

ORDINANCE NO. 96

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, PROVIDING FOR ADMINISTRATIVE PROCEDURES FOR PERMIT REVIEW, LAND USE HEARING AND APPEALS

WHEREAS, Substitute House Bill 1724, Chapter 347 of the laws of 1995, requires the City to adopt regulations implementing uniform administrative procedures for land use applications; and

WHEREAS, the purpose of this ordinance is to create a clear and simple process for administration of the permit review process for conducting hearings and appeals of land use decisions; and

WHEREAS, the City Council finds that many land use decisions have been time-consuming and have followed a process that was confusing and unpredictable for the citizens of Shoreline; and

WHEREAS, the City Council also finds that the citizens will benefit from an efficient land use decision process that: (a) clearly defines the requirements for persons applying for permits or other land use actions; (b) establishes clear time allotments for decision making; (c) limits the number of hearings held regarding a single project; and (d) clearly delegates authority to administrators and decision-making bodies; and

WHEREAS, it is the intent of the City Council that: (a) City of Shoreline land use decisions are made efficiently; (b) citizens of Shoreline are provided with a clear process that includes predictable time frames for decision-making and clear procedural requirements for applicants and other interested parties; (c) multiple permits for a single project are integrated into a single review, hearing and appeal process; (d) no more than one open record hearing and one closed record hearing are held for any project; (e) the provisions of this chapter supersede all other procedural requirements that may exist in other sections of the city code; and (f) the provisions of this chapter implement the permit review procedures, hearing and appeals provisions of legislation enacted by the Washington State Legislature in 1995 to integrate growth management planning and environmental review (Substitute House Bill 1724, Chapter 347 of the laws of 1995); and

WHEREAS, the Planning Commission conducted public hearings on May 23 and June 6, 1996 on the proposed ordinance; and

WHEREAS, the adoption of these administrative procedures is exempt from the requirements of the State Environmental Policy Act; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON,
DOES ORDAIN AS FOLLOWS:**

SECTION 1: DEFINITIONS

The following definitions apply throughout this chapter:

"Appellant" means a person, organization, association or other similar group who files a complete and timely appeal of a City decision.

"Applicant" means a person who is the owner of the subject property or the authorized representative of the owner of the subject property, and who has applied for land use permits.

"Building Board of Appeals" means a board appointed by the City Council and created to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of the Uniform Building Code.

"City Council" means the City of Shoreline City Council.

"City " means the City of Shoreline, Washington.

"Closed Record Appeal" means a hearing based on the record established at an open record hearing, where no new testimony or evidence is admitted.

"Decision Making Body" means the Hearings Examiner, Planning Commission, City Council, or other entity created by the Council of the City of Shoreline to hear and decide applications or appeals as identified in the Development Code of the City.

"Director" means the Director of the Department of Development Services.

"Ex parte communication" means written or oral communications to any member of a Decision Making Body about a matter pending before the Decision Making Body not included in the public record and made outside of a public hearing.

"Land Use Application" means any application for a land use action undertaken in accordance with the Development Code of the City of Shoreline.

"Land Use Decision" means a final determination by the City as defined in RCW 36.70C.020.

"Open Record Hearing" means a hearing that creates the record through testimony and submission of evidence and information. An open record hearing may be either a pre-decision hearing or an appeal of a decision made without an open record hearing.

"Party of record" means:

- a. A person who testifies at a hearing;
- b. The applicant; or

- c. Persons submitting written testimony about a matter pending before the Decision Making Body.

"Record" means the oral testimony and written exhibits submitted at a hearing. The tape recording of the proceeding shall be included as part of the record.

"Review Authority" means the Planning Commission or other entity entitled to hold predecision Open Record Hearings and make recommendations to the Decision Making Body.

"Shorelines Hearings Board" means a quasi judicial body established within the environmental hearings office under RCW 43.21B.005.

"Standing" means a showing that a party's interests are arguably within the zone of interests protected by the land use review process, and that the decision may cause the party injury-in-fact.

