[4]; decision by city council on the record. Appealable to Growth Management	*Comprehensive plan* amendment; *development regulation* amendment; zoning map amendment related to a *site-specific comprehensive plan land use map amendment*; master plans required in order to obtain a *comprehensive plan* amendment or related

Proposed amendments are highlighted in yellow

	Hearings Board pursuant to Chapter 36.70A RCW	zoning map or text amendment pursuant to Chapter 18.120 KMC.

[1] All shoreline permits, including shoreline variances and conditional uses, are appealable to the State Shorelines Hearings Board and not to the *hearing examiner*.

[2] Type 1 land use decisions that are not categorically exempt from environmental review under Chapter 43.21C RCW (State Environmental Policy Act) shall provide a notice of application per KMC 19.25.060 and a notice of decision per KMC 19.25.090. The notice of decision may be a copy of the permit.

[3] Approvals that are consistent with the *comprehensive plan* may be considered by the city council at any time. Zone *reclassifications* that are not consistent with the *comprehensive plan* land use map require a *site-specific comprehensive plan land use map amendment* and the city council's hearing, and consideration shall be considered a Type 5 land use decision and scheduled with the amendment to the *comprehensive plan* under Chapter 19.20 KMC.

[4] If the proposal is being considered as part of the annual *docket* work program as described in Chapter 19.20 KMC. If the proposal is not part of the annual *docket*, the city council conducts the public participation process and makes the decision on the record.

[5] Decisions on shoreline variance and shoreline conditional use permits require approval by the Department of Ecology.

[Ord. 19-0481 § 2 (Exh. A); Ord. 16-0426 § 8 (Att. F); Ord. 12-0334 § 18; Ord. 11-0329 § 3 (Exh. 1).]

Proposed amendments are highlighted in yellow

Chapter 18.105
SITE PLAN REVIEW

18.105.020 Applicability.

A. An application for site plan review shall be submitted for the following *development proposals*:

1. *Development* on *sites* identified on the *City*'s Site Plan Review Requirement Map as depicted in Figure 18.105.020.A.1;

2. *Development* on *sites* equal to or greater than three acres in size at the time of application in the PSP zone;

3. *Development* proposed for *classified uses* which are neither permitted, nor conditionally permitted, nor prohibited in the P, GC or PSP zones; or

4. *Development* on other *sites* as determined by the *city manager* after a preliminary review of the project's scope.

