



**City of Bellevue
Development Services Department
Land Use Staff Report**

Proposal Name: Tateuchi Formal Code Interpretation

Proposal Address: 10500 NE 8th Street

Proposal Description: Applicant requests formal interpretation of the Land Use Code, provisions LUC 20.30B.170, 20.30B.170.B.1 and B.2, and 20.40.510 as they relate to the conditional use permit approved for the Kemper Development Company to operate a helistop at 10500 NE 8th Street and Kemper Development Company's application to amend its approved conditional use permit. Applicant also requests revocation of the conditional use permit.

File Number: 14-142898-DA

Applicant: Joshua A. Whited on behalf of Ina Tateuchi

Decisions Included: Formal Code Interpretation
(Process II, LUC 20.30K)

Legal Planner: Catherine A. Drews

**State Environmental Policy Act
Threshold Determination:** EXEMPT

Director's Decision: Interpretation of the Land Use Code
Michael A. Brennan, Director
Development Services Department

Carol V. Helland

Carol V. Helland, Land Use Director
Development Services Department

Application Date: October 20, 2014
Notice of Application Publication Date: December 4, 2014
Decision Publication Date: June 25, 2015
Project Appeal Deadline: July 9, 2015

For information on how to appeal a proposal, visit the Development Services Center at City Hall or call (425) 452-6800. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

**Interpretation of the Director
Bellevue File No. 14-142898-DA**

I. INTRODUCTION

The following is a written interpretation of the Bellevue Land Use Code issued by the Director. This interpretation concerns Kemper Development Company's (KDC's) application to amend a conditional use permit authorizing operation of a helistop in downtown Bellevue under Ordinance No. 6000 and the subsequent hold placed on that application at the applicant's request.

In making this interpretation, the Director is required to consider the following:

- A. The applicable provisions of the LUC including their purpose and context; and
- B. The impact of the interpretation on other provisions of the LUC; and
- C. The implications of the interpretation for development within the City as a whole; and
- D. The applicable provisions of the Comprehensive Plan and other relevant codes and policies.

LUC 20.30K.140.

II. Summary of Code Interpretation Issues Presented

Ms. Ina Tateuchi has requested a formal code interpretation of the Bellevue Land Use Code (LUC). The request seeks interpretation of several provisions of the LUC as they relate to KDC's application to amend the Conditional Use Permit (CUP), which authorizes KDC to operate a helistop located at 10500 8th Ave. The CUP limits KDC use of the helistop to only light turbine, twin-engine helicopters. KDC's application to amend the CUP requests that condition be amended to allow use of light turbine single-engine helicopters. Tateuchi also requests the City initiate proceedings to revoke KDC's CUP based on either abandonment of the approved use or misrepresentation of a material fact in obtaining the CUP. Tateuchi further seeks interpretation of LUC 20.40.510 as it relates to the Director's request for additional information related to the March 18, 2014 helicopter accident in Seattle, Washington.

Specifically, Tateuchi seeks interpretation of LUC 20.30B.170, 20.30B.170.B.1, 20.30B.170.B.2; and 20.40.510 as these provisions apply to both KDC's approved CUP to operate a helistop and its pending application requesting to amend its CUP. The request presents four questions:

- (1) Has KDC abandoned the approved use for a period of at least one year?
- (2) Did KDC obtain approval of its CUP by misrepresentation of a material fact?

(3) If the answer to either question one or two is yes, should the City initiate proceedings to revoke KDC's CUP, consistent with LUC 20.30B.170 and Condition 5 of KDC's CUP?

(4) Is the Director authorized to place KDC's application on hold pending the outcome of the National Transportation Safety's Board investigation of the March 18, 2014 helicopter crash in Seattle?

The answers to each of the specific questions raised in this request for Code Interpretation are summarized below and set forth fully in Section III.B.

