

**CITY OF BURIEN, WASHINGTON
MEMORANDUM**

DATE: December 6, 2011

TO: Burien Planning Commission

FROM: Scott Greenberg, AICP
Community Development Director

SUBJECT: Draft Zoning Code Amendments

Staff has been working on a number of amendments to the Burien Zoning Code (Burien Municipal Code Title 19).

We are asking the Commission for any initial comments and questions on the attached preliminary set of amendments. Some amendments are fairly simple (such as removing “or” at the end of a section) while others are more substantive (such as adding a code compliance section for accessory dwelling units). We are still working on some more complex amendments which will be ready in January.

Once the entire package of amendments has been prepared and presented, we will schedule a public hearing for you, probably in February or March.

Please contact me if you have any questions.

2011 PROPOSED ZONING CODE AMENDMENTS

DRAFT December 6, 2011

BMC 19.10.280, Definition of ‘Impervious Surface’

Background: The current definition of ‘impervious surface’ is unclear whether gravel is considered impervious surface. The definition should be clarified to include gravel which has historically been considered impervious surface by staff.

Proposed Amendment: Revise the definition of impervious surface to include gravel in the definition.

19.10.280 Impervious surface - Any nonvertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle including, but not limited to, roof tops, swimming pools, paved or graveled roads and walkways or parking areas and excluding landscaping, surface water retention/detention facilities, and *vehicular access easements or tracts* shared by two or more *single detached dwelling units*.

BMC 19.10.475, Definition of ‘School’

Background: The current definition of ‘school’ includes elementary, middle/junior high, secondary or high schools, but does not include other types of schools such as Montessori, vocational/trade schools, or colleges. There is no other definition or use category in the code for such schools, and staff feels they should be added to the definition to include all levels of education.

Proposed Amendment: Revise the definition of ‘school’; to include private schools, Montessori, and schools of higher education.

19.10.475 School – An institution of learning, public or private, offering instruction in the several branches of learning and study required by the Education Code of the state of Washington, such as Montessori, elementary, middle/junior high, and secondary or high schools; also including schools of higher education such as colleges, vocational, and technical schools. ~~The following are categories of schools:~~

- ~~1. Elementary, and middle/junior high schools: Grades kindergarten through nine, including associated meeting rooms, auditoriums and athletic facilities.~~
- ~~2. Secondary or high school schools: Grades 9 through 12, including associated meeting rooms, auditoriums and athletic facilities.~~

BMC 19.15 (Multiple Sections)—Eliminate Type 2 Review Process for some public park & recreation facilities

Background: In many zones, Public Park & Recreation Facilities require a Type 1 review if less than 1 acre in size, and a Type 2 review if more than 1 acre in size. This was done to provide a public hearing opportunity for larger facilities. All new City-provided Public Park & Recreation Facilities already require City Council approval of the facility design, prior to going through the land use review process.

As part of the design process, the City Council will have taken public comments on its design, similar to a public hearing. Therefore, another hearing before the Hearing Examiner is not needed to obtain public input on the proposed facility.

If the City Council has not pre-approved a park or recreation facility design, then a Type 2 land use review would be appropriate to allow the Hearing Examiner to hold public hearing and issue a decision on the proposed project. This could occur if another public agency proposes a park or recreation facility.

Proposed Amendment: Eliminate the Special Review Process and add the following Special Regulation for Public Park and Recreation Facilities: “No special review process if project design is approved by the City Council through a public review process; otherwise a Type 2 review process is required.”

BMC 19.15 (Multiple Sections)—Replace Type 3 Review Process with Type 2 Review Process

Background: Some permitted uses in certain zones currently require a Type 3 Land Use Review. A Type 3 review means that 1) City Planning staff makes a recommendation on the application to the City’s Hearing Examiner; 2) The Hearing Examiner holds a public hearing on the application; 3) The Hearing Examiner then makes a recommendation to the City Council; and 4) The City Council makes the final decision on the application. The Council’s decision may be appealed to Superior Court.