B. An application for site plan review may be submitted by an applicant for any *development proposal*.

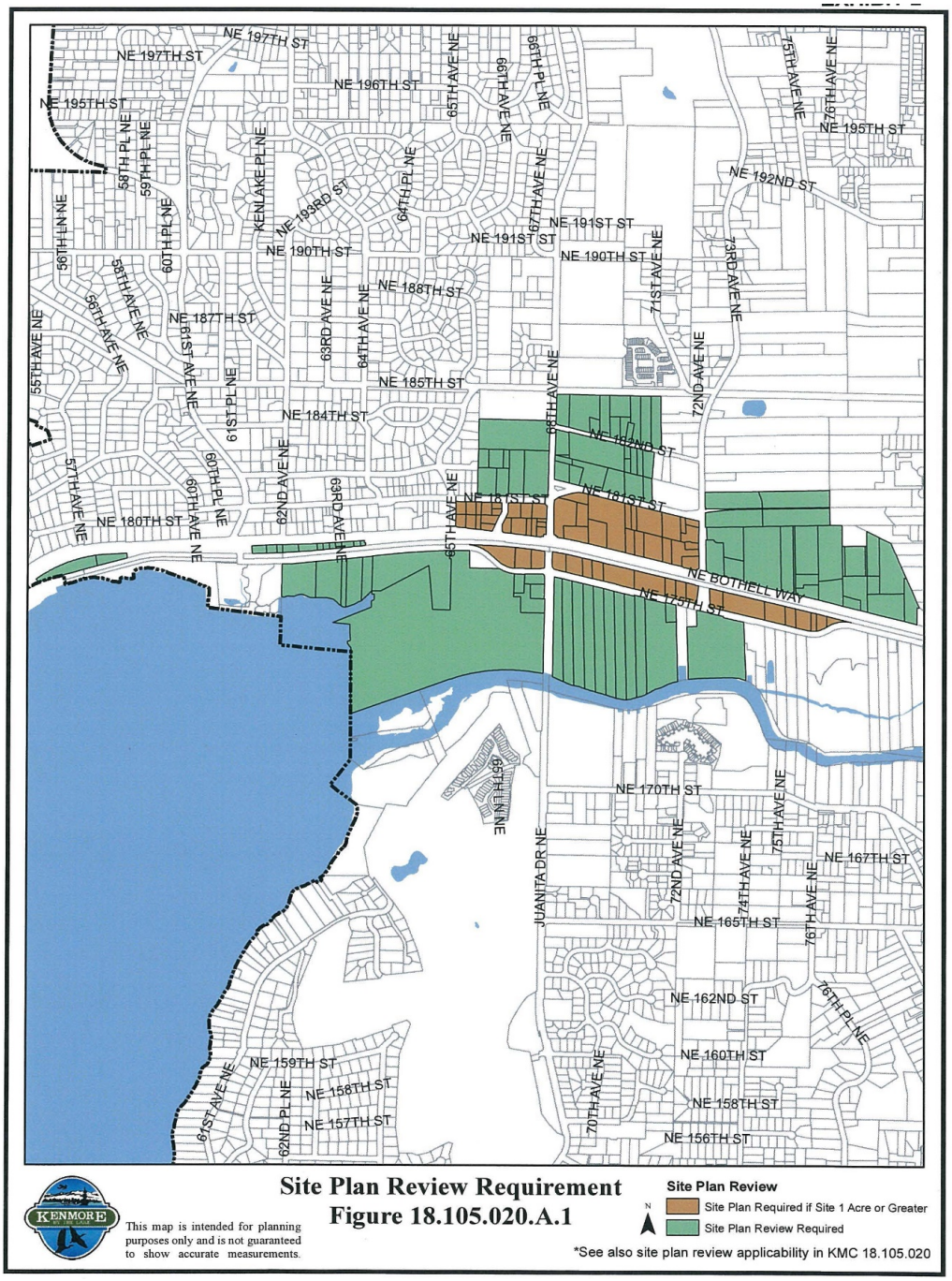
C. A site plan review is separate from and does not replace other required land use permits. A site plan review may be combined and reviewed concurrently with other land use permits, however.

D. If required or requested under subsection A or B of this section, an applicant shall receive a site plan review prior to the issuance of building, mechanical, plumbing, electrical, clearing, grading, engineering, or other similar administrative permits.

E. Proposed expansion of existing *development* for *sites* described under subsection A of this section, with or without an approved site plan review, shall require a new site plan review when such changes are determined by the *city manager* to be a major modification. For purposes of this section, factors to be considered when determining whether an expansion is a major modification include but are not limited to relocation of access or parking, addition of a building, or incorporation of an additional lot.

F. An applicant may request a waiver of the site plan review requirement from the *city manager*. Such waiver shall be based on a preliminary review of the development proposal and a written finding that the proposal is consistent with the comprehensive plan and the requirements of this title, is minor in scope, and will have no adverse effects on neighboring properties or the City as a whole.

Proposed amendments are highlighted in yellow



[Ord. 14-0391 § 2 (Exh. 1, 2); Ord. 11-0329 § 3 (Exh. 1).]

6. Affordable Housing Review Process - Joint meeting presentation

Proposed amendments are highlighted in yellow

18.105.030 Process.

A site plan review shall be processed as follows:

A. For those *sites* identified under KMC 18.105.020(A)(1) and (2) and (B), the site plan review shall be processed in accordance with requirements for a Type 2 land use decision as outlined in Chapter 19.25 KMC, unless otherwise authorized by KMC 18.77.060.A..

B. For those *sites* identified under KMC 18.105.020(A)(3), the site plan review shall be processed in accordance with requirements for a Type 4 land use decision as outlined in Chapter 19.25 KMC.

C. For those *sites* identified under KMC 18.105.020(A)(4), the site plan review shall be processed in accordance with requirements for a Type 2 land use decision as outlined in Chapter 19.25 KMC, unless otherwise determined by the city manager. [Ord. 11-0329 § 3 (Exh. 1).]

