

**Instructions to reader:** This is a new chapter in Tile 15 of the Everett Municipal Code. For a summary of the effect of this chapter from current standards, please visit the Rethink Zoning Library at <https://everettwa.gov/2453/Rethink-Zoning-Library>.

## Chapter 15.03 Land Use Decisions, Criteria and Authority

### Table of Contents

<b>CHAPTER 15.03</b>	<b>LAND USE DECISIONS, CRITERIA AND AUTHORITY .....</b>	<b>1</b>
15.03.010	INTRODUCTION AND USER GUIDE.....	1
<b>15.03.030</b>	<b>UNLISTED USES .....</b>	<b>1</b>
15.03.040	LAND USE PROJECT REVIEW AND CONSISTENCY.....	1
15.03.060	MODIFICATION OF DEVELOPMENT STANDARDS.....	2
15.03.100	ADMINISTRATIVE USE.....	3
15.03.120	CONDITIONAL USE.....	4
15.03.140	VARIANCES.....	5
15.03.200	DEVELOPMENT AGREEMENTS.....	5
15.03.300	UNIFIED DEVELOPMENT CODE AMENDMENT.....	7
15.03.400	COMPREHENSIVE PLAN AMENDMENTS.....	8

#### 15.03.010 Introduction and User Guide.

The purpose of this chapter, in conjunction with EMC 15.01 and EMC 15.02, is to implement requirements in Chapter 36.70B RCW, Local Project Review. Together, these three chapters are collectively referred to as the “Local Project Review Procedures”. In addition to the Local Project Review requirements, this chapter addresses who may apply for certain land use decisions, the criteria for land use decisions and the authority for those decisions.

#### **15.03.030 Unlisted Uses**

If a proposed use is not specifically listed in the use table (EMC 19.05) in a specific zone, the planning director may promulgate an interpretation as to whether or not such use is to be a permitted use, pursuant to Section 19.05.070 . The planning director shall determine whether the proposed use meets the following criteria:

- A. The use resembles or is of the same basic nature as a use or uses expressly authorized in the applicable zoning district or districts in terms of the following:
  - 1. The activities involved in or equipment or materials employed in the use;
  - 2. The effects of the use on the surrounding area, such as traffic impacts, noise, dust, odors, vibrations, lighting and glare, and aesthetic appearance.
- B. The use is consistent with the stated purpose of the applicable district or districts.
- C. The use is compatible with the goals and policies of the Everett comprehensive plan.

#### **15.03.040 Land Use Project Review and Consistency.**

**A-D.** The review of a proposed project’s consistency with applicable development regulations, and the adopted comprehensive plan shall serve as the starting point for project review. Land use permit review shall not reanalyze these land use planning decisions in making a permit decision.

**B-E.** The planning director or his/her designee (“director”) may determine through the local project review process that existing requirements including mitigation measures in applicable development regulations and plans and other applicable laws provide adequate mitigation for some or all of the project’s specific adverse environmental impacts.

~~G.F.~~ Nothing in this chapter limits the authority of the city to approve, condition, or deny a project as provided in its adopted development regulations and in its policies adopted under RCW 43.21C.060. Project review shall be used to: (1) review and document consistency with comprehensive plans and development regulations; (2) provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level; and (3) ensure accountability by local government to applicants and the public for requiring and implementing mitigation measures.

~~D.G.~~ Project review shall be used to identify specific project design and conditions relating to the characteristics of a development; to identify specific adverse environmental impacts of the proposal not previously analyzed; and to address the details of site plans, curb cuts, stormwater facilities, transportation demand management, the payment of impact fees, or other measures to avoid or otherwise mitigate a proposal's probable adverse environmental impacts.

~~E.H.~~ A proposed project's consistency with the city's development regulations and the appropriate elements of the comprehensive plan or subarea plan adopted under Chapter 36.70A RCW, shall be determined by consideration of:

~~1.3.~~ The type of land use allowed;

~~2.4.~~ The level of development allowed, such as units per acre or other measures of density;

~~3.5.~~ Infrastructure, including the adequacy of public facilities and services needed to serve the proposed development; and

~~4.6.~~ The characteristics of the proposed development, such as compliance with specific development standards.

~~F.I.~~ In determining consistency, the determinations made under this chapter shall be controlling.

~~G.J.~~ Nothing in this section requires documentation, dictates procedures for considering consistency, or limits the planning director from asking more specific or related questions with respect to any of the four main categories listed in subsection E of this section. This chapter does not apply to the city's civil enforcement procedures, EMC 1.20, except as specifically referenced herein.