Type 3 decisions are considered “quasi-judicial”. The City Council must act like a judge, reviewing applications only on the record established by the Hearing Examiner and not having contact regarding the application outside of the formal public process.

Proposed Amendment: Change all Type 3 review processes to Type 2 review processes in all Use Zone Charts. The following list summarizes which land uses would change from a Type 3 to a Type 2 review process, by zone:

<p><u>RS Zone:</u></p> <ul style="list-style-type: none"> • Cemetery • Community Residential Facility-I • Golf Course • Hatchery/Fish Preserve • School • Senior Citizen Assisted Dwelling Unit • Essential Public Facility • Community, Cultural or Government Facility • Public Utility <p><u>RM Zone:</u></p> <ul style="list-style-type: none"> • Community Residential Facility • Essential Public Facility • Community, Cultural or Government Facility • Public Utility 	<p><u>CN and CI Zones:</u></p> <ul style="list-style-type: none"> • Community, Cultural, Religious or Government Facility • Public Utility <p><u>CC, CR, SPA-1 and SPA-3 Zones:</u></p> <ul style="list-style-type: none"> • Essential Public Facility <p><u>SPA-2 Zone:</u></p> <ul style="list-style-type: none"> • Master Plan <p><u>DC Zone:</u></p> <ul style="list-style-type: none"> • Building height between 8-12 stories (in the 5-story height area) • Essential Public Facility 	<p><u>O Zone:</u></p> <ul style="list-style-type: none"> • Hospital Master Plan • Community, Cultural, Religious or Government Facility • Public Utility • School <p><u>I Zone:</u></p> <ul style="list-style-type: none"> • Essential Public Facility • Off-site Hazardous Waste Treatment and Storage Facility • Secure Community Transition Facility
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BMC 19.15.035.2 CC Zone, Retail Use, Special Reg. 2: Eliminate Type 1 review for auto repair.

Background: The CC Zone allows “vehicle repair” as an accessory use to a “service station” but only through a Type 1 review. This was done to allow the City to address aesthetic concerns that can be generated by vehicle repair shops. These concerns can be addressed by special regulations rather than a discretionary review process.

Proposed Amendment: Eliminate Type 1 review requirement, and add the following special regulation: “Vehicle repair activities must occur inside a building.”

BMC 19.15.020.5 CI Zone, Mixed Use—Add minimum floor area requirement for non-residential use

Background: Other non-residential zones allowing mixed use projects (CC, CR, SPA-1 and SPA-3) all require that a minimum of 25% of the floor area be used for non-residential use. However, the CI zone does not have the same requirement. The 25% minimum requirement should be added for consistency.

Proposed Amendment: Add the following Special Regulation: “At least 25% of the *gross floor area* must be designed and used for *retail, office or eating and drinking establishment uses*.”

BMC 19.17.040.5.A, Cargo Containers

Background: The current section of the cargo container code regarding requirements, permits, and approvals for structures references Titles 15, 18, and 19. Title 18 was repealed in August 2010 and therefore needs to be removed from the code section.

Proposed Amendment: Remove reference to Title 18 from BMC 19.17.040.5.A.

A. All requirements, permits and approvals of BMC Titles 15, ~~18~~ and 19 pertaining to *structures* shall apply, including but not limited to *setbacks, lot coverage, critical area* and transition area requirements.

BMC 19.17.070, Accessory Dwelling Units

Background: The code does not currently address the legalization of nonconforming ADU’s and the process to legalize them. An additional section has been proposed to address structures that have been converted to ADU’s without permits and provides reference to life safety requirements from the building code to be met during the legalization process.

Proposed Amendment: Add section to BMC 19.17.070 to address the legalization of unpermitted Accessory Dwelling Units.

3. Legalization of Nonconforming ADUs. ADUs existing without city approval may be legalized if the owner applies for the applicable permits. One ADU may be legalized per lot provided the owner occupancy requirements are met and the unit complies with the requirements set forth in BMC Title 15, Buildings and Construction.

