

## **Title 15**

### **BUILDINGS AND CONSTRUCTION**

#### **Chapters:**

- 15.04 Building Code**
- 15.05 *Repealed***
- 15.08 Sign Code**
- 15.12 Construction Work Affecting City Utilities**
- 15.16 Flood Damage Prevention**
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## Chapter 15.04

## BUILDING CODE

## Sections:

- 15.04.010 Title.**
- 15.04.015 Repealed.**
- 15.04.020 Codes adopted by reference.**
- 15.04.021 Design requirements.**
- 15.04.023 International Building Code, Section 104.6 and International Residential Code, Section R104.6 amended – Right of Entry; International Building Code, Section 114 and International Residential Code, Section R113 amended – Violations; International Building Code, Section 115 and International Residential Code, Section R114 amended – Stop Work Order.**
- 15.04.026 Section 204 deleted.**
- 15.04.030 Violations – Enforcement and penalty.**
- 15.04.040 Uniform Building Code – Section 106.4 amended – Permits issuance.**
- 15.04.050 International Building Code, Section 108.2 and International Residential Code, Section R108.2 amended – Fees.**
- 15.04.060 Repealed.**
- 15.04.080 Repealed.**
- 15.04.090 Repealed.**
- 15.04.095 Repealed.**
- 15.04.100 Fee schedule – Installation of solid fuel burning appliances.**
- 15.04.110 Repealed.**
- 15.04.120 Administrative variance – Compliance with Americans with Disabilities Act.**
- 15.04.130 Appeals.**

**15.04.010 Title.**

This chapter and amendments hereto shall constitute the “city building code” of the city and may be cited as such. (Ord. 89-22 § 1,

1989; Ord. 86-14 § 1, 1986; Ord. 79-28 § 1, 1979)

**15.04.015 Definitions.**

*Repealed by Ord. 2003-22. (Ord. 96-12 § 1, 1996; Ord. 95-02 § 2, 1995)*

**15.04.020 Codes adopted by reference.**

The following codes are adopted by reference subject to the amendments set forth in BIMC 15.04.021 through 15.04.050 and Resolution 99-31:

A. The International Building Code, 2009 Edition, published by the International Code Council, and amended by the State Building Code Council in Chapter 51-50 WAC, together with ICC A117.1-2003, Appendix C (Agricultural Buildings), Appendix E (Supplementary Accessibility Requirements), and Appendix J, (Grading);

B. The International Residential Code, 2009 Edition, published by the International Code Council, and amended by the State Building Code Council in Chapter 51-51 WAC, together with Appendix G (Swimming Pools, Spas and Hot Tubs) and Appendix R (Dwelling Unit Fire Sprinkler Systems);

C. The Uniform Plumbing Code, 2009 Edition, published by the International Association of Plumbing and Mechanical Officials, and amended by the State Building Code Council in Chapters 51-56 and 51-57 WAC;

D. The International Mechanical Code, 2009 Edition, published by the International Code Council, and amended by the State Building Code Council in Chapter 51-52 WAC, except that the standards for handling liquefied petroleum gas installations shall be NFPA 58 (Liquefied Petroleum Gas Code) and NFPA 54 (National Fuel Gas Code);

E. The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials;

F. The Washington State Energy Code, 2009 Edition, published by the State Building Code Council, and amended in Chapter 51-11 WAC;

G. The Uniform Administrative Code, 1997 Edition, published by the International Conference of Building Officials;

H. The International Fuel Gas Code, 2009 Edition, published by the International Code Council;

I. The Uniform Building Code, 1997 Edition, Table 1-A only, published by the International Conference of Building Officials.

In case of conflict among the BIMC and codes adopted in subsections A, B, C, D, E, F, G, H, and I of this section, the BIMC shall govern. (Ord. 2010-17 § 1, 2010: Ord. 2008-10 § 8, 2008: Ord. 2007-17 § 1, 2007: Ord. 2004-14 § 1, 2004: Ord. 98-30 § 2, 1998; Ord. 96-12 § 3, 1996; Ord. 93-20 § 1, 1993; Ord. 91-17 § 1, 1991; Ord. 89-46 § 1, 1989; Ord. 89-22 § 2, 1989; Ord. 87-27 § 1, 1987; Ord. 86-17 §§ 1, 2, 1986; Ord. 86-14 § 2, 1986; Ord. 86-06 § 1, 1986; Ord. 84-02 § 1, 1984; Ord. 81-07 § 1, 1981; Ord. 79-28 § 2, 1979)

#### 15.04.021 Design requirements.

IRC Table R301.2(1) is amended by filling in the blanks of the table as follows:

Roof Snow Load: 25 psf

Wind Speed: 85 mph

Seismic Category: D2

Weathering: Moderate

Frost Line Depth: 12 inches

Termite: Slight to Moderate

Decay: Slight to Moderate

Winter Design Temp: 27 degrees F

Ice Shield Underlayment Required: No

Flood Hazards: Per BIMC 15.16

Air Freezing Index: 113

Mean Annual Temp: 53 degrees F  
(Ord. 2010-17 § 2, 2010: Ord. 2007-17 § 2, 2007: Ord. 2004-14 § 2, 2004)

#### 15.04.023 International Building Code, Section 104.6 and International Residential Code, Section R104.6 amended – Right of Entry; International Building Code, Section 114 and International Residential Code, Section R113 amended – Violations; International Building Code, Section 115 and International Residential Code, Section R114 amended – Stop Work Order.

Section 104.6 Right of Entry. The right of entry for the building official shall be as set forth in BIMC 1.26.020.

Section R104.6 Right of Entry. The right of entry for the building official shall be as set forth in BIMC 1.26.020.

Section 114 Violations. The building official may order discontinuance or vacation of a use, structure, building or equipment in accordance with Chapter 1.26 BIMC.

Section R113 Violations. The building official may order discontinuance or vacation of a use, structure, building or equipment in accordance with Chapter 1.26 BIMC.

Section 115 Stop Work Orders. The building official may order work stopped in accordance with Chapter 1.26 BIMC.

Section R114 Stop Work Orders. The building official may order work stopped in accordance with Chapter 1.26 BIMC.  
(Ord. 2010-17 § 3, 2010: Ord. 2004-14 § 3, 2004; Ord. 96-12 § 2, 1996)

#### 15.04.026 Section 204 deleted.

Section 204 of the Uniform Building Code adopted in BIMC 15.04.020 is repealed. (Ord. 95-02 § 3, 1995)

**15.04.030 Violations – Enforcement and penalty.**

A. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the city, or cause or permit the same to be done, contrary to or in violation of any of the provisions of the city building code.

B. It is unlawful for any person to remove or deface any sign, notice, complaint or order required by or posted in accordance with the city building code.

C. It is unlawful to misrepresent any material fact in any application, plans or other information submitted to obtain any permits or authorizations under the city building code.

D. Civil Infraction. Except as provided in subsection E of this section, conduct made unlawful by the city building code shall constitute a civil infraction and is subject to enforcement and fines as provided in BIMC 1.26.035, including payment of a fine of not more than \$500.00 per violation for each day of noncompliance and payment of court costs. A civil infraction under this section shall be processed in the manner set forth in Chapter 1.26 BIMC.

E. Misdemeanor. Any person who again violates this section within 12 months after receiving a notice of infraction pursuant to subsection A of this section commits a misdemeanor and any person who is convicted thereof shall be punished as provided in BIMC 1.24.010.A.

F. Civil Penalty. In addition to any civil infraction fine, criminal penalty, and/or other available sanction or remedial procedure, any person engaging in conduct made unlawful by the city building code shall be subject to a cumulative civil penalty in the amount of \$1,000 per day for each violation from the date set for compliance until the date of compliance. Any such civil penalty shall be collected in accordance with BIMC 1.26.090.

G. Additional Remedies. In addition to any other remedy provided by this chapter or under the Bainbridge Island Municipal Code, the city may initiate injunction or abatement proceedings or any other appropriate action in

courts against any person who violates or fails to comply with any provision of this chapter to prevent, enjoin, abate, and/or terminate violations of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the person violating and/or failing to comply with any provisions of the city building code shall be liable for the costs and reasonable attorneys' fees incurred by the city in bringing, maintaining and/or prosecuting such action.

H. In the event and to the extent the language of this section conflicts with language of the codes and/or appendices adopted by reference in BIMC 15.04.020, the language of this section shall prevail over the language it conflicts with in any said code and/or appendix. (Ord. 2007-17 § 3, 2007: Ord. 2004-14 § 4, 2004: Ord. 98-05 § 1, 1998; Ord. 96-12 § 4, 1996; Ord. 95-02 § 4, 1995; Ord. 89-22 § 3, 1989; Ord. 86-14 § 3, 1986; Ord. 84-02 § 2, 1984: Ord. 81-18 § 1, 1981: Ord. 79-28 § 3(A), 1979)

**15.04.040 Uniform Building Code – Section 106.4 amended – Permits issuance.****A. Permit Required.**

1. Issuance Procedure. The application, plans and specifications and other data filed by an applicant for a permit shall be checked by the building official or his/her designee for a determination of completeness. The building permit application shall be considered complete only after:

a. The determination that the official application form is complete.

b. The plans submitted are adequate to evaluate the proposed project.

c. The plan check fees have been paid by the applicant.

The complete application and building plans shall be reviewed by the building official for compliance with codes adopted by this chapter and other pertinent laws and ordinances in effect in the city of Bainbridge Island. When the building official is satisfied that the work as described in the application satisfies the requirements of this code and conforms to other pertinent laws and ordinances,

the applicant will be required to pay the calculated building permit fee. A building permit shall then be issued to the applicant for the work described.

2. Compliance with Approved Plans and Permits. When the building official issues a permit, he/she shall endorse the permit in writing or stamp the plans "APPROVED." Such approved plans and permit shall not be changed, modified or altered without authorization from the building official, and all work shall be done in accordance with the approved plans and permit except as the building official may require during field inspection to correct errors or omissions.

3. Permits for Part of a Project. The building official may issue a permit after payment of the required fee for the construction of part of a project before complete plans for the whole project have been submitted or approved; provided, that the proposed project complies with the State Environmental Policy Act and the zoning ordinance (including site plan review); and provided further, that adequate information and plans have been filed and checked to assure compliance with all requirements of this and other pertinent codes.

4. Amendments to the Permit. When substitutions and changes are made during construction, approval shall be secured prior to execution. Substitutions, changes and clarifications shall be shown on two sets of plans which shall be submitted to and approved by the building official, accompanied by redesign fees, prior to occupancy.

5. Cancellation of Permit Application. If a permit is not issued after a period of six months from the date of approval for issuance or date of notification of required corrections, the applicant shall be notified in writing that the permit application will be canceled after one month. After that time, the site shall be inspected to verify that no work has taken place. The application shall be canceled and it and any accompanying plans and specifications destroyed and the portion of the fee paid forfeited. Upon written request of the applicant, prior to cancellation, the building official may extend the life of the permit application for a period not to exceed six months, with no

other extensions possible; except that applications may be further extended by the building official where permit issuance is delayed by litigation, appeals or similar problems. Application forms and plans for such canceled permit applications shall not be retained by the city. Any application for a permit for the same structure and/or site for which the original permit was canceled shall be considered a new application requiring a new application and submittal of a new complete set of plans, recalculations of the fees by the building official and payment of the full fee. All ordinances in effect at the time of the filing of the new completed application shall be complied with.

B. Retention of Plans for Work Under Construction. One set of approved plans shall be retained by the building official for a period of 90 days from the date of the final inspection and one set of approved plans shall be returned to the applicant, which set shall be kept on such building or work site at all times during which the work authorized is in progress for use by the building inspector.

C. Validity. The issuance or granting of a permit or approval of plans shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of this jurisdiction. No permit presuming to give authority to violate or cancel the provisions of this code shall be valid.

The issuance of a permit based upon plans shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications or other data, or from preventing building operations being carried on thereunder when in violation of this code or of any other ordinances of the city.

The issuance of a building permit shall not prevent the building official from requiring correction of conditions found to be in violation of this code or any ordinance of the city, nor shall the period of time for which any such permit is issued by construed to intend or otherwise affect any period of time for compliance specified in any notice or order issued by the building official or other administrative authority requiring the correction of any such condition.

#### D. Expiration.

1. **Permits and Renewals Where Work is Progressing.** Permits shall expire one year from the date that the original permit was issued, except if specifically noted otherwise on the permit. Permits for major construction projects that require more than one year to complete may be issued for a length of time that provides a reasonable time to complete the work, however, in no case to exceed three years. Permits may be renewed and renewed permits may be further renewed by the building official upon application within the 30-day period immediately preceding the date of expiration thereof; provided, that the building official determines that the work permitted has been started and is progressing. If commencement or completion of the work is delayed by litigation, appeals, strikes or other causes beyond the permittee's control, the expiration date will be extended the number of days the work was delayed by such causes. A new permit will be applied for where a permit has expired.

2. **Permits and Renewals Where Work is Not Commenced or is Suspended.** Permits and renewed permits shall expire 180 days from the date that the original permit or renewed permit was issued if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Permits may be renewed one time for such cases by the building official upon application within the 30-day period preceding expiration of the permit. A new permit will be applied for where a period has expired.

3. **Application Process for New Permits and Renewals of Permits.** A new permit shall be applied for where a permit has expired. A new application form and complete plans must be filed and a new fee shall be calculated by the building official and paid by the applicant. All ordinances in effect at the time of filing of a completed application shall be complied with. A permit may be renewed under the conditions set forth in this section upon written application for renewal. A renewal fee amounting to one-half the original

fee shall be paid by the applicant before the renewal permit is issued.

4. **Suspension or Revocation.** The building official shall, by written order, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any provisions of this code. The building official may also suspend a permit in whole or in part and stop work pursuant to said permit whenever an appeal from the action of the building official issuing or renewing said permit has been filed pursuant to this chapter or other ordinance of the city of Bainbridge Island. (Ord. 2001-41 § 3, 2001; Ord. 96-12 § 5, 1996; Ord. 89-22 § 3, 1989; Ord. 86-14 § 3, 1986; Ord. 84-02 § 2, 1984; Ord. 81-30 § 1, 1981; Ord. 81-18 § 1, 1981; Ord. 79-28 § 3(B), 1979)

#### **15.04.050 International Building Code, Section 108.2 and International Residential Code, Section R108.2 amended – Fees.**

A. **Permit Fees.** The fee for each permit shall be calculated from the 1997 Uniform Administrative Code, which is adopted by reference, and using the most current building valuation data supplied by the International Code Council times a factor of 1.41. When building valuation data is updated by the International Code Council, the city's fees shall be adjusted as of the first of the month at least 30 days after release of the updated figures from the International Code Council. The calculated fees may be reduced by a percentage discount as determined by resolution of the city council. In no case shall the fees charged for building permits exceed the cost to the city of the building permit regulatory function.

B. **Plan Review Fees.** When a plan or other data is required to be submitted, a plan review fee shall be paid at the time of submitting plans and specifications for review. Said plan review fee shall be 65 percent of the building permit fee calculated in subsection A of this section. Where plans are incomplete or

changed so as to require additional plan review, an additional plan review fee shall be charged.

C. Investigation Fees – Work Without a Permit. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether a permit is then or subsequently issued. The investigation fee shall be based on the actual time spent on the investigation. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this chapter or from any penalty prescribed by law.

D. Renewal Fees. Fees for renewals shall be one-half the amount required for a new permit for the work. Such fee may be waived by the building official following written request for same upon showing that circumstances beyond the control of the applicant prevented work from commencing or action from being taken.

E. Fee Refunds.

1. The building official may authorize the refunding of any fee paid hereunder which was erroneously paid or collected.

2. The building official may authorize the refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

3. The building official may authorize the refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

F. Planning Review of Building Permits. When a plan or other data is required to be reviewed for conformity with the environmental or zoning chapters of the Bainbridge Island Municipal Code, a review fee shall be charged in the amount established by the city by reso-

lution. Where plans are incomplete or changed so as to require additional environmental or zoning review, an additional review fee shall be charged. (Ord. 2007-08 § 1, 2007; Ord. 2006-25 § 1, 2006; Ord. 2005-38 §§ 1, 2, 2005; Ord. 2004-14 § 5, 2004; Ord. 97-10 § 4, 1997; Ord. 96-12 § 7, 1996; Ord. 89-22 § 3, 1989; Ord. 86-14 § 3, 1986; Ord. 84-02 § 2, 1984; Ord. 81-18 § 1, 1981; Ord. 79-28 § 3(C), 1979)

**15.04.060 Uniform Building Code – Section 204-C (#5) amended – City defined.**

*Repealed by Ord. 2003-22.* (Ord. 96-12 § 8, 1996; Ord. 89-22 § 3, 1989; Ord. 86-14 § 3, 1986; Ord. 84-02 § 2, 1984; Ord. 81-18 § 1, 1981; Ord. 79-28 § 3(D), 1979)

**15.04.080 Uniform Plumbing Code – Schedule of fees amended.**

*Repealed by Ord. 96-12.*

**15.04.090 Fire protection systems.**

*Repealed by Ord. 2008-10.* (Ord. 96-12 § 10, 1996; Ord. 90-02 §§ 1, 2, 1990; Ord. 89-14 § 4, 1989; Ord. 88-18 § 1, 1988; Ord. 86-17 § 3, 1986)

**15.04.095 Fire lanes.**

*Repealed by Ord. 2008-10.* (Ord. 2000-23 § 3, 2000)

**15.04.100 Fee schedule – Installation of solid fuel burning appliances.**

The city shall charge an appropriate fee for processing and issuing a permit for, or for inspecting, a wood stove or other solid fuel burning appliance in the amount established by the city by resolution. (Ord. 92-24 § 9, 1992; Ord. 87-27 § 2, 1987)

**15.04.110 Burning permits.**

*Repealed by Ord. 2000-27.* (Ord. 96-12 § 11, 1996; Ord. 89-63 §§ 2 – 6, 8, 1989; Ord. 89-16 § 1, 1989; Ord. 89-05, 1989)

**15.04.120 Administrative variance –  
Compliance with Americans  
with Disabilities Act.**

A. Application. A property owner may apply for an administrative variance from building setback requirements set forth in this code if the variance is requested solely for the purpose of complying with the Federal Americans with Disabilities Act and any amendments thereto. Administrative variance applicants shall not be required to comply with the procedures for obtaining a variance set forth in Chapter 18.111 BIMC.

B. Procedures. The application shall be filed with the department of planning and community development on a form prescribed by the department. The director of planning and community development shall review the application and approve, approve with conditions or disapprove the application pursuant to BIMC 2.16.095.

C. Decision Criteria. The director of planning and community development may approve or approve with conditions an application for an administrative variance if:

1. The administrative variance is requested for the purpose of obtaining relief from building setback requirements set forth in this code;

2. The need for the administrative variance has not arisen from actions taken or proposed by the applicant;

3. The administrative variance is the minimum necessary to fulfill the need of the applicant;

4. The administrative variance is consistent with the purpose and intent of this code and in accordance with the city's comprehensive plan; and

5. The administrative variance is necessary for the property to comply with the Federal Americans with Disabilities Act and any amendments thereto.

D. Expiration. An administrative variance automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit within three years of the effective date of the administrative variance unless:

1. The applicant has received an extension for the administrative variance; or

2. The administrative variance approval provides for a greater time period.

E. Extension. The director of planning and community development may grant one extension to the administrative variance for period not exceed one year if:

1. Unforeseen circumstances or conditions necessitate the extension of the administrative variance;

2. Termination of the administrative variance would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and

3. The extension request is received by the department of planning and community development no later than 30 days prior to the expiration of the administrative variance. (Ord. 96-12 § 12, 1996; Ord. 93-22 § 1, 1993)

**15.04.130 Appeals.**

A. General. Except for civil infractions, misdemeanors and civil penalties imposed pursuant to BIMC 15.04.030, the hearing examiner shall hear and decide appeals of orders, decisions and/or determinations made by the building official and/or director of planning and community development relative to the application and interpretation of the city building code.

B. Limitations on Authority. An application for appeal shall be based on a claim that the true intent of the city building code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the city building code do not fully apply or an equally good or better form of construction is proposed. The hearing examiner shall have no authority to waive requirements of the city building code.

C. In the event and to the extent the language of this section conflicts with language of the codes and/or appendices adopted by reference in BIMC 15.04.020, the language of this section shall prevail over the language it conflicts with in any said code and/or appendix. (Ord. 2007-17 § 4, 2007)

Chapter 15.05

**FIRE SAFETY REQUIREMENTS FOR  
DESIGNATED MULTIFAMILY  
RESIDENTIAL BUILDINGS**

(Repealed by Ord. 2008-10)

Chapter 15.08

**SIGN CODE**

Sections:

- 15.08.010 Purpose.
- 15.08.020 Definitions.
- 15.08.030 Signs not requiring a permit.
- 15.08.040 Prohibited signs.
- 15.08.050 Nonconforming signs.
- 15.08.060 Measurement of sign area.
- 15.08.070 Height of sign.
- 15.08.080 General regulations.
- 15.08.090 Commercial use signs.
- 15.08.095 Political signs.
- 15.08.100 Institutional or public use signs.
- 15.08.110 Residential use signs.
- 15.08.115 Freestanding or sandwich board signs.
- 15.08.120 Permits required.
- 15.08.130 Permit fees.
- 15.08.140 Sign variance.
- 15.08.150 Enforcement and penalties.

**15.08.010 Purpose.**

The purpose of this chapter is as follows:

- A. To promote and protect the public welfare, health and safety.
- B. To encourage the installation of signs which harmonize with building design, natural settings and other geographical characteristics of the locations in which they are erected.
- C. To create a more attractive economic and business climate.
- D. To reduce distractions and obstructions from signs which would adversely affect traffic safety and reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way. (Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

**15.08.020 Definitions.**

- A. "Agricultural products sign" means a sign advertising seasonal produce.
- B. "Alteration" means any change of a sign, other than changeable copy as defined in this section.
- C. "Awning and marquee sign" means a sign attached to a face or shelter, which face or

shelter extends (12 inches or more) in a direction perpendicular to the wall of the building and may be supported by posts or the exterior wall of the building or any combination thereof.

D. "Banner" means a sign of flexible material designed to be displayed between two supports or against another surface.

E. "Banneret" means a small banner that is hung vertically from a freestanding support, i.e., curbside bannerets on light standards and bannerets in public squares.

F. "Bulletin board" means a surface designed for the affixing of temporary handbills, notices, posters or other similar items.

G. "Changeable copy" means but is not limited to that portion of sign copy consisting of individual interchangeable letters and numbers which may be rearranged to spell new words and to form new numbers on the sign face, without reworking, repainting, or otherwise altering the physical composition of the sign, for the primary objective of displaying frequently changing copy.

H. "Construction sign" means a temporary sign erected for the purpose of announcing future building plans and identifying the owner, architect, engineer, building contractor and/or other persons responsible for the development of the site.

I. "Cultural, historical or architecturally significant sign" means a sign with unique local characteristics which may not fit other defined categories.

J. "Director" means the city's director of planning and community development.

K. "Erect" means to build, construct, raise, assemble, create, alter, display, relocate, attach, hang, place, suspend, affix, paint, draw, engrave, carve, cast, or in any other way bring into being or establish, other than to replace changeable copy and other than in the course of normal sign maintenance as described in this chapter.

L. "Facade sign" means any sign which is erected (including painted) on the wall of a building or other structure, whose face is generally parallel to that wall or other structure and whose face does not extend outward more

than 12 inches in a direction perpendicular to that wall or other structure.