SECTION 2: GENERAL PROVISIONS FOR LAND USE HEARINGS AND APPEALS

2.1. **Limitations on the Number of Hearings.** No more than one open record hearing and one closed record appeal shall be heard on any land use application, except for the appeal of a determination of significance as provided in RCW 43.21C.075.

2.2. **Consolidated Open Record Hearings.** The city may combine any hearing on a project permit with any hearing that may be held by another local, state, regional, federal or other agency provided that the hearing is held within city limits. Hearings shall be combined if requested by an applicant, as long as the joint hearing can be held within the time periods specified in this chapter or the applicant agrees to the schedule in the event that additional time is needed in order to combine the hearings. Hearings may only be combined if (a) notice requirements of each agency are met, (b) agencies have received the necessary information from the applicant, and (c) an agency is not prohibited by statute from doing so.

2.3. **Public Notice Requirements.** Notice of the time and place of either an open record hearing or closed record appeal hearing shall be given as provided in the specific ordinance governing the type of application.

2.4. Time.

- A. A land use decision shall be made within 120 days from the date of a determination that the application is complete in accordance with RCW 36.70B.070. Exceptions to this include:

- 1. Proposals which require amendments to the Comprehensive Plan or development regulations.

2. Any time required to correct plans, perform studies or provide additional information, provided that within 14 days of receiving the requested additional information, the Director shall determine whether the information is adequate to resume the project review and inform the applicant of this decision.
 3. Substantial project revisions made or requested by an applicant, in which case the 120 days will be calculated from the time that the City determines the revised application to be complete.
 4. All time required for the preparation and review of an environmental impact statement.
 5. Any period for administrative appeals of project permits.
 6. An extension of time mutually agreed upon in writing by the City and the applicant.
 7. Projects that require the approval of a new fully contained community, a master planned resort, or the siting of an essential public facility as provided in RCW 36.70B.090.
- B. If the City is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the Notice of Decision.

2.5 **Effective Date.** The land use decision of the City shall be effective on the date stated in the decision, motion, resolution, or ordinance.

2.6. **Judicial Review.** No person may seek judicial review of any decision of the City unless that person first exhausts the administrative remedies provided by the City.

2.7. **Rules of Procedure.** The City Council shall adopt rules of procedure that govern the process for open record hearings and closed record appeals. At a minimum, the rules of procedure shall include:

- A. Limitations of ex parte communications;
- B. The rights and responsibilities of the parties;
- C. The role of the presiding officials;
- D. A description of the hearing process; and

- E. The process for issuing recommendations and decisions resulting from the hearing.

SECTION 3: DECISIONS BY THE DIRECTOR

- 3.1. **Authority.** Table 1 specifies the decisions to be made by the Director or his/her designee, the applicable criteria for making this decision (Code section providing the review authority/guidelines), and the appeal authorities.

**TABLE 1
DECISIONS MADE BY THE DIRECTOR, CRITERIA FOR DECISION
AND APPEAL AUTHORITIES:**

ACTION	CRITERIA FOR DECISION (CODE SECTION)	APPEAL AUTHORITY
<i>Type A:</i>		
1. Accessory Dwelling Unit	Sec. 21A. 08.030 (Ord. 11)	Hearing Examiner
2. Boundary Line Adjustment	Sec. 19.08.112 (Ord. 20)	Hearing Examiner
3. Building Permit	Sec. 16.04 (Ord. 17)	Building Board of Appeals
4. Continuation and/or Minor Alteration of Nonconforming Use	Sec. 21A.32.050 through 090 (Ord. 11)	Hearing Examiner
5. Final Short Plat	Sec. 19.26 (Ord. 20)	Hearing Examiner
6. Grading Permit	Sec. 16.82 (Ord. 17)	Hearing Examiner
7. Hazardous Material Permit	Sec. 17.04 (Ord. 18)	Hearing Examiner
8. Right-Of Way Use Permit	Sec. 14.28 (Ord. 16)	Hearing Examiner
9. Shoreline Exemption	Sec. 25.32.010 (Ord. 23)	Hearing Examiner
10. Sign Permit	Sec. 21A.20 (Ord 11)	Hearing Examiner
11. Temporary Use Permit	Sec. 21A.32.100 (Ord. 11); and Sec. 14.30 (Ord. 16)	Hearing Examiner
<i>Type B:</i>		
1. Conditional Use Permit	Sec. 21A.44.040 (Ord. 11)	City Council
2. Preliminary Short Plat Approval/Alteration	Sec. 19.120 and 150 (Ord. 20)	Hearing Examiner
3. SEPA Threshold Determination	Sec. 20.44 (Ord. 52)	Hearing Examiner
4. Shoreline Substantial Development Permit	Sec. 25.32 (Ord. 23)	Shorelines Hearings Board
5. Zoning Variance	Sec. 21A.44.030 (Ord. 11)	Hearing Examiner