## **15.03.060 Modification of Development Standards.**

### **A. Overview**

Throughout this title, the planning director, city engineer or their designee ("director") may be authorized to approve project-specific modifications of the standards in this title.

### **B. Review Process**

1. An applicant shall submit a request for modification, providing such information as is required by the director, including application fees.
2. Where this title authorizes the director to modify development standards, the review process shall be Review Process I (REV I) unless otherwise indicated.
3. If the director determines that notice to contiguous property owners should be provided regarding a request to modify development standards, the director may require the proposed modification to be reviewed using a higher level of review process than otherwise required.
4. See EMC 15.02 for notice and procedures for various review processes.

### **C. General Criteria**

In considering any request for modification of standards in this title, the following criteria need to be met:

1. The request for modification would result in development that is equivalent or superior to what would likely result from compliance with the development standards which are proposed to be modified.
2. The request for modification meets the intent of the standards being modified.

3. The request for modification does not create any impacts or nuisances that cannot be mitigated, such as access points which are unsafe, noise, dust, odor, glare, visual blight or other undesirable environmental impacts.
4. The request for modification meets any additional modification criteria in the respective chapter.

### **15.03.100 Administrative Use.**

#### **A. Overview**

An Administrative Use, identified in EMC 19.05, is a mechanism by which the city may place special conditions on the use or development of property to ensure that new development is compatible with surrounding properties.

#### **B. Who May Apply**

A property owner, or their designated agent, may apply for an Administrative Use.

#### **C. Review Process**

Each zoning district includes uses which may be permitted if an Administrative Use is approved. See Use Tables in EMC 19.05. The process for consideration of an Administrative Use is as follows:

1. The planning director may approve, approve with conditions, or deny an Administrative Use following the Type II Review process set forth in EMC 15.02.
2. All Administrative Uses shall be evaluated by the criteria listed in subsection D of this section.
3. Some land uses may be subject to Specific Use Standards set forth in EMC 19.13. If the Administrative Use is included in EMC 19.13, the requirements of that chapter must be met.
4. The planning director is authorized to approve a minor expansion or alteration of an existing Administrative Use as follows:
  - a. A minor expansion or alteration of an Administrative Use can be approved with Review Process I (see EMC 15.02).
  - b. For purposes of this section:
    - i. A minor expansion shall be not more than twenty-five percent (25%) of the land or building gross floor area devoted to the existing Administrative Use.
    - ii. A minor alteration may include changes to final site plans and development which do not change the intent and compatibility with surrounding property which were originally approved.
5. The planning director may impose conditions to ensure the approval criteria in subsection D are met.

#### **D. Administrative Use Evaluation Criteria**

The following criteria shall be used for evaluating Administrative Uses:

1. Compatibility of proposed structures and improvements with surrounding properties, including the size, height, location, setback and arrangements of all proposed buildings and facilities, especially as they relate to light and shadow impacts on more sensitive land uses and less intensive zones.
2. The landscaping, buffering and screening of buildings, parking, loading and storage areas, especially as they relate to more sensitive land uses.
3. The generation of nuisance irritants such as noise, smoke, dust, odor, glare, visual blight or other undesirable impacts.

#### **E. Other Standards**

1. Revocation. The planning director has the authority to review and modify or revoke Administrative Uses for failure to meet the requirements of an Administrative Use. Such decisions may be appealed pursuant to EMC 15.02.600.
2. Transfer of ownership. An Administrative Use runs with the land and compliance with the conditions of any such permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.

3. Permit expiration. Administrative Uses shall complete development and establish the permitted use within three (3) years of approval. The planning director may authorize a one-time extension of six (6) months. If the use is not commenced within that time frame, the Administrative Use is considered void and a new application is required. The city has no duty or obligation to notify the applicant or current property owner that the permit is due to expire.

### **15.03.120 Conditional Use.**

#### **A. Overview**

A Conditional Use, identified in EMC 19.05, means a use, which because of its unusual size, infrequent occurrence, special requirements, possible safety hazards, or other possible detrimental effects on surrounding properties, may be approved only after meeting the requirements of this section.

#### **B. Who May Apply**

A property owner, or their designated agent, may apply for a Conditional Use.