M. "Facade" means the wall of a building or other structure whose face is generally parallel to that wall or other structure.

N. "Freestanding sign" means a sign supported by one or more uprights, poles or braces in or on the ground, and not supported by a building.

O. "Grade." See BIMC 18.06.430.

P. "Neon sign" means a sign illuminated in whole or part by gaseous tubes electrified by a current.

Q. "NSC" means neighborhood service centers.

R. "Political sign" means a sign advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue to be decided by ballot.

S. "Primary entrance" means the principal or main entrance of a building or structure which is used by the majority of patrons to access the building or structure.

T. "Projecting/hanging sign" means a sign, which is attached to or supported by a wall or suspended from the overhang of a building or other structure.

U. "Public right-of-way sign" means a sign in the public right-of-way.

V. "Repair" means the reconstruction or renewal of any part of an existing sign for the purpose of its maintenance.

W. "Sandwich board sign" means a sign which consists of two panels hinged or attached at the top or side, designed to be movable and stand on the ground.

X. "Sign" means any letter, figure, design, symbol, trademark or other device which is intended to attract attention to any activity, service, place, political office, subject, firm, corporation or merchandise, except traffic signs or signals, public or court notices, signs not visible from the public right-of-way or adjacent properties, signs on moving vehicles, newspapers, leaflets or other printed materials intended for individual use or individual distribution to members of the public, government flags, flags and bunting exhibited to commemorate national patriotic holidays.

## 15.08.030

Y. "Street frontage" means that portion of any lot or building facing a street or sidewalk and with direct access to that street or sidewalk.

Z. "Two-sided" means a sign where only one face is visible from any viewing position.

AA. "Window sign" means a sign placed inside a building within 15 feet of the window or on a window and visible from the outside. This term does not include merchandise. (Ord. 2005-23 § 1, 2005; Ord. 2001-40 § 1, 2001; Ord. 98-53 § 1, 1999; Ord. 96-32 § 1, 1996; Ord. 95-14 § 1, 1995; Ord. 94-29 § 19, 1995; Ord. 93-01 § 1, 1993)

### 15.08.030 Signs not requiring a permit.

The following signs shall not require a permit:

A. Signs erected or posted and maintained for public safety and welfare or pursuant to any law or regulation;

B. Bulletin boards, either one or two sided, with no face exceeding 20 square feet in display area, associated with any church, museum, library, school, or similar use; provided, that the top of such signs shall be less than eight feet high and such signs shall meet all other provisions of this chapter;

C. Directional signs solely indicating ingress or egress, the display area not exceeding three square feet;

D. Signs relating to trespassing and hunting, not exceeding two square feet of area;

E. Signs displaying address numbers only, not exceeding two square feet of area;

F. Culturally, historically or architecturally significant signs, existing at the time of passage of the ordinance codified in this chapter and officially recognized by the city. Designation of culturally, historically or architecturally significant signs will be adopted by separate resolution;

G. Any window sign four square feet or less in size; provided, that no single sign or combination of signs shall exceed 25 percent of an individual window area;

H. Agricultural products signs advertising products grown on or produced at the subject property. The signs shall be allowed at each street frontage, and shall be temporary, erected

for a period not exceeding 10 days prior to the availability of the products for sale, and removed when the products are no longer available for purchase. The maximum sign area shall not exceed 10 square feet for each face of a single or two faced sign;

I. Single signs, not exceeding 24 square feet in area, mounted at a height not exceeding 20 feet above grade, displaying the name of a farm. The farm shall meet the standards as defined in BIMC 16.20.020;

J. Banners, not exceeding 30 square feet in area, displayed by a nonprofit or civic organization. The banners and flags are not required to be displayed on the premises of the organization, and may be displayed for a maximum of two periods not exceeding 14 days total within any calendar year;

K. Bannerets, not exceeding 12 square feet in area, displayed by a city council-designated civic organization. Bannerets shall not advertise or promote any individual business or the sale of any product or commodity, and shall only be erected on city-approved standards and in approved locations within the Mixed Use Town Center zone. The city council may delegate the authority to manage and coordinate the erection and removal of bannerets to a civic organization;

L. Construction signs, not exceeding one per construction site, and not exceeding 12 square feet in area, when erected in connection with a building permit. The sign shall be removed within 30 days of the occupancy of the structure. Public works projects are authorized to install signs at the ends of a project which shall not exceed 32 square feet in area;

M. For sale/rent or lease signs on the property being sold, rented or leased. One sign, not exceeding six square feet in area, shall be allowed on each street frontage;

N. Political signs in accordance with BIMC 15.08.095;

O. Signs, intended to be temporary, either the same sign or different sign, may be displayed for a maximum of two periods not exceeding 14 days total within any calendar year. Signs must conform to size and location limitations of this chapter.

P. Public right-of-way signs shall conform to the current Manual on Uniform Traffic Control Devices (MUTCD), as modified, and in developments, shall be installed by and at the applicant's expense. (Ord. 2005-23 § 2, 2005; Ord. 98-53 § 2, 1999; Ord. 96-32 § 1, 1996; Ord. 95-14 § 2, 1995; Ord. 94-29 §§ 20, 21, 1995; Ord. 93-01 § 1, 1993)

#### 15.08.040 Prohibited signs.

The following signs are prohibited:

A. Billboards, streamers, pennants, ribbons, spinners or other similar devices.

B. Flashing signs, roof signs, signs containing moving parts or appearing to move, and signs which sparkle or twinkle in the sunlight.

C. Signs advertising or identifying a business or organization which is defunct.

D. Signs, except for traffic, regulatory, or informational signs, using the words "stop," "caution," or "danger," or incorporating red, amber, or green lights resembling traffic signals, or resembling "stop" or "yield" signs in shape or color.

E. Signs advertising a business or organization not located on the parcel containing the business or organization except signs erected by the state of Washington.

F. Signs erected within the public rights-of-way, access corridors or easements, except the following: signs erected by the city or state; those signs projecting/hanging over the public sidewalk, erected in compliance with the Mixed Use Town Center design guidelines; and political signs displayed in compliance with BIMC 15.08.095.

G. Signs with content or subject matter that constitutes obscenity as defined by law.

H. Portable reader boards and signs mounted on stationary, unlicensed vehicles.

I. Illuminated features, on the exterior of a building that call attention to the building or product sold within the building.

J. Any window sign(s) exceeding four square feet in area or exceeding 25 percent of an individual window area.

K. Neon facade signs except as permitted in BIMC 15.08.080.C.6.

L. On-premises signs in the natural, conservancy, aquatic conservancy and aquatic shoreline environments, except for navigation aids and public information.

M. Signs placed on trees or other natural features. (Ord. 2005-23 § 3, 2005; Ord. 98-53 § 3, 1999; Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

#### 15.08.050 Nonconforming signs.

A. A nonconforming sign lawfully existing prior to July 26, 1993, may remain and be used subject to the provisions of subsections B and C of this section.

B. A nonconforming sign cannot be enlarged, reworded, redesigned or altered in any way except to conform to this chapter. If the cost to repair a nonconforming sign exceeds 50 percent of its replacement cost, the sign shall not be repaired except to conform to this chapter.

C. A sign replacing a nonconforming sign shall conform to this chapter. (Ord. 2001-40 § 2, 2001; Ord. 98-53 § 7, 1999; Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

#### 15.08.060 Measurement of sign area.

Sign measurement shall be based upon the entire area of the sign, with a single continuous perimeter enclosing the extreme limits of the sign surface. For freestanding signs, support structures (providing that they are not signs) extending up to one foot above the signs shall not be included in the calculation of the sign area. For signs which are a molded, cast, carved, or otherwise integral part of a solid concrete, masonry, wood, or composite wall, foundation, fence, or entry structure the sign area shall be measured within a continuous perimeter enclosing the extreme limits of the lettering and/or image. (Ord. 2001-40 § 3, 2001; Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

#### 15.08.070 Height of sign.

A. The height of any sign shall be measured from the grade adjacent to the sign.

B. Signs for marinas shall not exceed 15 feet above the ordinary high water mark.

C. Awning structures on which sign images are attached shall be subject to regulation under the Uniform Building Code as adopted in BIMC 15.04.020. (Ord. 2001-40 § 4, 2001; Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

**15.08.080 General regulations.**

A. Signs which refer to a permitted use or an approved conditional use as set forth in the zoning ordinance and which are permitted under this chapter conform to this chapter.

B. Signs within the Shoreline Master Program Jurisdiction.

1. Sign permits shall be submitted for review and approval at the time of shoreline permit submittal.

2. All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access to the shoreline.

3. Over-water signs, or signs on floats or pilings, shall be related to water-dependent uses only.

4. Signs which impair visual access in view corridors are prohibited.

5. Signs indicating the public's right of access to shoreline areas shall be installed and maintained in conspicuous locations at all points of access. Signs shall also indicate all limitations on use of such areas including use of fire, alcohol, jet skis, and other recreational equipment, as well as requirements regarding pets.

C. Illumination Standards.

1. Signs, except for facade and awning signs, shall only be illuminated externally by light sources shielded so that the lamp is not visible from adjacent properties, the public right-of-way or watercourses.

2. Lights illuminating a sign shall project illumination toward the face of the sign.

3. Signs shall not flash, rotate, or have motorized parts or exposed electrical wires.

4. Signs shall not be illuminated between the hours of 10:00 p.m. and 6:00 a.m. unless the premises on which they are located is open for business.

5. Up to three neon signs are allowed in commercial zones for each business; pro-

vided, that they do not exceed four square feet for any individual sign. Total signage of all types shall not exceed 25 percent of an individual window area. For each retail business that has window area in excess of 100 square feet, an additional four square feet of neon sign area is allowed. Neon signs are allowed only on properties zoned for commercial uses, shall not be visible from the shoreline, and shall not flash.

6. One commercial use sign for theaters, including film or performing arts buildings that were constructed prior to November 10, 1999, may be internally illuminated and may include external unshielded neon lights.

7. Facade signs may be internally illuminated if:

a. The background does not emit light;

b. The background constitutes a minimum of 80 percent of the sign area; and

c. The illumination source is shielded.

D. Placement Standards.

1. No person shall affix a sign to a utility pole or a living tree or shrub.

2. Signs, including temporary banners, shall not be mounted on roofs, extend above the roof line, or be located more than 20 feet above the grade except for retail businesses with a second-floor exterior entrance.

3. Signs projecting from a building shall not be less than eight feet above grade, unless permitted by the city through an administrative variance procedure.

4. Freestanding signs shall not exceed five feet in height except in the LM and NSC zones and except as regulated by BIMC 15.08.100.B. Supporting structures (providing that they are not signs) for freestanding signs may extend one foot higher than the height limit for freestanding signs. In the LM and NSC zones, freestanding signs shall not exceed eight feet in height.

E. Safety Standards. No person may erect a sign that:

1. Is structurally or electrically unsafe;

2. Constitutes a hazard, by design or placement, to public safety and health; or

3. Obstructs free entrance or exit from a door or window that is required to be in place by this code or the city.

F. Freestanding signs shall be located within a landscaped area that is twice the area of the sign area, and the plantings or the landscaped area shall be located so as to shield illumination sources. (Ord. 2001-40 § 5, 2001: Ord. 99-60 § 1, 1999: Ord. 98-53 § 4, 1999: Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

### 15.08.090 Commercial use signs.

In addition to the general regulations of this chapter, the following regulations shall apply to all commercial use signs.

#### A. Facade Signs.

1. The total aggregate area of all facade signs on each wall shall not exceed 128 square feet.

2. Buildings may have one facade sign with a maximum area of 36 square feet for each tenant. If the building has street frontage on two or more streets, has access from an alley or parking area to the side or behind the building, or has retail uses on a second floor, a facade sign for each tenant is allowed; provided, that no additional sign shall exceed 20 square feet in area, face the same street, alley or parking area or be on the same floor as another facade sign.

3. Facade signs shall be located less than 20 feet above grade except for retail businesses with a second-floor exterior entrance.

4. A single directory, combining the name of the commercial complex and the individual names of businesses located within, is allowed provided no other facade sign on the building shall exceed 20 square feet in area except for retail businesses with a second-floor exterior entrance may have a facade sign up to 36 square feet. The maximum sign area for this directory is 48 square feet.

5. A single facade sign for a commercial complex is allowed at the primary entrance instead of a directory, provided no other facade sign for building tenants shall exceed 20 square feet in area except for retail businesses with a second floor exterior entrance may have a facade sign up to 36

square feet. The maximum area for this commercial complex sign is 36 square feet.

6. There may be up to three facade sign(s) per tenant in the High School Road commercial zone located more than 200 feet from the edge of any public right-of-way. No additional sign shall exceed 20 square feet in area, face the same street, alley or parking area or be on the same floor as another facade sign.

#### B. Freestanding Signs.

1. No more than one freestanding sign shall be allowed per tenant. The sign shall not exceed 20 square feet on any single face or 40 square feet on two faces. No more than two freestanding signs, regardless of the number of tenants, shall be allowed on any property.

2. A freestanding identification sign, for a commercial complex, with or without the individual names of businesses located therein, with a maximum sign area of 40 square feet on any single face and a total surface area of 60 square feet if two sided may be erected facing each street frontage. No individual tenant freestanding signs may be erected on such a property that contains this freestanding identification sign.

3. In the LM zone, freestanding identification signs may be located on adjacent LM zoned properties if the signs contain directional information to assist in locating the businesses listed and permission is obtained from the owner of the property where the sign is located. The maximum sign area shall be 36 square feet. The sign shall not be counted toward the maximum number of freestanding signs allowed.

C. An awning or marquee sign, not exceeding 20 square feet in area per commercial tenant, is allowed instead of a facade sign. The lowest point of the awning or marquee is at least eight feet above the sidewalk, and the awning shall have a dark background if illuminated from behind.

#### D. Projecting/Hanging Signs.

1. A business may have one projecting sign, located at least eight feet above grade, with a maximum area of five square feet for each side. The fixture used to suspend the hanging sign must be included in the permit design and approved by the designated offi-

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cials, but shall not be included in the total size of the sign.

2. Signs for theaters, including film or performing arts buildings, shall not exceed 80 square feet on a single face and 140 square feet on multiple faces and shall be located at least 100 feet from any property zoned single-family.

E. Sandwich Board Signs. One nonilluminated sandwich board sign, with each face not exceeding six square feet in area, shall be allowed per business. The sign shall be a minimum of 30 inches high and a maximum of 48 inches high. (Ord. 2001-40 § 6, 2001; Ord. 98-53 § 5, 1999; Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

**15.08.095 Political signs.**

A. Political Signs Not Allowed on Public Utility Poles or Public Buildings or Structures. It is unlawful for any person to paste, paint, affix or fasten a political sign on any utility pole, traffic control device, lamp post, or any other public building or structure.

B. Political Signs Within Public Right-of-Way. Subject to subsection A of this section, political signs may be posted within public right-of-way only if the sign does not interfere with sight distances and does not create a vehicular or pedestrian traffic obstruction or hazard, and permission to place the sign in the right-of-way has been obtained from the abutting property owner. Political signs in the right-of-way are limited to a maximum surface area of six square feet and a maximum height of five feet.

**C. Removal of Political Signs.**

1. A political sign promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election must be removed within seven days following an election; provided, that political signs promoting successful candidates in a primary election may remain displayed until seven days following the immediately subsequent general election.

2. It shall be the responsibility of the campaign director or political candidate to have the signs removed in accordance with this section. If any sign is placed or allowed to

remain in violation of this section, the city may remove the sign, and the campaign director or political candidate shall be liable to the city for all costs and expenses incurred by the city in removing and storing said sign.

D. The display of any political sign in violation of this section, or any portion or part thereof, shall be presumed to have been done at the direction and request of the campaign director or political candidate. (Ord. 2007-14 § 1, 2007; Ord. 2005-23 § 4, 2005)

**15.08.100 Institutional or public use signs.**

In addition to the general regulations of this chapter, public institutions or public entities:

A. May have a single sign, either facade-mounted or a freestanding identification sign, visible from each street frontage;

B. May have one additional freestanding identification sign at the principal entrance not to exceed a maximum height of six feet. The maximum sign area of any face shall be no greater than 40 square feet;

C. Civic organizations may erect temporary banner signs, not addressed in BIMC 15.08.030, that are not smaller than 90 square feet and no larger than 160 square feet. Banners may be displayed for maximum of six periods not to exceed a total of 84 days within any calendar year. These signs shall not advertise or promote any individual business or the sale of any product or commodity and are only allowed to be erected upon city-approved support standards at city-designated locations on Winslow Way and Olympic Drive. The city council may delegate the authority to manage and coordinate the erection and removal of banners to a civic organization. (Ord. 98-53 § 6, 1999; Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

**15.08.110 Residential use signs.**

In addition to the general regulations of this chapter, the following regulations shall apply to all residential use signs.

A. Residential developments may have a single freestanding identification sign with a maximum sign area of 10 square feet.

B. Home occupations, legally established, may have an identification sign as allowed in BIMC 18.96.030.

C. Multifamily residential developments may have a directory sign, with a maximum sign area of 20 square feet, at one vehicular entrance on each street frontage. (Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

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**15.08.115 Freestanding or sandwich board signs.**

A. Home Occupations. Up to 10 free-standing signs (under 18 inches in height and 24 inches wide) or sandwich board signs (meeting the size requirements of BIMC 15.08.090.E), advertising on-site sales at home occupations, as regulated under Chapter 18.96 BIMC, may be placed off of the parcel upon which the home occupation is located with permission of the parcel owner, or within the public right-of-way located as far as possible from the street or road so as not to create a traffic hazard or obstruction, for a maximum of 21 days. These signs are exempt from BIMC 15.08.030.C and O, 15.08.040.E and F, and 15.08.090.B.1. The home occupation business owner shall obtain a permit for all signs from the planning and community development department. The permit shall describe the size, content, and location of the signs and the days on which the signs will be displayed. There shall be no fee for the permit.

B. Events and Tours. Freestanding (under 18 inches in height and 24 inches wide) or sandwich board signs (meeting the size requirements of BIMC 15.08.090.E), advertising community events or self-guided tours of city residences and places, may be placed for a maximum of 21 days off of the parcel upon which the event or tour is located with permission of the parcel owner, or within the public right-of-way located as far as possible from the street or road so as not to create a traffic hazard or obstruction. These signs are exempt from BIMC 15.08.030.C and O, 15.08.040.E and F, and 15.08.090.B.1. The event or tour sponsor shall obtain a permit for all signs from the planning and community development department. The permit shall describe the size, content, and location of the signs and the days on which the signs will be displayed. There shall be no fee for the permit. (Ord. 2003-12 § 1, 2003)

**15.08.120 Permits required.**

A. No signs, except those described in BIMC 15.08.030, shall be erected without a valid sign permit.

B. Permit application requirements shall be determined by the director and shall include a site plan showing the location of the signs, the position of buildings and landscaped areas, the elevations of the signs and the configuration and size of the signs.

C. A valid sign permit is required before altering an existing sign or repairing a sign where the repair exceeds 50 percent of the replacement cost.

D. Legally established signs that include changeable copy are exempt from permit requirements for altering the changeable copy. (Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

**15.08.130 Permit fees.**

A. Plan check fees, permit fees and inspection fees shall be as established by the city council by resolution.

B. Until January 1, 2000, permit fees shall be waived for signs replacing nonconforming signs. (Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

**15.08.140 Sign variance.**

A. A variance is the mechanism by which the city may grant relief from the provisions of this chapter where practical difficulty renders compliance with the provisions of this chapter an unnecessary hardship and where the hardship is a result of the physical characteristics of the subject property.

B. The variance procedure shall be administrative and determined by the director. (Ord. 96-32 § 1, 1996; Ord. 95-14 § 3, 1995; Ord. 93-01 § 1, 1993)

**15.08.150 Enforcement and penalties.**

A. Anyone violating or failing to comply with the provisions of this chapter shall, upon conviction thereof, be punishable by fine of not more than \$500.00, or by imprisonment for not more than six months, or by both fine and imprisonment, and each day's violation or failure to comply shall constitute a separate offense.

B. In addition to any other sanction or remedial procedure which may be available, any person failing to comply with a notice of violation or order issued by the building official, or failing to comply with any other provi-

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sion of this chapter, shall be subject to cumulative civil penalty in the amount of \$500.00 per day from the date set for compliance until compliance with such violation or order.

C. In addition to instituting criminal prosecution for violation of any of the provisions of this chapter, the city, through the city attorney, may institute civil proceeding in the Bainbridge Island municipal court or the superior court of the county to obtain a temporary restraining order or injunction prohibiting violation of this chapter and to collect any fines, fees or penalties due under the provisions of this chapter.

D. The city may remove and dispose of signs that it determines are a threat to public safety and recover costs from the owner of the property on which the sign is located. Within 10 days of removal of a sign, and upon payment of the costs of removal, the owner may recover a sign. (Ord. 96-32 § 1, 1996; Ord. 93-01 § 1, 1993)

pavement as is economically feasible and desirable. (Ord. 79-09 § 2 (F), 1979)

#### **15.08.200 Landscaping – Maintenance.**

Landscaping must be maintained, and no dead shrubs, broken parts, or cracked or chipped decorative features shall be allowed to remain without repair. (Ord. 79-09 § 2 (G), 1979)

#### **15.08.210 Landscaping – Approval of plans.**

All landscaping plans shall be approved by the city engineer, who will use the following guidelines in his determinations:

A. Landscaping shall be encouraged to promote the purpose described in Section 15.08.190.

B. Landscaping area shall be in proportion to the size and height of the proposed sign and shall be designed to give an overall balanced appearance.

C. When plantings and shrubs are used, the planting area should be at least one-half the area of the sign.

D. Plantings and shrubs should be used whenever the sign design is appropriate, location and physical properties of the lot are not a problem, and planting area can be readily maintained.

E. Landscaping should be designed so as to protect the sign from being hit by moving vehicles.

F. The city engineer may offer advice regarding types of plants and materials to be used, but may not condition approval of the plan on the use of those plants and materials. (Ord. 79-09 § 2 (H), 1979)

#### **15.08.220 Braces and wires on projecting signs.**

When a projecting sign is used, no angle irons, guy wires or braces shall be visible, except those that are an integral part of the overall design such as decorative metals or woods. (Ord. 79-09 § 2 (I), 1979)

#### **15.08.230 Conformance to most restrictive limitations.**

The definitions and regulations relating to

the signs set forth in Sections 15.08.020 and 15.08.030 are intended to delineate those characteristics of signs which are permissible under this chapter. If any sign other than a public service sign comes within more than one definition contained in Sections 15.08.020 and 15.08.030, and if as a result conflicting limitations apply, the sign shall conform to the most restrictive limitations. (Ord. 79-09 § 2 (J), 1979)

#### **15.08.240 Type of signs included in determination of number limitation in certain zones.**

All signs regulated by this chapter shall be included in any determination of the number of signs permitted on any property in accordance with Sections 15.08.160 through 15.08.180, except for the signs listed in subsections B through M of Section 15.08.050. (Ord. 79-09 § 2 (K), 1979)

#### **15.08.250 Sign erection and maintenance.**

A. No sign, whether new or existing, shall hereafter be erected or altered, except in conformity with the provisions of this chapter. However, notwithstanding any provisions contained in this chapter, the sign must be kept clean, neatly painted, in good mechanical repair and free from all hazards, such as, but not limited to, faulty wiring and loose fastenings, and must be maintained at all times in such safe condition so as not to be detrimental to the public health and safety. Normal maintenance, as described in the second sentence of this subsection, shall not require the issuance of a sign permit.