3.2. **Open Record Hearings.**

- A. If the Director determines that the public will benefit from an open record hearing, the Director may choose to make a decision following an open record hearing.
- B. Where a hearing is held under the provisions of Type A or B actions, above, it shall be conducted by a Hearings Examiner, in accordance with the rules of procedure adopted in compliance with this chapter.
- C. Should a decision made by the Director following an open record hearing held under Type A or B actions, above, be appealed, a closed record appeal hearing shall be conducted by a different Hearings Examiner than the one responsible for the first hearing. The decision made on the closed record appeal is the final decision by the City.

3.3. **Decisions.** Decisions under this section shall be final unless a party files an appeal.

- A. The Director may approve, conditionally approve or deny the application.
- B. The Director shall prepare and adopt a written decision setting forth his/her findings, conclusions, and effective date of the decision.
- C. The Director shall provide a notice of the decision to the applicant, to all parties of record, and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application, as provided in RCW 36.70B.130.
- D. If no appeal is filed in accordance with this chapter, the Director's decision shall be final at the end of 14 days.
- E. If an appeal is filed within 14 days, the appeal process shall commence in accordance with Section 6 of this ordinance.

SECTION 4: PROCEEDINGS BEFORE A REVIEW AUTHORITY AND DECISION MAKING BODY

- 4.1. **Authority.** The Review Authority and the Decision Making Body with jurisdiction to review and decide a land use application and the body to whom their decisions may be appealed (Appeal Authority), are specified in Table 2.

TABLE 2

**REVIEW AUTHORITY, DECISION MAKING BODY, CRITERIA
FOR DECISION AND APPEAL AUTHORITY**

ACTION	REVIEW AUTHORITY	DECISION MAKING BODY	CRITERIA FOR DECISION (CODE SECTION)	APPEAL AUTHORITY
<i>Type C:</i>				
1. Preliminary Long Plat (Subdivision)	Planning Commission	City Council	Sec. 19.28 (Ord. 18)	Superior Court
2. Final Long Plat (Subdivision)	Director	City Council	Sec. 19.32 (Ord. 20)	Superior Court
3. Urban Planned Development (UPD)	Planning Commission	City Council	Sec. 21A.39 (Ord. 11)	Superior Court
4. Reclassification (rezone) of property	Planning Commission	City Council	Sec. 20.24.190 (Ord. 52)	Superior Court
5. Special Use Permit	Planning Commission	City Council	Sec. 21A.44.05 (Ord. 11)	Superior Court
6. Street Vacation	Planning Commission	City Council	Sec. 14.40 (Ord. 16)	Superior Court

- 4.2. **Nature of the Hearings.** If no open record hearing has been held by the Review Authority, the Decision Making Body shall hold an open record hearing prior to making a decision. If an open record hearing has been held by the Review Authority, and the recommendation of the Review Authority has been appealed, the City Council shall hold a closed record appeal. All hearings shall follow the rules of procedure adopted in accordance with this chapter.
- 4.3. **Staff Report.** The Director shall provide the Decision Making Body with a staff report on the proposed development or action. The staff report shall be prepared in accordance with the rules of procedure.
- 4.4. **Dismissals.** The Decision Making Body may dismiss an appeal or application in whole or in part without a hearing when the Decision Making Body determines that the appeal or application is untimely, without merit, frivolous, beyond the scope of the Decision Making Body's jurisdiction, brought merely to secure a delay, or that the appellant lacks standing.

