

ORDINANCE NO. 03-16

AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, AMENDING SECTIONS BMC 1.12.020(1), 8.18.030(1), 12.04.020 (5), 12.04.040, 12.08.140, 12.08.260, 12.08.320, 12.08.330(1&4), 12.04.340, 14.30.920, 19.12.145, 19.12.155, 19.20.010(2), 19.30.120, 19.30.140(3 & 3.k), 19.30.210, 19.30.220, 19.30.270, 19.32.030, 19.32.060, 19.32.090(2.b), 19.42.030, 20.01.020(6&24), 20.01.030, 20.01.050, 20.01.090(5.a&6), 20.01.100(3,4,&8), 20.01.200, 20.01.220, 20.01.240, 20.01.250(1.d.v), AND 20.01.260; AMENDING CHAPTER 19.40 BMC; REPEALING CHAPTER 2.34 BMC; TO REMOVE THE BOARD OF ADJUSTMENT FROM THE CITY'S DECISION-MAKING BODIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 35A.663.110 RCW allows code cities to create Boards of Adjustment; and

WHEREAS, the City of Buckley created the Board of Adjustment in Article X of Ordinance 652 on March 14, 1961; and

WHEREAS, the code regarding the Board of Adjustment was modified periodically over the years; and

WHEREAS, Section 35A.63.170 RCW allows a Hearing Examiner to hear and decide applications and hear appeals of administrative decisions; and

WHEREAS, the City of Buckley instituted the Hearing Examiner system through Ordinance 10-09 in 2009; and

WHEREAS, the City of Buckley accepts the expertise and knowledge of the hearing examiner; and

WHEREAS, the Planning Commission developed an ordinance to remove the Board of Adjustment from the code in favor of the Hearing Examiner system; and

WHEREAS, the planning commission conducted a public hearing on this ordinance January 11, 2016; and

WHEREAS, the proposal received environmental review with a determination of non-significance issued December 2, 2015; and

WHEREAS, the request for expedited review in place of the 60-day notice was received by the Washington State Department of Commerce December 3, 2015, under Material ID Number 21870 informing it of the proposed change in development regulations; and

WHEREAS, the Department of Commerce granted expedited review on December 18, 2015;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Buckley Municipal Code Section 1.12.020(1) BMC is hereby amended as follows:

1.12.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

(1) “Abate” means to repair, replace, remove, destroy or otherwise remedy a condition that constitutes a civil violation by such means, in such manner, and to such an extent as the code enforcement officer or city administrator or designee determines is necessary in the interest of the general health, safety and welfare of the community. ...

Section 2. Buckley Municipal Code Chapter 2.34 is hereby repealed.

Section 3. Buckley Municipal Code Section 8.18.030(1) BMC is hereby amended as follows:

8.18.030 Definitions.

The words and phrases in this chapter shall have the following meanings, unless the context otherwise indicates:

(1) “Abate” means to repair, replace, remove, destroy or otherwise remedy a condition that constitutes a civil violation by such means, in such manner, and to such an extent as the code enforcement officer or city administrator or designee determines is necessary in the interest of the general health, safety and welfare of the community. ...

Section 4. Buckley Municipal Code Section 12.04.020 (5) BMC is hereby amended as follows:

12.04.020 Definitions.

All words in this chapter shall be given their common meaning unless the context indicates otherwise. The definitions of the words set forth below shall be utilized in interpreting the ordinance codified in this chapter: ...

(5) “Agency” means the city council, the planning commission, or any other department, officer, board or commission within the city that is authorized to make law, hear contested cases, or otherwise take action as defined in this section, except the municipal court. ...

Section 5. Buckley Municipal Code Section 12.04.040 is hereby amended as follows:

12.04.040 Additional timing considerations.

(1) For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory body, such as the planning commission.

(2) If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications. Said request shall contain the location and nature of the proposed action. The applicant shall be required to pay the city's actual cost of evaluating said request. The planning director shall prepare an estimate of the proposed cost of review and that amount shall be paid prior to the commencement of the review process.

Section 6. Buckley Municipal Code Section 12.04.340 BMC is hereby amended as follows:

BMC 12.04.340 Appeals.

Appeals of SEPA determinations shall be in accordance with 20.01 BMC.

Section 7. Buckley Municipal Code Section 12.08.140 BMC is hereby amended as follows:

12.08.140 Exception – Public agency and utility.

(1) If the application of this title would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a critical areas permit application; critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (Chapter 43.21C RCW). The planning director shall prepare a recommendation to the decision maker identified in BMC 20.01 based on review of the submitted information, a site inspection, and the proposal's ability to comply with public agency and utility exception review criteria in subsection (4) of this section.

(3) Review. The decision maker identified in BMC 20.01 shall review the application and planning director's recommendation and conduct a public hearing pursuant to the provisions of BMC Title 20. The decision maker shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4) of this section.

(4) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions follow:

(a) There is no other practical alternative to the proposed development with less impact on the critical areas; and

(b) The application of this title would unreasonably restrict the ability to provide utility services to the public; and

(c) The proposal meets the criteria in BMC 12.08.280, Review criteria.

(5) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 01-12 § 2, 2012; Ord. 21-05 § 2, 2005).

Section 8. Buckley Municipal Code Section 12.08.260 BMC is hereby amended as follows:

12.08.260 Innovative mitigation.

(1) The city may encourage, facilitate, and approve innovative mitigation projects for Class III and Class IV wetlands. Class II wetlands may be considered after review and approval by the decision maker identified in BMC 20.01. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein one or more applicants, or an organization with demonstrated capability, may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:

- (a) Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
- (b) The applicant(s) demonstrates the organizational and fiscal capability to act cooperatively;
- (c) The applicant(s) demonstrates that long-term management of the habitat area will be provided; and
- (d) There is a clear potential for success of the proposed mitigation at the identified mitigation site.

(2) Conducting mitigation as part of a cooperative process does not reduce or eliminate the required replacement ratios.

(3) Any innovative mitigation project being considered under this section shall be required to satisfy the mitigation plan and monitoring requirements of BMC 12.08.250.

Section 9. Buckley Municipal Code Section 12.08.320 BMC is hereby amended as follows:

12.08.320 Appeals.

(1) Any person may appeal to the decision maker identified in Chapter 20.01 BMC a final administrative order, requirement, permit decision, condition and/or determination made; provided, that such appeal shall be filed in writing to the city planning department within 14 calendar days of the date of the written decision, order, requirement or determination is posted.

(2) For the purpose of this section, the city's order, requirement, permit decision or determination shall not be deemed final until it is reduced to writing and mailed to the applicant.

(3) The appeal shall be upheld if the applicant proves that the decision appealed is clearly erroneous or based upon error of law. (Ord. 21-05 § 2, 2005).