B. In the event of a violation of the foregoing provisions, the city engineer shall give written notice, specifying the violation, to the holder of the sign permit, or, if no permit exists, to the named owner of the land where the sign is erected, to correct the violation or remove such sign within 30 days. In the event the violation is not corrected within 30 days, the city engineer shall thereupon revoke the sign permit, if one has been issued, remove, or cause removal of such sign, and shall assess all costs and expense incurred in the removal against the named owner of the sign and/or

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named owner of the land. (Ord. 79-09 § 8, 1979)

### 15.08.260 Sign removal – Abandoned signs.

Any sign existing on or after the effective date of the ordinance codified in this chapter, which no longer advertises an existing business conducted by the advertiser or product sold by the advertiser shall be deemed abandoned and shall be removed after written notice as provided in this section. The city engineer, upon determining that such sign exists, shall notify in writing the holder of the sign permit if such can be found, or, if no permit exists, the owner of the sign or the record owner of the land where the sign is erected, if such can be found, to remove the sign within 30 days from the date of such notice. Upon application, the city engineer may extend the time for removal for a period not to exceed 90 days, provided the sign is covered so that the sign copy is not visible. If the sign is not removed within the prescribed time, the city engineer shall remove or cause removal of such sign, and shall assess all costs and expenses incurred in the removal against the person designated in the written notice of removal. (Ord. 79-09 § 9 (A), 1979)

### 15.08.270 Sign removal – Nonconforming signs.

A. In the event of any of the occurrences set forth in subdivisions 1 through 4 of this subsection, any sign existing at the effective date of the ordinance codified in this chapter, which does not conform to the provisions of this chapter, shall be immediately removed or immediately brought into compliance with the provisions of this chapter.

1. The sign structure or business name is changed or is altered in any way or more than twenty percent of the advertising copy, as measured by the sign area, is altered or changed, except that the changeable copy of a changing copy sign shall not be included in the 20 percent figure described in this subsection; or

2. The sign is damaged in excess of 50 percent of the original value of the sign; or

3. The sign is relocated; or

4. The sign is replaced.

B. If the sign owner or record owner of the property on which the sign is located elects to bring the sign into conformity with the provisions of this chapter, he must obtain a valid sign permit as set forth in Sections 15.08.060 through 15.08.120.

C. If the sign owner or record owner of the land on which the sign is located fails to remove the sign or take steps to bring it into conformity with this chapter as soon as is reasonably possible, but in no event more than 14 days after occurrence of one of the four events listed in subdivisions 1 through 4 of subsection A of this section, the city engineer shall give written notice to the sign owner or landowner of his intention to remove or cause removal of the sign on a date certain, not more than 10 days later, and shall thereafter be authorized to remove or cause removal of the sign at the expense of the sign owner or landowner. (Ord. 79-09 § 9 (B), 1979)

### 15.08.280 Sign removal – Action by city engineer.

If the city engineer finds that any sign regulated by this chapter, including any nonconforming sign, is unsafe or not properly secured, he shall give written notice to the sign permit holder, the owner of the sign or the record owner of the land on which the sign is erected, who shall remove or repair the sign within 10 days from the date of the notice. If the sign is not removed or repaired, the city engineer shall revoke the permit issued for such sign, if one has been issued, shall remove the sign and shall assess all costs and expenses incurred in removal against the person designated in the written notice of removal. The city engineer may cause any sign which is a source of immediate peril to persons or property to be removed summarily and without notice. All costs and expenses incurred in such summary removal of the sign shall be assessed against the sign permit holder, the owner of the sign and/or the record owner of the premises on which the sign is located. (Ord. 79-09 § 9 (C), 1979)

**15.08.285 Sign removal – Fee.**

If the city is required to remove or cause removal of any sign pursuant to Sections 15.08.260, 15.08.270 or 15.08.280, the city shall charge the sign owner or land owner a fee in the amount established by the city by resolution. The fee shall be in addition to any assessment of costs and expenses incurred in the removal of the sign. (Ord. 92-24 § 11, 1992)

**15.08.290 Variances – Procedure.**

A. Any person feeling aggrieved by any decision of the city engineer as to the application of the provisions of this chapter may petition for a variance therefrom. All petitions for variances from the provisions of this chapter shall be filed with the city on forms provided and shall be accompanied by a filing fee as established by the city by resolution. Within 30 days after receipt thereof, the city shall refer the matter to the hearing examiner for a public hearing. Upon completion of the public hearing, the hearing examiner shall make findings, conclusions and a decision on the petition. In those instances where the decision of the city engineer is upheld, the hearing examiner shall have the discretion to assess the petitioner the actual cost of the public hearing.

B. Any decision of the hearing examiner shall be final unless within 10 days after filing the decision, the decision is appealed to the city council. Upon the filing of any notice of appeal, the decision of the hearing examiner, together with the complete record thereof, shall be transmitted to the city council which shall at a public meeting, either regularly scheduled or specially called, within 30 days after filing of the notice of appeal, review the decision of the hearing examiner. The city council may affirm, disaffirm, and modify or refer back for further proceedings any decision of the hearing examiner. Any decision of the city council shall be final unless an adverse party, within 10 days after such decision is made, makes application to the superior court for the county for writ of certiorari, a writ of prohibition, or a writ of mandamus. All costs of copying documents and transcribing the proceedings shall be paid for by the appellant.

(Ord. 92-24 § 6, 1992; Ord. 79-09 § 11 (A), 1979)

**15.08.300 Variances – Criteria for granting.**

Variances may be granted provided that the applicant can establish that he meets all of the following criteria:

A. The strict application of the provisions of this chapter significantly interferes with a reasonable permitted use of his property.

B. The hardship described in subsection A of this section results from the existence of unique physical attributes of his property such as its location or natural features and does not result from deed restrictions, the applicant's own actions or other factors unrelated to unique physical attributes of the property.

C. The design of the sign will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties.

D. The variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area.

E. The variance provides for the minimum deviation from the provisions of this chapter necessary to afford the applicant relief.

F. The public interest will suffer no substantial detrimental effect.

G. The proposed sign is in conformity with the spirit and intent of this chapter and does not conflict with the statement of policy set forth in Section 15.08.010. (Ord. 79-09 § 11 (B), 1979)

**15.08.310 Owner of property responsible for signs.**

The ultimate responsibility for any sign shall be borne by the legal owner of the property on which the sign is located. The city engineer may require when necessary that the property owner or agent be party to or applicant for any required sign permit. (Ord. 79-09 § 10 (A), 1979)

**15.08.320 Enforcement – Authority.**

The city engineer is authorized and directed to enforce all provisions of this chapter and is empowered to promulgate such rules

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and regulations as may from time to time be necessary to accomplish the purpose of this chapter. (Ord. 79-09 § 10 (B), 1979)

#### 15.08.330 Enforcement – Inspection.

All signs controlled by this chapter shall be subject to periodic inspection by the city engineer. The city engineer shall keep records reflecting inspection dates and results thereof. (Ord. 79-09 § 10 (C), 1979)

#### 15.08.340 Enforcement – Right of entry.

A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the city engineer has reasonable cause to believe that there exists any sign or any condition which makes such sign unsafe, the city engineer may enter the premises or building on which such sign is located at all reasonable times to inspect the sign or to perform any duty imposed on him by this chapter; provided, that if such building or premises on which the sign is located is occupied, he shall first present proper credentials and request entry; and if such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the city engineer shall have recourse to every remedy provided by law to secure entry.

B. No owner or occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as provided in subsection A of this section, to promptly permit entry therein by the city engineer for the purpose of inspection and examination pursuant to this chapter. Any person violating this section shall be guilty of a misdemeanor. (Ord. 79-09 § 10 (D), 1979)

#### 15.08.350 Violation – Penalty.

Anyone violating or failing to comply with the provisions of this chapter shall, upon conviction thereof, be punishable by a fine of not more than \$500.00, or by imprisonment for not more than six months, or by both fine and imprisonment, and each day's violation or fail-

ure to comply shall constitute a separate offense. (Ord. 79-09 § 12, 1979)

#### 15.08.360 Violation – Civil penalty.

In addition to any other sanction or remedial procedure which may be available, any person failing to comply with a notice of violation or order issued by the building official, or failing to comply with any other provision of this chapter, shall be subject to cumulative civil penalty in the amount of \$10.00 per day from the date set for compliance until such violation is corrected or such notice of violation or order is complied with. (Ord. 79-09 § 13, 1979)

#### 15.08.370 Violation – Civil actions.

In addition to instituting criminal prosecution for violation of any of the provisions under this chapter, the city, through the city attorney, may institute civil proceedings in Bainbridge Island Municipal Court or the superior court of the county to obtain a temporary restraining order or injunction prohibiting violation of this chapter and to collect any fines, fees or penalties due under the provisions of this chapter. (Ord. 79-09 § 14, 1979)

## Chapter 15.12

**CONSTRUCTION WORK AFFECTING  
CITY UTILITIES****Sections:**

- 15.12.010 Permit – Required.**
- 15.12.020 Permit – Application.**
- 15.12.025 Surety bond required.**
- 15.12.030 Inspection of work upon completion.**
- 15.12.040 Nonapplicability to work performed under municipal contract.**
- 15.12.044 Daily removal of deposits required.**
- 15.12.046 Stop work order – Penalty for failure to comply.**
- 15.12.050 Violation – Penalty.**

**15.12.010 Permit – Required.**

No construction work which affects or may affect any city owned utilities, streets or property shall be performed by any person or corporation without first having obtained from the city a permit to perform such construction work. (Ord. 78-07 § 1, 1978)

**15.12.020 Permit – Application.**

Any person intending to perform the work defined in Section 15.12.010 shall first apply to the city for issuance of a permit. The application shall include a description of the work to be performed, a sufficient description of the location to allow inspection, the date the work will start and the estimated date of completion, together with any other additional information required by the city engineer. (Ord. 84-11 § 1, 1984; Ord. 78-07 § 2, 1978)

**15.12.025 Surety bond required.**

A. Before a permit as provided in Section 15.12.010 is issued, the applicant shall deposit with the city clerk a surety bond or other security in such reasonable amount as set by the city engineer, but not less than a percent as established by resolution of the city council of the estimated costs of the work. The required surety bond or other security must be:

1. With good and sufficient surety, if a bond;

2. By a surety company authorized to transact business in the state, if a bond;

3. Conditioned upon the permittee's compliance with the ordinance codified in this chapter and to secure and hold the city and its officers harmless against any and all claims, judgments, or other costs arising from the excavation or other work covered by the permit or for which the city, the city council or any city officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee;

4. Conditioned upon the permittee filling up, restoring and placing the street or other property in good and safe condition as near as may be to its original condition and patching all openings and excavations made in streets to the satisfaction of the city engineer or his designee;

5. Conditioned on the street or other property where the excavation or other work is performed remaining in as good a condition for a period of 12 months after the work has been done. The city engineer may reduce the amount of the bond or other security to not less than a percent of the amount of the original bond or security for this 12-month period as established by resolution of the city council.

B. Any settlement of the surface of the street or other property within the 12-month period is conclusive evidence of defective backfilling by the permittee.

C. Nothing contained in this section requires the permittee to maintain any repairs to pavement made by the city if such repairs should prove defective.

D. An annual bond may be given under this provision which shall remain in force for one year conditioned as provided in this section, in the amount specified in this section, and in other respects as specified in this section, but applicable as to all excavation work in streets by the principal in such bond during the term of one year from said date. (Ord. 88-16 § 22, 1988; Ord. 84-11 § 2, 1984)

## 15.12.030

### 15.12.030 Inspection of work upon completion.

Upon completion of the work, the applicant will notify the city engineer, or his delegate, who will make an inspection to determine if the work has been completed and that the city facilities have been restored and that no damage to city property has occurred. If satisfied with the work performed, the city engineer or his delegate will direct the surety bond be returned to the applicant after the expiration of a period of 12 months after the work has been completed. In the event the work performed is not satisfactory, the city engineer, or his delegate, shall advise the applicant in writing of the deficiencies and give a fixed time in which to complete the work. In the event the applicant does not perform within the time specified, the city shall perform the work either with city forces or by contracts and the cost thereof shall be charged to the applicant and to the applicant's surety bond. (Ord. 91-20 § 1, 1991; Ord. 78-07 § 3, 1978)

### 15.12.040 Nonapplicability to work performed under municipal contract.

This chapter shall not apply to any work performed for the city under a municipal contract. (Ord. 78-07 § 4, 1978)

### 15.12.044 Daily removal of deposits required.

A. Any person, firm, or corporation making any deposits of dirt, mud, rock, debris or other material of any nature on the public rights-of-way and any other municipally owned improvements shall clean up said deposits in a timely manner during the course of and the end of each day's operation.

B. Adequate equipment shall be available during each day of operation to ensure quick and timely removal of any such deposits. The equipment available shall include a power broom or other means approved by the city engineer. The rights-of-way surfaces and all catch basins, culverts or other municipally owned improvements affected by the deposits shall be cleaned. (Ord. 83-16 § 2, 1983; Ord. 78-07 § 6, 1978)

### 15.12.046 Stop work order – Penalty for failure to comply.

In the event any person, firm or corporation fails to comply with the provisions of Section 15.12.044 or in the event any work is being performed in an unsafe manner or contrary to the provisions of this code or other applicable law, the city engineer or his designee may cause a notice of violation to be delivered to a person of suitable age at the job site and may order all work to cease until authorized by the city engineer or his designee to proceed. Work shall not resume until so authorized by the city engineer or his designee. (Ord. 91-20 § 2, 1991; Ord. 83-16 § 2, 1983; Ord. 78-07 § 7, 1978)

### 15.12.050 Violation – Penalty.

Violation of any of the terms of this chapter may be punished by imposition of a fine of not over \$500.00 for each offense, or not more than six months in jail for each offense, or both, as determined by the municipal court. Each day the violation occurs shall be a separate offense. (Ord. 83-16 § 1, 1983; Ord. 78-07 § 5, 1978)

## Chapter 15.16

## FLOOD DAMAGE PREVENTION

## Sections:

**15.16.010 Methods and purpose.**

**15.16.020 Definitions.**

**15.16.030 General provisions.**

**15.16.040 Establishment of development permit.**

**15.16.050 General standards.**

**15.16.010 Methods and purpose.**

The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

A. Purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money and costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;
5. To minimize damage to public facilities and utilities such as water and gas mains, electric telephone and sewer lines, streets, and bridges located in areas of special flood hazard; and

6. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

B. Methods. In order to accomplish its purposes, this chapter includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

4. Controlling filling, grading, and other development which may increase flood damage; and

5. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas. (Ord. 90-15 § 1, 1990; Ord. 88-22 § 2, 1988)

**15.16.020 Definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

A. *Repealed by Ord. 2003-22.*

B. "Area of shallow flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

C. "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on map always includes the letters A or V.

D. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

E. "Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use, or store hazardous materials or hazardous waste.

F. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials located within the area of flood hazard.

G. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

H. "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

I. "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

J. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

K. "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure

is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

L. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

M. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

N. "New construction" means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this chapter.

O. "Recreational vehicle" means a vehicle:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

P. "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing,

grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Q. "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

R. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
2. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

S. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

T. "Water dependent" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. (Ord. 2005-05 § 1, 2005: Ord. 2003-22 § 21, 2003; Ord. 88-22 § 2, 1988)

### 15.16.030 General provisions.

A. Lands to Which This Chapter Applies. This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city.

B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled, "The Flood Insurance Study for Kitsap County and Incorporated Areas" dated November 4, 2010, with accompanying Flood Insurance Maps and any revisions thereto, is adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at the office of the city clerk.

C. Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

D. Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. Interpretation. In the interpretation and application of this chapter, all provisions shall be:

1. Considered as minimum requirements;

## 15.16.040

2. Liberally construed in favor of the governing body; and

3. Deemed neither to limit nor repeal any other powers granted under state statutes.

F. **Warning and Disclaimer of Liability.** The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of city, any officer or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. (Ord. 2010-38 § 1, 2010; Ord. 2005-05 § 2, 2005; Ord. 90-15 § 2, 1990; Ord. 88-22 § 2, 1988)

### 15.16.040 Establishment of development permit.

A. **Development Permit Required.** A development permit shall be obtained before construction or development begins within any area of special flood hazard established in BIMC 15.16.030.B. The permit shall be for all structures including manufactured homes, as set forth in BIMC 15.16.020, and for all development including fill and other activities, also as set forth in BIMC 15.16.020.

B. **Application for Development Permit.** Application for a development permit shall be made on forms furnished by the city building official and may include but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

2. Elevation in relation to mean sea level to which any structure has been floodproofed;

3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in BIMC 15.16.050.F.2; and

4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

C. **Designation of the Building Official.** The city building official is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

D. **Duties and Responsibilities of the Building Official.** Duties of the building official shall include, but not be limited to:

1. **Permit Review.**

a. Review all development permits to determine that the permit requirements of this chapter have been satisfied;

b. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required;

c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the provisions of BIMC 15.16.050.G are met;

2. **Uses of Other Base Flood Data.** When base flood elevation data has not been provided in accordance with BIMC 15.16.030.B, the building official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source in order to administer BIMC 15.16.050.F and G;

3. **Information to Be Obtained and Maintained.**

a. Where base flood elevation data is provided through the Flood Insurance Study or required as in subsection D.2 of this section, obtain and record the actual (as-built) elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or

substantially improved structures, and whether or not the structure contains a basement;

b. For all new or substantially improved floodproofed structures:

i. Verify and record an actual elevation (in relation to mean sea level); and

ii. Maintain the floodproofing certifications required in subsection B.3 of this section;

c. Maintain for public inspection all records pertaining to the provisions of this chapter;

#### 4. Alteration of Watercourses.

a. Prior to any alteration or relocation of a watercourse, the applicant shall obtain a hydraulic project approval (HPA) from the Washington State Department of Fish and Wildlife, notify adjacent communities and the Washington State Department of Ecology, and submit evidence of such notification and the HPA to the Federal Insurance Administration;

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished;

5. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection E of this section.

#### E. Variance Procedure.

##### 1. Appeal Board.

a. Pursuant to BIMC 2.16.100, the hearing examiner shall hear and decide appeals and requests for variances from the requirements of this chapter, and appeals alleging error in any requirement, decision, or determination made by the building official in the enforcement or administration of this chapter.

b. The decision of the hearing examiner shall be final unless, within 21 days after issuance, it is appealed in accordance with Chapter 36.70C RCW.

c. In passing upon such applications, the applicable city official or appeal

entity shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

i. The danger that materials may be swept onto other lands to the injury of others;

ii. The danger to life and property due to flooding or erosion damage;

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

iv. The importance of the services provided by the proposed facility to the community;

v. The necessity to the facility of a waterfront location, where applicable;

vi. The availability of alternative locations for the proposed uses which are not subject to flooding or erosion damage;

vii. The compatibility of the proposed use with existing and anticipated development;

viii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

x. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

xi. 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.

d. Upon consideration of the above factors and the purposes of this chapter, the applicable official or city entity may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

e. The building official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

2. Conditions for Variances.

a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections E.1.c.i through E.1.c.xi of this section have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.

b. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

c. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

e. Variances shall only be issued upon:

i. A showing of good and sufficient cause;

ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

iii. A determination that the granting of a variance will not result in increased expense, create nuisances, cause fraud on or victimization of the public as identified in subsection E.1.c of this section, or conflict with existing local laws or ordinances.

f. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

g. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood-proofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (2)(a) of this section, and otherwise complies with BIMC 15.16.050.

h. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. 2005-05 § 3, 2005; Ord. 2003-25 § 5, 2003; Ord. 90-15 §§ 3, 4, 1990; Ord. 88-22 § 2, 1988)

**15.16.050 General standards.**

In all areas of special flood hazards, the following standards are required:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

B. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

3. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or

otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

**C. Utilities.**

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and

3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

**D. Subdivision Proposals.**

1. All subdivision proposals shall be consistent with the need to minimize flood damage;

2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

**E. Review of Building Permits.** Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

**F. Specific Standards.** In all areas of special flood hazards where base flood elevation data has been provided as set forth in BIMC 15.16.030.B or 15.16.040.D.2, the following provisions are required:

**1. Residential Construction.**

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot or more above base flood elevation.

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

ii. The bottom of all openings shall be no higher than one foot above grade.

iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

**2. Nonresidential Construction.** New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot or more above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in BIMC 15.16.040.D.3.b;

d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection F.1 of this section;

e. Applicants floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to one foot above the base flood level will be rated as at the base flood level).

3. Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the base floodplain. Construction of new critical facilities shall be permissible within the base floodplain if no feasible alternative site is available. Critical facilities constructed within the base floodplain shall have the lowest floor elevated to three feet or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base floodplain shall be provided to all critical facilities to the extent possible.

4. Manufactured Homes. All manufactured homes to be placed or substantially improved within the floodplain shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot or more above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection A.2 of this section.

5. Recreational Vehicles. All recreational vehicles placed on sites are required to either:

a. Be on the site for fewer than 180 consecutive days; or

b. Be fully licensed and ready for highway use, on wheels or jacking system, attached to the site only by quick-disconnect type utilities and security devices, and have no permanently attached additions; or

c. Meet the requirements of subsection F.4 of this section and the elevation

and anchoring requirements for manufactured homes.

G. Floodways. Located within areas of special flood hazard established in BIMC 15.16.030.B are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements and other development unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachments would not result in any increase in flood levels during the occurrence of the base flood discharge.

2. Construction or reconstruction of residential structures is prohibited within designated floodways, except for:

a. Repairs, reconstruction or improvements to a structure which do not increase the ground floor area; and

b. Repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure as determined:

i. Before the repair or reconstruction is started; or

ii. Before damage occurred if the structure is being restored;

c. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or structures identified as historic places, may be excluded in the 50 percent limitation of subsection G.2.b of this section.

3. If subsection G.1 of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.

H. Wetlands Management. To the maximum extent possible, avoid the short and long

term adverse impacts associated with the destruction or modification of wetlands, especially those activities which limit or disrupt the ability of the wetland to alleviate flooding impacts. The following process should be implemented:

1. Review proposals for development within base floodplains for their possible impacts on wetlands located within the floodplain;

2. Ensure that development activities in or around wetlands do not negatively affect public safety, health, and welfare by disrupting the wetlands' ability to reduce flood and storm drainage;

3. Request technical assistance from the Department of Ecology in identifying wetland areas. Existing wetland map information from the National Wetlands Inventory (NWI) can be used in conjunction with the community's FIRM to prepare an overlay zone indicating critical wetland areas deserving special attention. (Ord. 2005-05 §§ 4, 5, 2005; Ord. 90-15 § 5, 1990; Ord. 88-22 § 2, 1988)

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## Chapter 15.18

### LAND CLEARING

#### Sections:

- 15.18.010 Purpose.**
- 15.18.020 Definitions.**
- 15.18.030 Applicability.**
- 15.18.040 Exemptions.**
- 15.18.050 General requirements.**
- 15.18.060 Performance bond.**
- 15.18.070 Appeals.**
- 15.18.080 Violation – Enforcement and penalty.**

#### 15.18.010 Purpose.

This chapter is adopted for the following purposes:

- A. To promote the public health, safety, and general welfare of the citizens of the city;
- B. To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;
- C. To promote land development practices that result in a minimal disturbance to the city's vegetation and native soil structure and protect infiltration capacity;
- D. To minimize surface water and ground water runoff and diversion and to prevent erosion and reduce the risk of slides;
- E. To minimize the need for additional storm drainage facilities;
- F. To retain clusters of trees for the abatement of noise and for wind protection;
- G. To promote building and site planning practices that are consistent with the city's natural topographical and vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover;
- H. To reduce siltation and water pollution in island waters;

I. To implement the goals and objectives of the Washington State Environmental Policy Act;

J. To implement and further the city's comprehensive plan; and

K. It is not the intent or purpose of this chapter to prevent the reasonable development of land in the city. (Ord. 2003-16 § 1, 2003)

#### 15.18.020 Definitions.

"Clearing" means the destruction or removal of vegetation by manual, mechanical, or chemical methods. (Ord. 2003-16 § 1, 2003)

#### 15.18.030 Applicability.

A. No person, corporation, or other legal entity shall engage in or cause clearing in the city without having obtained a land clearing permit from the planning director or designee.