4.5. Decisions.

- A. Following the hearing, the Decision Making Body may approve, conditionally approve or deny the application.
- B. If the hearing is an appeal, the Decision Making Body may affirm, reverse, or remand the decision that is on appeal.
- C. The Decision Making Body shall prepare and adopt a written decision setting forth its findings, conclusions, and effective date of the decision, as detailed in the rules of procedure adopted in accordance with this chapter.
- D. The Decision Making Body shall provide a notice of the decision to the applicant, to all parties of record, and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application, as provided in RCW 36.70B.130.

SECTION 5: PERMIT REVIEW PROCEDURES

5.1. Types of Land Use Permit Processes

Project permit review procedures are specified in Table 3. Type A and Type B actions are decisions made by the Director and described in Section 3 of this ordinance. Type C are actions by the Decision Making Body identified in Section 4 of this ordinance. Table 3 describes the type of permit/action, the notice requirements and the estimated target dates for decisions. Table 3 should be read in conjunction with Tables 1 and 2 which describe the Review Authority, Decision Making Body, and Appeal Authority for each land use application. Type A actions are administrative actions based on clear and nondiscretionary standards that require the application of professional expertise on technical issues. Flowchart 1 outlines the process for the Type B actions and Flowchart 2 identifies the process for the Type C actions.

Table 3 does not address processes for legislative decision. Legislative decisions involve the creation, amendment, or implementation of policy or law by ordinance. In contrast to other types of decisions, legislative decisions apply to large geographic areas and are of interest to many citizens and property owners. The process used for making legislative decisions is outside the scope of this ordinance.