Section 10. Buckley Municipal Code Section 12.08.330(1&4) BMC is hereby amended as follows:

12.08.330 Variances.

(1) An applicant who seeks a modification from the requirements of this title may pursue a variance by filing a written application with the city. Upon the filing of a proper application, the

decision maker shall conduct a duly noticed public hearing and review the application and make a finding that the request meets or fails to meet the variance criteria.

(2) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:

(a) There are special conditions and circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that do not apply generally to other properties; and

(b) The variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property, but which because of special circumstances is denied the property in question; and

(c) Granting the variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and

(d) Granting the variance will not violate, abrogate, or ignore the goals, objectives or policies of this title or other adopted city land use policies or the comprehensive plan.

(3) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this title.

(4) Additional Considerations for Frequently Flooded Areas. In addition to consideration of the review criteria in subsection (2) of this section, the decision maker shall also consider the following for activities proposed within a frequently flooded area:

(a) The danger to life and property due to flooding, erosion damage, or materials swept onto other lands during flood events; and

(b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the proposed use; and

(c) The importance of the services provided by the proposed use to the community; and

(d) The necessity to the proposed use of a waterfront location, where applicable, and the availability of alternative locations for the proposed use that are not subject to flooding or erosion damage; and

(e) The safety of access to the property in times of flood for ordinary and emergency vehicles; and

(f) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(g) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Variances shall only be issued upon a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

(6) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result. (Ord. 01-12 § 5, 2012; Ord. 21-05 § 2, 2005).

Section 11. Buckley Municipal Code Section 14.30.920 BMC is hereby amended as follows:

14.30.920 Appeals.

Administrative interpretations and administrative Type A-1 and Type A-2 decisions may be appealed, by applicants or parties of record, subject to the provisions of BMC 20.01.260.

Section 12. Buckley Municipal Code Section 19.12.145 BMC is hereby amended as follows:

19.12.145 Conditional use.

“Conditional use” means a use listed among those classified in any given zone but permitted to locate in that zone only after a review by the appropriate city-designated official and the granting of a conditional use permit imposing such design and performance standards as will make the use compatible with other permitted uses in the same vicinity and assure against imposing excessive demands upon public utilities.

Section 13. Buckley Municipal Code Section 19.12.155 BMC is hereby amended as follows:

19.12.155 Dwelling, caretaker’s.

“Caretaker’s dwelling” means a dwelling unit, located inside a principal building on the lot, which is designed for and used exclusively by the property owner or by another person and his or her family, employed to provide security or custodial services for a commercial or industrial use on the same lot. Caretaker’s dwelling units may be allowed by the appropriate city-designated official subject to the performance regulations for conditional use permits, and to the following additional requirements:

- (1) The dwelling unit shall only be allowed as an accessory use to the principal use(s) permitted in the zone;
- (2) The dwelling unit shall be located inside the principal building on the property. The appearance of the building shall remain commercial or industrial;
- (3) That portion of the principal building containing the dwelling unit shall observe a minimum setback of eight feet from property lines;
- (4) Only one caretaker’s dwelling shall be allowed on the site or lot;
- (5) The caretaker’s dwelling shall be removed upon a change in the use or ownership of the property.

Section 14. Buckley Municipal Code Section 19.20.010(2) is hereby amended as follows:

19.20.010 Requirements common to all zones.

(1) Residential Zones.

- (a) The maximum height for structures shall be 30 feet except as modified by other sections of this code.
- (b) Normal building appurtenances and projections such as chimneys, cupolas, ventilators, or other structures placed on or extending above roof level may exceed the 30-foot building height limit to a maximum height of 45 feet.
- (c) Except for ham radio antennas regulated under BMC 19.22.060, the height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, BMC 19.25.100(2)(k) and other applicable provisions of this code.

(d) Pitch of Roofs of Single-Family, Multiple-Family and Duplex Dwellings. All roofs of single-family dwellings, multiple-family dwellings and duplex dwellings within this classification must have a minimum pitch of 4:12; provided, however, that there shall be no minimum pitch required on deck and patio covers and carport roofs.

(e) Duplex Dwellings. Each duplex dwelling shall have an attached or detached two-car enclosed garage per unit.

(f) Standards for street and utility construction shall be as specified under Chapter 17.08 BMC and the City of Buckley Development Guidelines and Public Works Standards. Full street frontage improvements shall be required.

(2) Commercial Zones.

(a) The maximum height for structures shall be 35 feet except as modified by other sections of this code; provided, said height limitation may be increased for steeples, clock towers and other similar noncommercial unoccupied structures upon application to and approval by the decision-maker in accordance with BMC 20.01 (commercial height modification), who may grant, deny or modify the application as appropriate. The proposed structure should be in size proportional to the structure to which it is associated and should be so constructed as to minimize blockage of panoramic views from public properties and rights-of-way, and preserve the scenic view from adjacent properties. The applicant shall pay the same application fee as is charged for a code variance.

(b) The height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, BMC 19.25.100(2)(k) and other applicable provisions of this code.

(c) Pitch of Roofs of Single-Family, Multiple-Family and Duplex Dwellings. All roofs of single-family dwellings, multiple-family dwellings and duplex dwellings within this classification must have a minimum pitch of 4:12; provided, however, that there shall be no minimum pitch required on deck and patio covers and carport roofs.

(d) Standards for street and utility construction shall be as specified under Chapter 17.08 BMC and the City of Buckley Development Guidelines and Public Works Standards. Full street frontage improvements shall be required.

(e) Mixed-Use Dwelling Units. Dwelling units are allowed above commercial uses in the HC, CC, and NMU zones.

(3) Public "P" and Sensitive "S" Zones.

(a) The maximum height of all structures shall be 35 feet.

(i) In the S zone, this measurement shall be as required by the shoreline master program or Chapter 173-27 WAC, from existing grade to the highest point of the structure as defined in Chapter 173-27 WAC, regardless of location of the shoreline jurisdiction.

(ii) In the P zone normal building appurtenances and projections such as chimneys, cupolas, ventilators, or other structures placed on or extending above roof level may exceed the maximum height if the projection does not interfere with views to Mt. Rainier or to the river.

(iii) The height of receiving and transmitting antennas and communication towers is regulated by the permitted use sections of this land use code, Chapter 19.25 BMC.

Section 15. Buckley Municipal Code Section 19.30.120 is hereby amended as follows:

19.30.120 Residential (R-6,000, R-8,000, R-20,000) zone signs.

Signs in the residential (R-6,000, R-8,000, R-20,000) zones are limited as follows:

(1) One residential identification sign or nameplate not exceeding two square feet of sign surface area is allowed on each individual residence. Nameplates or identification signs may be mounted on the residence or accessory structure to the residence and may be illuminated by indirect lighting only.

