

City of Kenmore



City of Kenmore - 18120 68th Avenue NE - Kenmore, WA 98028

Phone: 425-398-8900 - E-mail: cityhall@kenmorewa.gov

City of Kenmore Planning Commission Meeting Agenda

Tuesday, October 20, 2020 @ 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/91345969945>

Or iPhone one-tap :

US: +12532158782,,91345969945# or +16699006833,,91345969945#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 253 215 8782 or +1 669 900 6833 or +1 346 248 7799 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799

Webinar ID: 913 4596 9945

International numbers available: <https://zoom.us/u/adzTjBpJ1V>

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. 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, October 20, 2020. All comments received will be forwarded to the Planning Commission for consideration. You can also use the "raise hand" feature in Zoom during the Citizen Comment portion of the meeting or by calling in. The 3-minute limit still applies.

3. APPROVAL OF MINUTES

4. AGENDA ITEMS

Affordable Housing Review Process

[Staff Memo: Affordable Housing Review Process](#)
[Attachment 1- Chapter 18.77 Code Amendments](#)
[Attachment 2- Chapter 19.25 Code Amendments](#)
[Attachment 3- Other consistency amendments](#)
[Attachment 4- Possible expedited review requirement](#)
[Attachment 5- Bill Digest](#)
[Attachment 6- Chapter 18.110 Code Amendments](#)

**Presentation of the Parks, Recreation and Open Space and Capital Facilities
Elements Comprehensive Plan amendments to the City Council November 16**

Planning Commission interview process

5. ADJOURNMENT

6. UPCOMING MEETINGS:

November 3, 2020, 7:00 p.m. – to be cancelled

November 17, 2020 – via Zoom



City Of Kenmore, Washington

Memorandum

Date: October 13, 2020

To: Planning Commission

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

Regarding: Affordable Housing Review Process

Attached for your review (Attachments 1 and 2) are the proposed affordable housing review process amendments with the changes you requested at your October 6 meeting. We have also made changes to other sections of the Municipal Code that would require adjustment (see Attachment 3).

As you requested, we asked ARCH and three affordable housing developers about requiring either a deeper level of affordability or an increased number of affordable units in exchange for the expedited process. ARCH staff concluded that, overall, there would be little real savings in project costs with the expedited process. A savings in debt payments for 2-5 months early in the process (before the majority of the debt is incurred) generally isn't that significant. For this reason, the long-term cost of providing more affordable units or units at lower levels of affordability is likely not worth the short-term benefit of the expedited process.

A summary of comments by the developers will be presented at your October 20 meeting. However, given ARCH's reaction to the proposal, staff is recommending against requiring either additional affordable housing units or deeper affordability of units in exchange for the expedited process. If the Commission continues to support this approach, potential language is provided in Attachment 4.

We asked Bryan Hampson, the Development Services Director, whether not allowing the process reduction for projects needing a variance would severely limit opportunities. Here is his response, "I don't think eliminating the variance process would have a major impact on the ability of affordable housing projects to take advantage of the Type 1 opportunity. Variances are pretty rare and are typically with more complex projects. Shouldn't be an issue."

Staff further reviewed the State requirement for affordable housing density increases on properties owned by religious organizations. Attachment 5 is the Bill Digest for the legislation. We also contacted the City Attorney in response to your two questions:

1. Could the City require more affordability (for low over very-low income projects) in exchange for the density increase. *City Attorney response: Yes, however this requirement should be explained in the Development Agreement chapter.*
2. Was the law contemplating reuse/repurposing of existing properties under the control of a religious organization, or could an organization purchase new property and request the density increase? *City Attorney response: The statute applies both to properties currently owned by a religious organization and to those they may acquire in the future.*

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To advance the discussion on this State requirement, staff has prepared Code amendments that would allow the Development Agreement process to be used to evaluate a religious organization request. Please see Attachment 6.

Attachments

- Attachment 1: Chapter 18.77 Code Amendments
- Attachment 2: Chapter 19.25 Code Amendments
- Attachment 3: Other consistency amendments
- Attachment 4: Possible expedited review requirement
- Attachment 5: Bill Digest
- Attachment 6: Chapter 18.110 Code Amendments

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*.

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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).]

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.

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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 $(8 \times .25 = 2)$.

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.

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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

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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.