Chapter 18.80
RESIDENTIAL DENSITY INCENTIVES AND TRANSFER OF DENSITY

18.80.010 Purpose.

The purpose of this chapter is to:

A. Provide density incentives to *developers* of residential property, in exchange for public benefits to help achieve comprehensive plan goals of affordable housing, *open space* protection, and parkland acquisition by:

l. Defining in quantified terms the public benefits that can be used to earn density incentives;

2. Providing rules and formulae for computing density incentives earned by each benefit.

B. Provide a method to realize the development potential of:

1. Sites containing *critical areas* or of unique size or shape;

2. Specific *sites* preserved in order to achieve comprehensive plan goals as identified by the *city council*.

Proposed amendments are highlighted in yellow

C. Provide a review process to allow evaluation of proposed density increases, using residential density incentives and the public benefits offered to earn them~~, and give the public opportunities to review and comment~~. [Ord. 19-0481 § 2 (Exh. A); Ord. 11-0329 § 3 (Exh. 1).]

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18.80.060 Review process.

A. All RDI proposals shall be reviewed concurrently with a primary proposal to consider the proposed site plan and methods used to earn extra density.

1. When the primary proposal requires a public hearing under this code or KMC Title 17, the public hearing on the primary proposal shall serve as the hearing on the RDI proposal, and the reviewing authority shall make a consolidated decision on the proposed *development* and use of RDI;

2. When the primary proposal does not require a public hearing under this code or KMC Title 17, the RDI proposal shall be processed as a Type 2 land use decision, unless otherwise authorized by KMC 18.77.060.A, subject to the decision criteria for *conditional use permits* outlined in Chapter 18.115 KMC; and

3. The notice for the RDI proposal also shall include the *development*'s proposed density and a general description of the public benefits offered to earn extra density.

B. RDI applications which propose to earn bonus units by dedicating real property or public facilities shall include a letter from the receiving agency certifying that the proposed dedication qualifies for the density incentive and will be accepted by the agency or other qualifying organization. [Ord. 19-0481 § 2 (Exh. A); Ord. 11-0329 § 3 (Exh. 1).]

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18.80.090 Transfer of density credits.

In order to realize the development potential of *sites* containing *critical areas* or of unique size or shape, or *sites* preserved in order to attain comprehensive plan goals, an opportunity to transfer unused density from one *site* to another shall be provided. *Transfer of density credit* transactions shall be handled between the private parties, with documentation provided to the *City*, until such time as the *City* enters into a formalized transfer of development rights (TDR) process through King County or another agency.

A. Transfer of Density from *Sites* Constrained by *Critical Areas* or of Unique Size and Shape.
A *development* proponent may apply to transfer unused density from a *site* constrained by *critical areas* or of unique size or shape to another *site* through a Type 2 land use decision, unless otherwise authorized by KMC 18.77.060.A.

Proposed amendments are highlighted in yellow

Chapter 18.110
DEVELOPMENT AGREEMENTS

Sections:

18.110.010 Authority.
18.110.020 General provisions.
18.110.030 Development standards – Flexibility.
18.110.040 Enforceability.
18.110.050 Processing procedure.
18.110.060 Status, recording and amendment of development agreement.

18.110.010 Authority.

The *City* may consider and enter into a *development agreement* with the owners of real property within the *City*, or with persons having control of real property within the *City* if the owners of such real property execute an authorization for such real property to be subject to and bound by the *development agreement*. In this chapter, the term *"owner"* shall include both the owner of such real property and such person having control of such property. Per RCW 36.70B.170, the execution of a *development agreement* is a proper exercise of *City* police power and contract authority. A *development agreement* must set forth the development standards and other provisions that shall apply to and govern and vest the *development*, *use* and mitigation of the development of the real property for the duration specified in the agreement. The decision of the city council to approve or reject a request for a *development agreement* is a proper exercise of police power and contract authority and shall be a discretionary, legislative act. [Ord. 15-0395 § 1 (Att. A); Ord. 12-0347 § 1 (Att. A).]