(2) One sign identifying nonresidential uses, not exceeding 16 square feet of sign surface area, is allowed within the R-20,000 residential agricultural zone to advertise the sale of products raised on the premises. The maximum height for the sign shall be six feet. The sign may be monument or mounted on a wall, fence or other structure.

(3) Approved home occupations as defined in BMC 19.12.245 are limited to one wall sign not exceeding six square feet of sign surface area. Only one such sign shall be allowed on the premises and may be illuminated by indirect lighting only.

(4) Approved conditional uses are limited to one advertising sign not exceeding 16 square feet. The maximum height for the sign shall be five feet. The sign may be monument or mounted on a wall, fence or other structure.

(5) Two permanent residential development identification signs not exceeding 16 square feet of sign surface area for each sign are allowed per subdivision. The maximum height for the sign shall be eight feet. The sign may be monument or mounted on a wall, fence or other structure.

Section 16. Buckley Municipal Code Section 19.30.140(3 & 3.k) is hereby amended as follows:

19.30.140 Off-premises signs.

Off-premises signs shall not be allowed except as herein provided:

(1) Community Bulletin Board Signs. Signs of a public service nature which are nonadvertising or nonpromotional and are used for providing public service information to the community by public service clubs or other nonprofit organizations may be allowed within any zone, subject to the following:

(a) Any such sign to be located within the right-of-way of a state highway shall be subject to approval by the Department of Transportation.

(b) Approval of the owner, submitted in writing, of the property on which the sign is to be placed.

(c) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver.

(d) Size. Shall be no larger than necessary to clearly inform the public. Community bulletin board signs shall not exceed 40 square feet of sign surface area.

(e) Illumination. May be internally or indirectly illuminated.

(2) Off-Premises Public Service Signs. Informational signs of a public service nature meant to guide or direct pedestrian or vehicular traffic to uses such as places of worship, schools, city parks, fire stations, police stations, municipal buildings, public libraries, community centers, points of interest and other similar noncommercial uses (B.P.O.E., Kiwanis, etc.) may be allowed within any zone subject to the following:

(a) Any such sign which is to be located within the right-of-way of a state highway shall be subject to approval by the Washington Department of Transportation.

(b) Approval of the owner, submitted in writing to the city, of the property on which the sign is to be placed.

- (c) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver, whether private drives or public rights-of-way.
- (d) Size. Shall not be larger than four square feet of sign surface area. Consolidated city identification and/or community-service-club-type signs shall not exceed 32 square feet of sign surface area. Business identification directional signs on dead-end streets shall meet the following criteria: all units will have letters six inches in height, dark color on a light background, not longer than four feet per unit and meeting corner visibility requirements; details to be approved by the planning director for each installation.
- (e) Illumination. May be indirectly illuminated.
- (3) Off-Premises Permanent Directional Signs. To provide business identification for sites located in areas not directly abutting a minor or principal arterial, such as on dead-ends or on local access or collector streets, one off-premises sign may be approved by the designated official in a commercial or industrial zone subject to the following:
 - (a) The subject business has demonstrated a need for off-premises signage and how the sign will benefit the community; and
 - (b) If more than one business in an immediate area has a similar need for an off-premises sign, all must be consolidated and identified on the same sign; and
 - (c) The location of the off-premises sign is at the nearest intersection of the closest principal or minor arterial on which the subject property is located; and
 - (d) The off-premises sign is located in a commercial or industrial district; and
 - (e) The square footage of the off-premises sign has been included in the subject property's total square footage sign allowance. The combined area total of property's signage plus the proposed sign does not exceed the total allowable signage for the subject property; and
 - (f) The proposed off-premises sign meets the sign requirements of the zone where located; and
 - (g) Any such sign which is to be located within the right-of-way of a state highway shall be subject to approval by the Department of Transportation; and
 - (h) Approval of the owner of the property, submitted in writing, on which the sign is to be placed; and
 - (i) Location. Any such sign shall not be placed where it may cause a hazard, or obstruct the vision of any driver; and
 - (j) Illumination. May be internally or indirectly illuminated; however, the sign shall not be an electronic messaging display center, or have any changeable message or flashing lights; and
 - (k) All other conditions that the designated official determines are reasonable and serve the interest of public health, safety and welfare.

Section 17. Buckley Municipal Code Section , 19.30.210 BMC is hereby amended as follows:

19.30.210 Variances.

The designated official may grant a variance from the provisions of this chapter subject to the variance provisions of BMC 19.40.030.

Section 18. Buckley Municipal Code Section 19.30.220 BMC is hereby amended as follows:

19.30.220 Planning director’s authority.

The planning director is authorized and directed to be the administrator of this chapter, in consultation with the building official, to make necessary interpretations subject to appeal to the designated official, and the planning director is designated to process all required permits. The planning director is authorized and directed to enforce all provisions of this chapter with the building official’s consultation for consideration of the structural integrity of proposed and existing signs.

Buckley Municipal Code Section 19.30.270 BMC is hereby amended as follows:

19.30.270 Appeal from sign code administrative interpretations and decisions.

Sign code administrative interpretations and administrative decisions may be appealed, by applicants or parties of record, in accordance with BMC 20.01.260.

Section 19. Buckley Municipal Code Section 19.32.030 is hereby amended as follows:

19.32.030 Types distinguished.

(1) Type A Home Occupation. A home occupation where the residents use their dwelling as a place of work.

(2) Type B Home Occupation. A home occupation where the residents use their dwelling as a place of work but that exceeds the standards of the Type A home occupation. Type B home occupations shall be permitted only as conditional uses and with approval by the designated official subject to the provisions of Chapter 19.40 BMC and BMC 19.32.060. Type B home occupations shall be filed on forms provided by and in the manner set forth by the planning department, with application fee paid as established by adopted fee schedule.

Section 20. Buckley Municipal Code Section , 19.32.060 BMC is hereby amended as follows:

19.32.060 Criteria for approval – Type B or “major” home occupation.

(1) Type B or “major” home occupations shall be allowed subject to a conditional use permit, and shall meet the requirements set forth in BMC 19.32.050(5) through (14) and the following requirements:

(a) The business, including operations and storage, shall occupy no more than half of the residential gross floor area, which includes all accessory buildings. If the business occupies an accessory building, the square footage of that building shall not be larger than the primary residential building;

(b) The building official shall determine the maximum occupancy load of the structure(s) in which the home occupation is proposed; designated official shall consider this number along

- with all other pertinent facts and comments in determining the maximum number of employees allowed on the premises to work in the home occupation at any one time;
- (c) The subject property shall not be altered except to install screening or buffers or to provide parking for no more than four vehicles. No parking in yards and buffers shall be allowed;
 - (d) No more than three vehicles shall be parked on the property as a result of the business at any one time;
 - (e) On-site sales shall be limited to items produced on the premises or incidental to the major home occupation;
 - (f) Traffic generated by the home occupation shall not noticeably affect the residential character of the neighborhood; and
 - (g) Accessways shall be accessible to emergency vehicles.
- (2) Major home occupations include, but are not limited to, the following:
- (a) Home occupations that do not meet all of the criteria in BMC 19.32.050, Criteria for approval – Type A or “minor” home occupation;
 - (b) Auto repairing, vehicle detailing, and vehicle, boat or trailer painting and major appliance repair;
 - (c) Commercial welding and machine shops.

