

Chapter 20.40 ADMINISTRATION AND ENFORCEMENT

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20.40.010 Purpose.

The purpose of this chapter is to set forth the provisions for the interpretation, general administration and enforcement of the Land Use Code. (Ord. 3145, 9-27-82, § 74)

20.40.100 Administration of the Land Use Code.

The Director shall be responsible for administration of this title. The Director may adopt rules for the implementation of this title; provided, the Director shall first hold a public hearing. The Director shall publish notice of intent to adopt any rule, and the date, time and place of the public hearing thereon in a newspaper of general circulation in the City at least 14 days prior to the hearing date. Any person may submit written comment to the Director in response to such notice, and any person may speak at the public hearing. Following the public hearing, the Director shall adopt, adopt with modifications, or reject the proposed rule. (Ord. 4973, 3-3-97, § 873; Ord. 4816, 12-4-95, § 973)

20.40.300 Community Councils.

As required by this Code, the Development Services Department, as the case may be, shall forward petitions, which meet the filing requirements, as determined by the Planning Director or Director of the Development Services Department, as the case may be, to the appropriate Community Council. With respect to such petitions, the

Community Council shall have such authority as granted by Chapter 35.14 RCW. (Ord. 3498, 5-27-85, § 119)

20.40.400 General Administration.

20.40.401 Compliance with the Comprehensive Plan.

Each decision or action of the City or its officials pursuant to the Land Use Code shall be made in compliance with the Comprehensive Plan. (Ord. 2945, 2-2-81, § 15)

20.40.405 Conflict of provisions.

Should a conflict occur between the provisions of this Code or between this Code and the laws, regulations, codes or rules promulgated by other authority having jurisdiction within the City, the most restrictive requirement shall be applied, except when constrained by federal or state law, or where specifically provided otherwise in this Code. (Ord. 3145, 9-27-82, § 75)

20.40.410 Severability.

If any provision of this Code, or its application to any person or circumstance is held invalid, the remainder of the Code, or the application of the provision to other persons or circumstances is not affected, and to this end the provisions of this Code are declared to be severable.

20.40.415 Power to correct errors or clarify.

A. The applicable Department Director may at any time amend an administrative decision to correct ministerial errors clearly identifiable from the public record. Such a correction does not affect any time limit provided for in this chapter.

B. The applicable Department Director may at any time clarify a statement in a written administrative decision as long as the clarification does not alter the intent or effect of the decision. (Ord. 4028, 7-17-89, § 9)

20.40.425 Building Permit and certificate of occupancy.

A Building Permit and a final inspection, temporary certificate of occupancy, or final certificate of occupancy must be obtained from the City of Bellevue prior to occupancy of a structure. Such permit or certificate shall be approved by the Director of the Development Services Department. (Ord. 4340, 3-16-92, § 1; Ord. 3498, 5-27-85, § 121)

20.40.430 Enforcement by administrative official.

The Director of the Development Services Department is charged with the enforcement of the provisions of this Code. (Ord. 3498, 5-21-85, § 122)

20.40.440 Inspections.

Whenever it is necessary to make an inspection to enforce any of the provisions of the Land Use Code, or whenever the Director of the Development Services Department has reasonable cause to believe that there exists in any building, or upon any premises, any condition which makes such building or premises nonconforming the

Director of the Development Services Department may enter such building or premises; provided, that if such building or premises be occupied, the Director of the Development Services Department shall first present proper credentials and demand entry; and if such building or premises be unoccupied, the Director shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused, the Director of the Development Services Department shall have recourse to every remedy provided by law to secure entry. (Ord. 4654, 6-6-94, § 69; Ord. 3498, 5-27-85, § 123)

20.40.450 Violation of this Code.

It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or use any land in the City, or cause the same to be done, contrary to or in violation of any of the provisions of this Code, or contrary to or in violation of the terms and conditions of any permit or approval issued by the city pursuant to this Code, or contrary to or in violation of any concomitant agreement or development agreement with the city. No permit, approval or other entitlement shall be granted by the City for activities to occur on property that is the subject of any active civil violation proceeding under Chapter 1.18 BCC. (Ord. 5876, 5-18-09, § 33; Ord. 5233, 7-17-00, § 5)

20.40.460 Violation – Penalty.

A. Any violation of this Code as described in LUC 20.40.450 constitutes a civil violation under Chapter 1.18 BCC for which a monetary penalty may be assessed and abatement may be required as provided therein.

B. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates this Code as described in LUC 20.40.450 shall be guilty of a misdemeanor. (Ord. 5876, 5-18-09, § 34; Ord. 4340, 3-16-92, § 2)

20.40.470 Notice in writing – Order to stop work.

Whenever any building or premises is being constructed contrary to the provisions of this Code, the Director of the Development Services Department may order the work stopped by notice in writing served on the legal or equitable property owner or any person causing such work to be done and any such persons shall cause such work to be stopped until authorized by the Director of the Development Services Department to proceed with the work or make the structure, or portion thereof, comply with the requirements of this Code. (Ord. 3498, 5-27-85, § 124)

20.40.480 Employees not personally liable for enforcement acts.

Any employee charged with the enforcement of this Code, acting in good faith and without malice for the City in the discharge of duties, shall not thereby render himself liable personally and is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of duties. Any suit brought against the employee, because of such act or omission performed by him in the enforcement of any provisions

of this Code, shall be defended by the Legal Department of the City until final termination of the proceedings.

20.40.490 Assurance device.

A. General.

The City may require or allow a performance or maintenance assurance device when the City determines the device is necessary pursuant to subsection B of this section.

B. When Applicable.

1. Performance Assurance Device.

a. The applicable Department Director may require a performance assurance device:

i. When a use or activity will, in the opinion of the Director, take place in a location or under circumstances which present a significant risk to the public health, safety, or welfare; or

ii. To protect the City from potential damage claims of others or damage to City streets, utilities, or property; or

iii. To assure that all work or actions required by a permit or approval are satisfactorily completed in accordance with approved plans, specifications, requirements, conditions, regulations, and policies; or

iv. To assure that work or actions not satisfactorily completed will be corrected to comply with approved plans, specifications, requirements, conditions, regulations and policies; or

v. To repair degradation to the environment or damage to the City's utility systems that occurred as a result of the use or activity.

b. The applicable Department Director may allow a performance assurance device if:

i. The applicant is unable to complete the work or improvements to be covered by the assurance device because of unavoidable circumstances that in no way resulted from the actions or inaction of the applicant, or a performance assurance device is specifically authorized by the Bellevue City Code; and

ii. It is reasonably certain that the applicant will be able to complete the work or improvements to be covered by the assurance device within a reasonable amount of time; and

iii. Granting a temporary certificate of occupancy prior to completion of the work or improvements will not be materially detrimental to the City or the properties in the vicinity of the subject property.

2. Maintenance Assurance Device.

a. The applicable Department Director shall require a maintenance assurance device when required by a provision of the Bellevue City Code.

b. The applicable Department Director may require a maintenance assurance device:

i. To assure proper functioning of facilities and improvements required as a condition of a permit or approval, including but not limited to the adequacy of materials and work, the satisfactory compliance with all regularly scheduled or

necessary maintenance or monitoring activities and with all requirements of the Bellevue City Code; or

ii. When he/she determines such a device is necessary to protect the interests of the public.

C. Form of Assurance Device.

1. In each case where the City requires or allows an applicant to provide an assurance device, the applicable Department Director shall determine the type of assurance device that will be used.

2. The assurance device may be a nonrevocable letter of credit, set-aside letter, assignment of funds, certificate of deposit, deposit account, bond, or other readily accessible source of funds.