Short Answer Question 1: No. KDC has neither abandoned, nor has KDC demonstrated an intent to abandon, its approved use, which is to construct and operate a private helistop. KDC has met its ongoing obligations under the CUP, such as submitting monthly reports regarding operations at its helistop that rebuts any presumption of abandonment.

Short Answer Question 2: No. The documents provided in support of the formal code interpretation and the City's record supporting approval of the CUP do not demonstrate KDC misrepresented a material fact in obtaining approval of its application warranting initiation of revocation proceedings.

Short Answer Question 3: No. There is no finding of abandonment or a misrepresentation of material fact. Also, the LUC prohibits using the formal code interpretation process to affect a land use approval after the administrative appeal period has expired. LUC 20.30K.130.

Short Answer Question 4: Yes. The Bellevue City Council delegated to the Director the authority to extend application review times consistent with LUC 20.40.510. LUC 20.40.510 provides the Director with discretionary authority to extend or cancel permit applications. The provision specifically authorizes the Director to extend the period for requested information beyond 60 days with an approved schedule and target date for submitting the information required by the Department.

III. INTERPRETATION

A. Background on KDC's Private Helistop.

In 2008, KDC applied for a CUP to establish a private helistop on the roof of the Bellevue Place Bank of America Building, located at 10500 NE 8th Street¹. The City imposed numerous conditions to allow KDC to operate its private helistop. These conditions included limiting the frequency of flights and the hours of operation,

¹ City of Bellevue, Development Services Department, Land Use Division Staff Report: Kemper Development Helistop, Recommendation to the Hearing Examiner, File No. 08-135262-LB, (May 21, 2009) [hereinafter "Staff Report"].

restricting the flight path, limiting the types of helicopters that may use the helistop, requiring reporting of flight frequency, times, and any deviations from the required flight path, submittal of required documents with the FAA, lighting restrictions, fire suppression requirements, implementing a weather station, providing communication channels for the public, and providing the city with a standard operations procedure manual before activation of the helistop.² Ina Tateuchi, among others, appealed the City's approval of KDC's CUP application under the Land Use Petition Act. On November 30, 2011, the court denied the appeal and upheld the City Council's decision approving the CUP.³

On August 8, 2012, KDC applied for the necessary building permit⁴ to upgrade the facility to current Federal Aviation Administration (FAA) design standards and city building code regulations consistent with the CUP approval. KDC applied to amend its approved CUP⁵ on February 22, 2013, to modify condition 3, which only allows twin-engine helicopters to use the helipad, to also allow single-engine helicopters. On March 18, 2014, a single-engine helicopter crashed in downtown Seattle as it departed from rooftop helipad. In late March and early April 2014, KDC inquired about and subsequently requested its application to amend its CUP be placed on hold pending outcome of the National Transportation Safety Board's (NTSB) investigation into the Seattle crash. The Director approved KDC's request, and required KDC to provide the NTSB's final report to the City within 60 days of the report's issuance. Ms. Tateuchi applied for this formal code interpretation on October 22, 2014. KDC filed a response to Ms. Tateuchi's application on January 23, 2015. Ms. Tateuchi responded to KDC's response on March 6, 2015. This staff report constitutes the interpretation of the Director.

As required under the CUP, KDC filed monthly operation reports for the first year, then after one year, KDC has filed its operation reports every six months.⁶ On January 21, 2015, a light turbine twin-engine helicopter landed and departed from the helistop.

B. Analysis of Questions Presented.

The purpose for an interpretation of the land use code is specific and limited:

An interpretation of the provisions of the Land Use Code **clarifies conflicting or ambiguous wording, or the scope or intent** of the provisions of the Code. A request for a Code interpretation must relate to a specific site, land use district, use or application within the City of Bellevue. An interpretation of the provisions of the Land Use Code may not be used to amend that Code. (Emphasis added).

² Ordinance No. 6000, at 3-7.

³ *Ina Tateuchi et al., v. City of Bellevue*, Cause No. 11-2-20007-8 SEA, Order and Judgment Denying Land Use Petition Relief (November 30, 2011).