18.110.020 General provisions.

A. In this chapter, the term *"development regulations"* shall have the meaning set forth in KMC 19.10.070.

B. A *development agreement* shall be consistent with the applicable policies and goals of the *City's* comprehensive plan.

C. Any departure requested by the *owner* from the development standards of this code through a *development agreement* shall be offset by the *owner's* provision of a benefit to the *City* of equal or greater value relative to the departure requested, as determined by the *City*.

1. Equivalent value need not be measured monetarily and the proposed benefit need not be of the same type as the existing development standard requirement. For example, the benefit of a public open space dedication may be considered against the benefit of a required street improvement.

2. In considering equivalency for the P-suffix and special district overlay regulations, the scope and scale of the proposed development shall be considered. The P-suffix and special district overlay regulations were applied as mitigation for a major mixed use development and they may be modified or eliminated through the development agreement process.

Proposed amendments are highlighted in yellow

3. In considering a request for an increased density bonus for affordable housing located on property owned or controlled by a religious organization per RCW 36.70A.545, a density bonus for a project providing *moderate-income affordable housing units* shall not exceed the maximum density allowed by the zoning district of the subject property. To achieve a greater density bonus, the project shall provide a significant proportion of *low-* or *very-low income affordable housing units*.

In no case shall a departure from the development standards be granted if no equivalent benefit to the *City* is provided.

D. A *development agreement* may be proposed and approved only for the following properties:

1. Properties in the downtown commercial (DC), regional business (RB), waterfront commercial (WC), urban corridor (UC), downtown residential (DR), community business (CB), neighborhood business (NB), public and semi-public (PSP), parks (P) and golf course (GC) zones.

2. Properties in any zone owned or controlled by a religious organization as defined in RCW 36.01.290 requesting consideration of an increased density bonus for affordable housing as described in RCW 36.70A.545; provided, however, that the requirements of RCW 36.70A.545(1)(a)-(c) shall apply to such a request.

E. A *development agreement* does not supplant any other required land use decision per KMC 19.25.020, including but not limited to a rezone, a shoreline permit, a site plan review, or an environmental review under Chapter 19.35 KMC. Such land use decisions shall be reviewed in conjunction with the *development agreement*.

F. As applicable, the *development agreement* must specify the following:

1. Project components which define and detail the permitted *uses*, residential densities, nonresidential densities and intensities or building sizes;

2. Design standards such as architectural treatment, maximum heights, *setbacks*, *landscaping*, drainage and water quality requirements and other development features;

3. Parking;

4. Provisions for affordable housing, if applicable;

5. *Parks* and common *open space* preservation;

6. Amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of State law, any reimbursement provisions, other financial contributions by the property *owner*, inspection fees or dedications;

7. Mitigation measures, development conditions and other requirements of Chapter 43.21C RCW;

8. Phasing;

9. Build-out or vesting periods for applicable standards; and

10. Other appropriate development requirements or procedures which are based upon a *City* policy, rule, regulation or standard.

G. A *development agreement* may obligate a party to dedicate land or easements, or fund or provide services, infrastructure or other facilities.

H. Subsequently adopted development standards which differ from those of an approved *development agreement* shall apply to the property subject to the *development agreement* only where necessary to address a serious threat to public health and safety. Subsequently adopted development standards which differ from those of an approved *development agreement* also shall apply following expiration of any phase or time period specified in the *development agreement* during which identified standards cannot be modified. [Ord. 15-0395 § 1 (Att. A); Ord. 14-0392 § 1; Ord. 14-0391 § 2 (Exh. 1); Ord. 12-0347 § 1 (Att. A).]

18.110.030 Development standards – Flexibility.

A. A *development agreement* shall be consistent with applicable development regulations to the fullest extent possible. Provided, however, a *development agreement* may allow for development standards that are different from those standards otherwise imposed under this code in order to provide flexibility to achieve public benefits, respond to changing community needs, or authorize modifications which provide the functional equivalent or adequately achieve the purposes of otherwise applicable development standards.

B. A *development agreement* cannot authorize deviations from *uses*, residential densities, *floor area ratio* limitations, or maximum *structure* height – whether required by zoning district provisions, property-specific development standards, or special district overlay requirements – unless the city council approves the deviation by a vote of a majority plus one of the whole city council after a minimum of two public hearings on the agreement.