BMC 19.17.090.5.I, Home Occupations

Background: The reference to the building and fire code is outdated and should be updated to reflect the current codes.

Proposed Amendment: Update the Building and Fire Code from Uniform Building Code and Uniform Fire Code to the International Building Code and International Fire Code.

I. Operation of the *home occupation(s)* shall comply with all applicable regulations, including but not limited to the Burien Municipal Code, ~~Uniform International~~ Building Code and ~~Uniform International~~ Fire Code, and shall not:

BMC 19.25.130 Landscaping, Significant Trees-Retention Plan

Background: This section contains a requirement for the City to compile and maintain a database of significant trees that have been identified in approved tree retention plans. This requirement was adopted in 2000 but was not implemented due to an initial lack of technology and resources to compile such database and geographically locate (map) these trees. Even if we mapped these significant trees, we cannot require they be retained once a site is developed (except in a critical area). Therefore, the required database would be of negligible value.

Proposed Amendment: Revise the first paragraph in section 19.25.130 as follows:

“The *applicant* shall submit a tree retention plan concurrent with a land use review application, grading permit application, building permit application, preliminary subdivision application or short subdivision application,

whichever is reviewed and approved first. ~~The Director shall compile and maintain a database of significant trees based upon the submitted and approved tree retention plans.~~ The tree retention plan shall consist of:"

BMC 19.40.350.1.C, Critical Areas, Streams – Performance Standards- General Requirements

Background: “C” of subsection “1” gives performance standards for plantings in this critical area. However, instead of stating “streams” it states “wetland”, or “wetland or wildlife habitat”. This is a result of a proof reading oversight during ordinance creation when similar wording and native plant requirements were used for different critical areas, including wetlands.

Proposed Amendment: Revise BMC 19.40.350.1.C, General Requirements, to state that the planting requirements for streams and stream buffers are as follows:

C. Plantings in a ~~wetland~~ stream or *buffer* should be native to Western Washington or increase the functions of the stream ~~wetland~~ or buffer ~~wildlife habitat,~~”

BMC 19.40.350.2.A, Critical Areas, Streams – Performance Standards-Buffers relating to clarifying where stream buffers are required.

Background: There is the need to clarify language that states when and where stream buffers are required. Currently, this section states, “A *stream buffer* area shall be established for all development proposals and activities **on a site** (emphasis added) containing a *stream*. The purpose of the *buffer* shall be to protect the integrity, function, and value of the *stream*”.

Some sites do not contain streams but do contain all or part of a buffer for a nearby stream. For example, a stream may flow through many properties and has a required 50’ buffer on either side (think of Miller Creek). The buffer is needed to preserve the functions and values of that stream. The need for stream buffering does not end at a property line--which is a legal creation, unrelated to the functions and values of that stream. This section needs to be clarified so that stream buffers clearly apply to adjacent sites as applicable.

Proposed Amendment: Revise the section to remove connection to a “site”. Additionally, correct the spelling of two words in this same citation, all as follows:

2. Buffers.

A. A *stream buffer* area shall be established ~~for all development proposals and activities on a site containing a stream.~~ as required in this section. The purpose of the *buffer* shall be to protect the integrity, functions, and values of the *stream*.

BMC 19.55.025.3.C Nonconformance, Nonconforming and Continuing Uses

Background: contains three criteria “A”, “B” and “C” that set forth three separate situations when a nonconforming use must be brought into conformance or discontinued. Only one of the three must be satisfied

for this subsection to take effect as evidenced by each of “A” and “B” being followed by “or”. However, “C” is also followed by “or” but without a subsequent “D” or other option.

Ordinance 268 created Chapter 19.55 in October 18, 1999. The “or” in question was included in that ordinance, also without a subsequent “D” or other option. Therefore its inclusion appears to be a typographical error and it should be removed.

Proposed Amendment: Revise subsection 19.55.025.3.C to remove the “or” at the end of “C” and to read:

“The *nonconforming use* has ceased for 12 or more consecutive months ~~or~~.”