⁴ File No. 12-114026-BZ.

⁵ File No. 13-107448-LI.

⁶ Ord. No. 6000 at 4, Condition 4.

LUC 20.30K.120. Also, any code interpretation requested after the applicable administrative appeal period shall not affect an issued permit or decision and cannot be used to amend the LUC. LUC 20.30K.120 and 20.30K.130.B.

1. LUC 20.30B.170.B – Modification or Revocation of a Conditional Use Permit.

The bulk of Tateuchi's code interpretation request focuses on LUC 20.30B.170. Provisions of this section address the processes to modify or revoke an approved CUP. In her application for a formal code interpretation⁷, Tateuchi requests the Director initiate proceedings to revoke KDC's CUP. To support her request, Tateuchi contends that KDC has abandoned the use approved under the CUP because there have been no helicopter operations at the approved helistop and further contends KDC misrepresented a material fact in obtaining its CUP.

Tateuchi states that interpretation of LUC 20.30B.170.B is required to prevent future illegal use of the helistop:

[A]n interpretation regarding the application of LUC 20.30.B.170.B.1 to KDC's helistop is necessary to ensure that KDC does not claim the right to make future use of the helistop when it has never been utilized consistent with the approval granted and has been abandoned as a result. An interpretation of LUC 20.30.B.170.B.2 is necessary to ensure that KDC does not make future use of the helistop when the CUP was obtained by misrepresentation of material fact. In light of the abandonment of the approved CUP usage and the misrepresentations of material fact made to obtain the permit, revocation proceedings consistent with LUC 20.30B.170.B and LUC 20.35.100 are appropriate and necessary to prevent future unlawful use of the helistop. . . . In each instance the requested interpretation is necessary to accomplish the purpose of the Code and protect the public interest.

KDC responded to Tateuchi's application requesting the Director deny Tateuchi's request for an interpretation because none of the issues Tateuchi presented raise a question of conflicting or ambiguous wording of the Code or of the scope or intent of any provision of the code," and that Tateuchi's "plain intent is for the City to revoke the CUP."⁸

⁷ Letter from Peter J. Eglick and Joshua A. Whited, Eglick Kiker Whited, PLLC, to Carol Helland, Land Use Division Director, Carol Hamlin, Associate Planner [sic], and Catherine A. Drews, Legal Planner, City of Bellevue, Development Services, Re: Request for Formal Land Use Code Interpretation Concerning Kemper Development Company's Abandoned Helistop, October 17, 2014. [Hereinafter "Application"].

⁸ Letter from Keith W. Dearborn, Allison Moss, and Virginia R. Nicholson, Schwabe, Williamson, & Wyatt, to Catherine Drews, Legal Planner, Carol Helland, Land Use Director, and Carol Hamlin, Senior Planner, City of Bellevue, RE: Response to the Request for Formal Code Interpretation Regarding Kemper Development Company's Helistop; File Number: 14-142898-DA, January, 23, 2015. [Hereinafter "KDC Response."]

The interpretation process is not the appropriate mechanism to initiate revocation of a CUP. Condition 5 of the CUP authorizes the City to initiate revocation proceedings or modify the CUP consistent with the authority provided in LUC 20.20.450.A.1.b, 20.30B.170 and 20.30B.175. Ordinance No. 6000, Section 4, A.5 (Land Use Conditions for Approval). Under these facts, it is appropriate to determine the scope and intent of LUC 20.30B.170 as it relates to KDC's CUP. Because the formal code interpretation is a Process II decision, both parties will have the opportunity for an administrative appeal. LUC 20.35.015.C.5, 20.35.250.

