ORDINANCE NO. 2538-01

An Ordinance amending the Zoning Code to Make Textual changes to provide consistency with the City's Local Project Review Procedures Ordinance, amending Ordinance No. 1671-89 as amended, Ordinance No's. 1838-91, 1847-92, 2111-95 and 2170-96 (Title 19 EMC)

WHEREAS, the City adopted interim permit review processes for land use permits through the adoption of Ordinance No. 2136-96; and

WHEREAS, through the adoption of the City's Local Project Review Procedures Ordinance, the City has incorporated the interim regulations into the Local Project Review Procedures Ordinance which is intended to be a master procedural ordinance for land use applications within the City; and

WHEREAS, it is the intent of this ordinance to make the necessary revisions to the Zoning Code so that it is consistent with the provisions of the City's Local Project Review Procedures Ordinance; and

WHEREAS, the City Council finds:

1. The amendment is consistent with the applicable provisions of the Everett general plan; and
2. The amendment bears a substantial relation to public health, safety or welfare; and
3. The amendment promotes the best long term interests of the Everett community;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

SECTION 1: That Section 3 of Ordinance No. 1847-92 as amended by Section 1 of Ordinance No. 1864-92, Sections 1 & 2 of Ordinance No. 1978-93, Section 1 of Ordinance No. 2076-95, Section 1(A) of Ordinance No. 2106-95, Section 2(A) of Ordinance No. 2111-95, Section 1 of Ordinance No. 2290-98 and Sections 12-34 of Ordinance No. 2397-99 (EMC 19.04.020) which reads in part as follows:

"Review process" means the procedure listed in Chapter 42 of this title by which a specific use shall be evaluated before a determination is made concerning the issuance of an approval, a license or permit.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

"Review process" means the procedure listed in the City's Local Project Review Procedures Ordinance by which a specific use shall be evaluated before a determination is made concerning the issuance of an approval, a license or permit.

SECTION 2: That Ordinance No. 1671-89 as amended by Section 36 of Ordinance No. 2397-99 (EMC 19.05.020) which reads in part as follows:

Review Process. The review process that applies to a permitted use is listed in the Use Table for uses that are permitted in each zone. If a use listed in the Use Table does not have a review process listed in the box or cell for a particular zone, it shall be considered to be a prohibited use in that particular zone. The review process for permitted uses will be either I, II, or III. The procedures that apply to each of these review processes are described in Section 42 of this Title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Review Process. The review process that applies to a permitted use is listed in the Use Table for uses that are permitted in each zone. If a use listed in the Use Table does not have a review process listed in the box or cell for a particular zone, it shall be considered to be a prohibited use in that particular zone. The review process for permitted uses will be as set forth in the City's Local Project Review Procedures Ordinance.. The procedures that apply to each of these review processes are described in the City's Local Project Review Procedures Ordinance.

SECTION 3: That Ordinance No. 1671-89 as amended by Section 36 of Ordinance No. 2397-99 (EMC 19.05.060) which reads in part as follows:

Review Process and Development Standards for Properties Which are Under the Jurisdiction of the Everett Shoreline Master Program. All uses and structures proposed on properties which are also under the jurisdiction of the Everett shoreline master program shall be subject to the review processes, development standards and other requirements of Chapter 20.12 of the Everett Municipal Code, as well as the development standards and special regulations of this Title; provided however, that when a conflict exists between the regulations of Chapter 20.12 of the Everett Municipal Code and those of this title, the regulations of Chapter 20.12 of the Code shall take precedence over those of this title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Review Process and Development Standards for Properties Which are Under the Jurisdiction of the Everett Shoreline Master Program. All uses and developments proposed on properties which are also under the jurisdiction of the Everett shoreline master program shall be subject to the review processes in the City's Local Project Review Procedures Ordinance. All such uses and developments shall be subject to the review criteria for shoreline substantial development permits, variances, conditional use permits and revisions in the City's Local Project Review Procedures Ordinance. In addition, all uses and developments in shoreline jurisdiction shall be subject to the development standards and special regulations of this Title and the Shoreline Master Program; provided however, that when a conflict exists between the regulations of the

Shoreline Master Program and those of this title, the regulations of the Shoreline Master Program shall take precedence over those of this title.

SECTION 4: That Ordinance No. 1671-89 as amended by Section 36 of Ordinance No. 2397-99, Section 2 of Ordinance No. 2445-00, Section 2 of Ordinance No. 2525-01 (EMC 19, Special Regulations for Zoning Code Table 5.2(30-44)) which reads in part as follows:

(30) See Section 41.150.C for general evaluation criteria for this use.
(31) See Section 41.150.C for general evaluation criteria, and Section 41.150.D.1.b for special regulations pertaining to this use.
(32) Emergency airlift landing may be permitted only at existing hospitals, subject to Review Process III. See Section 41.150.D.1.d for special regulations pertaining to this use.
(33) See Section 41.150.C for general evaluation criteria, and Section 41.150.D.2.c for special regulations pertaining to this use.
(34) Permitted only as an accessory use to existing cemetery or mortuary.
(35) See Section 27.040 for regulations applicable to "Aggregates extraction, related manufacturing activity" in the M-1 zone.
(36) See Section 41.150.C for general evaluation criteria.
(37) See Section 41.150.D.2.d for specific criteria to be used to evaluate this use.
(38) See Section 39.105 for regulations for jails, Class II group homes, and correctional facilities.
(39) See Section 41.150.D.2.a for regulations pertaining to school facilities.
(40) See Section 41.150.D.1.c for regulations pertaining to above ground utility and communications facilities.
(41) See Section 41.100 for regulations for outdoor uses, activities and storage.
(42) See Section 22.020.D for development standards for parking lots in the B-3 zone.
(43) Allowed only in church parking lots in this zone.
(44) See Section 41.150.C for general evaluation criteria.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

(30) See Section 41.130.C for general evaluation criteria for this use.
(31) See Section 41.130.C for general evaluation criteria, and Section 41.130.D.1.b for special regulations pertaining to this use.
(32) Emergency airlift landing may be permitted only at existing hospitals, subject to Review Process IIIA. See Section 41.130.D.1.d for special regulations pertaining to this use.
(33) See Section 41.130.C for general evaluation criteria, and Section 41.130.D.2.c for special regulations pertaining to this use.
(34) Permitted only as an accessory use to existing cemetery or mortuary.
(35) See Section 27.040 for regulations applicable to "Aggregates extraction, related manufacturing activity" in the M-1 zone.
(36) See Section 41.130.C for general evaluation criteria.
(37) See Section 41.130.D.2.d for specific criteria to be used to evaluate this use.
(38) See Section 39.105 for regulations for jails, Class II group homes, and correctional facilities.
(39) See Section 41.130.D.2.a for regulations pertaining to school facilities.
(40) See Section 41.130.D.1.c for regulations pertaining to above ground utility and communications facilities.
(41) See Section 41.100 for regulations for outdoor uses, activities and storage.

(42) See Section 22.020.D for development standards for parking lots in the B-3 zone.
(43) Allowed only in church parking lots in this zone.
(44) See Section 41.130.C for general evaluation criteria.

SECTION 5: That Ordinance No. 1671-89 as amended by Section 37 of Ordinance No. 2397-99 (EMC 19.06.080) which reads in part as follows:

Review Process and Development Standards for Properties Which are Under the Jurisdiction of the Everett Shoreline Master Program. All uses and structures proposed on properties which are also under the jurisdiction of the Everett shoreline master program shall be subject to the review processes, development standards and other requirements of Chapter 20.12 of the Everett Municipal Code, and to the off-street parking requirements of Chapter 34 and regulations listed in the Development Standards Table of Chapter 6 of this title. When in conflict with the regulations of Chapter 20.12 of the Everett Municipal Code, the special regulations contained in Chapter 5 or other development standards listed in the Development Standards Table of this chapter shall not apply.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Review Process and Development Standards for Properties Which are Under the Jurisdiction of the Everett Shoreline Master Program. All uses and structures proposed on properties which are also under the jurisdiction of the Everett shoreline master program shall be subject to the review processes in the City's Local Project Review Procedures Ordinance. All such uses and developments shall be subject to the review criteria for shoreline substantial development permits, variances, conditional use permits and revisions in the Local Project Review Procedures Ordinance. In addition, all uses and developments in shoreline jurisdiction shall be subject to the development standards and other requirements of the Shoreline Master Program and the regulations listed in the Development Standards Table of Chapter 6 of this title. When in conflict with the regulations of the Shoreline Master Program, the special regulations contained in Chapter 5 or other development standards listed in the Development Standards Table of this chapter shall not apply.

SECTION 6: That Ordinance No. 1671-89 as amended by Section 10 of Ordinance No. 2146-96 and Section 1 of Ordinance No. 2310-98 (EMC 19.07.020 K) which reads in part as follows:

K. The Hearing Examiner, using Review Process III, may allow detached accessory buildings to exceed fifteen feet in height, or to exceed one thousand square feet in area as provided herein. The hearing examiner shall have the authority to deny an application for accessory buildings which exceed fifteen feet in height or a total of one thousand square feet. The basis for denial is incompatibility with the dwelling and/or neighborhood character. To make this determination, the hearing examiner may look to such factors that include, but are not limited to, view obstruction, aesthetic impact on surrounding properties and streetscape, incompatible scale with dwellings on surrounding properties, and impact on neighborhood character. The hearing examiner shall also have the authority to impose greater setback requirements, landscape buffers, or other locational or design requirements as necessary to mitigate the impacts of accessory buildings which are larger or taller than otherwise allowed by this section.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

K. The Hearing Examiner, using the review process described in the City's Local Project Review Procedures Ordinance, may allow detached accessory buildings to exceed fifteen feet in height, or to exceed one thousand square feet in area as provided herein. The hearing examiner shall have the authority to deny an application for accessory buildings which exceed fifteen feet in height or a total of one thousand square feet. The basis for denial is incompatibility with the dwelling and/or neighborhood character. To make this determination, the hearing examiner may look to such factors that include, but are not limited to, view obstruction, aesthetic impact on surrounding properties and streetscape, incompatible scale with dwellings on surrounding properties, and impact on neighborhood character. The hearing examiner shall also have the authority to impose greater setback requirements, landscape buffers, or other locational or design requirements as necessary to mitigate the impacts of accessory buildings which are larger or taller than otherwise allowed by this section.