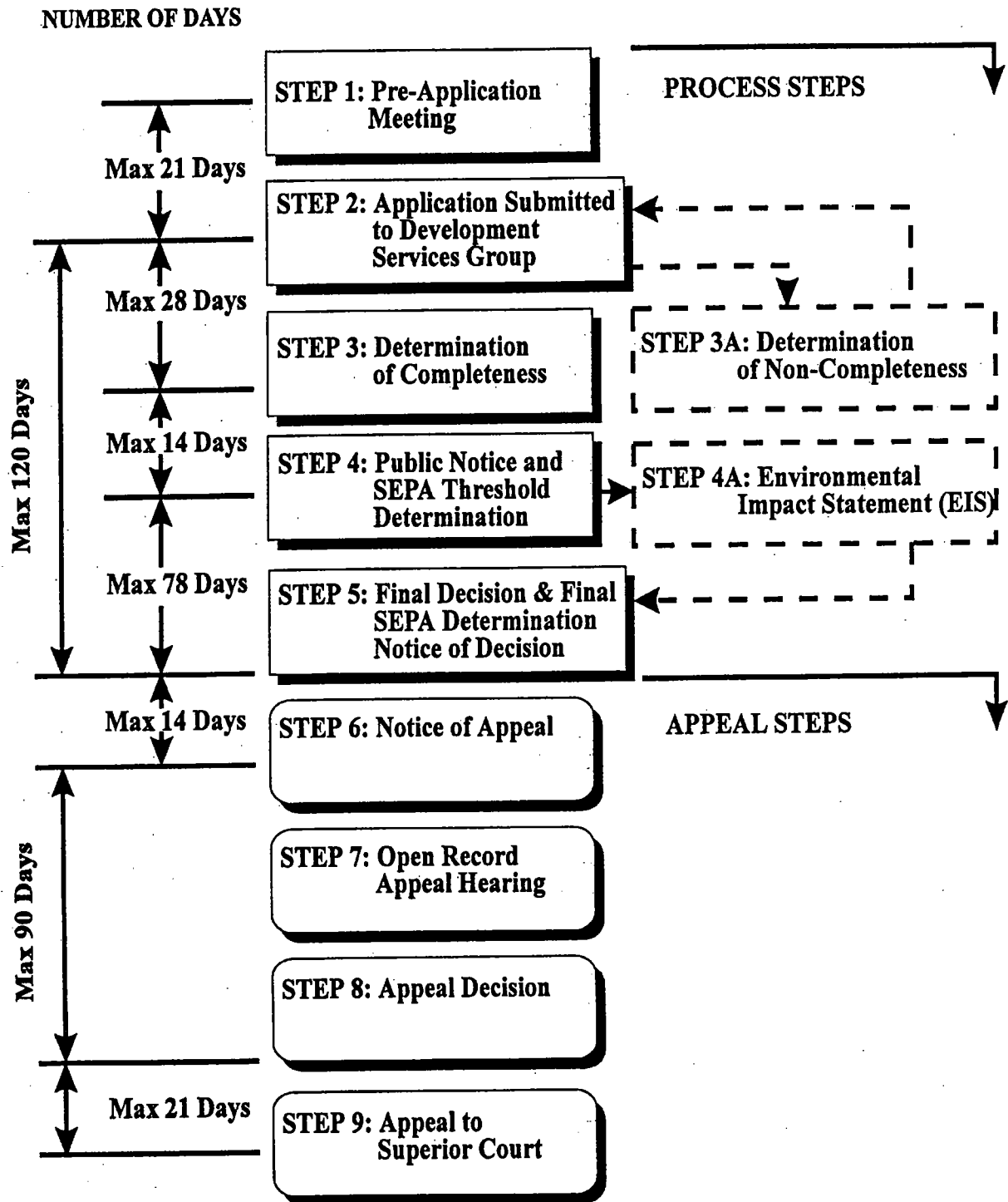
TABLE 3

**SUMMARY OF ACTIONS, NOTICE REQUIREMENTS AND
ESTIMATED TARGETS FOR DECISIONS**

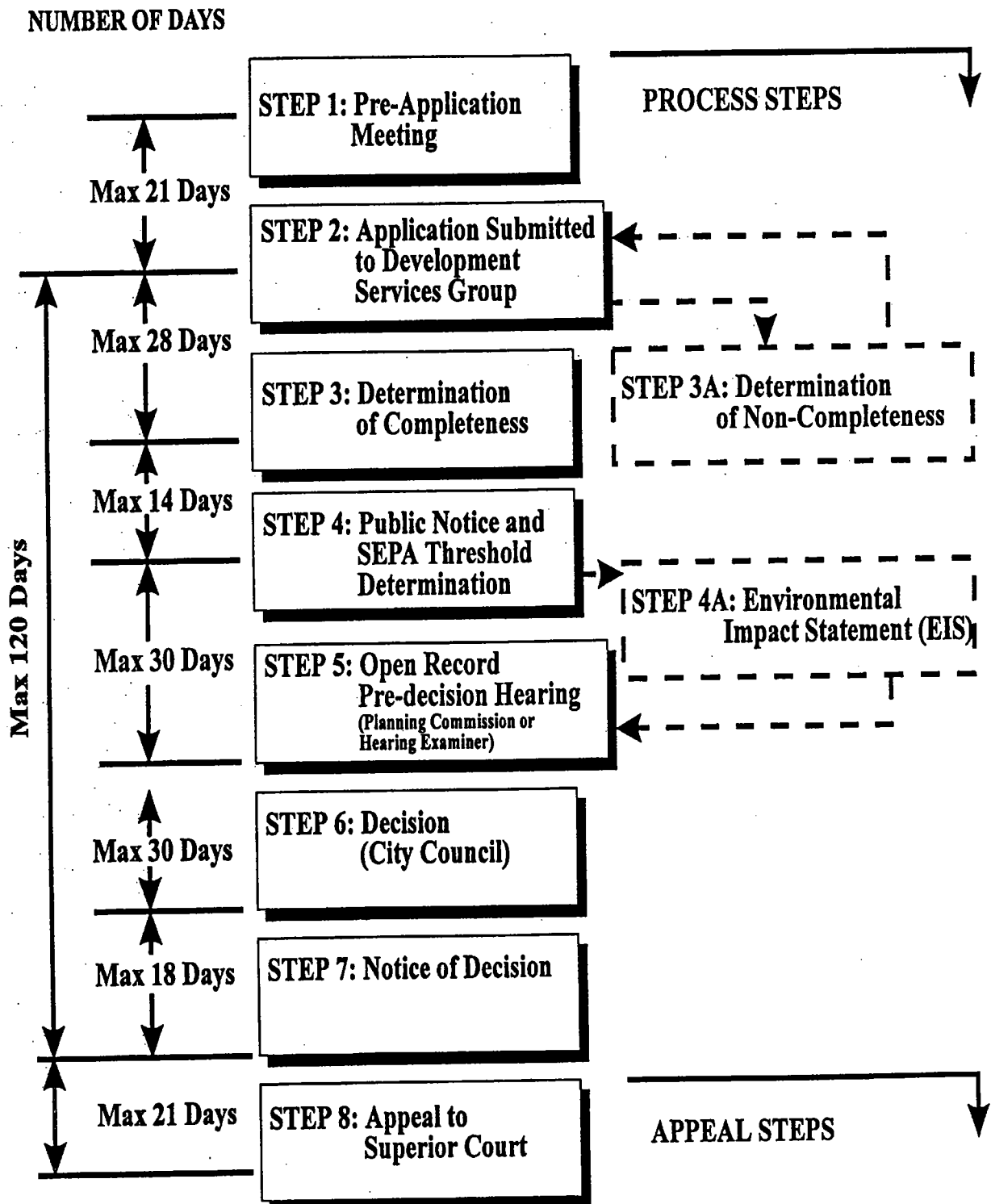
ACTION	Notice of Application	Public Notice	Public Hearing	Notice of Decision	Estimated Targets for Decision *
TYPE A:					
1. Accessory Dwelling Unit					14 - 30 days
2. Boundary Line Adjustment					14 days
3. Building Permit					1 - 90 days
4. Continuation and/or Minor Alteration of Nonconforming Use					1 - 14 days
5. Final Short and Long Plat					14 to 30 days
6. Grading Permit					1 - 14 days
7. Hazardous Material Permit					1 day
8. Right-of-Way Use Permit					1 - 7 days
9. Shoreline Exemption Permit					15 days
10. Sign Permit					7 days
12. Temporary Use Permit					1 - 7 days
Type B:					
1. Conditional Use Permit	X	X	X	X	21 - 45 days
2. Preliminary Short Plat Approval/Alteration	X	X	X	X	45 - 60 days
3. SEPA Threshold Determination	X	X	X	X	28 days
4. Shoreline Substantial Development Permit	X	X	X	X	75 - 90 days
5. Zoning Variance	X	X	X	X	30 - 60 days
Type C:					
1. Urban Planned Development	X	X	X	X	60 - 90 days
2. Preliminary Subdivision Approval	X	X	X	X	60 - 90 days
3. Reclassification (rezone)	X	X	X	X	60 - 90 days
4. Special Use Permit	X	X	X	X	60 - 90 days
5. Street Vacation	X	X	X	X	60 days

* Times are estimated targets for the City to make a decision and may be changed in accordance with RCW 36.70B. For example, projects subject to review under the State Environmental Policy Act will require a longer review period.

FLOWCHART 1: PROCESS FOR TYPE 'B' ACTIONS



FLOWCHART 2: PROCESS FOR TYPE 'C' ACTIONS



5.2. Description of Major Steps in Permit Review Procedures

A. PRE-APPLICATION MEETING

Applicants for development permits are encouraged to participate in informal meetings with city staff and property owners in the neighborhood of the project site. Meetings with staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood serve the purpose of informing the neighborhood of the project proposal prior to the formal notice provided by the city.