Section 21. Buckley Municipal Code Section 19.32.090(2.b) BMC is hereby amended as follows:

19.32.090 Revocation of permits.1

- (1) Upon determination that a violation of decision criteria or a condition of approval may have occurred, the director shall notify the owner of a home occupation of the alleged violation and of the revocation procedures if the business is not brought into conformance within 30 calendar days.
- (2) If the business is not brought into conformance within the time specified above:
 - (a) If the business is a Type A “minor” home occupation, the planning department will refer nonconformance to the city administrator for revocation of the business license pursuant to BMC 6.04.160; or
 - (b) If the business is a Type B “major” home occupation, the planning department will refer the nonconformance to the designated official for public hearing and revocation of the conditional use permit pursuant to BMC 19.40.190.
- (3) When a permit or business license is revoked, the director shall notify the owner by certified mail of the revocation and the findings upon which revocation is based.
- (4) Nothing in this section shall be construed as limiting other code enforcement remedies available to the city.

Section 22. Buckley Municipal Code Chapter 19.40 is hereby amended as follows:

19.40.010 Purpose.

This chapter is intended to detail the procedures and responsibilities of the designated official in the processing, consideration and issuance of variances and conditional use permits. In regard to variances, this chapter shall apply to claims that the provisions of the zoning code are unduly prohibitive to reasonable use of property as intended by this title. In regards to conditional use

permits, this chapter shall apply after application for consideration and issuance of a conditional use permit subject to the conditions set forth in this title.

19.40.020 Variances and authority to grant.

Upon the filing of a proper application, the designated official shall have the authority, subject to provisions of this chapter, to grant, upon such conditions as it may determine, variances from required lot width, depth or area; required front, side or rear yards; required height of buildings, fences and structures; maximum floor area, impervious surface coverage and signage; and required parking. Nothing in this chapter shall be construed to give any property owner a right to use any property in any manner which requires a variance, unless a variance for such use has first been granted and is in full force and effect pursuant to all conditions attached thereto. Further, the authority to grant a variance does not extend to use regulations set forth in this title. No variance shall permit a use not permitted in the zone district applicable to a property.

19.40.030 Required findings to grant variance.

Each determination granting a variance shall be supported by written findings showing specifically wherein all of the following conditions exist:

- (1) Because of unusual conditions applicable to the subject property, including size, shape, topography, location, natural features or surroundings, which were not created by the owner or applicant, the strict application of this title would deprive the property of rights and privileges enjoyed by other properties in the vicinity and zone in which the subject property is located; and
- (2) The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and
- (3) That the granting of such variance will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements of such vicinity and/or zone in which the property is located; and
- (4) The literal interpretation and strict application of the applicable provisions or requirements of this title could cause undue and unnecessary hardship; and
- (5) The requested variance would be consistent with the spirit and purpose of the zoning code and adopted land use policies or comprehensive plan, as applicable.

19.40.040 Conditions on variance approvals.

The designated official shall have the authority to impose conditions and safeguards as it deems necessary to protect and enhance the health, safety and welfare of the surrounding area, and to assure that the proposed variance fully meets the criteria set forth in BMC 19.40.030.

19.40.050 Public hearing required for variance.

Before the designated official may grant, amend or deny any application for a variance, the designated official shall conduct a duly noticed public hearing. Upon completion of the hearing, the board or official shall grant, amend with conditions or deny with findings the variance application in accordance with the provisions of this chapter.

19.40.060 Expiration of variance grant.

Any variance granted by the designated official shall become null and void if not exercised within the time specified in such variance or, if no time is specified, within one year of the date of approval of such variance. A variance shall be deemed exercised and remain in full force and affect when a building permit has been issued and substantial construction accomplished in reliance upon said permit. If such variance is abandoned or is discontinued for a continuous period of one year, it may not thereafter be reestablished unless authorized in accordance with the procedure for variance prescribed in this chapter.

19.40.070 Extension of time for variance permit.

Upon written request by a property owner or his/her authorized representative, also designated in writing, prior to the date of variance expiration, and following consideration at a public meeting, the designated official may grant an extension of time up to but not exceeding one year. Such extension of time shall be based upon a finding that there has been no material change of circumstances applicable to the property since the granting of the variance which would be injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare

19.40.080 Cancellation of a variance.

A valid variance granted by the designated official may be canceled at any time. Cancellation must be initiated by the owner of the property covered by the variance by means of a written request to the planning director. The variance shall then become null and void 15 calendar days thereafter.

19.40.090 Revocation of a variance.

Following a public hearing, the designated official may revoke or add additional conditions to any variance issued on any one or more of the following grounds:

- (1) That the approval was obtained by fraud or that erroneous information was presented by the applicant or his/her designated representative and considered in the granting of the variance;
- (2) That the variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation;
- (3) That the use for which the approval was granted is being so exercised as to constitute a nuisance.

19.40.100 Posting of performance bonds.

Notwithstanding the provisions of BMC 19.40.040, whenever a variance is granted upon any condition or limitation, the person seeking the variance may be required to furnish security in the form of money, letter of credit from a bank, or a surety bond in an amount fixed by which variance is granted. Every such bond shall be a performance bond payable to the city and shall be conditional upon compliance with the conditions and limitations upon which such variance is granted.

19.40.110 Appeals of variance determination.

A final action under this chapter with respect to a variance shall be appealed in accordance with BMC 20.01.

19.40.120 Conditional use permits and authority to grant.

Certain uses require a special degree of control due to unusual effects or characteristics peculiar to them, or because of size, location, type of equipment used, or demands upon public facilities resulting from such use. Therefore, the designated official shall have the authority subject to provisions of this chapter to grant, upon such conditions as they may determine, a conditional use permit as may be in harmony with the scope and purpose of this title and zone district in which the use is to be located, and the goals, objectives and policies of the Buckley comprehensive plan. Nothing in this chapter shall be construed to give any property owner a right to use any property in any manner which requires a conditional use permit, unless a conditional use permit for such use has first been granted and is in full force and effect pursuant to all conditions attached thereto.