B. In the event of a conflict between the requirements of this chapter and any other requirement of the Bainbridge Island Municipal Code, the more restrictive requirement shall apply.

C. Additional permits may be required if the activities are regulated by other chapters such as, but not limited to, Chapters 15.20 BIMC, Surface and Storm Water Management, 16.20 BIMC, Critical Areas, and 16.22 BIMC, Vegetation Management. (Ord. 2003-16 § 1, 2003)

#### 15.18.040 Exemptions.

The following shall be exempt from the provisions of this chapter:

- A. Clearing of up to six significant trees, as defined in Chapter 18.85 BIMC, in any 12-month period;
- B. Clearing of up to 2,500 square feet of land in any 12-month period;
- C. Clearing as part of a development where clearing limits have been set and erosion control plans approved as part of the approval for the development; provided, that land clearing in connection with such projects shall take place only after a development permit has been issued by the city and shall be in accordance with such permit;

## 15.18.050

D. The installation and maintenance of fire hydrants, water meters, and pumping stations, and street furniture by the city or utility companies or their contractors;

E. Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;

F. Removal of diseased, dead or dying trees upon written verification by a qualified arborist or landscape architect or landscape contractor which states that removal of the trees is essential for the protection of life, limb, or property and which statement is filed with the director;

G. Routine gardening and landscape maintenance of existing landscaped areas on developed lots, including pruning, weeding, planting, and other activities associated with maintaining an already established landscape;

H. Agricultural management of existing farmed areas;

I. Routine maintenance activities, including tree removal, required to control vegetation on road and utility rights-of-way;

J. Forest practices regulated by the Department of Natural Resources under Chapter 76.09 RCW. (Ord. 2003-16 § 1, 2003)

### 15.18.050 General requirements.

A. Submittal Requirements. A complete application for a land clearing permit shall be submitted on the application form provided by the city, together with information required under Chapter 15.20 BIMC for a completed application, and including the following:

1. A plot plan on a base map provided by the applicant or by the city containing the following information:

a. Date of drawing or revision, north arrow, adjoining roadways and appropriate scales;

b. Prominent physical features of the property including, but not limited to, geological formations, critical areas and watercourses;

c. General location, type, range of size, and conditions of trees and ground cover;

d. Identification by areas, of trees and areas of ground cover that are to be

removed, and information on how the trees or areas are delineated in the field;

e. Any existing improvement on the property including, but not limited to, existing cleared areas, structures, driveways, ponds, and utilities;

f. Information indicating the method of drainage and erosion control during and following the clearing operation; and

g. Information on how property lines are identified.

2. Payment of the land clearing application fee in the amount established by resolution of the city council.

B. The planning director shall grant a clearing permit application if the application meets the requirements of this chapter and all other relevant city codes, including but not limited to Chapters 15.20, 16.12, 16.20, and 16.22 BIMC.

C. Approved clearing plans shall not be amended without authorization of the planning director.

D. No work authorized by a clearing permit shall commence until a permit notice has been posted by the applicant on the subject property at a conspicuous location. The notice shall remain posted in said location until the authorized clearing has been completed.

E. Any clearing permit granted under this chapter shall expire one year from the date of issuance. Upon a showing of good cause, a clearing permit may be extended for six months by the planning director.

F. A clearing permit may be suspended or revoked by the planning director because of incorrect information supplied or any violation of the provisions of this chapter.

G. Failure to obtain forest practice application, where applicable, with the stated intent of land conversion as defined in RCW 76.09.020(4) shall be grounds for denial of any and all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of the land for a period of six years, in accordance with RCW 76.09.060(3)(b). (Ord. 2003-16 § 1, 2003)

**15.18.060 Performance bond.**

The planning director may require, as a condition to the granting of a permit, that the applicant furnish a performance bond to the city to secure the applicant's obligation, after the approved land clearing has been accomplished, to complete the erosion control on the property in accordance with the conditions of the permit. The bond shall be in an amount equal to the estimated cost of erosion control and clean up and with surety and conditions satisfactory to the planning director. (Ord. 2003-16 § 1, 2003)

**15.18.070 Appeals.**

Appeals of the planning director's decision on a land clearing permit application shall be in accordance with the administrative decision procedures established in Chapter 2.16 BIMC. (Ord. 2003-16 § 1, 2003)

**15.18.080 Violation – Enforcement and penalty.**

A. A violation of or failure to comply with any provision of this chapter shall be a misdemeanor punishable, upon conviction, as provided in BIMC 1.24.010.A.

B. In addition to any other sanction or remedy that may be available, a violation of or failure to comply with any provision of this chapter shall be a civil infraction and shall be subject to enforcement and civil penalties as provided in Chapter 1.26 BIMC. (Ord. 2003-16 § 1, 2003)

**Chapter 15.20****SURFACE AND STORM  
WATER MANAGEMENT<sup>1</sup>****Sections:**

- 15.20.010 Purpose.**
- 15.20.020 Definitions.**
- 15.20.030 General provisions.**
- 15.20.040 Regulated activities and allowed activities.**
- 15.20.050 General requirements.**
- 15.20.060 Approval standards.**
- 15.20.070 Administration.**
- 15.20.080 Enforcement.**
- 15.20.090 Repealed.**
- 15.20.100 Repealed.**

**15.20.010 Purpose.**

The provisions of this chapter are intended to establish regulation for all new development, redevelopment or construction activities within the city that will or may impact surface or storm waters. The provisions of this chapter establish the minimum requirements that must be met to permit a property to be developed, redeveloped or proceed with construction activities within the city. The purpose of this chapter is to:

- A. Preserve and enhance the suitability of waters for contact recreation, fishing, and other beneficial uses;
- B. Minimize water quality degradation and sedimentation in streams, ponds, lakes, wetlands and other water bodies;
- C. Minimize the impact of increased runoff, erosion and sedimentation caused by land development and poor maintenance practices;
- D. Maintain and protect ground water resources;
- E. Minimize adverse impacts from projects on ground and surface water quantities, locations and flow patterns;
- F. Decrease potential landslide, flood and erosion damage to public and private property;

1. Prior legislation: Ords. 85-13, 86-02, 88-16 and 94-29.

G. Promote site planning and construction practices that are consistent with natural topographical, vegetational and hydrological conditions;

H. Maintain and protect the city storm water management infrastructure and downstream systems and properties. (Ord. 2009-13 § 1, 2009; Ord. 98-31 § 1, 1999)

#### 15.20.020 Definitions.

1. "Approval" means the proposed work or completed work conforms to this chapter in the opinion of the director.

2. "As-graded" means the extent of surface conditions on completion of grading.

3. "Basin plan" means a plan and all implementing regulations and procedures including but not limited to land use management adopted by ordinance for managing surface and storm water management facilities and features within individual sub-basins.

4. "Bedrock" means the more or less solid rock in place either on or beneath the surface of the earth. It may be soft, medium, or hard and have a smooth or irregular surface.

5. "Bench" means a relatively level step excavated into earth material on which fill is to be placed.

6. "Best management practice (BMP)" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water. BMPs are listed and described in the manual.

7. "Certified erosion and sediment control lead (CESCL)" means an individual who has current certification through an approved erosion and sediment control training program that meets the minimum training standards established by the Department of Ecology (see BMP C160 in the manual). A CESCL is knowledgeable in the principles and practices of erosion and sediment control. The CESCL must have the skills to assess site conditions and construction activities that could impact the quality of storm water and the effectiveness of erosion and sediment control measures used to control the quality of storm water discharges. Certification is obtained through an Ecology-approved erosion and sediment con-

trol course. Course listings are provided online at Ecology's web site.

8. "City" shall mean the city of Bainbridge Island.

9. "Civil engineer" means a professional engineer licensed in the state of Washington in civil engineering who is experienced and knowledgeable in the practice.

10. "Civil engineering" means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials and to the evaluation, design and construction of civil works.

11. "Clearing" means the destruction and removal of vegetation by manual, mechanical, or chemical methods.

12. "Commercial agriculture" means those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has been idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.

13. "Compaction" means densification of a fill by mechanical means.

14. "Critical areas" means, at a minimum, areas which include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems. Reference Chapter 16.20 BIMC.

15. "Design storm" means a prescribed hyetograph and total precipitation amount (for a specific duration recurrence frequency) used to estimate runoff for a hypothetical storm for the purposes of analyzing existing drainage, designing new drainage facilities or assessing other impacts of a proposed project on the flow of surface water. (A hyetograph is a graph of percentages of total precipitation for a series of

time steps representing the total time during which the precipitation occurs.)

16. "Detention" means the release of storm water runoff from a specific site at a slower rate than it is collected by the storm water facility system, the difference being held in temporary storage.

17. "Detention facility" means an above or below ground facility, such as a pond or tank, that temporarily stores storm water runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored storm water.

18. "Drainage basin" means a geographic and hydrologic subunit of a watershed. Further clarification is located in the drainage reconnaissance study or basin assessment.

19. "Earth material" means any rock, natural soil or fill and/or any combination thereof.

20. "Engineering geologist" means a geologist experienced and knowledgeable in engineering geology.

21. "Engineering geology" means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

22. "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep, or the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

23. "Excavation" means the mechanical removal of earth material.

24. "Experimental BMP" means a BMP that has not been tested, evaluated and approved for general use by the Department of Ecology in collaboration with local governments and technical experts. These include BMPs known as emerging technologies.

25. "Fill" means a deposit of earth material placed by artificial means.

26. "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, as defined by RCW 76.09.050.

27. "Frequently flooded areas" means the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program. Reference Chapter 15.16 BIMC.

28. "Geologically hazardous areas" means areas susceptible to erosion, sliding, earthquakes, or other geological events. They pose a threat to the health and safety of citizens when used as sites for commercial, residential or industrial development. Reference Chapter 16.20 BIMC.

29. "Grade" means the slope of a road, channel, or natural ground, the finished surface of a canal bed, roadbed, top of embankment, or bottom of excavation or any surface prepared for the support of construction such as paving or the laying of a conduit.

a. "Existing grade" means the grade prior to grading.

b. "Rough grade" means the stage at which the grade approximately conforms to the approved plan.

c. "Finish grade" means the final grade of the site which conforms to the approved plan.

30. "Grade, to" ("to grade") means to finish the surface of a canal bed, roadbed, top of embankment or bottom of excavation.

31. "Gradient terrace" means an earth embankment or a ridge-and-channel constructed with suitable spacing and an acceptable grade to reduce erosion damage by intercepting surface runoff and conducting it to a stable outlet at a stable nonerosive velocity.

32. "Ground water" means water in a saturated zone or stratum beneath the surface of land or a surface water body.

33. "Hydroperiod" means the seasonal occurrence of flooding and/or soil saturation; it encompasses depth, frequency, duration, and seasonal pattern of inundation.

34. "Illicit discharge" and "illegal connections" are as defined in BIMC 15.22.020.

35. "Impervious surface" means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development and/or a hard surface area which causes water to run

off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.

36. "Interflow" means that portion of rainfall that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface; for example, in a wetland, spring or seep.

37. "Land disturbing activity" means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity.

38. "Mitigation" means, in the following order of preference:

- a. Avoiding the impact altogether by not taking a certain action or part of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- c. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

39. "Natural location" means the location of those channels, swales, and other nonman-made conveyance systems as defined by the first documented topographic contours existing for the subject property, either from maps or photographs, or such other means as appropriate.

40. "New development" land disturbing activities, including Class IV – general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

41. "Pollution" shall be construed to mean such contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquids, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life; as defined in RCW 90.48.020 as now existing or hereafter amended.

42. "Redevelopment" means, on a site that is already substantially developed (i.e., has 35 percent or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

43. "Regional retention/detention system" means a storm water quantity control structure designed to correct existing excess surface water runoff problems of a basin or sub-basin for two or more properties. The area down-

stream has been previously identified as having existing or predicted significant and regional flooding and/or erosion problems. This term is also used when a detention facility is used to detain storm water runoff from a number of different businesses, developments or areas within a catchment.

44. "Retention/detention facility (R/D)" means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground; or to hold surface and storm water runoff for a short period of time and then release it to the surface and storm water management system.

45. "Site" means the area defined by the legal boundaries of a parcel or parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.

46. "Slope" means the degree of deviation of a surface from the horizontal, measured as a numerical ratio, percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second is the vertical distance (rise), as 2:1. A 2:1 slope is a 50 percent slope. Expressed in degrees, the slope is the angle from the horizontal plane, with a 90-degree slope being vertical (maximum) and 45 degrees being a 1:1 or 100 percent slope.

47. "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

48. "Source control BMP" means a structure or operation that is intended to prevent pollutants from coming into contact with storm water through physical separation of areas or careful management of activities that are sources of pollutants. The manual separates source control BMPs into two types. Structural source control BMPs are physical, structural, or mechanical devices, or facilities that are intended to prevent pollutants from entering storm water. Operational BMPs are nonstructural practices that prevent or reduce

pollutants from entering storm water. See Volume IV of the manual for details.

49. "Storm water" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility.

50. "Storm water drainage system" means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter storm water.

51. "Storm water facility" means a constructed component of a storm water drainage system, designed or constructed to perform a particular function, or multiple functions, including but not limited to pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catch basins, oil/water separators, sediment basins and modular pavement.

52. "Storm water management manual" or "manual" means the Stormwater Management Manual for Western Washington adopted by reference and prepared by Washington State Department of Ecology, dated February 2005, Publication Numbers 05-10-029 through 05-10-033 including subsequent publications which contains BMPs to prevent or reduce pollution.

53. "Toe of slope" means a point or line of slope in an excavation or cut where the lower surface changes to horizontal or meets the existing ground slope.

54. "Top of slope" means a point or line on the upper surface of a slope where it changes to horizontal or meets the original surface.

55. "Unstable slopes" means those sloping areas of land which have exhibited past and present history of mass movement of earth.

56. "Vegetation" means all organic plant life growing on the surface of the earth. Reference Chapter 16.22 BIMC.

57. "Watershed" means a geographic region within which water drains into a particular river, stream, or body of water as identified and numbered by the State of Washington

Water Resource Inventory Areas (WRIAs) as defined in Chapter 173-500 WAC.

58. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support (and under normal circumstances do support) a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, marshes, bogs, and other similar areas. This definition includes wetlands created, restored or enhanced as part of a mitigation procedure; it does not include constructed wetlands or the following surface waters of the state intentionally constructed from sites that are not wetlands: irrigation and drainage ditches, grass-lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities. Reference Chapter 16.20 BIMC. (Ord. 2009-13 § 2, 2009; Ord. 2005-10 § 1, 2005; Ord. 2003-22 § 22, 2003; Ord. 2001-49 § 1, 2001; Ord. 98-31 § 1, 1999)

#### 15.20.030 General provisions.

A. Procedures. The department of public works/engineering department is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. Prior to fulfilling the requirements of this chapter, the administrator or assigns shall not grant any approval or permission to conduct a regulated activity, including but not limited to the following:

1. Building permits, commercial or residential;
2. Comprehensive plan amendments;
3. Conditional use permits;
4. Final plats (short/long/large lot);
5. Forest practices;
6. Grading or clearing permits;
7. Planned unit developments;
8. Plats;
  - a. Subdivide, preliminary and final (short/long/large lot);
9. Preliminary plats (short, long, large lot);
10. Reasonable use exceptions;
11. Right-of-way permits;
12. Shoreline substantial development permits;

13. Shoreline variance/shoreline conditional use permits;

14. Site plan reviews;
15. Variances;
16. Zone reclassification (rezones); or
17. Any subsequently adopted permit or required approval not expressly exempted by this chapter.

B. The following agencies may also require a drainage review to assess a site's impact. Any requirements imposed by these agencies are separate from the city mandates. It is the applicant's sole responsibility to resolve any conflicting issues that may arise from submittal reviews.

1. U.S. Army Corps of Engineers;
2. Washington State Department of Natural Resources;
3. Bremerton-Kitsap County Health District;
4. Washington State Department of Ecology: general permit is required for sites that disturb one acre or more;
5. Washington State Department of Fish and Wildlife;
6. Washington State Department of Transportation. (Ord. 2005-10 § 2, 2005; Ord. 98-31 § 1, 1999)

#### 15.20.040 Regulated activities and allowed activities.

A. Regulated Activities. Consistent with the minimum requirements contained in the manual, the administrator shall approve or disapprove the following activities:

1. New Development.
  - a. Land disturbing activities;
  - b. Structural development, including construction, installation or expansion of an existing building or other structure;
  - c. Creation of new impervious surfaces greater than 800 square feet;
  - d. Class IV general forest practices that are conversions from timber land to other uses; and
  - e. Subdivision, short subdivision and binding site plans, as defined in RCW 58.17.020.
2. Redevelopment. On an already developed site, the creation or addition of

impervious surfaces greater than 800 square feet; structural development including construction, installation or expansion of a building or other structure; any land disturbing activity, and/or replacement of impervious surface (that is not part of a routine maintenance activity); and land disturbing activities associated with structural or impervious redevelopment. (Ord. 2009-13 § 3, 2009; Ord. 2005-10 § 3, 2005; Ord. 98-31 § 1, 1999)

**15.20.050 General requirements.**

A. Stormwater Management Manual Adopted. The February 2005 Edition of Washington State Department of Ecology’s Stormwater Management Manual for Western Washington is hereby adopted by reference and is hereinafter referred to as the manual; provided, that certain provisions of the manual are amended as stated in BIMC 15.20.060.

B. Illicit discharges and illegal connections to the storm water drainage system are prohibited by Chapter 15.22 BIMC.

C. Low Impact Development Manual Adopted. The 2009 Edition of the Low Impact Development (LID) Guidance Manual – A Practical Guide to LID Implementation in Kitsap County is hereby adopted by reference and is hereinafter referred to as the LID manual for use in meeting the relevant sections of the manual. (Ord. 2009-13 § 4, 2009; Ord. 2005-10 § 4, 2005; Ord. 98-31 § 1, 1999)

**15.20.060 Approval standards.**

A. In Volume I, Section 2.3 of the manual, Definitions Related to Minimum Requirements, the definition of “threshold discharge area” is not adopted.

B. In Volume I, Section 2.5.6 of the manual, Minimum Requirement No. 6 Runoff Treatment, and Section 2.5.7, Minimum Requirement No. 7 Flow Control, and Section 4.2, BMP and Facility Selection Process, references to “threshold discharge area” are deleted.

C. In Volume I, Section 2.4.1 of the manual, New Development is amended to read as follows:

All new development that shall be

required to comply with Minimum Requirement No. 2. In addition, new development that exceeds certain thresholds shall be required to comply with additional Minimum Requirements as follows. The following new development shall comply with Minimum Requirements No. 1 through No. 5:

1. Creates or adds 800 square feet, or greater, of new, replaced, or new plus replaced impervious surface area, or
2. Has land disturbing activity of 7,000 square feet or greater.

The following new development shall comply with Minimum Requirements Nos. 1 through 10:

1. Creates or adds 5,000 square feet, or more, of new impervious surface area, or
2. Converts 3/4 acres, or more, of native vegetation to lawn or landscaped areas, or
3. Converts 2.5 acres, or more, of native vegetation to pasture.

D. In Volume I, Section 2.4.2 of the manual, Redevelopment, is amended to read as follows:

All redevelopment shall be required to comply with Minimum Requirement No. 2. In addition, all redevelopment that exceeds certain thresholds shall be required to comply with additional Minimum Requirements as follows:

The following redevelopment shall comply with Minimum Requirements No. 1 through No. 5 for the new and replaced impervious surfaces and the land disturbed:

1. The new, replaced, or total of new plus replaced impervious surfaces is 800 square feet or more, or
2. 7,000 square feet or more of land

disturbing activities.

The following redevelopment shall comply with Minimum Requirements Nos. 1 through 10 for the new impervious surfaces and converted pervious areas:

1. Adds 5,000 square feet or more of new impervious surfaces, or
2. Converts 3/4 acres, or more, of native vegetation to lawn or landscaped areas, or
3. Converts 2.5 acres, or more, of native vegetation to pasture.

If the runoff from the new impervious surfaces and converted pervious surfaces is not separated from runoff from other surfaces on the project site, the stormwater treatment facilities must be sized for the entire flow that is directed to them.

The administrator may allow the Minimum Requirements to be met for an equivalent (flow and pollution characteristics) area within the same site. For public roads projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.

#### Additional Requirements for the Project Site

For road-related projects, runoff from the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the Minimum Requirements if the new impervious surfaces total 5,000 square feet or more and total 50% or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.

Other types of redevelopment projects shall comply with all the Minimum

Requirements for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is 5,000 square feet or more, and the valuation of proposed improvements – including interior improvements – exceeds 50% of the assessed value of the existing site improvements.

E. In Volume I, Section 2.5.10 of the manual, Minimum Requirement No. 10: Operation and Maintenance, is amended to read as follows:

An operation and maintenance manual that is consistent with BIMC 15.21 and the provisions in Volume V of this manual shall be provided for all proposed private stormwater facilities and BMPs, and the party (or parties) responsible for maintenance and operation shall be identified. For private facilities, a copy of the manual shall be provided to the city prior to occupancy and a copy retained onsite or within reasonable access to the site, and shall be transferred with the property to subsequent owners. The copy of the manual shall be retained in the Public Works Department. A log of maintenance activity that indicates what actions were taken shall be kept and be available for inspection by the Administrator.

F. In Volume I, Section 2.6.1 of the manual, Financial Liability/Bonding, is not adopted.

G. In Volume I, Section 2.6.2 of the manual, Optional Guidance No. 2: Off Site Analysis and Mitigation, and Volume I, Section 3.1.3, Perform an Offsite Analysis, are adopted by reference and established for projects creating 5,000 square feet or more of impervious area.

H. In Volume I, Section 2.6.2 of the manual, Optional Guidance No. 2: Off Site Analysis and Mitigation Development, is amended to read as follows:

Development projects that discharge stormwater off-site shall submit an off-site analysis report that assesses the

potential off-site water quality, erosion, slope stability, and drainage impacts associated with the project and that proposes appropriate mitigation of those impacts. An initial qualitative analysis shall extend downstream for the entire flow path from the project site to the receiving water or up to one mile, whichever is less.

If a receiving water is within one-quarter mile, the analysis shall extend within the receiving water to one-quarter mile from the project site. The analysis shall extend one-quarter mile beyond any improvements proposed as mitigation. The analysis must extend upstream to a point where any backwater effects created by the project cease. Upon review of the qualitative analysis, the local administrator may require that a quantitative analysis be performed.