C. A *development agreement* cannot authorize deviations from the following development standards:

1. KMC Title 15, Buildings and Construction;

2. KMC Title 16, Environment;

3. Chapter 18.55 KMC, Critical Areas; and

4. Chapter 13.35 KMC, Surface Water Runoff Policy, and Chapter 13.45 KMC, Water Quality.

D. Any approved development standards that differ from those in this code shall not require any further *variance* from development standards or *use* permit apart from *development agreement* approval. The development standards as approved through a *development agreement* shall apply to and govern the development of the property subject to the *development agreement* in lieu of any conflicting or different standards or requirements elsewhere in this code. [Ord. 15-0395 § 1 (Att. A); Ord. 14-0391 § 2 (Exh. 1); Ord. 14-0391 § 2 (Exh. 1); Ord. 12-0347 § 1 (Att. A).]

Proposed amendments are highlighted in yellow

18.110.040 Enforceability.

The *development agreement* shall be binding on the parties and their successors. Unless amended or terminated by agreement of both parties to a *development agreement*, the agreement is enforceable during its term by a party to the agreement. Except as provided in KMC 18.110.020(H), a *development agreement* and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement. The *development agreement* shall not be subject to an amendment to a *development regulation* or a new *development regulation* adopted after the effective date of the agreement, except as provided in KMC 18.110.020(H). Applications for building permits and other permits subject to KMC Title 15, Buildings and Construction, shall be considered under the provisions of KMC Title 15 that are in effect at the time of submittal of a valid and fully complete application. Any land use decision issued by the *City* pertaining to the property subject to the *development agreement* after the execution of the *development agreement* must be consistent with the agreement. [Ord. 15-0395 § 1 (Att. A); Ord. 12-0347 § 1 (Att. A).]

18.110.050 Processing procedure.

A. An application for a *development agreement* shall be filed by the *owner* of real property within the *City* on forms provided by the *department*. An application shall be accompanied by an application fee pursuant to the *City's* current fee schedule and a signed agreement on forms provided by the *department* to reimburse the *City* for fees of the city attorney pursuant to the *City's* current agreement with the city attorney. The *development agreement* may provide for assignment of a portion of the application fee to other permit fees if a *development agreement* is ultimately approved by the city council.

B. The city council shall make a threshold decision on each application for a *development agreement* at a regular meeting of the city council. If a majority of the whole council approves further review of the *development agreement*, the agreement shall be processed as described in this section. No threshold decision is needed for *development agreement* applications for an increased density bonus for affordable housing located on property owned or controlled by a religious organization as defined in RCW36.01.290.

C. Before voting on a proposed *development agreement*, the city council shall hold a public hearing on the *development agreement*. Consistent with KMC 18.110.030(B), two public hearings shall be held on the *development agreement* if deviations from *uses*, residential densities, *floor area ratio* limitations, or maximum *structure* height – whether required by zoning district provisions, property-specific development standards, or special district overlay requirements – are requested. The city council shall approve, disapprove or modify a *development agreement* by ordinance adopted by the vote of a majority plus one of the whole city council. The ordinance, if approving or modifying the *development agreement*, shall authorize the *city manager* to execute the *development agreement* on behalf of the *City*.

D. The *city manager* shall prepare a recommendation to the city council on a proposed *development agreement*. The *city manager* shall provide the recommendation to the city council, and make it available to the public, at least 10 calendar days prior to the public hearing on the proposed *development agreement*.

E. If a *development agreement* is associated with a Type 5 land use decision such as a comprehensive plan amendment, the *development agreement* shall be processed concurrently with the Type 5 land use decision. A recommendation of the planning commission to the city council on

the Type 5 land use decision shall be issued at least 10 calendar days prior to the public hearing on the proposed *development agreement*.

F. If the *owner* files an application for a Type 2, 3 or 4 land use decision or a Type 1 land use decision subject to SEPA, the *City* shall review and process the application concurrently with the *development agreement*, and the *owner* shall sign a written waiver of the deadline for issuance of the final land use decision. A final decision of the *city manager* or *hearing examiner* on such types of land use decisions shall become effective on the date that the city council passes the ordinance for the *development agreement*. The period for appealing such final decision shall commence on the date that the city council passes such ordinance. A recommendation of the *city manager* or *hearing examiner* to the city council on such types of land use decisions shall be issued at least 10 calendar days prior to the public hearing on the proposed *development agreement*.