19.40.130 Required findings to grant conditional use permit.

Each conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions exist:

- (1) That the use for which the conditional use permit is applied is specified by this title as being conditionally permitted within and is consistent with the description and purpose of the zone district in which the property is located;
- (2) That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
- (3) That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and, further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;
- (4) That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping and other such features, as are required by this title or as needed in the opinion of the designated official, and are properly provided to be compatible and harmonious with adjacent and nearby uses;
- (5) That the granting of such conditional use permit will not be contrary to the adopted Buckley comprehensive plan, or to the objectives of any code, ordinance, regulation, specifications or plan in effect to implement the comprehensive plan.

19.40.140 Conditions on conditional use permit approvals.

The designated official shall have the authority to impose conditions and safeguards as it deems necessary to protect and enhance the health, safety and welfare of the surrounding area and to assure that the proposed use or activity fully meets the findings set forth in BMC 19.40.130. No conditional use permit shall require as a condition the dedication of land for any purpose not reasonably related to the use of property for which the conditional use permit is requested, or posting of a bond to guarantee installation of public improvements not reasonably related to the use of property for which the conditional use permit is requested.

19.40.150 Public hearing required for conditional use permit.

Before the designated official may grant, amend or deny an application for a conditional use permit, the board shall conduct a duly noticed public hearing. Upon completion of the hearing,

the commission or official shall grant, amend or deny the conditional use permit application in accordance with the provisions of this chapter.

19.40.160 Expiration of conditional use permit.

Any conditional use permit granted by the designated official shall become null and void if not exercised within the time specified in such permit or, if no time is specified, within one year of the date of approval of such permit. A conditional use permit shall be deemed exercised and remain in full force and effect when a building permit has been issued and substantial construction accomplished in reliance upon the conditional use permit. If such permit is abandoned or is discontinued for a continuous period of one year, it may not thereafter be reestablished unless authorized in accordance with the procedure prescribed herein for the establishment of a conditionally permitted use.

19.40.170 Extension of time of conditional use permit.

Upon written request by a property owner or his/her authorized representative prior to the date of conditional use permit expiration, and following consideration at a public meeting, the designated official may grant an extension of time up to but not exceeding one year. Such extension of time shall be based upon a finding that there has been no material change of circumstances applicable to the property since the granting of the permit which would be injurious to the neighborhood or otherwise detrimental to the public health, safety and general welfare.

19.40.180 Cancellation of a conditional use permit.

A valid conditional use permit granted by the designated official may be canceled at any time. Cancellation must be initiated by the owner of the property covered by conditional use permit by means of a written request to the planning director. The permit shall then become null and void within 30 calendar days thereafter.

19.40.190 Revocation of a conditional use permit.

Following a public hearing, the designated official may revoke or add additional conditions to any conditional use permit issued on any one or more of the following grounds:

- (1) That the approval was obtained by fraud or that erroneous information was presented by the applicant or designated representative and considered in the granting of the permit;
- (2) That the use for which such approval is granted is not being exercised;
- (3) That the use for which such approval is granted has ceased to exist or has been suspended for one year or more;
- (4) That the conditional use permit granted is being, or recently has been, exercised contrary to the terms of conditions of such approval, or in violation of any statute, ordinance, law or regulation;
- (5) That the use for which the approval was granted is being so exercised as to constitute a nuisance.

19.40.200 Posting of performance bonds.

Notwithstanding the provisions of BMC 19.40.140, whenever a conditional use permit is granted upon any condition or limitation, the person seeking the conditional use permit may be required to furnish security in the form of money or a surety bond in an amount fixed by the designated

official to ensure compliance with the conditions and limitations upon which permit is granted. Every such bond shall be a performance bond and shall be in a form approved by the city attorney, shall be payable to the city and shall be conditioned upon compliance with the conditions and limitations upon which such permit is required.

19.40.210 Appeals on conditional use permit determination.

A final decision under this chapter with respect to a conditional use permit shall be filed in accordance with BMC 20.01.

Section 23. Buckley Municipal Code Section 19.42.030 is hereby amended as follows:

19.42.030 Hearing Examiner.

The Buckley hearing examiner is vested with authority to:

- (1) Approve, approve with conditions, or deny shoreline variance and conditional use permits after considering the findings and recommendations of the administrator; the decision shall be forwarded to the Department of Ecology for final action; provided, that any decisions of this matter made by the city may be further appealed to the State Shorelines Hearings Board as provided in the Act.
- (2) Conduct public hearings on appeals of the administrator’s actions, interpretations, and decisions related to Chapter 19.42 BMC.
- (3) At the discretion of the city, require any applicant granted a shoreline permit to post a bond or other acceptable security with the city conditioned to assure that the applicant and/or his successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 150 percent of the estimated development cost including attached conditions until such time as the project is completed. Such bonds or securities shall be approved as to form by the city attorney.

Section 24. Buckley Municipal Code Section 20.01.020 BMC is hereby amended as follows:

20.01.020 Definitions.

The following definitions shall apply throughout this title: ...

...

(24) “Type A-3 process” means an application that is subject to objective and subjective standards that require the exercise of discretion about nontechnical issues and about which may be a public interest.

...

Section 25. Buckley Municipal Code Section 20.01.030 is amended as follows:

BMC 20.01.030 Procedures for processing development project permits.
 (1) Project Permit Application Framework. The project permit application framework is set forth in Tables 1 and 2 as follows:

Table 1: Application Process

Procedural Steps	Application Process	
	Type “A” Actions Administrative	Type “C” Actions

				Planning Commission, Hearing Examiner and City Council		
	Type A-1	Type A-2	Type A-3	Type C-1	Type C-2	Type C-3
Recommendation by:	N/A	N/A	Planning Commission	Staff	Staff	Staff
Notice of application	No	Yes	Yes	Yes	Yes	No
Open Record Public Hearing	See Note 1	See Note 1	Yes Planning Commission	Yes Planning Commission	Yes Hearing Examiner	No
Final Decision-Making Body	Staff	Staff	Director	City Council	Hearing Examiner/City Council ³²	City Council
Appeal Authority	Hearing examiner	Hearing examiner	Hearing Examiner	Pierce County Superior Court ³	Pierce County Superior Court	Pierce County Superior Court

1. Note: Public hearing only on appeal of an administrative decision, open record hearing before hearing examiner.

2. Note: Council is the final decision-making body for mobile home parks, planned unit developments, all rezones, and major PUD amendments.

3. Note: Comprehensive plan amendments, shoreline permits, BMC land use text amendment, and area-wide rezones are potentially appealable to the Growth Management Hearings Board or Shoreline Hearings Board.