#### **C. Review Process**

Each zoning district includes uses which may be permitted if a Conditional Use is approved. See Use Tables in EMC 19.05. The process for consideration of a Conditional Use is as follows:

1. Conditional Uses require a public hearing with action by the Hearing Examiner following Review Process III. See EMC 15.02 for procedures.
2. All Conditional Uses shall be evaluated by the criteria listed in subsection D of this section.
3. Some land uses may be subject to Specific Use Standards set forth in EMC 19.13. If the Conditional Use is included in EMC 19.13, the requirements of that chapter must also be met in conjunction with approval of a Conditional Use.
4. The planning director is authorized to approve a minor expansion of an existing Conditional Use using Review Process II.
  - a. A minor expansion of a Conditional Use, which was previously considered a Special Property Use prior to adoption of this Ordinance, can be reviewed pursuant to this subsection C.4.
  - b. For purposes of this section, a minor expansion shall be not more than twenty-five percent (25%) of the land or building gross floor area devoted to the existing Conditional Use.
5. The Hearing Examiner may impose conditions to ensure the approval criteria in subsection D are met.

#### **D. Conditional Use Evaluation Criteria**

The following criteria shall be used for evaluating Conditional Uses:

1. The adequacy of utilities, public facilities and services required to serve a proposed use.
2. The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety; and the ability of the proponent to mitigate such potential impacts.
3. Compatibility of proposed structures and improvements with surrounding properties, including the size, height, location, setback and arrangements of all proposed buildings and facilities, especially as they relate to light and shadow impacts on more sensitive land uses and less intensive zones.
4. The landscaping, buffering and screening of buildings, parking, loading and storage areas, especially as they relate to more sensitive land uses.
5. The generation of nuisance irritants such as noise, smoke, dust, odor, glare, visual blight or other undesirable impacts.
6. Compliance with the provisions of Title 19 and other city, state and federal regulations.

#### **E. Other issues**

1. Revocation. The planning director has the authority to review and modify or revoke Conditional Uses for failure to meet the requirements of a Conditional Use. Such decisions may be appealed pursuant to EMC 15.02.600.

2. Transfer of ownership. A Conditional Use runs with the land and compliance with the conditions of any such permit is the responsibility of the current owner of the property, whether that is the original applicant or a successor.
3. Permit expiration. Conditional Uses shall complete development and establish the permitted use within three (3) years of approval. The planning director may authorize a one-time extension of six (6) months. If the use is not commenced within that time frame, the Conditional Use is considered void and a new application is required. The city has no duty or obligation to notify the applicant or current property owner that the permit is due to expire.

### **15.03.140 Variances.**

#### **A. User Guide**

This section establishes a mechanism whereby the provisions of Title 19 can be varied on a case-by-case basis if the application of such provisions would result in an unreasonable and unusual hardship. The criteria of this section shall be met in order to approve a variance.

#### **B. Who May Apply**

A property owner, or their designated agent, may apply for a Variance.

#### **C. Review Process**

An application for a Variance is considered by Review Process III. See EMC 15.02 for procedures.

#### **D. Criteria for Granting a Variance**

The city may grant a variance only if it finds that:

1. The variance will not be materially detrimental to the property in the area of the subject property or to the city as a whole; and
2. The variance is necessary because of exceptional or extraordinary circumstances regarding the size, shape, topography or location of the subject property; or the location of a preexisting improvement on the subject property that conformed to the zoning code in effect when the improvement was constructed; and
3. The variance will only grant the subject property the same general rights enjoyed by other property in the same area and zone as the subject property; and
4. The need for the requested variance is not the result of a self-created hardship.

#### **E. Variances Prohibited**

Under no circumstances shall the review authority grant a variance to any of the following:

1. To any provisions establishing the uses that are permitted to locate or that may continue to operate in any zone; or
2. To any of the procedural provisions of the code; or
3. To any provision that specifically states that its requirements are not subject to variance; or
4. To minimum lot size or maximum residential density requirements; or
5. To the critical areas standards in Chapter 19.37.

#### **F. Stay of Proceedings**

If a request for a variance is made in an effort to remedy a violation of Title 19 for which enforcement action has been commenced, the variance request stays all proceedings on the enforcement action until the variance has been acted upon. If, in the opinion of the mayor, a stay of proceedings would cause imminent peril to life or property, the mayor may continue enforcement action and such enforcement action may not be stayed except by a restraining order issued by superior court. If a variance request has been filed, enforcement shall be taken only to the extent that there shall no longer be imminent peril to life or property.

### **15.03.200 Development Agreements.**

### **A. Development Agreements Authorized**

The city may enter into a development agreement pursuant to Chapter 36.70B RCW with a person having ownership or control of real property within the city or for real property outside the city as part of a proposed annexation or a service agreement.

1. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement.
2. A development agreement shall be consistent with applicable development regulations adopted by the city under chapter 36.70A RCW.
3. For the purposes of this section, "development standards" includes, but is not limited to:
  - a. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
  - b. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
  - c. Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW;
  - d. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
  - e. Affordable housing;
  - f. Parks and open space preservation;
  - g. Phasing;
  - h. Review procedures and standards for implementing decisions;
  - i. A build-out or vesting period for applicable standards; and
  - j. Any other appropriate development requirement or procedure.
4. Unless amended or terminated, a development agreement is enforceable during its term by a party to the agreement. A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning ordinance or development standard or regulation or a new zoning ordinance or development standard or regulation adopted after the effective date of the agreement. A permit or approval issued by the city after the execution of the development agreement must be consistent with the development agreement.
5. A development agreement shall be recorded with the real property records of Snohomish County. During the term of the development agreement, the agreement is binding on the parties and their successors, including if the city assumes jurisdiction through incorporation or annexation of the area covering the property covered by the development agreement.

### **B. Development Agreements – Public Hearing Required**

1. The city shall only approve a development agreement by ordinance or resolution after a public hearing.
2. The public hearing shall be conducted in conjunction with the underlying land use action. In the event the underlying land use action does not require a public hearing, a public hearing following Type III Review Process in EMC 15.02 shall be conducted by the Hearing Examiner, with a recommendation to the City Council.
3. See EMC 15.02 for procedures for notice and conduct of public hearings for development agreements.
4. Minor modifications to development agreements, as set forth in subsection C below, do not require a public hearing.

### **C. Modification of Development Agreements**

1. Minor Modifications.
  - a. The applicant may apply for a minor modification to a development agreement following Review Process I set forth in EMC 15.02.

- b. The planning director will review and decide upon an application for a minor modification. If the planning director determines that notice to contiguous property owners should be provided regarding the minor changes, the planning director may require the proposed modification to be reviewed using Review Process II set forth in EMC 15.02.
  - c. The planning director may approve a minor modification only if he or she finds that:
    - i. The change is necessary because natural features of the subject property not foreseen by the applicant or by the city prior to approval of the development agreement; and
    - ii. The change will not result in reducing the landscaped area, buffering areas or the amount of open space on the project required by the development agreement; and
    - iii. The change will not result in increasing the residential density or gross floor area of the project as approved by the development agreement; and
    - iv. The change will not result in any structure, or vehicular circulation or parking area which will adversely affect abutting property or public right-of-way, or conflict with any provisions of the development agreement or Title 19; and
    - v. The planning director determines that the change will not increase any adverse impacts or undesirable effects of the project and that the change in no way significantly alters the project.
2. Major Modifications
- The applicant may seek a modification to the approved site plan that does not meet all of the requirements of subsection A of this section by submitting an application which will be reviewed by the city using the procedures set forth in this section as if it were an application for a new development agreement.

### **15.03.300 Unified Development Code Amendment.**

This section establishes the mechanism and criteria to amend the Unified Development Code, including amendments to the zoning maps.

#### **A. Area-Wide Rezones**

- 1. Description. An area-wide rezone is to change the zoning classification that is not site-specific.
- 2. Who May Initiate. Only the city may initiate area-wide rezones; the area-wide rezone may be initiated by the city council, mayor or designee.
- 3. Review Process. An area-wide rezone is considered by Review Process V. See EMC 15.02 for procedures.
- 4. Criteria. The city may decide to approve a proposal to rezone land only if it finds that:
  - a. The proposal is consistent with the Everett Comprehensive Plan; and
  - c. The proposal bears a substantial relation to public health, safety or welfare; and
  - d. The proposal promotes the best long-term interests of the Everett community.

#### **B. Site-Specific Rezones**

- 1. Description. A site-specific rezone is to change the zoning classification of a specific property or properties.
- 2. Who May Initiate. Site specific rezones may be initiated by the city or all property owners in the requested rezone area.
- 3. Review Process.
  - a. If the rezone includes an application to amend the Comprehensive Plan, the site-specific rezone is considered by Review Process V. See EMC 15.02 for procedures.
  - b. If the rezone does not require an amendment to the Comprehensive Plan, the site-specific rezone is considered by Review Process IIIB. See EMC 15.02 for procedures.
- 4. Criteria. The review authority may approve an application for a site-specific rezone if it finds that:
  - a. The proposed rezone is consistent with the Everett Comprehensive Plan; and
  - b. The proposed rezone bears a substantial relation to public health, safety or welfare; and the proposed rezone promotes the best long-term interests of the Everett community; and

- c. The proposed rezone mitigates any adverse impact(s) upon existing or anticipated land uses in the immediate vicinity of the subject property.
  - d. If a Comprehensive Plan amendment is required in order to satisfy section 4.a. of this subsection, approval of the Comprehensive Plan amendment is required prior to or concurrently with the granting of an approval on the rezone.
5. Development Agreements. In some circumstances, in order to demonstrate the criteria for approval are met, the city may determine that a development agreement authorized pursuant to RCW 36.70B and EMC 15.03.200 are necessary.