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 <i>city manager</i> ; no administrative appeal	Building; demolition; moving; engineering; clearing and grading; sign; change of use and/or classification under KMC Title <u>15</u> ; accessory dwelling unit; home occupation; boundary line adjustment; right-of-way; street standards variance; adjustment under Chapter <u>13.35</u> 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 <i>city manager</i> ; appealable to <i>hearing examiner</i> ; 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 <u>18.60</u> KMC; approval of residential density incentives under KMC <u>18.80.060(A)(2)</u> or transfer of development credits under KMC <u>18.80.090(A)</u> ; reuse of public schools; reasonable use exceptions under KMC <u>18.55.180</u> ; public agency and utility exceptions under KMC <u>18.55.160</u> ; other critical areas exceptions, variances and decisions to require studies or to approve, condition or deny a development proposal based on Chapter <u>18.55</u> KMC.
TYPE 3	Recommendation by <i>city manager</i> ; hearing and decision by <i>hearing examiner</i> ; appealable directly to King County superior court, pursuant to Chapter <u>36.70C</u> 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 <u>18.60</u> KMC.
TYPE 4	Recommendation by <i>city manager</i> ; hearing and recommendation by <i>hearing examiner</i> ; decision by city council on the record	Zone <i>reclassification</i> not related to a <i>site-specific comprehensive plan land use map amendment</i> ³ ; shoreline environment redesignation; plat vacation; short plat vacation; site plan review for uses not allowed by zone pursuant to Chapter <u>18.105</u> KMC; master plans other than those required in order to obtain a <i>comprehensive plan</i> 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	<i>Comprehensive plan</i> amendment; <i>development regulation</i> amendment; zoning map amendment related to a <i>site-specific comprehensive plan land use map amendment</i> ; master plans required in order to obtain a <i>comprehensive plan</i> amendment or related

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	Hearings Board pursuant to Chapter <u>36.70A</u> RCW	zoning map or text amendment pursuant to Chapter <u>18.120</u> KMC.
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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).]

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.

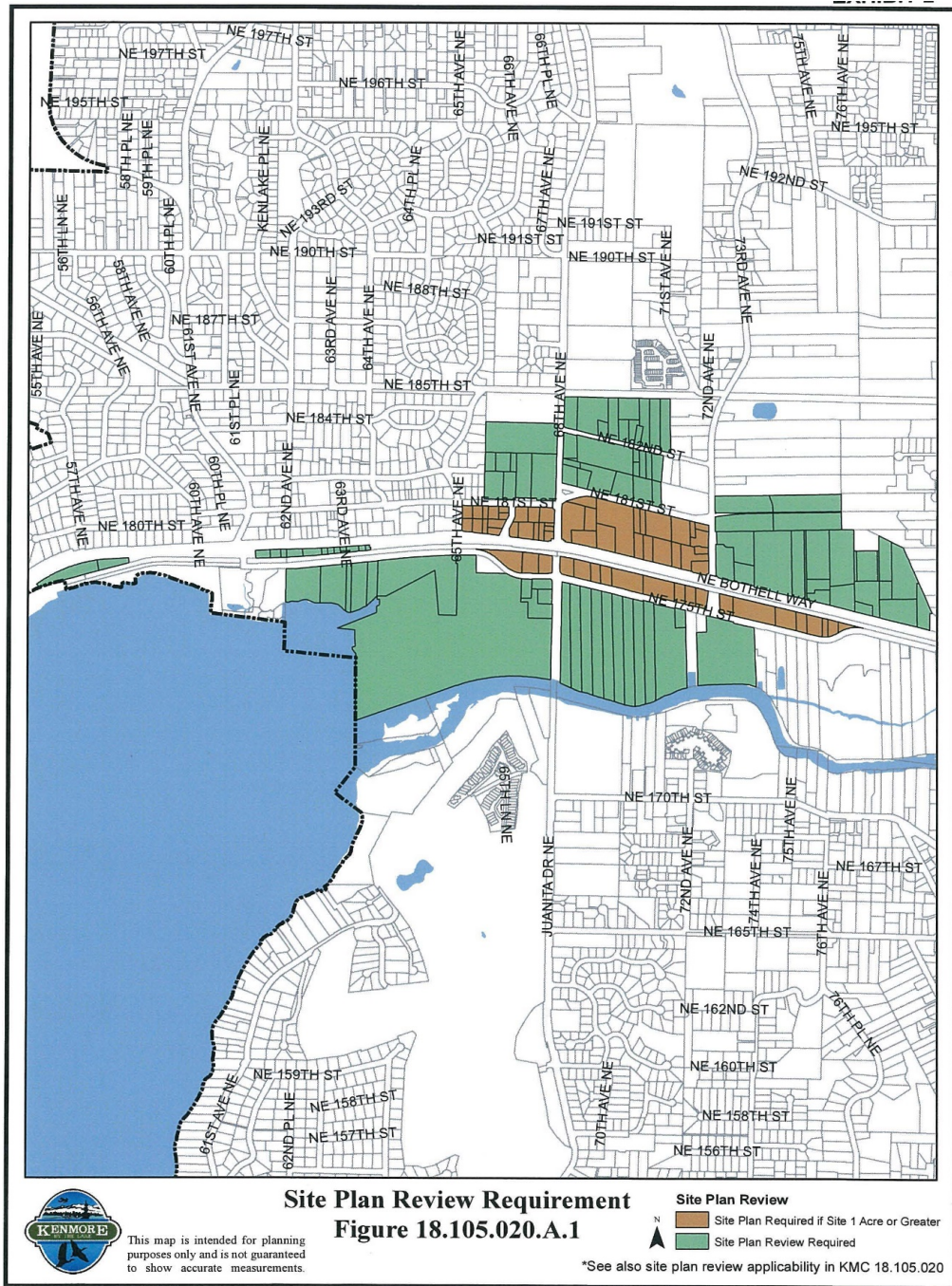
B. An application for site plan review may be submitted by an applicant for any *development proposal*.