B. APPLICATION

All applications for permits or actions by the city shall be submitted on forms provided by the Development Services Group. An application shall contain all information required by the applicable development regulations, and shall include the following general information:

1. A verified statement by the applicant that the property that is the subject of the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all owners of the property.
2. A property and/or legal description of the site
3. The application fee.

C. DETERMINATION OF COMPLETENESS

1. An application shall be determined complete when all information required for the application, as specified in Appendix A, has been provided. An application is not accepted by the city for submission unless the application has been determined to be complete. If, upon review, the city determines that the application information provided is incomplete, within twenty-eight (28) days after receiving a permit application the City shall mail or personally provide a written determination to the applicant stating the inadequacies of the application.
2. If the applicant fails to provide the required information within 90 days, the application shall lapse. The applicant may request a refund of the application fee minus the city's cost of determining the completeness of the application.

D. PUBLIC NOTICE AND SEPA THRESHOLD DETERMINATION

1. Within fourteen days of the determination of completeness, the city shall issue a Notice of Application. If an open record hearing is required on the permit, the Notice of Application shall be provided at least fifteen days prior to the hearing.
2. The Notice of Application shall include the following information:
 - a. The dates of application, determination of completeness, and the date of the notice of application;
 - b. The name of the applicant;
 - c. The location and description of the project;
 - d. The requested actions and/or required studies;
 - e. The date, time and place of an open record hearing, if one has been scheduled;
 - f. Identification of environmental documents, if any;
 - g. A statement of the public comment period not less than fifteen (15) days nor more than thirty (30) days; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision (once made) and any appeal rights;
 - h. The city staff contact and phone number;
 - i. A description of the development regulations used in determining consistency of the project with the city's Comprehensive Plan; and
 - j. Any other information that the city determines to be appropriate.
3. The Notice of Application shall be made available to the public by the Development Services Group through use of the following methods:
 - a. Posting the property (for site specific proposals); and
 - b. Mailing to owners of real property located within 500' of the subject property.

4. All comments received on the Notice of Application, must be received by the Development Services Group by 5:00 PM on the last day of the comment period
5. The Development Services Group shall publish a notice of the application in the newspaper of general circulation for the general area in which the proposal is located. This notice shall include the project location and description, the type of permit(s) required, comment period dates, and the location where the complete application may be reviewed.
6. A Threshold Determination under the State Environmental Policy Act (SEPA) will be required for a project when: a) The scale of the proposal exceeds thresholds for review identified by WAC 197-11-800 and adopted by the City of Shoreline; or b) The proposal changes existing conditions within a designated environmentally sensitive area; or c) The proposal is a further division of a parcel of land previously created through the short platting process. A Determination of Significance shall be issued and an Environmental Impact Statement (EIS) required under SEPA when the responsible agency (the City of Shoreline Development Services Group) identifies probable significant adverse environmental impacts that cannot be mitigated without substantially modifying the proposal.
7. Except for a Determination of Significance, the city shall not issue a threshold determination or issue a decision on an application until the expiration of the public comment period on the Notice of Application.

E. FINAL DECISION, FINAL SEPA DETERMINATION AND NOTICE OF DECISION

Following closure of the public comment period, staff shall review all applicable provisions of the City of Shoreline Code, together with the information generated by the application, and issue a final decision approving or denying the application. This decision shall be communicated in a Notice of Decision that also includes a statement of any threshold determination issued under Chapter 43.21 RCW (SEPA) and the procedure for appeal. The Notice of Decision may take the form of a copy of the report or decision on the project permit application issued by the Development Services Group. The notice shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.

SECTION 6: ADMINISTRATIVE APPEAL PROCESS

6.1. General Description

- A. Administrative decisions are appealable to the Decision Making Body as specified in Sections 3 and 4 of this chapter. If an open record hearing has not already been held and a decision is appealed, the Decision Making Body shall conduct an open record appeal hearing. If an open record hearing has been held, the Decision Making Body shall conduct a closed record appeal hearing.
- B. Once an open record hearing has been held, only one closed record appeal is allowed.
- C. Appeals of Council decisions and appeals of a Decision Making Body's appellate decisions shall be made to Superior Court.