4. No assurances are made as to the accuracy of Table 1 in identifying the appellate forum with jurisdiction to hear appeals of final City decisions. It is the responsibility of the appellant to determine where to file appeals of final city decisions.

Table 2: Application Type

Type A-1 administrative w/o notice; Type A-2 administrative w/ notice; Type A-3 administrative hearing and recommendation from the planning commission; Type C-1 legislative or quasi-judicial w/ recommendation from a commission; Type C-2 quasi-judicial w/ hearing examiner; Type C-3 ministerial or administrative w/ city council.

Title and Chapter	Permit	Permit Type				
		A		C-1	C-2	C-3
Title 12, Environment						
12.08.130	Critical area exemption	A-1				
12.08.140	Critical area exception – public agency and utility				C-2	

Title and Chapter	Permit	Permit Type				
		A		C-1	C-2	C-3
12.08.330	Critical areas variance				C-2	
12.08.260	Innovative wetland mitigation				C-2	
12.08.150	Reasonable use exception				C-2	
12.04	SEPA determination	A-2				
19.42.050	Shoreline exemption	A-1				
	Shoreline substantial development permit	A-2				
19.42.120	Shoreline conditional use permit				C-2	
19.42.120	Shoreline variance				C-2	
12.08.130	Wetland exemptions	A-1				
12.11.040	Floodplain development permit	A-1				
Title 16, Buildings and Construction						
16.06.020	Building and other construction permits	A-1				
16.80.010	Canopies	A-1				
16.12.070	Fences	A-1				
16.12.070	Fence variances	A-3				
16.01.010	Land disturbing activity permit	A-1				
16.40.040	Mobile home installation permit	A-1				
14.06.140	Sewer permit	A-1				
13.08.010	Sidewalk construction permit	A-1				
16.10.010	Temporary dwelling permit	A-1				
14.06.390	Wastewater discharge (also from state DOE)	A-1				
Title 17, Design and Construction Standards, and Development Guidelines and Public Works Standards (DGS)						
17.08	Acceptance of public improvement					C-3
17.08.050	Dedication of public easements and rights-of-way					C-3
DGS 4.07(C)	Frontage improvement exceptions					C-3
DGS 4.21	Light standards	A-1				
	Modification of public improvement requirement					C-3
DGS 2.02	Major variances of Development Guidelines and Public Works Standards					C-3
DGS 2.02	Minor variances of Development Guidelines and	A-1				

Title and Chapter	Permit	Permit Type				
		A		C-1	C-2	C-3
	Public Works Standards					
DGS 2.01	Right-of-way use permits	A-1				
	Title 18, Subdivisions					
18.34.040	Boundary line adjustment	A-1				
18.34.040	Boundary line adjustment, non-conforming lots					C-3
	Binding site plans					
18.36.060	Preliminary binding site plans				C-2	
18.36.090	Final binding site plan amendments					C-3
18.36.070	Adjustments (minor) to binding site plan approved plans	A-1				
18.36.070	Adjustments (not minor) to binding site plan approved plans				C-2	
	Short subdivisions (short plats)					
18.32.070	Preliminary short subdivisions	A-2				
18.32.080	Final short subdivisions					C-3
18.32.100	Amendments (minor) to unrecorded short plats	A-1				
18.32.100	Amendments to approved or recorded final short plats					C-3
	Subdivisions (long plats)					
18.16.020	Preliminary subdivisions (long plats)				C-2	
18.16.030	Final subdivisions					C-3
	Amendments to approved (not recorded) preliminary plats				C-2	
RCW 58.17.215	Amendments to approved (recorded) final plats (alteration of recorded plat)					C-3
	Title 19, Zoning					
19.06.030	Comprehensive plan amendments, legislative			C-1		
19.06.030	Comprehensive plan amendments, quasi-judicial				C-2	
<u>19.20.010</u>	<u>Commercial height modification</u>	A-2				
19.40.120	Conditional use permits, zoning code				C-2	
19.50.070,	Design review	A-1				

Title and Chapter	Permit	Permit Type				
		A		C-1	C-2	C-3
19.51.050						
19.52	Development code text amendments			C-1		
19.32.050	Home occupation Type A with minor impact	A-1				
19.32.060, 19.40	Home occupation Type B with potential impacts				C-2	
19.34.020	Mobile home parks				C-2 ^{ec}	
19.30.140	Off-premises directional signs	A-1				
19.30.060	Sign permit	A-1				
19.33	Site plan reviews (commercial/industrial)				C-2	
19.33.120	Site plans amendment commercial/industrial/multifamily				C-2	
19.33.110	Site plans – technical adjustment	A-1				
19.52	Rezoning, legislative			C-1		
19.52	Rezoning, site-specific				C-2	
	Planned unit developments (PUDs)				C-2 ^{ec}	
	• PUD amendments				C-2 ^{ec}	
	• PUD amendments – technical adjustment	A-1				
	Telecommunication facilities (collocation)	A-1				
19.25.110	Telecommunication facilities waiver					C-3
19.25.110	Telecommunication facilities CUP				C-2	
19.25.110	Telecommunication facilities variance				C-2	
19.30.210	Variances, sign code	A-3				
19.40.020	Variances, zoning				C-2	

(2) Types of Development Permit Applications. For the purpose of project permit processing, all development permit applications shall be subject to Type A-1 and Type A-2 process (administrative), Type C-1 (planning commission/city council), Type C-2 and Type C-3 process (hearing examiner/city council) as defined in BMC 20.01.020. As defined in subsection (1) of this section:

(2) Type of development permit applications. For permit processing, development shall be subject to one of the following permit processes:

(a) Administrative decisions.

(i) A Type A-1 is an administrative process that does not require public notice;

(ii) A Type A-2 process is an administrative process that requires public notice;

(iii) A Type A-3 process is an administrative process that requires public review with the planning commission;

- (b) Type C-1 processes are legislative or quasi-judicial and require public hearings. The (decision-making body for Type C-1 processes shall be the city council.
- (c) Type C-2 are quasi-judicial and require public hearings (the decision-making body shall be the hearing examiner, except the city council shall be the decision-making body for mobile home parks, planned unit developments and major planned unit development amendments);
- (d) Type C-3 are largely ministerial or administrative and do not require a public hearing (the decision-making body for Type C-3 is the city council).

(3) Exemptions from the requirements of project permit application processing as defined in this chapter are contained in BMC 20.01.070.

Section 26. Buckley Municipal Code Section 20.01.050 is hereby amended as follows:

20.01.050 Projects requiring two or more permit applications.

(1) Optional Consolidation. A project that involves two or more permit applications may be subject to a consolidated project permit review process as established in this chapter. The applicant may determine whether the applications shall be processed collectively or individually. If the applications are processed under the individual procedure option, the highest type procedure must be processed prior to the subsequent lower procedure.