The existing or potential impacts to be evaluated and mitigated shall include:

1. Conveyance system capacity problems;
2. Localized flooding;
3. Upland erosion impacts, including landslide hazards;
4. Stream channel erosion at the out-fall location;
5. Violations of surface water quality standards as identified in a Basin Plan or a TMDL (Water Clean-up Plan); or violations of ground water standards in a wellhead protection area.

Projects shall be required to initially submit, with the permit application, a qualitative analysis of each downstream system leaving a site. The analysis should accomplish four tasks:

Task 1 – Define and map the study area.

Submission of a site map showing property lines; a topographic map (at a minimum a USGS 1:24000 Quadrangle Topographic map) showing site boundaries, study area boundaries, downstream flowpath, and potential/existing problems.

Task 2 – Review all available information on the study area.

This should include all available basin plans, ground water management area plans, drainage studies, floodplain/floodway FEMA maps, wetlands inventory maps, Critical Areas maps, stream habitat reports, salmon distribution reports, etc.

Task 3 – Field inspect the study area.

The design engineer should physically inspect the existing on- and off-site drainage systems of the study area for each discharge location for existing or potential problems and drainage features. An initial inspection and investigation should include:

1. Investigate problems reported or observed during the resource review;
2. Locate existing/potential constrictions or capacity deficiencies in the drainage system;
3. Identify existing/potential flooding problems;
4. Identify existing/potential overtopping, scouring, bank sloughing, or sedimentation;
5. Identify significant destruction of aquatic habitat (e.g., siltation, stream incision);
6. Collect qualitative data on features such as land use, impervious surface, topography, soils, presence of streams, wetlands;
7. Collect information on pipe sizes,

channel characteristics, drainage structures;

8. Verify tributary drainage areas identified in Task 1;

9. Contact the local government office with drainage review authority, neighboring property owners, and residents about drainage problems; and

10. Note date and weather at time of inspection.

Task 4 – Describe the drainage system, and its existing and predicted problems.

For each drainage system component (e.g., pipe, culvert, bridges, outfalls, ponds, vaults) the following should be covered in the analysis: location, physical description, problems, and field observations. All existing or potential problems (e.g., ponding water, erosion) identified in tasks 2 and 3 above should be described. The descriptions should be used to determine whether adequate mitigation can be identified, or whether more detailed quantitative analysis is necessary. The following information should be provided for each existing or potential problem:

1. Magnitude of or damage caused by the problem;
2. General frequency and duration;
3. Return frequency of storm or flow when the problem occurs (may require quantitative analysis);
4. Water elevation when the problem occurs;
5. Names and concerns of parties involved;
6. Current mitigation of the problem;
7. Possible cause of the problem; and

8. Whether the project is likely to aggravate the problem or create a new one.

Upon review of this analysis, the administrator may require mitigation measures deemed adequate for the problems, or a quantitative analysis, depending upon the presence of existing or predicted flooding, erosion, or water quality problems, and on the proposed design of the onsite drainage facilities. The analysis should repeat Tasks 3 and 4 above, using quantitative field data including profiles and cross-sections.

The quantitative analysis should provide information on the severity and frequency of an existing problem or the likelihood of creating a new problem. It should evaluate proposed mitigation intended to avoid aggravation of the existing problem and to avoid creation of a new problem.

I. In Volume I, Section 2.7 of the manual, Adjustments, is not adopted.

J. In Volume III, Section 3.1.2 of the manual, Downspout Dispersion Systems, is modified for use with additional standard details as prescribed by the city.

K. In Volume III, Section 3.1.3 of the manual, Perforated Stub-Out Connections, is modified for use with additional standard details as prescribed by the city.

L. In Volume III, Section 3.2 of the manual, Figure 3.12, Pond Signage, is amended to include the following language:

Developers shall provide the required signage for constructed ponds as a part of the project.

M. In Volume V, Section 4.3, Setbacks, Slopes and Embankments, is amended to include the following language:

All stormwater facilities and infiltration systems constructed within 200 feet of a geologically hazardous area shall have the concurrence of a Geotechnical Engineer.

N. In Volume V, Section 5.3.1 of the manual, BMP T 5.10 Downspout Dispersion, is modified for use with additional standard details as prescribed by the city.

O. In Volume V, Section 5.3.2 of the manual, BMP T 5.21 Better Site Design: Build Narrower Streets, is amended to include the following language:

Streets and roadways must, however, comply with city of Bainbridge Island Design and Construction Standards and Specifications unless an exception is granted in writing by the administrator.

P. In Volume V, Section 5.3.3 of the manual, BMP T 5.30 Full Dispersion, is modified for use with additional standard details as prescribed by the city.

Q. In Volume V of the manual, Chapter 12, Emerging Technologies, is not adopted.

R. In Volume I, Section 2.5.2 of the manual, Minimum Requirement No. 2: Construction Storm Water Pollution Prevention (SWPPP), the following language replaces or amends the language found in Section 2.5.2 of the manual:

All new development and redevelopment projects are responsible for preventing erosion and discharge of sediment and other pollutants into receiving waters.

Sediment and erosion control BMPs shall be consistent with the BMPs contained in Chapters 3 and 4 of Volume II of the manual.

The SWPPP shall include a narrative and drawings. All BMP's shall be clearly referenced in the narrative and marked on the drawings. The SWPPP narrative shall include documentation to explain and justify the pollution prevention decisions made for the project.

1. Volume I, Section 2.5.2 of the manual, Minimum Requirement No. 2: Construction Storm Water Pollution Prevention Plan (SWPPP) Elements. The following language

replaces or amends the language found in the Elements Section 2.5.2 of the manual:

Element 2.c. Wheel wash or tire baths shall be located on site, if the stabilized construction entrance is not effective in preventing sediment from being tracked onto public roads.

Element 6.c. Temporary pipe slope drains shall handle the expected peak 10-minute flow velocity from a type 1A, 10-year, 24-hour frequency storm for the developed condition.

The hydrologic analysis shall use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis shall use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the Western Washington Hydrology model to predict flows, bare soil areas should be modeled as "landscaped area."

#### Element 7. Protect Drain Inlets

All sediment and street wash water shall not be allowed to enter storm drains without prior and adequate treatment unless treatment is provided before the storm drain discharges to waters of the State.

#### Element 9. Control Pollutants

Permittees shall require construction site operators obtain written approval from the Department prior to using chemical treatment other than CO<sub>2</sub> or dry ice to adjust pH.

S. Volume I, Section 2.5.6 of the manual, Minimum Requirement No. 6 Runoff Treatment. The following language replaces the language found in Section 2.5.6 of the manual:

#### Project Thresholds

The following require construction of stormwater treatment facilities (see

Table below):

- Projects in which the total of effective, pollution-generating impervious surface (PGIS) is 5,000 square feet or more in a threshold discharge area of the project, or
- Projects in which the total of pollution-generating pervious surfaces (PGPS) is three-quarters (3/4) of an acre or more in a threshold discharge area, and from which there is a surface discharge in a natural or man-made conveyance system from the site.

**Treatment-Type Thresholds**

**1. Oil Control:**

Treatment to achieve Oil Control applies to projects that have "high-use sites." High-use sites are those that typically generate high concentrations of oil due to high traffic turnover or the frequent transfer of oil. High-use sites include:

- a. An area of a commercial or industrial site subject to an expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area;
- b. An area of a commercial or industrial site subject to petroleum storage and transfer in excess of 1,500 gallons per year, not including routinely delivered heating oil;
- c. An area of a commercial or industrial site subject to parking, storage or maintenance of 25 or more vehicles that are over 10 tons gross weight (trucks, buses, trains, heavy equip-

ment, etc.);

| Treatment Requirements by Threshold Discharge Area |                     |                     |                    |                    |
|--|---------------------|---------------------|--------------------|--------------------|
|  | < 3/4 acres of PGPS | > 3/4 acres of PGPS | < 5,000 sf of PGIS | > 5,000 sf of PGIS |
| Treatment Facilities                               |                     | ✓                   |                    | ✓                  |
| Onsite Stormwater BMPs                             | ✓                   | ✓                   | ✓                  | ✓                  |

PGPS = pollution-generating pervious surfaces  
 PGIS = pollution-generating impervious surfaces  
 sf = square feet

d. A road intersection with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 vehicles or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

**2. Phosphorus Treatment:**

The requirement to provide phosphorus control is determined by the local government with jurisdiction (e.g., through a lake management plan), or the Department of Ecology (e.g., through a waste load allocation). The local government may have developed a management plan and implementing ordinances or regulations for control of phosphorus from new/redevelopment for the receiving water(s) of the stormwater drainage. The local government can use the following sources of information for pursuing plans and implementing ordinances and/or regulations:

- a. Those waterbodies reported under section 305(b) of the Clean Water Act, and designated as not supporting beneficial uses due to phosphorus;
- b. Those listed in Washington State's Nonpoint Source Assessment required under section 319(a) of the Clean Water Act due to nutrients.

### 3. Enhanced Treatment:

Enhanced treatment for reduction in dissolved metals is required for the following project sites that discharge to fish-bearing streams, lakes, or to waters or conveyance systems tributary to fish-bearing streams or lakes:

Industrial project sites,  
Commercial project sites,  
Multi-family project sites, and  
High AADT roads as follows:

Within Urban Growth Management Areas:

- Fully controlled and partially controlled limited access highways with Annual Average Daily Traffic (AADT) counts of 15,000 or more
- All other roads with an AADT of 7,500 or greater

Outside of Urban Growth Management Areas:

- Roads with an AADT of 15,000 or greater unless discharging to a 4th Strahler order stream or larger;
- Roads with an AADT of 30,000 or greater if discharging to a 4th Strahler order stream or larger (as determined using 1:24,000 scale maps to delineate stream order).

However, such sites listed above that discharge directly (or, indirectly through a municipal storm sewer system) to Basic Treatment Receiving Waters (Appendix I-C of the manual), and areas of the above-listed project sites that are identified as subject to Basic Treatment requirements, are also not subject to Enhanced Treatment requirements. For developments with a mix of land use types, the Enhanced Treatment requirement shall apply when the runoff from the areas subject to the Enhanced Treatment requirement comprise 50% or more of the total runoff within a thresh-

old discharge area.

### 4. Basic Treatment:

Basic Treatment generally applies to:

- Project sites that discharge to the ground, UNLESS:

1) The soil suitability criteria for infiltration treatment are met; (see Chapter 3 of Volume III of the manual for soil suitability criteria) or

2) The project uses infiltration strictly for flow control – not treatment – and the discharge is within 1/4-mile of a phosphorus sensitive lake (use a Phosphorus Treatment facility), or within 1/4 mile of a fish-bearing stream, or a lake (use an Enhanced Treatment facility).

- Residential projects not otherwise needing phosphorus control as designated by USEPA, the Department of Ecology, or by the Permittee; and

- Project sites discharging directly to salt waters, river segments, and lakes listed in Appendix I-C of the manual; and

- Project sites that drain to streams that are not fish-bearing, or to waters not tributary to fish-bearing streams;

- Landscaped areas of industrial, commercial, and multi-family project sites, and parking lots of industrial and commercial project sites that do not involve pollution-generating sources (e.g., industrial activities, customer parking, storage of erodible or leachable material, wastes or chemicals) other than parking of employees' private vehicles. For developments with a mix of land use types, the Basic Treatment requirement shall apply when the runoff from the areas subject to the Basic Treatment requirement comprise 50% or more of the total runoff within a threshold discharge area.

### Treatment Facility Sizing

**Water Quality Design Storm Volume:** The volume of runoff predicted from a 24-hour storm with a 6-month return frequency (a.k.a., 6-month, 24-hour storm). Wetpool facilities are sized based upon the volume of runoff predicted through use of the Natural Resource Conservation Service curve number equations in Chapter 2 of Volume III of the manual, for the 6-month, 24-hour storm. Alternatively, the 91st percentile, 24-hour runoff volume indicated by an approved continuous runoff model may be used.

### Water Quality Design Flow Rate

1. **Preceding Detention Facilities or when Detention Facilities are not required:**

The flow rate at or below which 91% of the runoff volume, as estimated by an approved continuous runoff model, will be treated. Design criteria for treatment facilities are assigned to achieve the applicable performance goal at the water quality design flow rate (e.g., 80% TSS removal).

2. **Downstream of Detention Facilities:**

The water quality design flow rate must be the full 2-year release rate from the detention facility. Alternative methods may be used if they identify volumes and flow rates that are at least equivalent. That portion of any development project in which the above PGIS or PGPS thresholds are not exceeded in a threshold discharge area shall apply On-site Storm Water Management BMPs in accordance with Minimum Requirement #5.

### Treatment Facility Selection, Design, and Maintenance

Stormwater treatment facilities shall be:

- Selected in accordance with the

process identified in Chapter 4 of Volume I of the manual,

- Designed in accordance with the design criteria in Volume V of the manual, and
- Maintained in accordance with the maintenance schedule in Volume V of the manual.

### Additional Requirements

The discharge of untreated stormwater from pollution-generating impervious surfaces to ground water is not authorized, except for the discharge achieved by infiltration or dispersion of runoff from residential sites through use of On-site Stormwater Management BMPs.

(Ord. 2009-13 § 5, 2009; Ord. 2005-10 § 5, 2005; Ord. 2001-49 § 2, 2001; Ord. 98-31 § 1, 1999)

### 15.20.070 Administration.

A. **Administrator.** The public works director or a designee shall administer this chapter and shall be referred to as the administrator. The administrator shall have the authority to develop and implement administrative procedures to administer and enforce this chapter.

B. **Review and Approval.** The administrator may approve, conditionally approve or deny an application for activities regulated by this chapter.

C. **Enforcement Authority.** The administrator shall enforce this chapter.

D. **Inspection.** All activities regulated by this chapter shall be inspected by the administrator. The administrator shall inspect projects at various stages of the work requiring approval to determine that adequate control is being exercised. Stages of work requiring inspection include, but are not limited to, pre-construction, installation of BMPs, land disturbing activities, installation of utilities, permanent storm water control facilities, landscaping, retaining walls and completion of project. When required by the administrator, a

special inspection and/or testing shall be performed. (Ord. 2009-13 § 6, 2009; Ord. 2005-10 § 6, 2005; Ord. 98-31 § 1, 1999)

#### **15.20.080 Enforcement.**

A. Failure to Comply. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter.

B. Emergency Access and Reparation. In the event the violation constitutes an immediate danger to public health or safety, the administrator is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking further relief or applying other penalties as provided in this chapter.

C. Civil Infraction. Except as provided in subsection D of this section, conduct made unlawful by this chapter shall constitute a civil infraction and is subject to enforcement and fines as provided in BIMC 1.26.035. A civil infraction under this section shall be processed in the manner set forth in Chapter 1.26 BIMC.

D. Misdemeanor. Any person who again violates this chapter within 12 months after having been found by the Bainbridge Island municipal court to be in violation of this chapter, commits a misdemeanor and any person who is convicted thereof shall be punished as provided in BIMC 1.24.010.A.

E. Civil Penalty. In addition to any civil infraction fine, criminal penalty, and/or other available sanction or remedial procedure, any person engaging in conduct made unlawful by this chapter shall be subject to a cumulative civil penalty in the amount of \$1,000 per day for each violation from the date set for compliance until the date of compliance. Any such civil penalty shall be collected in accordance with BIMC 1.26.090.

#### **F. Additional Remedies.**

1. In addition to any other remedy provided by this chapter or under the Bainbridge

Island Municipal Code, the city may initiate injunction or abatement proceedings or any other appropriate action in courts against any person who violates or fails to comply with any provision of this chapter to prevent, enjoin, abate, and/or terminate violations of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the person violating and/or failing to comply with any provisions of this chapter shall be liable for the costs and reasonable attorneys' fees incurred by the city in bringing, maintaining and/or prosecuting such action.

2. Any person who violates any provision of this chapter may also be in violation of the Federal Clean Water Act, NPDES Phase II permit, and/or Chapter 90.48 RCW and may be subject to sanctions including civil and criminal penalties. Any enforcement action authorized under this chapter shall also include written notice to the violator of such potential liability. (Ord. 2009-13 § 7, 2009; Ord. 2005-10 § 7, 2005; Ord. 98-31 § 1, 1999)

#### **15.20.090 Exceptions and appeals.**

*Repealed by Ord. 2009-13.* (Ord. 2005-10 § 8, 2005; Ord. 2003-25 § 6, 2003; Ord. 98-31 § 1, 1999)

#### **15.20.100 Severability.**

*Repealed by Ord. 2003-24.* (Ord. 98-31 § 1, 1999)

**Chapter 15.21**

**STORM WATER FACILITIES  
MAINTENANCE PROGRAM**

**Sections:**

- 15.21.010 Purpose.**
- 15.21.020 Definitions.**
- 15.21.030 General provisions.**
- 15.21.040 General requirements.**
- 15.21.050 Administration.**
- 15.21.060 Inspection program.**
- 15.21.070 Enforcement.**
- 15.21.080 Repealed.**

**15.21.010 Purpose.**

The purpose of this chapter is to ensure maintenance of all storm water facilities within the city and to set minimum standards for the inspection and maintenance of storm water facilities. The provisions of this chapter are intended to:

A. Provide for inspection and maintenance of storm water facilities in the city to provide for effective and functional storm water drainage systems.

B. Authorize the city, through the public works department, to require that storm water facilities be operated, maintained and repaired in conformance with this chapter.

C. Establish the minimum level of compliance.

D. Guide and advise all who conduct inspection and maintenance of storm water facilities. (Ord. 98-42 § 1, 1999)

**15.21.020 Definitions.**

For the purposes of this chapter, the following definitions shall apply:

A. "Best management practice (BMP)," means physical, structural, and/or managerial practices that, when used in the singular or in combination, prevent or reduce pollution of water, and have been approved by the Washington State Department of Ecology. BMPs are listed and described in the storm water management manual.

B. *Repealed by Ord. 2003-22.*

C. "Storm water" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility.

D. "Storm water drainage system" means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter storm water.

E. "Storm water facility" means a constructed component of a storm water drainage system, designed or constructed to perform a particular function, or multiple functions, including but not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catchbasins, oil/water separators, sediment basins and modular pavement.

F. "Storm water management manual (manual)" means the manual adopted by reference and prepared by the Washington State Department of Ecology which contains BMPs to prevent or reduce pollution. (Ord. 2003-22 § 23, 2003; Ord. 98-42 § 1, 1999)

### 15.21.030 General provisions.

A. Abrogation and Greater Restrictions. This chapter is not intended to repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

B. Interpretation. The provisions of this chapter shall be held as minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

#### C. Applicability.

1. When any provision of the Bainbridge Island Municipal Code conflicts with this chapter, the provision which provides more environmental protection shall apply.

2. The department of public works/engineering department is authorized to adopt written procedures for the purposes of carrying out the provisions of this chapter. (Ord. 98-42 § 1, 1999)

### 15.21.040 General requirements.

A. Maintenance Required. All storm water facilities shall be maintained in accordance with this chapter and the storm water management manual. Systematic, routine preventive maintenance is preferred.

B. Minimum Standards. The following are the minimum standards for the maintenance of storm water facilities:

1. Facilities shall be inspected annually and cleared of debris, sediment and vegetation when they effect the functioning and/or design capacity of the facility.

2. Grassy swales and other biofilters shall be inspected monthly and mowed or replanted as necessary. Clippings are to be removed and properly disposed of.

3. Where lack of maintenance is causing or contributing to a water quality problem, immediate action shall be taken to correct the problem. Within one month, after initial recognition of problem, the city inspector shall revisit the facility to assure that the problem has been rectified.

C. Disposal of Waste from Maintenance Activities. Disposal of waste from maintenance activities shall be conducted in accordance with the minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials from storm water maintenance activities, and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC.

D. Compliance. Property owners are responsible for the maintenance, operation or repair of storm water drainage systems and BMPs. Property owners shall maintain, operate and repair these facilities in compliance with the requirements of this chapter and the storm water management manual. (Ord. 98-42 § 1, 1999)

### 15.21.050 Administration.

A. Director. The public works director, and/or designee, shall administer this chapter and shall be referred to as the director. The director shall have the authority to develop and implement administrative procedures to administer and enforce this chapter.

B. Inspection Authority. The director is directed and authorized to develop an inspection program for storm water facilities in the city.

C. Enforcement Authority. The director shall enforce this chapter. (Ord. 98-42 § 1, 1999)

**15.21.060 Inspection program.**

A. Inspection. Whenever implementing the provisions of the inspection program, or whenever there is cause to believe that a violation of this chapter has been or is being committed, the inspector is authorized to inspect all storm water drainage systems within the city in accordance with Chapter 1.16 BIMC.

B. Procedures. The method of entry onto property to perform duties imposed by this chapter shall be in accordance with Chapter 1.16 BIMC.

C. Inspection Schedule. The director shall establish a master inspection and maintenance schedule to inspect appropriate storm water facilities that are not owned or operated by the city. Inspections shall be annual. Critical storm water facilities may require a more frequent inspection schedule.

D. Inspection and Maintenance Records. As existing storm water facilities are encountered, they shall be added to the master inspection and maintenance schedule. Records of new storm water facilities shall include the following:

1. As-built plans and locations;
2. Findings of fact from any exemption granted by the local government;
3. Operation and maintenance requirements and records of inspection maintenance actions and frequencies;
4. Declaration of covenant associated with maintenance and operation of storm drainage facilities. See "Exhibit A" following this chapter; and
5. Engineering reports, as appropriate.

E. Reporting Requirements. The inspector shall report annually to the director of public works about the status of the storm water facilities inspections. The annual report may include, but not be limited to, the proportion of the components found in and out of compliance, the need to upgrade components,

enforcement actions taken, compliance with the inspection schedule, the resources needed to comply with the schedule, and comparisons with previous years. (Ord. 2003-28 § 3, 2003; Ord. 98-42 § 1, 1999)

**15.21.070 Enforcement.**

A. General Enforcement action, as provided by Chapter 1.26 BIMC, shall be taken whenever a person has violated any provision of this chapter.

B. Orders. The director or designee shall have the authority to issue to an owner or person in control of a storm water facility deemed to be in violation of this chapter, an order to maintain or repair a component of a storm water facility or BMP to bring it in compliance with this chapter, the storm water management manual and/or city regulations. The order shall include:

1. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;
2. A notice that the violation or potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken;
3. A reasonable time to comply, depending on the circumstances.

C. Civil Penalty. A person who fails to comply with the requirements of this chapter or who fails to conform to the terms of an approval or order issued shall be subject to civil penalties as provided for in the BIMC 1.26.090. (Ord. 98-42 § 1, 1999)

**15.21.080 Severability.**

*Repealed by Ord. 2003-24. (Ord. 98-42 § 1, 1999)*

**EXHIBIT A  
DECLARATION OF COVENANT ASSOCIATED WITH MAINTENANCE  
AND OPERATION OF STORM DRAINAGE FACILITIES**

Grantor: \_\_\_\_\_ Additional Grantor: \_\_\_\_\_  
Grantee: \_\_\_\_\_ Additional Grantee: \_\_\_\_\_  
Legal Description   1/4     1/4sec     T     R     W.M.   Additional Legal: \_\_\_\_\_  
Assessor's Tax Parcel #: \_\_\_\_\_ Additional #: \_\_\_\_\_  
Reference Auditor File #: \_\_\_\_\_ Additional #: \_\_\_\_\_

Whereas the city of Bainbridge Island, a political subdivision of the State of Washington, has rights under city ordinances, codes, and Washington State statutes to regulate storm water drainage, and The City of Bainbridge Island, Department of Public Works has issued a permit number \_\_\_\_\_ for the development known as \_\_\_\_\_ which contains on-site stormwater facilities.