A. Has KDC Abandoned the Approved Helistop?

Tateuchi alleges that KDC has abandoned the helistop use approved under the CUP, because when Tateuchi applied for the formal code interpretation there had been no helicopter operations. In support of her allegation, Tateuchi points to a statement by KDC's counsel in a letter to the Land Use Director advising the Director that KDC desired to amend its CUP because the limitation to twin-engine helicopters "has the practical effect . . . [that] the Helistop will not be used."⁹ According to Tateuchi, these two facts establish abandonment under LUC 20.30B.170.B.1. Tateuchi subsequently alleged that KDC never established the approved use:

The Conditional Use Permit (CUP) for the helistop approved use of the helistop only by twin engine helicopters. KDC's helistop usage reports confirm that the helistop has not been used since the CUP was approved by the King County Superior Court on November 30, 2011. Accordingly, "[t]he use for which the approval was granted has been abandoned for a period of at least one year" under LUC 20.30B.170.B.1.¹⁰

KDC responded to Tateuchi's request for a formal code interpretation on January 23, 2015.¹¹ KDC replied that it had not abandoned the approved use, which is the establishment of a private helistop.¹²

Did KDC establish its use? KDC applied for a CUP to operate a private helistop¹³, which use the City approved with conditions. A helistop is "the same as a heliport, except that no refueling, maintenance, repairs or storage of helicopters is permitted." LUC 20.50.024 (H definitions). A heliport is "an area of land or water or a structural surface **which is used as a permanent facility** for the landing and takeoff of helicopters, and any appurtenant areas which are used for heliport buildings and other facilities. . . . LUC 20.50.024 (H definitions)." (Emphasis added).

⁹ Application at 2-3.

¹⁰ Letter from Peter J. Eglick, Eglick Kiker Whited, PLLC, to Carol Helland, Land Use Division Director, City of Bellevue, Re: Request for a Formal Code Interpretation Concerning Kemper Development Company's Abandoned Helistop, File Number: 14-148898-DA, at 3, March 6, 2015.

¹¹ Letter from Keith W. Dearborn, Allison Moss, and Virginia R. Nicholson, Schwabe, Williamson, & Wyatt, to Catherine Drews, Legal Planner, Carol Helland, Land Use Director, and Carol Hamlin, Senior Planner, City of Bellevue, RE: Response to the Request for Formal Code Interpretation Regarding Kemper Development Company's Helistop; File Number: 14-142898-DA, January, 23, 2015.

¹² KDC Response at 3.

¹³ Ordinance No. 6000; Staff Report at 3.

Here, Tateuchi asserts that KDC has abandoned the use because no helicopters have used the helistop. Tateuchi however overlooks the fact that the helistop remains operational¹⁴ and continues to meet the reporting conditions required under its CUP. The use approved is defined in the land use code as a helistop, which is broader than Tateuchi's narrow interpretation of only including the landing and departures of helicopters. KDC established its use, a private heliport, when it received its final inspection and certificate of occupancy from the City, and made the facility available for helicopter landings. Helicopter flights are not necessary to establish a helistop. What is necessary to establish a helistop is having infrastructure, maintenance, procedures, processes, and operations established in compliance with the city code and conditions of the CUP. LUC 20.50.024 (H definitions).

Has KDC Abandoned its Private Helistop? LUC 20.30B.170.B.1¹⁵ provides that the Hearing Body *may* revoke a conditional use permit as a Process I land use decision¹⁶ only when the Hearing Body finds one of three criteria exist, one of which being the "use for which the approval was granted has been abandoned for a period of at least one year[.]" The process further supports that the formal code interpretation process is not the appropriate mechanism to initiate revocation of a CUP. Rather, Condition 5 of the CUP provides the mechanism for the City to initiate revocation.

The law regarding abandonment in Washington is well-established. The question of whether abandonment has occurred is one of fact that the person alleging abandonment has the burden of proof. *Van Sant v. City of Everett*, 69 Wn. App. 641, 649, 849 P.2d 1276 (1993) (citations and quotations omitted). And this burden is not an easy one. *Id.* Abandonment or discontinuance is a question of fact, and ordinarily depends upon a concurrence of two factors: "(a) an intention to abandon; **and** (b) an overt act, or failure to act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use." (Emphasis added).