(2) Consolidated Permit Processing. When the project is reviewed under the consolidated procedure option, the highest procedure required for any part of the project application must be applied. All project permits being reviewed through the consolidated permit review process shall be included in the following:

- (a) Determination of completeness;
- (b) Notice of application;
- (c) Notice of final decision;
- (d) Single report stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060. The report may be the local permit. If a threshold determination other than a determination of significance has not been issued previously by the local government, the report shall include or append this determination. (RCW 36.70B.060(5))

(3) Public Hearing for Consolidated Applications. The review process shall provide for no more than one consolidated open record hearing and one closed record appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing.

(4) Decision-Maker(s). Applications processed in accordance with subsection (2) of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decision-maker (s) to the extent consistent with state law. The order of decision making authority, from highest to lowest is City Council, hearing examiner, and director.

(5) Consolidation with the Other Government Agencies. The city is also authorized to consolidate project review with the permit procedures of other government agencies. Joint public hearings with other agencies shall be processed according to BMC 20.01.060.

Section 27. Buckley Municipal Code Section 20.01.090 BMC is hereby amended as follows:

20.01.090 Administrative approvals subject to notice (Type A-2) – Process overview.

(1) Administrative Decision. The director shall approve, approve with conditions, or deny (with or without prejudice) all Type A-2 permit applications, subject to the determination of completeness, the notice of application, the notice of decision and appeal requirements of this section.

(2) Notice of Application. Within 14 working days after the date an application subject to a Type A-2 process was accepted as complete, the review authority shall issue a public notice of the pending review consistent with the requirements of BMC 20.01.140. Upon issuance of the notice of application the city shall provide the public notice of application for a project permit by ensuring posting of the property, mailing and by publication in the city's official newspaper as provided in BMC 20.01.140.

(3) Additional Posting. The review authority may also require notices to be posted in conspicuous places visible on the site or in the vicinity of a proposed action at least 10 working days before the close of the comment period.

(4) Staff Report. The director shall issue written findings and conclusions supporting Type A-2 decisions.

(5) Appeal Procedures. An applicant or other party of record who may be aggrieved by the administrative decision of a Type A-2 application may appeal the decision to the following:

(a) Appeals for Type A-2 administrative decisions will be to the, hearing examiner;

Section 28. Buckley Municipal Code Section 20.01.100 BMC is hereby amended as follows:

20.01.100 Type C-1 and C-2 procedures – Quasi-judicial decisions – Process overview.

(1) Determination of Completeness and Notice of Application. All C-1 and C-2 procedures require the issuance of determination of completeness and notice of application consistent with BMC 20.01.130 and 20.01.140. Upon issuance of the notice of application the city shall provide the public notice of application for a project permit by ensuring posting of the property, mailing and by publication in the city's official newspaper as provided in BMC 20.01.140.

(2) Staff Report. At least five days before a public hearing for all types of procedures, the director shall prepare a staff report on the proposed development or action summarizing the comments and recommendations of city departments, affected agencies and special districts, and evaluating the development's consistency with the city's development code as amended, adopted plans and regulations. The staff report shall include proposed findings, conclusions and recommendations for disposition of the development application. The staff report shall include and consider all written public comments on the application.

(3) Recommendations. Staff recommends to decision makers and recommending bodies, as appropriate, after reviewing the application and applicable codes.

(4) Required Findings. The decision maker or recommending body may approve or recommend to approve a proposed project if it first makes the following findings and conclusions:

(a) The project is consistent with the Buckley comprehensive plan and meets the requirements and intent of the Buckley Municipal Code;

(b) The project is not detrimental to the public health, safety and welfare;

(c) The project adequately mitigates impacts identified under Chapter 12.04 BMC, State Environmental Policy Act, and Chapter 12.08 BMC, Critical Areas – General Provisions, as amended.

(5) Public Hearing. A public hearing on quasi-judicial decisions shall be held for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the city's development code, adopted plans and regulations.

(6) Notice of Public Hearing. At least ~~15~~ 14 days before the date of the hearing for an application subject to Type B or Types C-1 and C-2 review, the review authority shall issue a public notice. Notice of the public hearing shall be in accordance with BMC 20.01.190.

(7) Notice of Public Meeting or Workshop. Notice shall be given consistent with Chapter 1.28 BMC and RCW 36.70A.035, Public participation – Notice provisions.

(8) Quasi-Judicial Action. Upon receiving a recommendation, the decision maker shall hold an open record public hearing and make a decision on a recommendation, including consideration of any appeals of the recommendation. For Type C-1 decisions, the planning commission after receiving a staff review of the application shall hold an open record public hearing and forward a recommendation to the city council for decision. For Type C-2 decisions, the hearing examiner after receiving a staff review of the application shall hold an open record public hearing and make a decision on the application.

(9) Quasi-Judicial Decisions. A quasi-judicial decision on a recommendation following an open record public hearing shall include one of the following actions:

(a) Approve as recommended;

(b) Approve with additional conditions;

(c) Modify, with or without the applicant's concurrence; provided, that the modifications do not:

(i) Enlarge the area or scope of the project;

(ii) Increase the density or proposed building size; or

(iii) Significantly increase adverse environmental impacts as determined by the responsible official;

(d) Deny without prejudice (reapplication or resubmittal is permitted);

(e) Deny with prejudice (reapplication or resubmittal is not allowed for one year); or

(f) Remand for further proceedings and/or evidentiary hearing in accordance with BMC 20.01.240.

Section 29. Buckley Municipal Code Section 20.01.200 BMC is hereby amended as follows:

20.01.200 Notice of public meetings.

Public meetings of the planning commission, hearing examiner, and city council shall comply with applicable notice requirements of the Open Public Meetings Act, Chapter 42.30 RCW, Chapter 1.28 BMC, and, if applicable, notice shall be given consistent with RCW 36.70A.035, Public participation – Notice provisions.

Section 30. Buckley Municipal Code Section 20.01.220 BMC is hereby amended as follows:

20.01.220 Procedures for public meetings.

The city council, planning commission and hearing examiner may adopt by majority vote the process for their respective public meetings. Generally a public meeting does not involve formal public comment. A public meeting is not a public hearing. The city council, planning commission and the hearing examiner may, but are not required to, provide for written comments or questions prior to a meeting to assist that body in its actions at its public meeting and may allow comments at a public meeting.