The Grantors, hereinafter known as the owner(s) of the real property situated in the City of Bainbridge Island, State of Washington, and legally described as follows:

The owner(s), their heirs, successors or assigns, hereby covenant and agree that:

1. The City of Bainbridge Island, or its designee, shall have the right to ingress and egress over the above described property for the purpose of inspecting, sampling and monitoring stormwater facility components and discharges.
2. If, at any time, the City of Bainbridge Island reasonably determines that maintenance or repair work is required to be done to the existing and accepted stormwater facilities installed on the property described above (which will mean repair or clean out existing facilities only to the same standards as originally installed and accepted), the COBI City Engineer or his/her designee shall give the Owner(s) seven (7) days' notice that the City intends to perform such maintenance or repair work, or to have them performed by others. If the owner(s) have not completed or are not diligently pursuing the maintenance or repair work to the facilities and it becomes necessary for the City to perform the work, the Owner(s) will assume responsibility for the cost of such maintenance or repair work and will reimburse the City within thirty (30) working days of receipt of the invoice for any such work performed. Overdue payments will require payment of interest at the current legal rate for liquidated judgments, and any costs or fees incurred by the City, should any legal action be required to collect such payments, will be borne by the parties responsible for said reimbursements.
3. If, at any time, the City reasonably determines that the existing and accepted stormwater facilities installed on the property described above poses a hazard to life and limb, or endangers property, or adversely affects the safety and operations of public way, due to failure, damage or non-maintenance, and that the situation is so adverse as to preclude written notice to the Owner(s), the City Engineer may take the measures necessary to eliminate the hazardous situation (which will mean repair or clean out of the existing facilities only to the same standards as originally installed and accepted), provided the Director, or his/her designee, has first made a reasonable effort to locate said Owner(s) before acting. The Owner(s) will assume responsibility for the cost of such maintenance or repair work and will reimburse the City within thirty (30) days of receipt of the invoice for any such work performed. Overdue

payments will require payment of interest at the current legal rate for liquidated judgments, and any costs or fees incurred by the City, should any legal action be required to collect such payments, will be borne by the parties responsible for said reimbursements.

4. The Owner(s) will keep the City informed at all times as to the name, address and telephone number of the contact person responsible for the performance of maintenance or repair work to the storm drainage facilities.

5. The Owner(s) agree to hold harmless and indemnify the City or its designee from any and all claims arising from any activity the City undertakes on the property described above if it becomes necessary for the City to conduct maintenance or repair work.

These covenants are intended to protect the value and desirability of the real property described above, and to benefit all the citizens of the City of Bainbridge Island. They shall run with the land and be binding on all parties having or acquiring from the Owner(s), their heirs, successors or assigns, any right, title or interest in the property or any part thereof. They shall inure to the benefit of each present or future successor in interest of said property or any part thereof, or interest therein, and to the benefit of all the citizens of the City of Bainbridge Island.

|       |       |
|-------|-------|
| _____ | _____ |
| Owner | Date  |
| _____ | _____ |
| Owner | Date  |

## Chapter 15.22

### ILLICIT DISCHARGE DETECTION AND ELIMINATION

#### Sections:

- 15.22.010 Purpose.
- 15.22.020 Definitions.
- 15.22.030 Applicability.
- 15.22.040 Administration.
- 15.22.050 General provisions.
- 15.22.060 General requirements.
- 15.22.070 Inspections and investigations.
- 15.22.080 Enforcement.

#### 15.22.010 Purpose.

The purpose of this chapter is to regulate the city's municipal separate storm sewer system ("MS4" or "stormwater drainage system") regarding the introduction of pollutants that would adversely impact surface and ground water quality of the state of Washington in order to comply with requirements of the city's National Pollutant Discharge Elimination System ("NPDES") permit. The intent of this chapter is to:

A. Control the introduction of pollutants to the storm water drainage system by any person and/or entity.

B. Prohibit illicit connections and discharges to the storm water drainage system and receiving waters.

C. Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter. (Ord. 2008-14 § 1, 2008)

#### 15.22.020 Definitions.

A. "Best management practices" or "BMPs" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent and/or reduce pollution of water. BMPs are listed and described in the Stormwater Management Manual for Western Washington and the city of Bainbridge Island pollution control manual.

B. "Clean Water Act" means the federal Water Pollution Control Act (33 USC 1251 et

seq.), and any subsequent amendments thereto.

C. "Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed, including but not limited to: dangerous waste, extremely hazardous waste, hazardous household substances, hazardous substances, hazardous waste, and moderate-risk waste all as defined in RCW 70.105.010 as now existing or hereafter amended.

D. "Illegal discharge" means any direct or indirect non-storm water discharge to the storm water drainage system, except as permitted or exempted in BIMC 15.22.050.

E. "Illicit connection" is defined as either of the following:

1. Any drain, conveyance, or hydraulic connection, whether surface or subsurface, which allows an illegal discharge to enter the storm water drainage system including but not limited to any conveyances which allow sewage, process wastewater, or wash water to enter the storm water drainage system and any connections to the storm water drainage system from indoor drains and sinks, regardless of whether the connection had been previously allowed, permitted, or approved by the city or other authorized public agency.

2. Any drain or conveyance connected from a residential, commercial or industrial land use to the storm water drainage system which has not been documented in plans, maps, or equivalent records and approved by the city.

F. "Municipal separate storm sewer system (MS4)" or "storm water drainage system" means the system of conveyances including sidewalks, roads with drainage systems, municipal streets, catchbasins, curbs, gutters, ditches, manmade channels, or storm drains owned and operated by the city and design or used for collecting or conveying storm water.

G. "National Pollutant Discharge Elimination System (NPDES) Phase II permit" means the "Western Washington Phase II municipal storm water permit" issued by the Washington State Department of Ecology with an effective date of February 16, 2007, and subsequent reissues.

H. "Non-storm water discharge" means any discharge to the storm water drainage system that is not composed entirely of storm water.

I. "Pollutant" or "pollution" shall be construed to mean such contamination or other alteration of the physical, chemical, or biological properties of any of the waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life; as defined in RCW 90.48.020 as now existing or hereafter amended.

J. "Storm water" means surface water runoff resulting from rainfall, snowmelt, or other precipitation.

K. "Wastewater" or "process wastewater" means any liquid or water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

L. "Watercourse" and "river or stream" means any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irriga-

tion ditches, canals, storm water runoff devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered by humans.

M. "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington as defined in Chapter 90.48 RCW. (Ord. 2008-14 § 1, 2008)

#### **15.22.030 Applicability.**

This chapter shall apply to all water entering the storm water drainage system and waters of the state within the city jurisdiction. (Ord. 2008-14 § 1, 2008)

#### **15.22.040 Administration.**

The public works director or designee shall administer this chapter and shall be referred to as the administrator. The administrator shall have the authority to develop and implement procedures to administer and enforce this chapter. (Ord. 2008-14 § 1, 2008)

#### **15.22.050 General provisions.**

##### **A. Prohibition of Illegal Discharges.**

1. No person shall discharge or cause to be discharged into the city's storm water drainage system or waters of the state any materials, including, but not limited to, pollutants or waters containing any pollutants.

2. Prohibited discharges include, but are not limited to, the following:

- a. Trash or debris;
- b. Construction materials;
- c. Petroleum products including, but not limited to, oil, gasoline, grease, fuel oil, heating oil;
- d. Antifreeze and other automotive products;
- e. Metals in excess of naturally occurring amounts, in either particulate or dissolved form;
- f. Flammable or explosive materials;
- g. Chemicals not normally found in uncontaminated water;

- h. Acids, alkalis, or bases;
- i. Painting products;
- j. Degreasers and/or solvents;
- k. Drain cleaners;
- l. Commercial and household cleaning products;
- m. Pesticides, herbicides, or fertilizers;
- n. Steam cleaning wastes;
- o. Pressure washing wastes;
- p. Soaps, detergents, or ammonia;
- q. Chlorinated spa or swimming pool water;
- r. Domestic or sanitary sewage;
- s. Animal carcasses;
- t. Food wastes;
- u. Yard wastes;
- v. Silt, sediment, or gravel;
- w. Any hazardous material or waste;
- x. Wastewater or process wastewater (including filtered or purified wastewaters).

3. The following discharges are allowed by this chapter if the discharges do not contain pollutants. The administrator may evaluate and remove any of the exemptions if it is determined that they are causing an adverse impact:

- a. Diverted stream flows (i.e., channeled or piped streams);
- b. Rising ground waters and springs;
- c. Flows from riparian habitats and wetlands;
- d. Uncontaminated ground water infiltration (as defined in 40 CFR 35.2005(20));
- e. Uncontaminated pumped ground water;
- f. Foundation and footing drains;
- g. Air conditioning condensation;
- h. Irrigation water from agricultural sources that is commingled with urban storm water;
- i. Water from crawl space pumps;
- j. Non-storm water discharges covered by another NPDES permit;
- k. Discharges from emergency fire fighting activities;

l. Discharges specified in writing by the administrator as being necessary to protect public health and safety.

4. The following types of discharges shall only be permitted if the stated conditions are met:

a. Discharges from potable water sources, including water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water; planned discharges shall be dechlorinated to a concentration of 0.1 parts per million or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the storm drainage system;

b. Discharges from lawn watering and other irrigation runoff; these shall be minimized through water conservation efforts;

c. Dechlorinated spa or swimming pool discharges; the discharges shall be dechlorinated to a concentration of 0.1 parts per million or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent resuspension of sediments in the storm drainage system. The temperature of the discharge water shall not exceed 65 degrees Fahrenheit. Spa or swimming pool cleaning wastewater and filter backwash shall not be discharged to the storm drainage system;

d. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents; the amount of street wash, dust control, and building wash water shall be minimized. At active construction sites, street sweeping must be performed prior to washing the street;

e. Dye testing with verbal notification to the city at least 24 hours prior to the time of the test;

f. Discharges resulting from maintenance, repair, or operation of fire fighting equipment and facilities that are not directly associated with public fire fighting, including discharges from public fire fighting training exercises, unless city-approved best management practices are implemented.

5. Discharge prohibitions shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or

waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency or Washington State Department of Ecology; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm water drainage system.

**B. Prohibition of Illicit Connections.**

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

**C. Waste Disposal.** No person shall throw, deposit, leave, maintain, or keep in or upon any public or private property, the storm water drainage system, or waters of the state any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, or accumulations that may cause or contribute to pollution. Wastes deposited in proper waste receptacles for the purposes of collection are exempt from this prohibition. (Ord. 2008-14 § 1, 2008)

**15.22.060 General requirements.**

**A. Requirement to Eliminate Illegal Discharges.** The administrator may require by written notice that a property owner or person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge, clean up the polluting matter and, if necessary, take measures to eliminate the source of the discharge to prevent the reoccurrence of discharges. The administrator may charge all associated costs thereof to the property owner or responsible party.

**B. Requirement to Eliminate Illicit Connections.** The administrator may require by written notice that a property owner or person responsible for an illicit connection to the storm water drainage system eliminate the connection by a specified date, regardless of

whether or not the connection had been established or approved previously.

**C. Requirement to Implement Best Management Practices.** The owner or operator of a commercial or industrial establishment and property owners shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the storm water drainage system or waters of the state through the use of structural and nonstructural BMPs (as defined in BIMC 15.20.020). The administrator may require any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, to implement, at their own expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm water drainage system.

**D. Watercourse Protection.** Any person owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, and other items that would pollute or contaminate the flow of water through the watercourse.

**E. Notification of Illegal Discharges.**

1. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation has information of any known or suspected illegal discharges into the storm water drainage system or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

2. In the event of an illegal discharge of hazardous materials into the storm water drainage system or waters of the state, said person shall immediately notify emergency dispatch services (911) and the public works department (206-842-2016).

3. In the event of an illegal discharge of nonhazardous materials into the storm water drainage system or waters of the state, said person shall notify the public works department by phone (206-842-2016), by facsimile (206-780-3710), or in person within 48 hours after said discharge.

4. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such

establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be kept and maintained on a permanent basis from the effective date of the ordinance codified in this chapter. (Ord. 2008-14 § 1, 2008)

#### **15.22.070 Inspections and investigations.**

A. Facility and Property Inspections. The administrator shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a property owner has security measures in force which require proper identification and clearance before entry into its premises, the property or facility owner/operator shall make the necessary arrangements to allow access to the administrator.

#### **B. Facility and Property Access.**

1. Facility operators shall allow the administrator ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and/or federal law.

2. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the property owner at the written or oral request of the administrator and shall not be replaced. The costs of clearing such access shall be borne by the property owner.

#### **C. Monitoring and Sampling.**

1. The administrator has the right to install or require the property owner to install monitoring equipment as is reasonably necessary in the opinion of the administrator to conduct appropriate monitoring and/or sampling of the facility's storm water discharge. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the property owner at his/her own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

2. All data shall be collected in accordance with a sampling and analysis plan that is approved by the administrator. (Ord. 2008-14 § 1, 2008)

#### **15.22.080 Enforcement.**

A. Failure to Comply. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter.

B. Emergency Access and Reparation. In the event the violation constitutes an immediate danger to public health or safety, the administrator is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking further relief or applying other penalties as provided in this chapter.

C. Civil Infraction. Except as provided in subsection D of this section, conduct made unlawful by this chapter shall constitute a civil infraction and is subject to enforcement and fines as provided in BIMC 1.26.035. A civil infraction under this section shall be processed in the manner set forth in Chapter 1.26 BIMC.

D. Misdemeanor. Any person who again violates this chapter within 12 months after having been found by the Bainbridge Island municipal court to be in violation of this chapter, commits a misdemeanor and any person who is convicted thereof shall be punished as provided in BIMC 1.24.010.A.

E. Civil Penalty. In addition to any civil infraction fine, criminal penalty, and/or other available sanction or remedial procedure, any person engaging in conduct made unlawful by this chapter shall be subject to a cumulative civil penalty in the amount of \$1,000 per day for each violation from the date set for compliance until the date of compliance. Any such civil penalty shall be collected in accordance with BIMC 1.26.090.

**F. Additional Remedies.**

1. In addition to any other remedy provided by this chapter or under the Bainbridge Island Municipal Code, the city may initiate injunction or abatement proceedings or any other appropriate action in courts against any person who violates or fails to comply with any provision of this chapter to prevent, enjoin, abate, and/or terminate violations of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the person violating and/or failing to comply with any provisions of this chapter shall be liable for the costs and reasonable attorneys' fees incurred by the city in bringing, maintaining and/or prosecuting such action.

2. The administrator may provide the option for compensation of all or part of any penalties incurred by any person(s) to be made in the form of community service approved by the administrator that will be of benefit to the environment and the city. The person(s) and administrator will enter into a formal, written agreement providing for the community service. This agreement shall include in detail description of the service(s) to be rendered by the person(s) in penalty for noncompliance of this chapter. The description shall include a completion date with a mutually agreed compensation structure to offset the above mentioned penalties.

3. Any person who violates any provision of this chapter may also be in violation of the Federal Clean Water Act, NPDES Phase II permit, and/or Chapter 90.48 RCW and may be subject to sanctions including civil and criminal penalties. Any enforcement action authorized under this chapter shall also include written notice to the violator of such potential liability. (Ord. 2009-15 § 1, 2009; Ord. 2008-14 § 1, 2008)

**Chapter 15.24****HAZARDOUS MATERIALS FACILITY  
WARNING SYSTEM**

(Repealed by Ord. 2008-10)

**Chapter 15.28****DEVELOPMENT IMPACT ON, AND  
IMPACT FEE SCHEDULE FOR, PUBLIC  
SCHOOL FACILITIES****Sections:**

- 15.28.010 Authority.**
- 15.28.020 Definitions.**
- 15.28.030 School adequacy standards  
impact fees applicability.**
- 15.28.040 Findings, recommendations  
and decisions regarding  
school capacities.**
- 15.28.050 School adequacy standards.**
- 15.28.060 Fee schedule.**
- 15.28.070 Exemptions.**
- 15.28.080 Appeals – Adjustments –  
Payment under protest.**
- 15.28.090 Payment of fees.**
- 15.28.100 Impact fee account –  
Reporting.**
- 15.28.110 Expenditure.**
- 15.28.120 Refunds.**

**15.28.010 Authority.**

The ordinance codified in this chapter is adopted as an official control to implement appropriate sections of the city's comprehensive plan policies and the Growth Management Act, and is necessary to address identified impacts of residential construction on schools in order to protect the public health, safety and welfare. (Ord. 93-05 § 3, 1993)

**15.28.020 Definitions.**

As used in this chapter:

A. "Capacity" means the number of students that a school site and its school buildings is designed to accommodate. The capacity standard for the school district is a combination of the designed size of the building, health, safety and program requirements, as established and adopted by the school district in its capital facilities plan, collective bargaining agreements and education principles to insure quality instruction. The capacity standards shall be determined by the school district and shall take into consideration the state capacity standards.

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B. "Construction cost per student" means the estimated cost of construction of a school in the school district for the grade level of school to be provided, divided by the school district's design capacity for that grade level of school.

C. "Grade level" means the categories into which the school district groups its grades of students, i.e., elementary, middle or junior high school and high school.

D. "Public funds" means funds allocated by the city and the school district. All required public funds shall be paid 50 percent by the city out of the current expense fund and 50 percent by the school district.

E. "Site cost per student" means the estimated cost of a site in the school district for the grade level of school to be provided, divided by the school district's design capacity for that grade level of school.

F. "Student factor" means the number derived by the city and the school district to describe the number of students of each grade level that are expected to be generated by a single family or multi-family dwelling unit. Student factors shall be based on 1991 census data as updated by occupancy permits issued since the 1991 census, and the school district records of average actual students enrolled per household, per grade level.

G. "Temporary facilities cost per student" means the estimated cost of purchasing and siting a temporary facility (portable classroom) in the school district for the grade level of school to be provided, divided by the school district's design capacity for temporary facilities for that grade level of school. (Ord. 93-05 § 4, 1993)

#### **15.28.030 School adequacy standards impact fees applicability.**

A. The adequacy standards and impact fees set out in this chapter shall apply to all forms of residential construction that are subject to city review and approval and that would result in the creation of new residential building lots or the construction of new dwelling units.

B. For the purposes of this chapter, the following do not constitute forms of residen-

tial construction that would result in the creation of new residential buildings or the construction of new dwelling units for which impact fees are due:

1. Construction of new dwelling units for which impact fees have been imposed by the city prior to January 2, 1992, as mitigation under the State Environmental Policy Act;

2. Construction of new dwelling units for which a complete building permit application was filed with the city prior to January 2, 1992;

3. Construction of new dwelling units for which impact fees have been assessed or paid under voluntary agreements with the city prior to January 2, 1992;

4. Construction of multi-family housing for the exclusive use of seniors (62 years of age or older), including but not limited to nursing homes and retirement centers. If use of the housing is changed in whole or in part, the owner of the property at the date of change in use shall pay impact fees for the entire property in the amount applicable at the date of change in use. The occupancy permit for the housing must state that the housing is for the exclusive use of seniors. When the occupancy permit is issued, the director of finance and administrative services shall file with the Kitsap County auditor a notice of the use restriction and the impact fee requirement on change of use;

5. Remodel or reconstruction of existing dwelling units;

6. Temporary placement shelters, relocation facilities and transitional housing facilities (such as transitional housing facilities for recovering alcoholics, prison and jail work release facilities, and temporary housing for homeless people) that are not exempt from impact fees under Section 15.28.070(A)(3). (Ord. 93-05 § 5, 1993)

#### **15.28.040 Findings, recommendations and decisions regarding school capacities.**

In reviewing applications for approvals related to or resulting in new dwelling units and/or in making a threshold determination pursuant to the State Environmental Policy

Act, the city shall review the impacts on schools. The city, in the course of reviewing proposals for residential construction, including subdivisions, short subdivisions, planned unit developments, building permits, or any other proposal not cited herein resulting in an impact on schools, shall consider any documentation of capacity problems provided by the school district as presumptively valid but subject to rebuttal, and shall require or recommend phasing or provision of the needed facilities and sites as appropriate to address the deficiency or deny or condition approval as required by this chapter and as necessary to remedy the deficiency, or recommend such denial or conditional approval, as provided for in Section 15.28.050 of this chapter. The school district shall annually, by March 1, update its documentation of the adequacy of school facilities. This documentation shall be presumed to apply to any application made in the school district and shall be incorporated into the record of every application without requiring the school district to offer it. (Ord. 93-05 § 6, 1993)

#### 15.28.050 School adequacy standards.

A. School facilities shall be deemed to have adequate capacity for purposes of approval of any residential construction proposal if all of the following circumstances exist:

1. The school district has permanent facilities to house the students, by appropriate grade level groupings, projected to result from the residential construction proposal without exceeding school district class size capacity standards. Any facilities that have been closed for more than two years due to lack of demand for the facilities shall not be treated as available for permanent facilities until any needed remodeling can be provided.

2. The school district has the land to accommodate the permanent and portable facilities needed to serve the students projected to result from the residential construction proposal.

3. The applicant has paid any school mitigation fee required by ordinance, or pay-

ment of such fee is scheduled for payment and is adequately secured.

B. If the capacity standards established by the school district are or would be exceeded with the construction of the proposed residences, the school facilities available to serve the residences shall be deemed inadequate, and the residences shall not be approved unless they are phased to meet the standards, and the impact fee authorized by this chapter is paid in a manner timely to the needs of the school district, or the needed land or facilities are provided before or concurrently with the construction of the residences. An offer of payment of an applicable impact fee shall not be deemed sufficient if the fee cannot be used in a timely fashion to actually provide needed school facilities, and the payment shall be delayed until such time as it can be used, but shall not be forgiven unless a facility of equal value is provided.

C. School adequacy standards should refer to the capital facilities plan. (Ord. 93-05 § 7, 1993)

#### 15.28.060 Fee schedule.

A. When authorized by this chapter, impact fees for the impact of development activity on public school facilities shall be paid in accordance with the city's fee resolution and shall be calculated in accordance with Exhibit A attached hereto and incorporated herein. Mobile homes shall be considered single family residences for the purposes of this chapter. Accessory dwelling units as defined by Section 18.06.010 of the Bainbridge Island Municipal Code and duplexes shall be considered multi-family dwellings for the purpose of this chapter.

B. When the city approves residential construction on the condition that the applicant provide a school facility or site that is acceptable to the school district, the applicant shall be entitled to a credit against impact fees, calculated in accordance with subsection A above, in the amount of the actual cost of providing the school facility or site. Upon approval of the residential construction, the applicant shall file with the city and supply to the school district an estimate of the cost of the

school facility or site. Upon transfer of the site to the school district and/or construction of the school facility, the applicant shall file with the city and provide to the school district a statement of costs, together with any supporting documentation that is requested by the city and the school district. The cost statement and documentation shall be reviewed by the school district and the city after transfer and/or construction to assure an accurate credit amount. The city and the school district shall determine the actual cost of the school facility or site for purposes of determining the amount of the credit. If the actual cost as determined by the city and the school district is less than the impact fee that would have been imposed under subsection A above, the applicant shall pay the difference as an impact fee. (Ord. 93-05 § 8, 1993)

#### **15.28.070 Exemptions.**

A. No impact fees shall be imposed for the following:

1. Low-income housing projects that are constructed by public housing agencies or private nonprofit housing developers;

2. Low-income residential units, rented or purchased, that are dedicated and constructed by private developers;

3. Temporary placement shelters, relocation facilities and transitional housing facilities (such as transitional housing facilities for recovering alcoholics, prison or jail work release facilities, and temporary housing for homeless persons), that in the determination of the director of planning and community development have the potential for accommodating children who will attend public schools on a consistent basis. The decision of the director may be appealed pursuant to this chapter.