6.2. Grounds for Appeal Any appeal shall be linked to the criteria of the underlying land use decision. The grounds for filing an appeal shall be limited to the following:

- A. The Decision Making Body or Director exceeded their jurisdiction or authority;
- B. The Decision Making Body or Director failed to follow applicable procedures in reaching the decision;
- C. The Decision Making Body or Director committed an error of law; or
- D. The findings, conclusions, or decision prepared by the Decision Making Body or Director are not supported by the record.

6.3. Filing Administrative Appeals

- A. Appeals shall be filed within fourteen (14) calendar days from the date of the decision. Appeals shall be filed in writing with the City Clerk. The appeal shall comply with the form and content requirements of the rules of procedure adopted in accordance with this chapter.
- B. Appeals shall be accompanied by a filing fee in the amount to be set by City Council resolution.
- C. Within ten (10) calendar days following timely filing of a complete appeal with the City Clerk, notice of the date, time and place for Decision Making Body or City Council hearing shall be mailed by the City Clerk to all parties of record.

6.4. Appeals Process

- A. Closed record appeals shall be conducted in accordance with the Decision Making Body's rules of procedure. No new evidence or testimony shall be allowed. A closed record appeal shall be heard and decided within sixty (60) days from the date the appeal is filed. Only one closed record appeal is allowed per project.
- B. An appeal may be an open record hearing, but only if no open record hearing was held prior to the appeal. If an open record hearing is held for an appeal, it shall be heard and decided within ninety (90) days from the date the appeal is filed.
- C. No new appeal issues may be raised after the filing of the appeal, and all appeal proceedings shall be limited to those issues expressly raised in the written appeal.
- D. Timely filing of an appeal shall delay the effective date of the Decision Making Body's or City Council's decision until the appeal is ruled upon or withdrawn.

6.5. Appeals to City Council

- A. The City Council may adopt any or all of the findings or conclusions of the Director or Decision Making Body. The City Council may affirm the decision or reverse the decision, either wholly or in part.
- B. The City Council shall prepare a written decision which shall set forth the findings and conclusions in support of its decision.
- C. In the event the City Council determines that the record contains an error of law or fact, the Council may remand the matter back to a Decision Making Body or to the Director to correct the deficiencies. The Council shall specify the items or issues to be considered and the time frame for completing the additional work.

SECTION 7: JUDICIAL APPEAL

7.1. Appeals Process

- A. Any judicial appeal shall be in the form of a Land Use Petition or an appeal to a quasi-judicial body created by the state, as required by RCW 36.70C.030.
- B. Judicial appeals shall be filed within twenty-one (21) calendar days after a final decision is issued by the city.

- C. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the City Clerk and others as provided by RCW 36.70C.040.
- D. The cost of transcribing and preparing all records desired by the appellant shall be paid by the appellant.

SECTION 8: CONFLICTS

In the event of any conflict between any provision of this chapter and any other provision in City ordinances, the provisions of this chapter shall control. Specifically, but without limitation, this means that the provisions of this chapter shall control with reference to authority to make decisions and the time-frame for making those decisions; the requirements to file an appeal; and the procedures involved in open record hearings and closed record appeals.

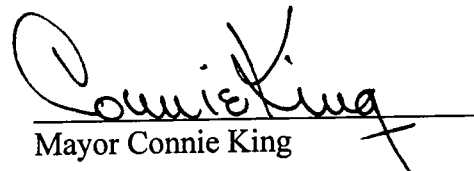
SECTION 9: SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

SECTION 10: EFFECTIVE DATE AND PUBLICATION

A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five (5) days after the date of publication.

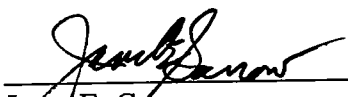
PASSED BY THE CITY COUNCIL ON JUNE 24, 1996.


Mayor Connie King

ATTEST:


Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:



Janet E. Garrow
Interim City Attorney

Date of Publication: June 27, 1996
Effective Date: July 2, 1996