Despite not having ongoing helicopter activity at its helistop, KDC has maintained its private helistop, including the filing of required monthly reports. The City does not agree with Tateuchi that one sentence from a letter requesting modification of KDC's CUP is sufficient to demonstrate abandonment, especially in light of KDC's ongoing compliance with its obligations under the CUP. Under both the LUC and the common law of abandonment, the Director does not conclude that KDC has abandoned its use or demonstrated an intent to abandon its use.

¹⁴ According to the operation logs that KDC is required to file with City as part of its CUP, a twin-engine helicopter used the helistop on January 21, 2015. See Ordinance 6000, page 4 (Condition 4).

¹⁵ LUC 20.30B.170.B provides the Hearing Body with discretionary authority to revoke a conditional use permit only upon finding that:

1. The use for which the approval was granted has been abandoned for a period of at least one year; or
2. Approval of the permit was obtained by misrepresentation of material fact; or
3. The permit is being exercised contrary to the terms of approval.

¹⁶ When the property is located within the boundary of the East Bellevue Community Council, the revocation proceedings are a Process III land use decision. LUC 20.30B.170.

LUC 20.30B.170.B.1 requires that the use be abandoned for a period of at least one year before the Hearing Body may revoke a conditional use permit. Demonstrating abandonment requires both showing the intent to abandon and an overt act or failure to act – one without the other is insufficient. KDC established the helistop and continues its operation. According to KDC's operation reports, a helicopter used the helistop on January 21, 2015. Finally, the fact that KDC applied to modify its CUP rebuts any presumption that KDC intended to abandon its use.

B. Did KDC Misrepresent a Material Fact to Obtain Approval of its CUP?

Tateuchi contends that KDC obtained its conditional use permit by misrepresenting a material fact – specifically that twin-engine helicopters would use the helistop.¹⁷ KDC responds that its application anticipated both dual and single-engine helicopters and its design helicopter for the helistop was a twin-engine model.¹⁸ One of the three basis on which the Hearing Examiner may revoke an approved permit is only upon a finding that “[a]pproval of the permit was obtained by misrepresentation of a material fact.” LUC 20.30B.170.B.2. A fact is material if knowledge of the fact would affect a person's decision-making process.¹⁹ Misrepresentation is defined as “the act of making a false or misleading statement about something, usually with the intent to deceive, or “the statement so made; an assertion that does not accord with the facts.”²⁰

The Director has reviewed the correspondence from Tateuchi, KDC, Ordinance No. 6000, the Staff Report, the Hearing Examiner's Report and Recommendation to the Council Following Hearing on Remand (Mar. 15, 2010) and the Examiner's Second Revised and Final Report of Findings, Conclusions, and Recommendation to the Bellevue City Council, and the Superior Court's Order and Judgment Denying Land Use Petition Relief (Cause No. 11-2-20007-SEA (Nov. 30, 2010) and does not conclude that KDC obtained approval of its permit through misrepresentation of a material fact.

KDC's application underwent a lengthy and robust review, including the Council directing two remands to the Hearing Examiner for additional fact-finding and recommendations to the Council before the Council finally approved KDC's application. The Hearing Examiner's Final Recommendation contains over 80 findings and 22 conditions of approval. The topics included evaluation of the helistop by the Federal Aviation Administration, consideration of prevailing winds and obstructions (such as buildings) in relation to the flight path, selection of the approach and departure path, and the flight path.²¹ The type of helicopter allowed to use the facility is but one fact relevant to that decision. There is no evidence that the City Council's approval of KDC's CUP was obtained through misrepresentation of a material fact. The LUC allows KDC to apply to change its CUP in response to changing conditions. LUC 20.30B.175. KDC

¹⁷ Application at 4-7. (October letter at 4-7).

¹⁸ KDC letter at 6.

¹⁹ *Black's Law Dictionary*, 7th ed. at 991 (1999).

²⁰ *Black's Law Dictionary*, 7th ed. at 1016 (1999).