B. For purposes of this section, a low-income housing project unit or a low-income residential rental unit is one that has a maximum rent and a maximum income level for tenants equal to or less than 50 percent of the average of the median income, adjusted for family size, between the Seattle Metropolitan Statistical Area and the Bremerton Metropolitan Statistical Area as of the date of the application for construction of the unit. A low-

income residential purchased unit is one that has a sales price of \$130,000 or less for single family houses, and \$95,000 or less for multi-family units. These maximum sale prices shall be adjusted by the Seattle CPI-U consumer price index each year, with 1992 being the base year. The purchaser's family income cannot exceed 80 percent of the average median income, adjusted for family size, between the Seattle Metropolitan Statistical Area and the Bremerton Metropolitan Statistical Area as of the date of application for construction of the house or unit.

C. Impact fees for the projects and units exempted by this section shall be paid from public funds.

D. The department of planning and community development shall review requests for exemptions from impact fees under subsection A1 of this section pursuant to criteria and procedures adopted by administrative rule, and shall advise the developer in writing of the granting or denial of the request. In addition, the department shall notify the school district of all applications for exemptions when they are received and shall notify the school district when such requests are granted or denied.

E. When a low-income purchased unit is sold or rented to a person who does not qualify as a low-income purchaser or tenant, an amount equal to the impact fee on the date of the sale or rental shall be paid by the seller or the property owner to the city.

F. When a low-income purchased unit has received a certificate of occupancy, the director of finance and administrative services shall record a notice of the exemption and the income qualification requirements for such unit with the Kitsap County auditor. (Ord. 93-05 § 9, 1993)

#### **15.28.080 Appeals – Adjustments – Payment under protest.**

A. An applicant for residential construction may provide studies and data to demonstrate that any particular factor used by the school district may not be appropriately applied to the residential construction proposal. The school district's data shall be pre-

## 15.28.090

sumed valid unless clearly demonstrated to be otherwise by the applicant.

B. Any appeal of school adequacy determinations or fee amounts shall follow the appeal process for the underlying permit or approval and shall not be subject to a separate appeal process. Where no other administrative appeal process is available, an appeal may be taken to the hearing examiner using the appeal procedures for variances.

C. Any error in the formula identified as a result of an appeal should be referred to the city council for possible modification of the fees and/or impact fee formula after notice to and comment from the school district.

D. Impact fees may be paid under protest. If an impact fee is protested, the city shall make construction pursuant to the issuance of a building permit conditional upon final resolution of the protest, if failure to collect the fee payment would otherwise require a denial or deferral of the project to meet school district adequacy standard requirements. (Ord. 93-05 § 10, 1993)

### 15.28.090 Payment of fees.

A. Impact fees shall be collected as follows:

1. For subdivisions other than subdivisions of land classified as agricultural by the Kitsap County assessor under Chapter 84.34 RCW, one-half of the impact fee for each lot in the subdivision shall be paid at the time of final approval of the subdivision, with the amount of the fees calculated based on the impact fee schedule in effect at the time of final approval. For each lot in the subdivision, the remainder of the impact fee due for the lot shall be paid at the time of issuance of a building permit for the lot, with the amount of the fee calculated based on one-half of the impact fee schedule in effect at the time of building permit issuance.

2. For subdivisions of land classified as agricultural by the Kitsap County assessor under Chapter 84.34 RCW, the impact fee for each lot in the subdivision shall be paid at the time the lot's agricultural classification is changed, or at the time a residential building permit is issued for the lot, whichever occurs first, with the amount of the fee being calcu-

lated based on the impact fee schedule in effect at the time that the fee is paid.

3. For planned unit developments, one-half of the impact fee for each dwelling unit in the planned unit development shall be paid at the time of final approval of the planned unit development, with the amount of the fees calculated based on the impact fee schedule in effect at the time of final approval. For each dwelling unit in the planned unit development, the remainder of the impact fee due for the dwelling unit shall be paid at the time of issuance of a building permit for the dwelling unit, with the amount of the fee calculated based on one-half of the impact fee schedule in effect at the time of building permit issuance.

4. For developments that are completed in phases, one-half of the impact fees for each dwelling unit in the phase shall be paid by the applicant at the time of final approval of the phase, with the amount of the fees calculated based on the impact fee schedule in effect at the time of final approval of the phase. For each dwelling unit in the development, the remainder of the impact fees due for the dwelling unit shall be paid at the time of issuance of building permits, with the amount of the fees being calculated based on one-half of the impact fee schedule in effect at the time of building permit issuance.

5. For residential construction on existing lots or parcels and all other residential construction not covered by subdivisions 1, 2, and 3 of this subsection, the full fee shall be assessed and paid upon issuance of building permits.

B. Following payment of the first half of the fee, the director of finance and administrative services shall file with the Kitsap County auditor a notice of the amount of the fee already paid, and a statement that, upon issuance of building permits, the property owner must pay the remainder of the impact fees due for the property, based on one-half of the impact fee schedule in effect at the time of building permit issuance. For impact fees assessed on the subdivision of land classified as agricultural by the Kitsap County assessor under Chapter 84.34 RCW, the director shall file with the Kitsap County auditor a notice stating that at the time

the lot's agricultural classification is changed or at the time a residential building permit is issued, whichever occurs first, the property owner must pay one-half of the impact fees due for the property, based on the impact fee schedule in effect at the time of payment.

C. Arrangement may be made for later payment, with the approval of the school district, only if the school district determines that it will be unable to use or will not need the payment until a later time; provided, that sufficient security shall be provided to assure payment. (Ord. 2000-30 § 1, 2000; Ord. 96-16 § 1, 1996; Ord. 93-05 § 11, 1993)

#### **15.28.100 Impact fee account – Reporting.**

A. There is created and established in the office of the director of finance and administrative services a special interest bearing account for the receipt and payment of impact fees imposed pursuant to this chapter. All interest earned through investment of funds in the account shall be retained in the account and expended in the same manner as impact fees.

B. The director of finance and administrative services shall prepare an annual report for the account showing the source and amount of funds received and earned and the school facilities that were financed in whole or in part by impact fees.

C. Commencing on March 1st of each year, the director of finance and administrative services, in consultation with the school district business manager or other school district designee, shall review information necessary to update the actual amounts associated with the six impact fee components utilized in the calculation under the formula set out in Exhibit A,<sup>1</sup> and shall, within 45 days, forward a recommended revised fee schedule, as necessary, to the city council. (Ord. 93-05 § 12, 1993)

#### **15.28.110 Expenditure.**

A. The school district shall expend the impact fees for facilities approved by the school capital facilities element of the city's comprehensive plan.

B. The school district shall expend or encumber impact fees within six years of receipt by the city; provided, that the school district may expend or encumber impact fees more than six years after receipt where the city determines, pursuant to written finding entered within the six-year period, and based on evidence provided by the school district, that there is an extraordinary and compelling reason for the impact fees to be expended or encumbered more than six years after receipt. (Ord. 93-05 § 13, 1993)

#### **15.28.120 Refunds.**

A. The current owner of property for which an impact fee has been paid may receive a refund of the impact fee where the development activity has not occurred within six years of payment; or where the fee has not been expended or encumbered within the six-year period or extension thereof provided for in BIMC 15.28.110 and there has been no impact on school district facilities. Impact fees shall be considered encumbered on a first in, first out basis.

B. The city shall notify potential claimants of their right to file an application for a refund and the deadline for filing such an application. The notices shall be sent by first class mail deposited with the United States Postal Service at the addresses shown on the records of the county auditor. The request for a refund must be filed with the city clerk in writing within one year of the date on which the right to a refund arises or the postmark date of the notice, whichever is later.

C. Any impact fees that are not expended or encumbered within the six-year period or extension thereof, and for which no application for a refund has been filed within the one-year period, shall be retained and expended in conformance with the school capital facilities element of the city's comprehensive plan.

D. Refunds of impact fees shall include interest, the rate of which shall be the average rate received by the city on funds in the impact fee account during the deposit of the impact fees. (Ord. 93-05 § 14, 1993)

1. Exhibit A is on file in the office of the city clerk.

## Chapter 15.32

### TRANSPORTATION CONCURRENCY

#### Sections:

- 15.32.010 Authority.**
- 15.32.020 Definitions.**
- 15.32.030 Concurrency requirement.**
- 15.32.040 Concurrency test.**
- 15.32.050 Level of service standards.**
- 15.32.060 Certificate of concurrency.**
- 15.32.070 Appeals.**
- 15.32.080 Annual reporting and monitoring.**

#### **15.32.010 Authority.**

This chapter is enacted pursuant to the city's powers as a noncharter code city pursuant to RCW Title 35A; Article XI, Section 10 of the Washington State Constitution; the Growth Management Act, Chapter 36.70A RCW, generally, and RCW 36.70A.070, specifically. (Ord. 2001-09 § 1, 2001)

#### **15.32.020 Definitions.**

"Certificate of concurrency" means the document issued by the city indicating the location or other description of the property on which the development is proposed, the type of development permit for which the certificate is issued, the uses, densities, and intensities of the development approved for the property, the transportation facilities that are available and reserved for the property described in the certificate, and an expiration date of the certificate.

"Concurrency" means that adequate transportation improvements or strategies needed to maintain the adopted level of service standards are in place at the time of development or that a financial commitment is in place to provide the improvements or strategies within six years.

"Concurrency test" means a comparison of a development's impact on the level of service standards to determine whether adequate capacity exists on the affected transportation facilities.

"Development" means improvements to, or changes in use of land that results in more dwelling units or buildings, or changes in the use of the land, buildings or improvements on the land in a manner that increases the impact on transportation facilities, that requires a development permit from the city.

"Development permit" means any order, permit or other official action of the city granting, or granting with conditions, an application for development.

"Level of service standard" means a measurement of the quality of service provided by a facility including traffic conditions along a given roadway or at a particular intersection. Descriptions and measuring methodology shall be as provided in the "levels of service" section of the transportation element of the comprehensive plan and are in accordance with the Transportation Research Board's Highway Capacity Manual (HCM).

"Transportation facilities" means roads and streets. (Ord. 2003-22 § 24, 2003; Ord. 2001-09 § 1, 2001)

#### **15.32.030 Concurrency requirement.**

A. The following development permit applications shall be subject to a concurrency test which shall be conducted in the processing of the development permit application:

1. Preliminary plat (subdivision of five or more residential lots);
2. Site plan and design review;
3. Any other land use plan or permit, the granting of which would increase the demand for transportation facilities by 50 or more trips per day, per the ITE Trip Generation Manual.

B. The following development permits are exempt from this chapter, and applicants may submit applications, obtain development permits and commence development without a certificate of concurrency:

1. Any development permit issued for uses, densities and intensities that were disclosed in a completed application filed before the effective date of this chapter.

2. Any development permit for development that generates less than 50 trips per day, except as provided for in subsection A of this section.

C. A traffic study sufficient for the city engineer to perform a concurrency test shall be provided in accordance with the procedures of Chapter 15.40 BIMC.

D. The city shall not issue a development permit until:

1. A concurrency test has been conducted in accordance with BIMC 15.32.040 and a certificate of concurrency has been issued; or

2. The application has been determined to be exempt from the concurrency test as provided in subsection B of this section.

E. A fee as established by city council resolution shall be charged for all development applications subject to the concurrency test in subsection A of this section. (Ord. 2005-07 § 1, 2005; Ord. 2001-09 § 1, 2001)

#### **15.32.040 Concurrency test.**

A. The city engineer shall perform a concurrency test for each application for a development permit which is not otherwise exempt from the requirements of this chapter, to determine if adequate capacity exists on affected transportation facilities.

B. If the capacity of transportation facilities affected by the proposed development is equal to or greater than the capacity required to maintain the level of service standard for the impact of the development, the concurrency test is passed, and the city engineer shall issue a certificate of concurrency.

C. If the capacity of transportation facilities affected by the proposed development is less than the capacity required to maintain the level of service standard for the impact of the development, the concurrency test is not passed, and the city engineer shall issue a letter denying a certificate of concurrency. The applicant may re-test for concurrency after doing one or both of the following:

1. Amend the application to reduce the need for capacity of transportation facilities in order to maintain the adopted level of service; or

2. Arrange to provide capacity for transportation facilities that is not otherwise available.

D. The city engineer shall conduct the concurrency test first for the earliest completed development application received. Subsequent applications will be tested in the same order as the city receives completed applications.

E. A concurrency test, and any resulting certificate of concurrency, shall be administrative actions of the city that are categorically exempt from the State Environmental Policy Act (SEPA). (Ord. 2001-09 § 1, 2001)

#### **15.32.050 Level of service standards.**

In conducting the concurrency test, the city engineer shall use the level of service standards for transportation facilities adopted in the transportation element of the comprehensive plan, as amended. (Ord. 2001-09 § 1, 2001)

#### **15.32.060 Certificate of concurrency.**

A. The city engineer or designee shall have the authority to issue a certificate of concurrency.

B. A certificate of concurrency shall be valid for the same period of time as the development permit with which it was issued, except that if the development permit does not expire, the certificate of concurrency shall expire after three years.

C. A certificate of concurrency may be extended according to the same terms and conditions as the underlying development permit. If a development permit is granted an extension, the certificate of concurrency, if any, shall also be extended, except that certificates of concurrency shall not be extended more than two times. Certificates of concurrency shall not be extended beyond the expiration of the underlying development permit, or any extensions thereof.

## 15.32.070

D. A certificate of concurrency is valid only for the uses and intensities authorized for the development permit with which it is issued. Any change in use or intensity that increases the impact of development on transportation facilities is subject to an additional concurrency test of the incremental increase in impact on transportation facilities.

E. A certificate of concurrency is valid only for the development permit with which it is issued, and for subsequent development permits for the same property, as long as the applicant obtains the subsequent development permit, and where the use or intensity has not changed, and the previous development permit has not expired.

F. A certificate of concurrency runs with the land, and cannot be transferred to a different property. A certificate of concurrency transfers automatically with ownership of the property for which the certificate was issued. Upon subdivision of a property that has obtained a certificate of concurrency, the city shall replace the certificate of concurrency by issuing a separate certificate of concurrency for each subdivided parcel, assigning to each a pro rata portion of the transportation facility capacity or other measure that was reserved for the original certificate.

G. A certificate of concurrency shall expire if the underlying development permit expires or is revoked or denied by the city and the certificate has not been extended to a subsequent development permit for the same property. (Ord. 2001-09 § 1, 2001)

## 15.32.070 Appeals.

A. An applicant may, within 10 days of the date of denial of a certificate of concurrency, appeal the denial on the following grounds:

1. The city engineer committed a technical or mathematical error; or
2. The applicant provided alternative data that was rejected by the city engineer.

B. Appeal of denial of a certificate of concurrency shall be to the hearing examiner in accordance with BIMC 2.16.095. The period

of the appeal shall be excluded from the permit processing time period of BIMC 2.16.075. (Ord. 2001-09 § 1, 2001)

## 15.32.080 Annual reporting and monitoring.

The city engineer shall monitor the city's transportation facilities and issue an annual report, no later than June 30th of each year, which shall include the following:

A. A summary of the level of service for the city's roads as currently monitored, noting which, if any, are below the adopted level of service standards adopted in the city's comprehensive plan;

B. A summary of significant current and future development activity likely to have an adverse impact on the level of service on the city's roads; and

C. Recommendations, based on growth projections and monitoring data, for amendments to the city's capital improvements program and the city's six-year capital facilities plan for transportation facilities identified in subsection A this section. (Ord. 2001-09 § 1, 2001)

## Chapter 15.34

OUTDOOR LIGHTING ON PUBLIC  
AND PRIVATE PROPERTY

## Sections:

- 15.34.010 Purpose.
- 15.34.020 Definitions.
- 15.34.030 Applicability.
- 15.34.040 Exemptions.
- 15.34.050 General standards.
- 15.34.060 Prohibited.
- 15.34.070 Submittals.
- 15.34.080 Penalties for violation.
- 15.34.090 *Repealed.*
- 15.34.100 Figures of acceptable shielding and direction of outdoor light fixtures.

**15.34.010 Purpose.**

The purpose of this chapter is to provide regulations that preserve and enhance the view of the dark sky; promote health, safety, security, and productivity; and help protect natural resources. The provisions of this chapter are intended to control glare and light trespass. It is the intent of this chapter to provide standards for appropriate lighting practices and systems that will enable people to see essential detail in order that they may undertake their activities at night, facilitate safety and security of persons and property, and curtail the degradation of the nighttime visual environment. (Ord. 2002-15 § 1, 2002)

**15.34.020 Definitions.**

The following terms have the following definitions for purposes of this chapter:

A. "Accent lighting" means any luminaire that emphasizes a particular object or draws attention to a particular area for aesthetic purposes.

B. "Cut-off angle" (of a luminaire) means the angle, measured from the lowest point between a vertical line from the center of the lamp extended to the ground and the first line of sight at which the bare source is not visible.

C. *Repealed by Ord. 2003-22.*

D. "Fixture" (also called a "luminaire") means a complete lighting unit including the lamps, together with the parts required to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply.

E. "Foot-candle" means a measure of illuminance or a measure of how bright a light appears to the eye. One foot-candle is equal to one lumen/ft<sup>2</sup>. As an example, a typical 60-watt incandescent lamp (840 lumens) produces an illuminance of 0.1 foot-candles at a distance of about 25 feet.

F. "Fossil fuel light" means any outdoor lighting fixture producing light directly by the combustion of natural gas or other fossil fuel.

G. "Lamp" means the light-producing source installed in the socket portion of a luminaire.

H. "Light pollution" means general sky glow caused by the scattering of artificial light in the atmosphere and resulting in decreased ability to see the natural night sky.

I. "Light trespass" means any light emitted by an outdoor luminaire that shines directly beyond the property on which the luminaire is installed, or indirectly shines beyond the property on which the luminaire is installed at a brightness (illuminance) that exceeds 0.1 foot-candles at the property line.

J. Luminaire. See definition for "fixture."

K. "Outdoor lighting fixture" means a luminaire outside of an enclosed building or structure or any luminaire directed such that it primarily illuminates outdoor areas.

L. "Shielding" means that no light rays are emitted by a fixture above the horizontal plane running through the lowest point of the fixture.

M. "Spotlight" means any lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction. (Ord. 2003-22 § 25, 2003; Ord. 2002-15 § 1, 2002)

**15.34.030 Applicability.**

A. All outdoor lighting fixtures installed on private and public property shall comply with this chapter. This chapter does not apply to interior lighting; provided, that if it is determined by the director that any interior lighting

## 15.34.040

emitting light outside of the building or structure in which it is located creates a light trespass, the interior lighting shall be subject to the requirements of this chapter. Types of outdoor lighting to which this chapter applies include, but are not limited to, lighting for:

1. Building and structures including, but not limited to, overhangs and canopies;
2. Recreational areas;
3. Parking lot lighting;
4. Landscape lighting;
5. Lighting on docks and piers, unless otherwise regulated by Chapter 16.12 BIMC;
6. Street lighting.

B. The city's department of planning and community development shall administer and enforce this chapter.

C. In the event of a conflict between the requirements of this chapter and any other requirement of the Bainbridge Island Municipal Code the more restrictive requirement shall apply. (Ord. 2002-15 § 1, 2002)

### 15.34.040 Exemptions.

The following are exempt from the provisions of this chapter:

- A. Traffic control signals and devices;
- B. Street lights installed prior to the effective date of the ordinance codified in this chapter; provided, that when a street light fixture becomes inoperable, any replacement street light fixture shall be subject to the provisions of this chapter;
- C. Temporary emergency lighting (i.e., fire, police, repair workers) or warning lights;
- D. Moving vehicle lights;
- E. Navigation lights (i.e., radio/television towers, docks, piers, buoys) or any other lights where state or federal statute or other provision of the Bainbridge Island Municipal Code requires lighting that cannot comply with this chapter. In such situations, lighting shall be shielded to the maximum extent possible, and lumens shall be minimized to the maximum extent possible, while still complying with state or federal statute;
- F. Seasonal decorations do not have to be shielded; provided, that they do not have a brightness of more than 0.1 foot-candles at the property line on which they are installed;

G. Outdoor lighting approved by the director for temporary or periodic events (e.g., fairs, nighttime construction);

H. Internally and externally illuminated signs regulated by Chapter 15.08 BIMC;

I. Fossil fuel lights;

J. Existing lights in use before 9:00 p.m.; provided, that no more than 0.1 foot-candle of direct light shines off the subject property, as measured at the property line. (Ord. 2002-15 § 1, 2002)

### 15.34.050 General standards.

The following general standards shall apply to all nonexempt outdoor lighting fixtures and accent lighting:

A. All light trespass is prohibited.

B. Outdoor lighting fixtures and accent lighting must be shielded and aimed downward. Examples of acceptable and unacceptable light pollution control shielding are shown in Figures 1 through 4 in BIMC 15.34.100. The shield must mask the direct horizontal surface of the light source. The light must be aimed to insure that the illumination is only pointing downward onto the ground surface, with no escaping direct light permitted to contribute to light pollution by shining upward into the sky.

C. All outdoor lighting fixtures and accent lighting shall be designed, installed, located and maintained such that there is no light trespass (see Figure 3 in BIMC 15.34.100).

D. Outdoor lighting fixtures and accent lighting shall not directly illuminate public waterways such as Puget Sound, even if the tidelands are privately owned, unless it is a navigational light subject to state or federal regulations.

E. Accent lighting shall be directed downward onto the illuminated object or area and not toward the sky or onto adjacent properties (see Figure 4 in BIMC 15.34.100). Direct light emissions of such accent lighting shall not be visible above the roof line or beyond the building, structure, or object edge.

F. Spotlighting on landscaping and foliage shall be limited to 150 watts incandescent (2,220 lumens output). (Ord. 2002-15 § 1, 2002)

**15.34.060 Prohibited.**

A. The following fixtures (luminaires) are prohibited:

1. Searchlights for any other purpose other than temporary emergency lighting;
2. Laser lights or any similar high-intensity light for outdoor use or entertainment, when projected above the horizontal plane;
3. Quartz lamps;
4. Mercury vapor lamps.