A bond will be accepted only when circumstances make a bond the only reasonable form of assurance as determined by the Department Director, and the bond adequately protects the interests of the City, or when a bond is required by state statute.

3. Interest from any interest-bearing form of assurance device will accrue to the benefit of the depositor.

D. Amount of Assurance Device.

1. General. The applicable Department Director shall determine the amount of the assurance device as follows:

a. For a performance device, the amount will be 150 percent of the cost of the work or improvements covered by the assurance device based on estimated costs immediately following the expiration of the device.

b. For a maintenance device, the amount will not be less than 20 percent of the cost of replacing the materials covered by the assurance device based on estimated costs on the last day covered by the device. The Director may require an amount more than 20 percent where the Director determines such increased amount is necessary to assure that adequate funds will be available to protect health, safety and welfare, or to protect critical area functions and values in the event of total or partial failure or underperformance of the work requiring the maintenance device.

2. Assistance in Determining Estimated Costs. The applicable Department Director may consult with one or more persons with applicable special knowledge or expertise in determining the cost of work or improvements covered by an assurance device under subsection D.1 of this section. The applicant shall pay the actual costs of this consultation prior to the Director accepting the device.

E. Irrevocable License Signed by the Owner of the Subject Property.

In each case where the City requires or allows an applicant to establish an assurance device, the owner of the subject property shall give the City a signed notarized irrevocable license to run with the property to allow the employees, agents, or contractors of the City to go on the subject property for the purpose of inspecting and, if necessary, doing the work or making the improvements covered by the device. The applicant shall file this license with the Department.

F. Release of Assurance Device.

1. After the work or improvements covered by a performance assurance device have been completed to the satisfaction of the City or, at the end of the time covered by a maintenance assurance device, the applicant may request the City to release the device.

2. The City shall release such device as expeditiously as possible after receipt of a request for release.

G. Use of Proceeds – Notice to Property Owner.

If during the period of time covered by a maintenance assurance device or after the date by which the required work or improvements are to be completed under a performance assurance device, the applicable Department Director determines that the work or improvements have not been complied with, he/she shall notify the applicant.

The notice must state:

1. The work that must be done or the improvement that must be made to comply with the requirements and the assurance device; and

2. The amount of time that the applicant has to commence and complete the required work or improvements; and

3. That, if the work or improvements are not commenced and completed within the time specified, the City will use the proceeds of the assurance device to have the required work or improvements completed.

H. Use of Proceeds – Work by the City.

If the work or improvements covered by the assurance device are not completed within the time specified in the notice given under subsection G of this section, the City shall obtain the proceeds of the device and do the work or make the improvements covered by the device. The City may either have employees of the City do the work or make the improvements or, by using procurement procedures established by law, have a contractor do the work or make the improvements.

I. Use of Proceeds – Emergency Work by City.

If at any time the Director or Director's designee determines that actions or inaction associated with any assurance device have created an emergency situation endangering the public health, safety, or welfare, creating a potential liability for the City, or endangering City streets, utilities, or property, or endangering critical area functions and values; and if the nature or timing of such an emergency precludes the notification of applicants as provided in subsection G of this section while still minimizing or avoiding the effects of the emergency, the City may use the assurance device to correct the emergency situation. The City may either have employees of the City do the work or make the improvements, or may have a contractor do the work or make the improvements. If the City uses the assurance device as provided by this section, the applicant shall be notified in writing within four days of the commencement of emergency work. The notice must state the work that was completed and the nature or timing of the emergency that necessitated the use of the assurance device without prior notification.

J. Use of Proceeds – Refund of Excess, Charge for all Costs.

The property owner is responsible for all costs incurred by the City in doing the work and making the improvements covered by the assurance device. The City shall release or refund any proceeds of a performance device remaining after subtracting all costs for doing the work covered by the device. The owner of the subject property shall reimburse the City for any amount expended by the City that exceeds the proceeds of the device. The City shall have a lien against the subject property for the amount of any excess.