**C. Unified Code Text Amendments**

- 1. Description. Amendment of the text of the Unified Development Code.
- 2. Who May Initiate. Amendments to the text of the Unified Development Code may be initiated by the city council, mayor or designee, or planning commission.
- 3. Review Process. Amendments are considered by Review Process V. See EMC 15.02 for procedures.
- 4. Criteria. The city may amend the text of the Unified Development Code if it finds that:
  - a. The proposed amendment is consistent with the applicable provisions of the Everett Comprehensive Plan; and
  - b. The proposed amendment bears a substantial relation to public health, safety or welfare; and
  - c. The proposed amendment promotes the best long-term interests of the Everett community.

**15.03.400 Comprehensive Plan Amendments.**

- A. Description. Amendments to the Comprehensive Plan may include both text (e.g. goals and policies) and maps (e.g. land use designations).
- B. Who May Initiate. Amendments to the Comprehensive Plan may be initiated as follows:
  - 1. Area-Wide Amendments. Area-wide amendments may be initiated only by the city council, mayor or designee, or planning commission. Area-wide amendments could include both text and map amendments.
  - 2. Site-Specific Amendments. Site-specific amendments may be initiated by property owners, city council, mayor or designee, or planning commission.
- C. Review Process.
  - 1. Docket. Except as allowed by RCW 36.70A, the comprehensive plan may only be amended once per year. The city shall review all revisions as a comprehensive package of updates to the plan so the cumulative effect of all proposed amendments is fully understood. The planning director is authorized to set deadlines for applications to amend the comprehensive plan and establish the docket for consideration of amendments. See EMC 15.02 for application requirements.
  - 2. Amendments are considered by Review Process V. See EMC 15.02 for procedures.
- D. Land Use Map. The following factors shall be considered in reviewing requests to amend the Comprehensive Plan Land Use Map.
  - 1. The proposed land use designation must be supported by or consistent with the existing policies of the various elements of the comprehensive plan.
  - 2. Have circumstances related to the subject property and the area in which it is located changed sufficiently since the adoption of the Land Use Element to justify a change to the land use designation? If so, the circumstances that have changed should be described in detail to support findings that a different land use designation is appropriate.
  - 3. Are the assumptions upon which the land use designation of the subject property is based erroneous, or is new information available which was not considered at the time the Land Use Element was adopted, that justify a change to the land use designation? If so, the erroneous assumptions or new information should be described in detail to enable the Planning Commission and City Council to find that the land use designation should be changed.



4. Does the proposed land use designation promote a more desirable land use pattern for the community as a whole? If so, a detailed description of the qualities of the proposed land use designation that make the land use pattern for the community more desirable should be provided to enable the Planning Commission and City Council to find that the proposed land use designation is in the community's best interest.
  5. Should the proposed land use designation be applied to other properties in the vicinity? If so, the reasons supporting the change of several properties should be described in detail. If not, the reasons for changing the land use designation of a single site, as requested by the proponent, should be provided in sufficient detail to enable the Planning Commission and City Council to find that approval as requested does not constitute a grant of special privilege to the proponent or a single owner of property.
  6. What impacts would the proposed change of land use designation have on the current use of other properties in the vicinity, and what measures should be taken to assure compatibility with the uses of other properties in the vicinity?
  7. Would the change of the land use designation sought by the proponent create pressure to change the land use designation of other properties in the vicinity? If so, would the change of land use designation for other properties be in the best long-term interests of the community in general?
- E. Comprehensive Plan Policies. The following factors shall be considered in reviewing proposed amendments to comprehensive plan policies.
1. Have circumstances related to the subject policy changed sufficiently since the adoption of the plan to justify a change to the subject policy? If so, the circumstances that have changed should be described in detail to support the proposed amendment to the policy.
  2. Are the assumptions upon which the policy is based erroneous, or is new information available that was not considered at the time the plan was adopted, that justify a change to the policy? If so, the erroneous assumptions or new information should be described in detail to support the proposed policy amendment.
  3. Does the proposed change in policy promote a more desirable growth pattern for the community as a whole? The manner in which the proposed policy change promotes a more desirable growth pattern should be described in detail.
  4. Is the proposed policy change consistent with other existing plan policies, or does it conflict with other plan policies? The extent to which the proposed policy change is consistent with or conflicts with other existing policies should be explained in detail.