B. The city reserves the right to further restrict outdoor lighting including, but not limited to, pole height, and level of illumination, when it is deemed to be in the best public interest consistent with the purpose of this chapter. (Ord. 2002-15 § 1, 2002)

**15.34.070 Submittals.**

All building permit applications including the installation of outdoor lighting fixtures shall provide evidence of compliance with the requirements of this chapter on a form provided by the department of planning and community development. (Ord. 2002-15 § 1, 2002)

**15.34.080 Penalties for violation.**

Any violation of the provisions of this chapter shall constitute a civil infraction, enforceable pursuant to Chapter 1.26 BIMC, Code Enforcement. (Ord. 2002-15 § 1, 2002)

**15.34.090 Severability.**

*Repealed by Ord. 2003-24.* (Ord. 2002-15 § 1, 2002)

**15.34.100 Figures of acceptable shielding and direction of outdoor light fixtures.**

The following four figures illustrate acceptable and unacceptable outdoor lighting fixtures in the city:

Figure 1: Wall-Mounted Lights

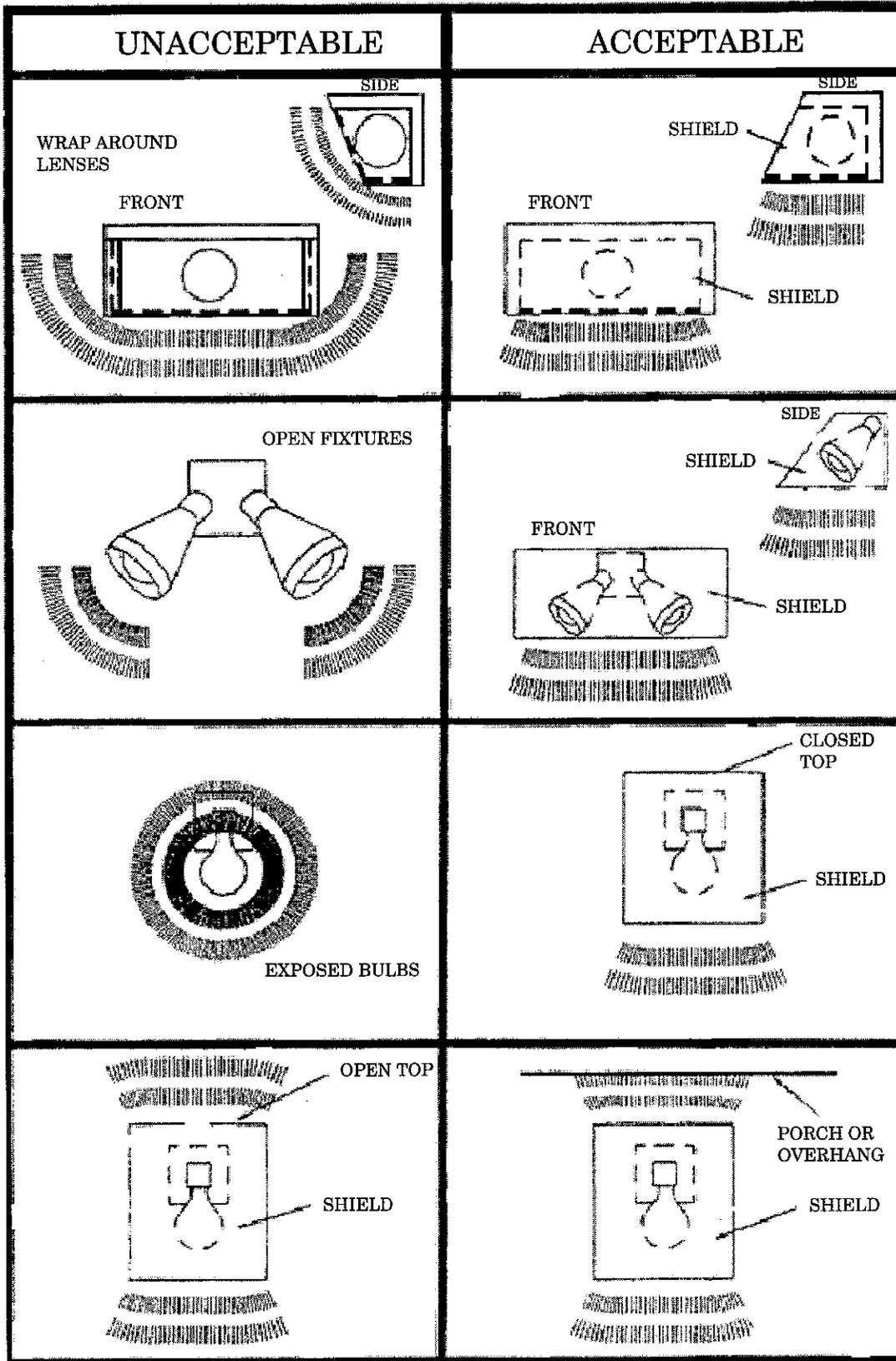


Figure 2: Freestanding Outdoor Lighting Fixtures

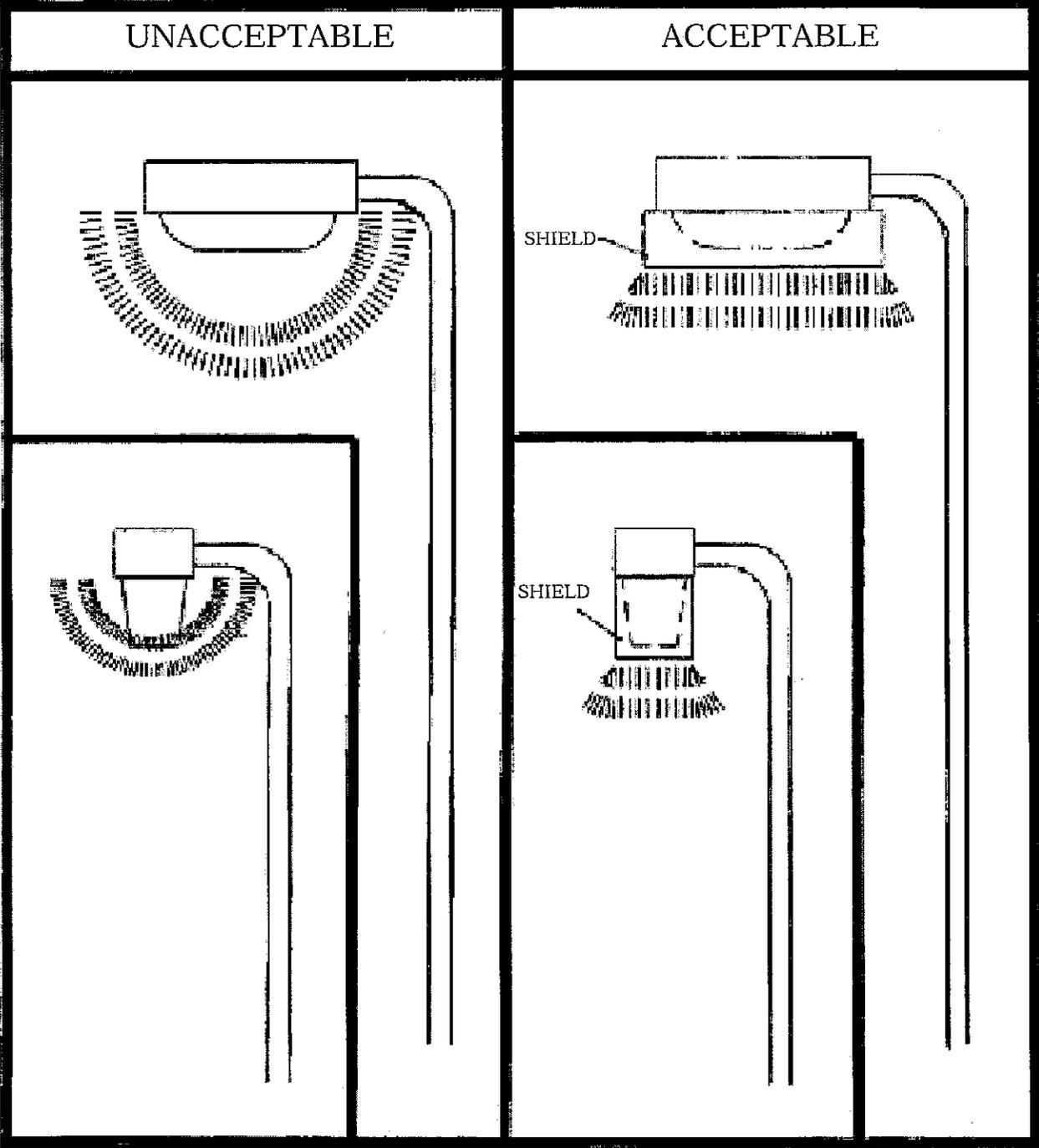


Figure 3: Outdoor Lighting Fixtures – Street and Lot Light Cut-Off at Property Line

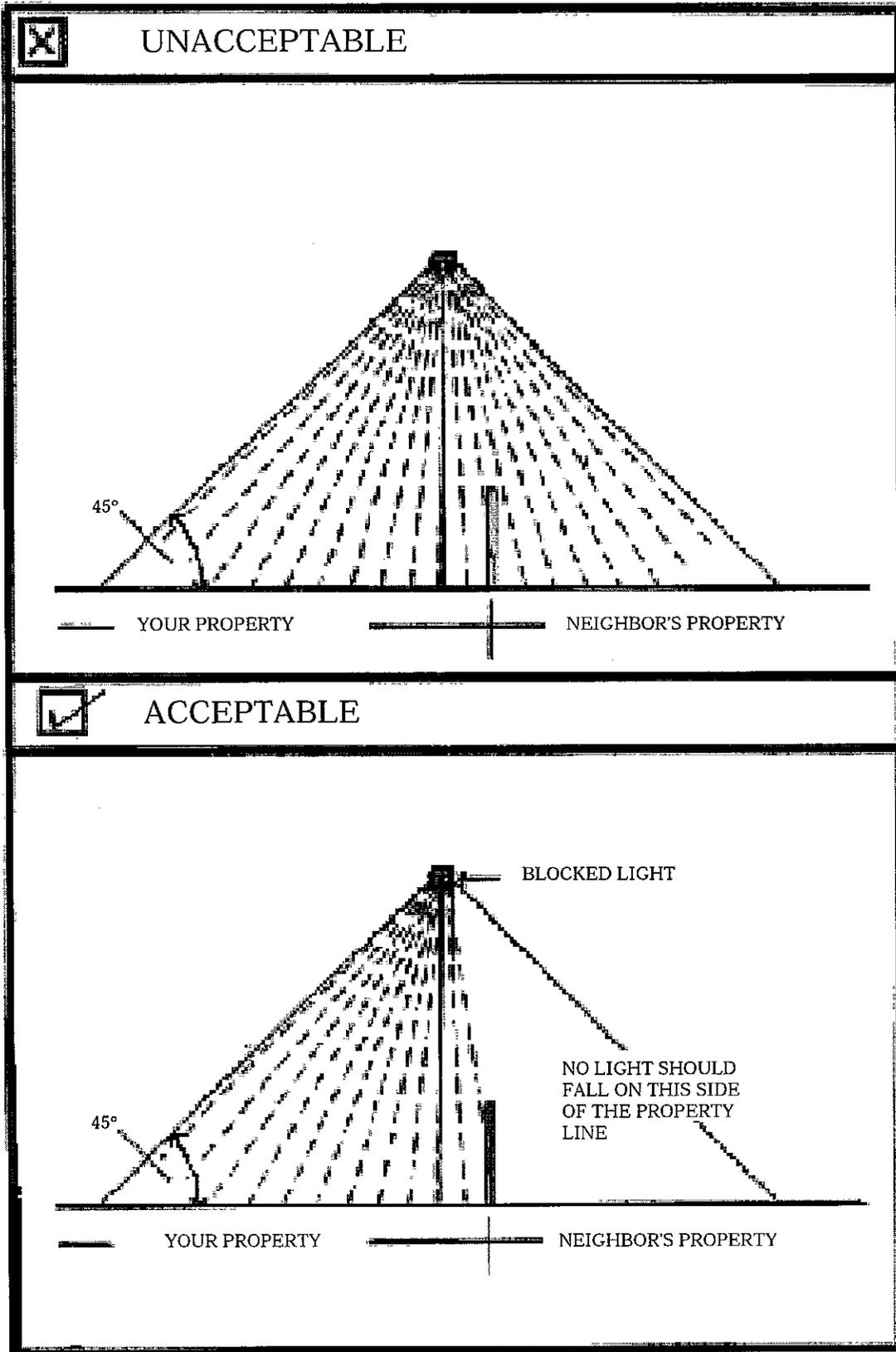
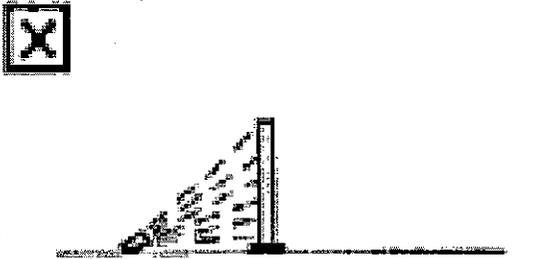
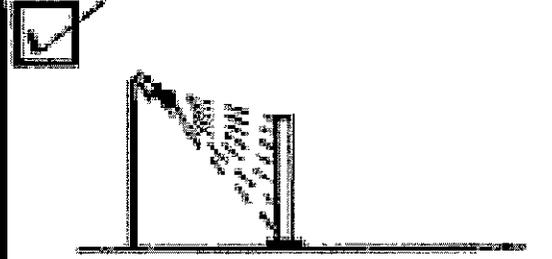
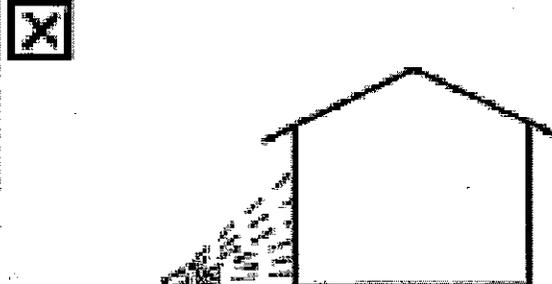
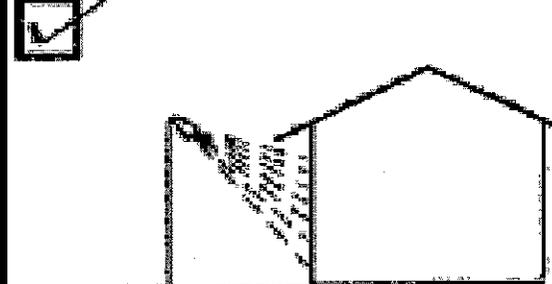
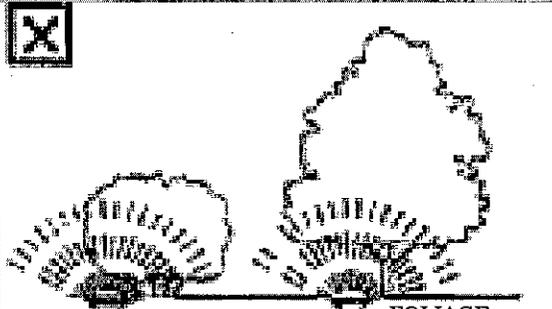
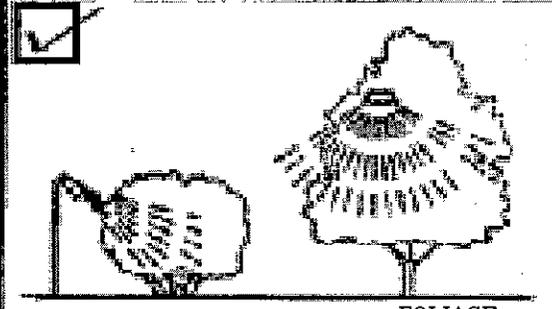
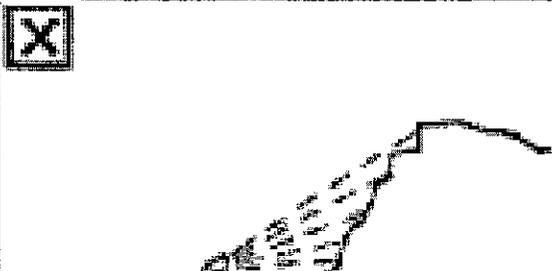
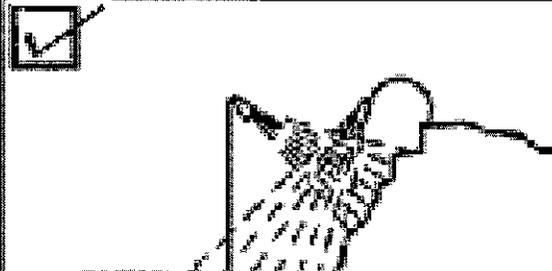


Figure 4: Accent Lighting

| UNACCEPTABLE  | ACCEPTABLE   |
|---|--|
|  <p data-bbox="586 632 708 653">OFF-WALL</p>       |  <p data-bbox="1195 632 1317 653">OFF-WALL</p>       |
|  <p data-bbox="610 1010 732 1031">BUILDING</p>     |  <p data-bbox="1219 1010 1341 1031">BUILDING</p>     |
|  <p data-bbox="643 1367 748 1388">FOLIAGE</p>    |  <p data-bbox="1235 1367 1341 1388">FOLIAGE</p>    |
|  <p data-bbox="586 1703 748 1724">ESCARPMENT</p> |  <p data-bbox="1260 1703 1422 1724">ESCARPMENT</p> |

(Ord. 2002-15 §1, 2002)

**Chapter 15.36**

**UNDERGROUNDING OF UTILITIES**

**Sections:**

- 15.36.010 Undergrounding required.**
- 15.36.020 Notice – Commencement of work.**
- 15.36.030 Restoration – Maintenance.**
- 15.36.040 Noncompliance.**

**15.36.010 Undergrounding required.**

In accordance with BIMC 15.36.020, and in an area provided for by city council resolution, the owner of every building and structure served by underground power, telecommunications and utility wires installed in a right-of-way shall, at the owner’s cost and expense:

A. Install the necessary underground wires and related facilities to connect the underground wires from the connection point in the right-of-way to the building and structure; and

B. Remove all overhead wires and related facilities on or over the owner’s property that were used to serve the building and structure. The work shall be carried out in accordance with the city building code and applicable regulations. (Ord. 2002-35 § 1, 2002)

**15.36.020 Notice – Commencement of work.**

At least 45 days before the anticipated date of completion of the undergrounding in the right-of-way, the public works director shall send by first class mail to the owner of each building and structure to be served by such underground wires, according to the records of the Kitsap County assessor, a notice of the date of completion and the requirements of BIMC 15.36.010. At least 14 days before the overhead wires in the right-of-way are turned off, the public works director shall send by first class mail to such owner, and attempt to hand deliver once to an occupant on the property, a notice of the date on which the overhead wires in the right-of-way will be turned off, which shall also be the date for completion of the work required by BIMC 15.36.010. For pur-

poses of this chapter, the term “public works director” shall include the director’s designee. (Ord. 2002-35 § 1, 2002)

**15.36.030 Restoration – Maintenance.**

In performing the work, the owner shall restore to good condition and repair any pavement, curb, gutter, sidewalk, sewer line, water line and public utility equipment and facilities disturbed or damaged in connection with the work, and shall thereafter maintain, remove, move, or replace the underground wires and related facilities on the owner’s property at the reasonable request of the public works director and in accordance with the city building code and applicable regulations. (Ord. 2002-35 § 1, 2002)

**15.36.040 Noncompliance.**

If a property owner fails to commence or complete the work required by BIMC 15.36.010 before the overhead wire in the right-of-way is turned off, the public works director may perform or complete the work with city employees or third parties, and the property owner shall reimburse the city for all such costs and expenses within 30 days of receiving an invoice. A delinquent invoice shall incur interest at the rate of 12 percent per annum. In the alternative, and for not to exceed 60 days, the public works director may authorize temporary service to the building or structure through overhead wires on the owner’s property, at the cost and expense of the property owner, if in the opinion of the public works director the temporary service is feasible and safe and the property owner has shown good cause. The determination of the public works director shall be final. (Ord. 2002-35 § 1, 2002)

## Chapter 15.40

TRAFFIC STUDIES FOR  
DEVELOPMENT

## Sections:

**15.40.010 Traffic study required.****15.40.020 Agreement for study.****15.40.030 Distribution of and payment for study – Presumption of accuracy.****15.40.040 Additional study.****15.40.050 Definitions.****15.40.060 Exemptions.****15.40.010 Traffic study required.**

Except as specifically exempted under BIMC 15.40.060, an individual traffic study shall be required for all developments or improvements for which street improvements and/or dedications may be made a condition to permit issuance or approval pursuant to this code. No permit or approval shall be granted for such development or improvement until the applicant meets all requirements of this chapter. (Ord. 2005-07 § 2, 2005)

**15.40.020 Agreement for study.**

The applicant shall execute an agreement in a form satisfactory to the public works director, authorizing the public works director, in consultation with the applicant, to retain an independent traffic consultant for purposes of studying the impacts of the proposed development or improvement upon the city's pedestrian and transportation facilities and setting forth the requirements, terms and conditions of such study. The public works director shall maintain a list of independent traffic consultants in accordance with the required contract procedures for engineering services set forth in BIMC 3.70.030. (Ord. 2005-07 § 2, 2005)

**15.40.030 Distribution of and payment for study – Presumption of accuracy.**

Once the public works director has selected a consultant and negotiated the scope and fee for the traffic study, the applicant shall pay to the city an amount equal to 110 percent of the negotiated fee. The additional 10 percent

is to pay for the cost of administering the consultant contract. Upon receipt of these moneys, the city will execute a professional services agreement with the selected consultant and authorize them to proceed with the study.

Upon completion of the traffic study, the public works director shall deliver or cause to be delivered to the applicant a copy of the traffic study.

At the time of the delivery of the study, the public works director shall further provide the applicant with a description of any street improvements and/or dedications to be required as a condition of project approval, as supported by the traffic study.

The findings and conclusions set forth in the traffic study shall be deemed accurate and the required street improvements and/or dedications shall be deemed enforceable. (Ord. 2005-07 § 2, 2005)

**15.40.040 Additional study.**

Within 15 days following the date the traffic study was delivered or mailed to the applicant, the applicant may object to the traffic study by delivering to the public works director a written objection to the traffic study. Following the filing of the objection, the applicant shall have 30 days within which to present to the public works director the applicant's own traffic study, arranged and paid for by the applicant; provided, that such traffic study must be prepared by an engineer duly certified and licensed within the state of Washington and otherwise qualified to prepare such study. The public works director shall consider the applicant's traffic study in reviewing the imposed street improvements and/or dedications. The public works director may modify such conditions or requirements as the director deems reasonable or appropriate in light of the applicant's traffic study. The public works director shall notify the applicant of the director's decision relating to the imposed street improvements and/or dedications within 30 days of the director's receipt of the applicant's traffic study. The applicant may appeal the public works director's decision relating to the imposed street improvements in accordance

#### **15.40.050**

with the appeals process applicable to the particular project or development. (Ord. 2005-07 § 2, 2005)

#### **15.40.050 Definitions.**

For purposes of this chapter, the term "public works director" shall include the director's designee.

For purposes of this chapter, the city's "transportation facilities" shall include, but are not limited to, streets, sidewalks, bike lanes, storm water facilities and other facilities commonly found within city rights-of-way. All traffic studies required by this chapter shall consider the potential impacts to, and need for improvement to or installation of, all city transportation facilities. (Ord. 2005-07 § 2, 2005)

#### **15.40.060 Exemptions.**

The requirements of BIMC 15.40.010 through 15.40.050 shall not be required:

A. For development that generates less than 50 average daily trips (ADT) per the ITE Trip Generation Manual.

B. Where the applicant agrees in writing to construct and install street improvements and make dedications that are requested by the public works director in accordance with standards that have been adopted by the city council. (Ord. 2005-07 § 2, 2005)