K. Itemized Statement.

In each case where the City uses any of the proceeds of the device, it shall give the owner of the subject property an itemized statement of all proceeds and funds used. (Ord. 5683, 6-26-06, §§ 31, 32; Ord. 5480, 10-20-03, § 25; Ord. 4973, 3-3-97, §§ 870, 871; Ord. 4816, 12-4-95, § 970, 971; Ord. 3690, 8-4-86, § 34; Ord. 3530, 8-12-85, § 80)

20.40.500 Vesting and expiration of vested status of land use permits and approvals.

A. Vesting for Permits and Approvals.

1. Permits and Approvals Other than Subdivisions and Short Subdivisions.

Applications for all land use permits and approvals except subdivisions and short subdivisions shall be considered under the Land Use Code and other land use control ordinances in effect on the date that a fully complete Building Permit application, meeting the requirements of BCC 23.10.032, is filed. If a complete Building Permit application is not filed, the land use permit or approval shall become vested to the provisions of the Land Use Code upon the date of the City's final decision on the land use permit or approval.

2. Subdivisions and Short Subdivisions. An application for approval of a subdivision or short subdivision of land, as defined in LUC 20.50.046, shall be considered under the Land Use Code and other land use control ordinances in effect when a fully completed application is submitted for such approval which satisfies the submittal requirements of the Director specified pursuant to LUC 20.35.030.

B. Expiration of Vested Status of Land Use Permit or Approval.

1. The vested status of a land use permit or approval shall expire as provided in subsection B.2 of this section; provided, that:

a. Variances shall run with the land in perpetuity if recorded with King County Department of Records and Elections within 60 days following the City's final action; and

b. Critical Areas Land Use Permits shall expire as set forth in LUC 20.30P.150; and

c. Lots in a subdivision or short subdivision shall be vested against changes in the Land Use Code, except for changes that address a serious threat to the public health or safety as found by the City Council when such change is adopted, for a period of five years following the date of recording of the final plat or final short plat; and

d. The time period established pursuant to subsection B.2 of this section shall not include the time during which an activity was not actively pursued due to the pendency of litigation which may materially affect rights of the applicant for the permit or approval related to that permit or approval.

2. The vested status of a land use permit or approval shall expire two years from the date of the City's final decision, unless:

a. A complete Building Permit application is filed before the end of the two-year term. In such cases, the vested status of the land use permit or approval shall be automatically extended for the time period during which the Building Permit application is pending prior to issuance; provided, that if the Building Permit application expires or is canceled pursuant to BCC 23.05.160, the vested status of a land use permit or approval shall also expire or be canceled. If a Building Permit is issued and

subsequently renewed, the vested status of the land use permit or approval shall be automatically extended for the period of the renewal;

b. For projects which do not require a Building Permit, the use allowed by the permit or approval has been established prior to the expiration of the vested status of the land use permit or approval and is not terminated by abandonment or otherwise; or

c. The vested status of a land use permit or approval is extended pursuant to subsection B.3 of this section.

3. When a Building Permit is issued, the vested status of a land use permit or approval shall be automatically extended for the life of the Building Permit. If the Building Permit expires, or is revoked or canceled pursuant to BCC 23.05.160 or otherwise, then the vested status of a land use permit or approval shall also expire, or be revoked or canceled. (Ord. 5683, 6-26-06, § 33; Ord. 4973, 3-3-97, § 874; Ord. 4816, 12-4-95, § 974)

20.40.510 Cancellation of land use applications.

Applications for land use permits and approvals may be canceled for inactivity if an applicant fails to respond to the Department's written request for revisions, corrections, or additional information within 60 days of the request. The Director may extend the response period beyond 60 days if within that time period the applicant provides and subsequently adheres to an approved schedule with specific target dates for submitting the full revisions, corrections, or other information needed by the Department. (Ord. 4973, 3-3-97, § 875; Ord. 4816, 12-4-95, § 975)