Section 31. Buckley Municipal Code Section 20.01.240 BMC is hereby amended as follows:

20.01.240 Remand.

In the event the hearing examiner or the city council determines that the public hearing record, the record on appeal or the administrative decision is insufficient or otherwise flawed, the council may remand the matter back to the planning commission, or director, as applicable, to correct the deficiencies. Remand is available upon a showing of:

- (1) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;
- (2) Unlawfulness of procedure or of decision-making process; or
- (3) Mistake of material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

Section 32. Buckley Municipal Code Section 20.01.250 BMC is hereby amended as follows:

20.01.250 Final decision.

(1) Notice of Final Decision.

(a) The city shall provide a notice of decision that also includes a statement of any threshold determination made under SEPA (Chapter 43.21C RCW) and the procedures for administrative appeal, if any.

(b) The notice of decision shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.

(c) Notice of the decision shall be provided to the public as set forth in BMC 20.01.190.

The director shall issue a notice of final decision within 120 days of the issuance of the determination of completeness pursuant to BMC 20.01.130; provided that the time period for issuance of a notice of final decision on a preliminary plat shall be 90 days, for a final plat 30

days, and a short plat 30 days. The notice of decision shall include a statement of the threshold determination made under Chapter 12.04 BMC as amended and the procedures for an appeal (if any) of the permit decision or recommendation. Said notice shall also state that the affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. The department shall provide notice of the decision to the Pierce County assessor.

(d) In calculating the 120-day period for issuance of the notice of final decision, the following periods shall be excluded:

(i) Any period during which the applicant has been requested by the director to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the director notifies the applicant of the need for additional information until the earlier of the date the director determines that the additional information provided satisfies the request for information, or 14 days after the date the additional information is provided to the city;

(ii) If the director determines that the information submitted is insufficient, the applicant shall be informed of the particular insufficiencies and the procedures set forth in subsection (1)(d)(i) of this section for calculating the exclusion period shall apply;

(iii) Any period during which an environmental impact statement (EIS) is being prepared pursuant to Chapter 43.21C RCW. The time period for preparation of an EIS shall be governed by Chapter 43.21C RCW;

(iv) Any period for consideration and issuance of a decision for administrative appeals of project permits, which shall be not more than 90 days for open record appeals and 60 days for closed record appeals, unless a longer period is agreed to by the director and the applicant;

(v) Any remand to the planning commission, hearing examiner or director;

(vi) Any period during which the applicant has failed to pay any applicable fees or deposits after having been notified of such by the city shall be excluded from the time period in this chapter;

(vii) Any extension of time mutually agreed to by the director and the applicant.

(f) If the city is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of decision.

(g) The time limits established in this title do not apply if a project permit application:

(i) Requires an amendment to the comprehensive plan or a development regulation;

(ii) Requires siting approval of an essential public facility as provided in RCW 36.70A.200; or

(iii) Is substantially revised by the applicant, in which case the time period shall start from the date that a determination of completeness for the revised application is issued by the director pursuant to BMC 20.01.130 and RCW 36.70B.070.

(2) Effective Date. The final decision of the council, hearing examiner or hearing body shall be effective on the date stated in the decision, motion, resolution, or ordinance; provided, that the appeal periods shall be calculated from the date of issuance of the land use decision, as provided in the Land Use Petition Act, Chapter 36.70C RCW. For the purposes of this chapter, the date on which a land use decision is issued is:

(a) Three days after a written decision is mailed by the city, or, if not mailed, the date on which the city provides notice that a written decision is publicly available;

(b) If the land use decision is made by ordinance or resolution by the city council sitting in a quasi-judicial capacity, the date the city council passes the ordinance or resolution;

(c) If neither subsection (2)(a) nor (b) of this section applies, the date the decision is entered into the public record.

Section 33. Buckley Municipal Code Section 20.01.260 BMC is hereby amended as follows:

20.01.260 Appeals.

(1) Appeal of Administrative Interpretations and Decisions. Administrative interpretations and administrative decisions may be appealed to the appeal authority designated in BMC 20.01.030, Table 1, by applicants or parties of record, within 14 days from the date of the decision.

(a) SEPA determinations shall be appealed to the hearing examiner; provided that an appeal of a determination of significance shall follow Chapter 43.21C RCW and Chapter 197-11 WAC.

(2) Consolidated Public Hearing. All appeals of SEPA threshold determinations made pursuant to Chapter 12.04 BMC as amended (other than determinations of significance) shall be considered together with the decision on the project application in a single, consolidated public hearing.

(3) Procedures for Appeals. Appeals shall be conducted in accordance with the rules of procedure of the hearing body and shall serve to provide argument and guidance for the body's decision.

(a) The parties to an appeal of a planning commission recommendation may submit timely written statements or arguments.

(4) Filing. A notice of appeal shall be delivered to the planning department by mail or personal delivery, and must be received by 4:00 p.m. on the last business day of the appeal period, with the required appeal fee.

(a) SEPA appeals shall be filed with the Responsible Official within seven days after the end of the SEPA determination's comment period ends.

(b) Every permit appeal shall be filed with the director within 21 days after the date of the decision of the matter being appealed became final. Every appeal shall be filed with the director within 21 days after the date of the decision of the matter being appealed became final.

(5) Contents of the Notice of Appeal. The notice of appeal shall contain a concise statement identifying:

(a) The decision being appealed;

(b) The name and address of the appellant and his/her interest(s) in the matter;

(c) The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;

(d) The desired outcome or changes to the decision; and

(e) The appeal fee.

(6) Hearing body actions on Appeal. The decision following an appeal hearing shall include one of the following actions:

(a) Grant the appeal in whole or in part.

(b) Deny the appeal in whole or in part.

(c) Remand for further proceedings and/or evidentiary hearing in accordance with BMC 20.01.240.

(d) The hearing body may receive new evidence in addition to that contained in the record on appeal only if it relates to the validity of the underlying decision at the time the decision was made and is needed to decide disputed issues regarding:

(i) The proper constitution of or disqualification grounds pertaining to the decision-maker.

(ii) The use of unlawful procedure.

(7) Judicial Appeal. BMC 20.01.030 identifies final decisions appealable to superior court. In lieu of superior court, some appeals of final decisions are required by state law to be filed in other forums. The appellant bears the responsibility of filing an appeal in the proper forum and no assurances are made as to the accuracy of the forums designated for appeal in Table 1, BMC 20.01.030.

(a) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant.

(b) Prior to the preparation of any records, the appellant shall post with the city clerk an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

Section 34. Copy to the Department of Commerce. Pursuant to RCW 36.70A.106, the City administrator is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

Section 35. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 36. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this 26th day of January, 2016.


MAYOR, PAT JOHNSON

ATTEST/AUTHENTICATED:


JOANNE STARR, CITY CLERK

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY:

PUBLISHED: February 3, 2016

BY

A handwritten signature in blue ink, appearing to read "P. J. [unclear]", is written over a horizontal line.

EFFECTIVE: February 8, 2016