²¹ See e.g., *Kemper Development Company v. Tateuchi, et al.*, Second Revised and Final Report of Findings Conclusions, and Recommendation to the Bellevue City Council (Dec. 16, 2010).

submitted such an application after learning that its assumption regarding the demand for twin-engine helicopter landings in Bellevue was incorrect.

2. Is the Director Authorized to Request Additional Information and Approve a Schedule for Applicants to Comply consistent with LUC 20.40.510?

Tateuchi requests interpretation of LUC 20.40.510; contending that the Director lacks authority to place a project application on hold "pending the outcome of a future event."²² The Director is authorized, among other responsibilities, to administer the LUC. BCC 3.44.010.E. LUC 20.40.510 provides the Development Services Department with the authority and flexibility to work with a variety of applicants, both responsive and unresponsive, and provides consequences when an applicant fails to act in conformance with the code or an agreed upon schedule. Processing permit applications is oftentimes an iterative process and requesting applicants to provide reports and studies from qualified professionals is a common practice when reviewing applications.

LUC 20.40.510 addresses when the Director may cancel or extend a land use permit or approval application. It is not ambiguous, nor does it contain conflicting terms:

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. (Emphasis added).

The LUC unambiguously provides the Director with authority to establish a schedule for an applicant to provide requested information.

On August 1, 2013, a public meeting was held on KDC's application to amend its CUP to allow single-engine helicopters. In response to public comments received during the meeting, the City requested KDC provide comparative information analyzing and addressing safety issues associated with single versus twin-engine helicopters operating in an urban environment from an elevated helistop as described in the following request for additional information:

[T]he difference in safety and noise impacts related to operation of single-engine versus twin-engine helicopters. This analysis must focus on helicopter operations in an urban environment. For the safety analysis,

²² Application at 8.

please include accident data related to the operation of both types of helicopters in an urban area on an elevated helistop. . . .²³

A key consideration of KDC's pending application to modify its conditional use permit was whether operational safety between single and twin-engine helicopters could be differentiated.²⁴ After receiving KDC's response to the City's request, on March 18, 2014, a single-engine helicopter departing from a rooftop helistop in an urban environment crashed in Seattle, resulting in two fatalities, injuries to persons on the ground, and property damage. After this accident, the City specifically asked KDC provide relevant safety data related to the operation of single-engine helicopters from the FAA, NTSB, or other state or federal agencies researching this issue. This request includes information on the March 18 accident in Seattle, which the City understood would take the NTSB approximately 12 months to process its final report.

With this timeframe in mind, the department approved the schedule provided by KDC, which requires submittal of data within 60 days of release of the NTSB's final report on the accident. The City also required removal of the land use signs at the site, so that the public would not assume review of the application was ongoing. If the City does not receive the information it requested from KDC, LUC 20.40.510 authorizes the City to cancel KDC's application.

Once the City receives the NTSB report and other requested safety data, and if the department determines review of KDC's application should resume, then this fact will be noticed in the City's Weekly Permit Bulletin and new land use notice signs will be posted.²⁵ This will provide the public with notice and opportunity for comment.

III. FACTORS FOR CONSIDERATION

In making an interpretation of the provisions of the Land Use Code, the Director shall take the following factors into consideration. LUC 20.30K.140.

A. Applicable Provisions of the Land Use Code.

The applicable LUC provisions considered in this formal code interpretation are the following:

1. Chapter 3.44 Bellevue City Code: Development Services Department
2. Part 20.30B Conditional Use Permit.
3. Part 20.30K LUC Interpretation of the Land Use Code.
4. Chapter 20.40 LUC – Administration and Enforcement.
5. Chapter 20.50 LUC – Definitions

²³ Email, from Catherine A. Drews, City of Bellevue, to Keith Dearborn and Allison Moss, Dearborn & Moss, re: Follow Up from 8/1/13 Public Meeting re: KDC Helistop Proposal, August 5, 2013.