BMC 19.55.030.1.B, Nonconforming Structures Increasing Impervious Surface Coverage

Background: The current language allows expansion of building and impervious surface coverage for sites which already exceed the maximum allowed in that zone provided surface water is treated in accordance with the Surface Water Design Manual. Properties that currently exceed the maximum allowable impervious surface amount can increase their impervious surface up to 100%. Properties that currently have less than the maximum allowable impervious surface amount cannot exceed the maximum allowable in their zone. This approach is not only inequitable but does nothing to limit runoff from residential development, encourage reduction of impervious surface coverage or incentivize use of low impact development for existing residential lots.

In August of this year, the City of Mercer Island adopted an amendment for legally nonconforming residential sites which allows new impervious surfaces when the applicant offsets the newly created impervious surface areas with a net reduction of existing impervious surface areas. The proposed amendment below adapts this concept to Burien.

Proposed Amendment: Revise BMC 19.55.030.1.B to allow an increase in building coverage and/or impervious surface coverage when each new square foot of impervious surface is offset by a reduction of two square feet of existing impervious surface.

19.55.030.1 Nonconforming structures

B. An increase in nonconforming building coverage and/or impervious surface coverage is permitted ~~if the additional storm drainage runoff created by the new building coverage and/or impervious surface coverage is collected, transported and treated in accordance with the Surface Water Design Manual as adopted by the City of Burien.~~ when each new square foot of impervious surface is offset by a reduction of two square feet of existing impervious surface, or until the site is in conformance with the current requirements for the maximum allowed impervious surface coverage.

BMC 19.65.050 Project Timelines

Background: The reference to the RCW in this section is outdated. RCW 36.70B.090 expired on 6/30/2000, and therefore the code should be updated to reflect the current RCW.

Proposed Amendment: Change RCW 36.70B.090 which expired on 6/30/2000 to RCW 36.70B.080.

19.65.050 Project Timelines.

The *Director* shall establish reasonable and predictable timelines for review of land use applications and shall provide target dates for decisions on such applications. All land use decisions on applications filed on or after April 1, 1996, shall be made within the time period specified under RCW ~~36.70B.090~~ 36.70B.080. For purposes of calculating timelines and counting days of permit processing, the applicable time period shall begin on the first working day following the date the application is determined to be complete and shall only include the time during which the City can proceed with review of the application as specified in RCW ~~36.70B.090~~ 36.70B.080.

BMC 19.70.070, Adequate Roads – Road Capacity Level of Service (“LOS”) Standard

Background: Adoption of 2011 Comprehensive Plan text amendments to Chapter 2.5 Transportation Element has resulted in adoption of a layered network transportation planning concept and establishment of multimodal levels of service for the Burien road network. Revised level of service standards have been established for designated vehicle priority roadways, downtown Burien streets and all other roadway facilities and services.

Proposed Amendment: Revise the levels of service standards to reflect amended language in the Burien Comprehensive Plan.

19.70.070 Adequate Roads – Road Capacity Level of Service (“LOS”) Standard.

The following calculated level-of-service standards shall be considered adequate and shall apply to all public roads:

1. ~~LOS standard E for First Avenue South;~~ LOS standard D for designated vehicle priority roadways;
2. ~~LOS standard D within the urban center boundary, as shown in Figure 2LU-1.11 of the Comprehensive Plan;~~ LOS standard E for downtown Burien streets;
3. ~~LOS standard D for the intersection of SW 128th Street and Ambaum Boulevard SW;~~ LOS C for all other roadway facilities and services;
4. As mandated by state law, the city of Burien adopts LOS “D” for SR-509 and SR-518 (highways of statewide significance) and an LOS of “E/mitigated” for the segment of SR-509 from First Avenue South to the Burien city limits (highway of regional significance), or whichever LOS is currently adopted by the Washington State Department of Transportation;
5. ~~LOS standards C for all other roadway facilities and services. [Ord. 545 § 1, 2010, Ord. 431 § 1, 2005; Ord. 28 § 1(516), 1993]~~