G. The *City* shall give notice of the meeting at which the city council considers a proposed *development agreement*, or amendment thereto, and of the public hearing(s) on the proposed *development agreement*, or amendment thereto, as follows:

1. Not less than 10 calendar days prior to the public hearing date, a notice of the public hearing shall be sent to property owners within 1,000 feet of the property subject to the *development agreement* and to others who have submitted comments and/or requested notice.

2. Notice of the public hearing shall be posted on the property subject to the *development agreement* not less than 10 calendar days prior to the hearing date. Notice shall be posted in the manner required by KMC 19.25.065.

3. Notice of the city council meeting and public hearing shall be published in the *City*'s official newspaper not less than 10 calendar days prior to the meeting or hearing date.

4. All costs associated with the public notice shall be borne by the *owner*.

5. All notices shall state that the *city manager's* recommendation on the proposed *development agreement* is available for review at the front desk of City Hall and on the City's website.

H. Any subsequent land use decisions shall be reviewed for compliance with the terms of the *development agreement* and any associated land use decisions. [Ord. 15-0395 § 1 (Att. A); Ord. 14-0391 § 2 (Exh. 1); Ord. 12-0347 § 1 (Att. A).]

18.110.060 Status, recording and amendment of development agreement.

A. *Development agreement*s are not "project permit applications" as defined in RCW 36.70B.020(4). Therefore, there is no deadline for processing a *development agreement*.

B. The city attorney shall review and approve a proposed *development agreement* as to form at least 30 calendar days prior to the public hearing on the *development agreement*. The *owner* shall sign the *development agreement* before the public hearing on the *development agreement*. If a person or corporation has a "substantial beneficial interest in the property" as specifically described below, the *owner* shall submit to the *city manager* with the request for *development agreement* a document

stating that such person or corporation concurs in the request and will not object to, contest or appeal any terms and conditions of the approved *development agreement*. A person or corporation having a "substantial beneficial interest in the property" shall include easement holders, lessees with a lease of one year or more, and persons or corporations with a recorded deed of trust or mortgage on the real property subject to the *development agreement*. The *city manager* shall have the authority to determine whether other persons or corporations with an interest in the real property subject to the *development agreement* have a "substantial beneficial interest in the property." Within 20 calendar days of receiving written notice that the *city manager* has determined that other persons or corporations have a "substantial beneficial interest in the property," the *owner* shall submit to the *city manager* the document described above for each such person or corporation.

C. The term of *development agreements* and extensions thereof shall be as follows:

1. *Development agreements* may be approved for a maximum period of 20 years.

2. In determining the appropriate term for a *development agreement*, the city council should consider the type, size and location of *development* and phasing if proposed. The city council may consider shorter terms with extensions.

3. If extensions are authorized in a *development agreement*, the *owner* must request the extension at least 90 calendar days prior to expiration of the term or any extension. For *development agreements* associated with land use decisions, the *city manager* may grant an extension for up to five years if the *owner* can satisfactorily show that, for a residential project, at least 50 percent of the residential units are constructed, or for nonresidential and mixed use projects, at least 50 percent of the gross floor area is constructed. All other requests for extensions shall be reviewed by the city council, unless another process is expressly provided for in the *development agreement*.

D. The City shall record an approved *development agreement* with the King County recorder's office, at the cost of the *owner*.

E. The *owner* may request an amendment to a *development agreement*. Before voting on the amendment, the city council shall hold a public hearing. The city council shall approve, disapprove or modify an amendment by ordinance adopted by the vote of a majority plus one of the whole city council. The ordinance, if approving or modifying the *development agreement*, shall authorize the *city manager* to execute the amendment on behalf of the *City*. The city council shall not approve or modify an amendment unless it is consistent with any associated land use decisions and approved modifications thereto. [Ord. 15-0395 § 1 (Att. A); Ord. 12-0347 § 1 (Att. A).]