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.



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

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:

- I. 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*.

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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).]

. . .

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.~~

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.

To be eligible for this Type 1 Land Use Decision, the project must either:

1. Provide at least ?? additional *very low-income* or *low-income affordable housing units* beyond those required or proposed as part of an incentive-based density increase; or
2. Make at least ?? *dwelling units* in the project affordable to a lower *median income* than is otherwise required or proposed as part of an incentive-based density increase. For example, instead of providing ?? *low-income affordable housing units*, provide ?? *very-low income affordable housing units*.

FINAL BILL REPORT

SHB 1377

C 218 L 19

Synopsis as Enacted

Brief Description: Concerning affordable housing development on religious organization property.

Sponsors: House Committee on Housing, Community Development & Veterans (originally sponsored by Representatives Walen, Barkis, Jenkin, Harris, Springer, Macri, Wylie, Ryu, Reeves, Robinson, Griffey, Appleton, Bergquist, Jenkins, Tharinger, Slatter, Kloba, Doglio, Goodman, Leavitt, Ormsby and Santos).

House Committee on Housing, Community Development & Veterans
Senate Committee on Housing Stability & Affordability

Background:

Planning enabling statutes allow cities and counties, at their option, to adopt comprehensive plans, zoning ordinances, and other official controls regulating land uses within their boundaries. Such regulations may generally include: the location and the use of buildings, structures, and land for residence, industry, trade, and other purposes; the height, construction, and design of buildings and structures; the size of yards, open spaces, lots, and tracts; the density of population; the set-back of buildings; the subdivision and development of land; and adoption of standard building codes and fire regulations. These regulations must form parts of a comprehensive plan which must prepare for the physical and generally advantageous development of the city or county and be designed to encourage the most appropriate uses of land.

Other cities and counties are required, or have elected, to adopt comprehensive plans under the Growth Management Act (GMA). The GMA establishes land-use designation and environmental protection requirements for all Washington cities and counties, and a significantly wider array of planning duties for the cities and counties within that are obligated to satisfy all planning requirements of the GMA. The GMA directs planning jurisdictions (*i.e.*, jurisdictions that fully plan under the GMA) to adopt internally consistent comprehensive land-use plans that are generalized, coordinated land-use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Generally, a density bonus is a zoning tool used by cities and counties in which they allow a developer to build more housing units, taller buildings, or more floor space than normally allowed, in exchange for provision of a defined public benefit, such as a specified number or percentage of affordable housing units. Any city or county that is fully planning under the GMA may enact or expand an affordable housing incentive program that may include density bonuses in the urban growth area.

Joint Legislative Audit and Review Committee.

The Joint Legislative Audit and Review Committee (JLARC) is comprised of an equal number of House of Representatives and Senate members, Democrats and Republicans. The nonpartisan staff of the JLARC conduct performance audits, program evaluations, sunset reviews, and other analyses assigned by the Legislature and the JLARC itself.

Summary:

A city planning under certain planning enabling statutes, or a city or county fully planning under the Growth Management Act (GMA), must allow an increased density bonus consistent with local needs for any affordable housing development of any single-family or multifamily residence located on real property owned or controlled by a religious organization if the affordable housing development:

- is set aside for, or occupied exclusively for, low-income households. "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is less than 80 percent of the median family income, adjusted for household size for the county where the affordable housing development is located;
- is part of a lease or other binding obligation that requires development to be used exclusively for affordable housing purposes for at least 50 years, even if the religious organization no longer owns the property; and
- does not discriminate against any person who qualifies as a member of a low-income household.

A city or town, code city, or county may develop policies to implement the increased density bonus if it receives a request from a religious organization for the increased density bonus. The religious organization developing the qualifying affordable housing must pay all fees, mitigation costs, and other charges required and, if applicable, should work with local transit agencies to ensure appropriate transit services are provided to the affordable housing development.

"Affordable housing development" means a proposed or existing structure in which 100 percent of all single-family or multifamily residential dwelling units within the development are set aside for or are occupied by low-income households at a sales price or rent amount that may not exceed 30 percent of the income limit for the low-income housing unit.

An affordable housing development created by a religious institution within a city or county fully planning under the GMA must be located within an urban growth area.

The Joint Legislative Audit and Review Committee must review the efficacy of the increased density bonus incentive for affordable housing development located on property owned by a religious organization and must report its findings to the appropriate committees of the

Legislature by December 1, 2030. The review must include a recommendation on whether this incentive should be continued without change or should be amended or repealed.

Votes on Final Passage:

House	84	12	
Senate	42	3	(Senate amended)
House	85	9	(House concurred)

Effective: July 28, 2019

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.

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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 *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).]

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*.

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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 agreements* 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

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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).]