²⁴ Letter: Catherine Drews, Legal Planner, City of Bellevue to Keith Dearborn, Schwabe, Williamson & Wyatt, RE: Kemper Development Company's Application Requesting Modification of its Conditional Use Permit to Operate a Helipad. File No. 13-107448-LI (March 26, 2014).

²⁵ *Id.*

B. The Impact of the Interpretation on other Provisions of the Land Use Code.

The interpretation does not impact other provisions of the LUC other than those considered in the analysis provided here.

C. The Implications of the Interpretation for Development within the City as a whole.

Because this formal code interpretation is narrowed by both the specific questions posed and the specific facts of this particular application, there are no implications for development within the City as whole. The exception being the interpretation affirms the Director's authority under LUC 20.40.510 is clear and unambiguous.

D. Applicable Provisions of the Comprehensive Plan and other Relevant Codes and Policies.

The following polices from the Comprehensive Plan were deemed relevant to the issue presented and reviewed in relation to the interpretation:

Land Use Element:

Policy LU-28. Support Downtown's development as an Urban Center, maintaining it as the financial, retail, and business hub of the Eastside.

Policy LU 29. Strengthen Downtown as the primary commercial area to provide local goods and services to surrounding neighborhoods and to the residents and employees within the District.

Policy LU 31. Encourage and foster economic development in areas designated for commercial uses.

Transportation Element:

Policy TR-38. Require mitigation to provide safety and site access, and to mitigate neighborhood impacts as needed to address the effects of development.

Policy TR-118. Mitigate air quality, noise, light/glare and other significant adverse environmental impacts of proposed transportation projects on adjacent neighborhoods.

Economic Development Element:

Policy ED-1. Maintain a business climate that supports the retention and expansion of the city's economic base.

Policy ED-3. Develop and maintain regulations that allow for continued economic growth while respecting the environment and quality of life of city neighborhoods.

Policy ED 17. Recognize the economic development benefits of city and private sector investments in urban amenities like arts and culture, open space and recreational facilities and high quality urban design. Strengthen the city's assets in these areas as an explicit component of the city's economic development strategy.

Environmental Element:

Policy EN-88. Ensure that excessive noise does not impair the permitted land use activities in residential, commercial, and industrial land use districts.

Policy EN-89. Protect residential neighborhoods from noise levels that interfere with sleep and repose through development standards and code enforcement.

Downtown Subarea Plan:

Policy S-DT-1. Emphasis shall be placed on Downtown livability, with provisions made for the needs, activities, and interests of Downtown residents, employees, shoppers, and visitors.

Policy S-DT-4. The highest intensity development shall be located in the core of Downtown, with diminishing intensities towards the edges of Downtown

Policy S-DT-18. Strengthen Downtown's role as the Eastside's major business and commercial center and as an important revenue source for the City of Bellevue.

Policy S-DT-26. Encourage residential uses to occur in mixed-use structures or complexes.

Policy S-DT-82. A range of activities shall be permitted, including office, urban residential, hotel, retail, civic, and entertainment uses.

Policy S-DT-83. Day-time and night-time activities should be encouraged.

Based on review of the above polices, the interpretation is consistent with the Comprehensive Plan policies.

IV. EFFECT OF INTERPRETATION

Pursuant to LUC 20.30K.150, an interpretation of any Land Use Code provision issued under Chapter 20.30K LUC shall have the same effect as any provision of the Land Use Code. An interpretation of the Land Use Code remains in effect until or if rescinded in writing by the Director. LUC 20.30K.155.

V. APPEAL

An interpretation of the Land Use Code under Chapter 20.35.015 is a Process II administrative land use decision made by the Director. Pursuant to LUC 20.35.250,

Process II decisions may be appealed to the Hearing Examiner by providing a written statement of appeal and the appeal notification form (including payment of any applicable appeal fee) to the City Clerk not later than 5:00 p.m. on the 14th day following the date of publication of the decision of the Director.