SECTION 7: That Ordinance No. 1671-89 as amended by Section 2 of Ordinance 2307-98 (EMC 19.15.010 D) which reads in part as follows:

D. Modification of Development Standards and Design Guidelines. An applicant may propose and the planning director, using Review Process II, may allow an applicant to deviate from certain development standards of this chapter, as provided herein, and from the multiple-family design guidelines, provided the proposal satisfies the evaluation criteria of this subsection. This process differs from the variance procedure in that rather than approval being based upon unusual circumstances or a physical hardship such as steep slopes, it is based upon the quality of the proposed design. This alternative process is intended to promote well designed housing which does not strictly comply with the development standards of this chapter and/or the multiple-family design guidelines, but which meets the criteria contained herein. In evaluating such a proposal, the planning director, using the criteria in subsection D.3 of this section, shall determine if the alternative design provides equivalent or superior results to that which would be required by compliance with the development standards of this chapter and the design guidelines.

1. What Can Be Modified. The following standards can be modified using this process:

a. Multiple-family design guidelines;
b. Permitted number of dwelling units may be increased by not more than ten percent;
c. Building setbacks and separation between buildings;
d. Building height;
e. Open space and on-site recreation standards of this chapter;
f. Landscaping requirements;
g. Parking location;
h. Pedestrian access requirements as provided by subsection 15.080.C.

2. What Cannot Be Modified. Except for the standards identified in subsection D.1 of this section, no other standards, including the following, can be modified using this process:

a. Number of off-street parking spaces;
b. Uses permitted by the zone in which the property is located;
c. Regulations for nonconforming uses;
d. Standards of Chapter 37 of the Zoning Code (Environmentally Sensitive Areas);

e. Shoreline regulations, where applicable;

f. Standards adopted as part of "H" historic or "D" design overlay zones.

3. Evaluation Criteria for Modification. Any proposal to modify development standards or design guidelines shall not undermine the intent of the standards of this chapter or the intent of the multiple-family design guidelines. The planning director shall not approve a request for modification unless the proposal provides architectural and urban design elements equivalent or superior to what would likely result from compliance with the multiple-family design guidelines and the development standards of the Zoning Code which are proposed to be modified. The planning director shall consider the following criteria in evaluating proposals using this process:

a. The unique characteristics of the subject property and/or its surroundings and how they will be protected or enhanced by modifying the development standards or design guidelines.

b. The positive characteristics of the proposed development and whether such characteristics could be provided by compliance with the development standards and/or design guidelines proposed to be modified.

c. The arrangement of buildings and open spaces as they relate to other buildings and/or uses on the subject property and on surrounding properties.

d. Visual impact to surrounding properties caused by parking facilities in the proposed development and whether such impacts are less than would result from compliance with the development standards and/or design guidelines proposed to be modified.

e. If the development proposes greater building height than permitted by the zone in which the property is located, does the increase in building height result in an increase in the usable open space on the property over what would be provided by meeting the development standards and design guidelines proposed to be modified?

f. If the development proposes greater building height than permitted by the zone in which the property is located, does the increase in building height impact the views or privacy of abutting residentially zoned properties?

g. Does the proposed development result in a mix of permitted residential and commercial uses allowed by the zoning in which the property is located which would not result from compliance with the development standards and/or design guidelines proposed to be modified?

h. Does the proposed design mitigate the impacts that could be caused by relaxation of the standards which are proposed to be modified?

4. Appeal of Planning Director's Decision. An appeal of the planning director's decision using this process shall be reviewed by the hearing examiner in accordance with Section 42.110. Substantial weight shall be given to the decision of the planning director in considering any appeal.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

D. Modification of Development Standards and Design Guidelines. An applicant may propose and the planning director, using the review process described in the City's Local Project Review Procedures Ordinance, may allow an applicant to deviate from certain development standards of this chapter, as provided herein, and from the multiple-family design guidelines, provided the proposal satisfies the evaluation criteria of this subsection. This process differs from the variance procedure in that rather than approval being based upon unusual circumstances or a physical hardship such as steep slopes, it is based upon the quality of the proposed design. This alternative process is intended to promote well designed housing which does not strictly comply

with the development standards of this chapter and/or the multiple-family design guidelines, but which meets the criteria contained herein. In evaluating such a proposal, the planning director, using the criteria in subsection D.3 of this section, shall determine if the alternative design provides equivalent or superior results to that which would be required by compliance with the development standards of this chapter and the design guidelines.

1. What Can Be Modified. The following standards can be modified using this process:

a. Multiple-family design guidelines;

b. Permitted number of dwelling units may be increased by not more than ten percent;

c. Building setbacks and separation between buildings;

d. Building height;

e. Open space and on-site recreation standards of this chapter;

f. Landscaping requirements;

g. Parking location;

h. Pedestrian access requirements as provided by subsection 15.080.C.

2. What Cannot Be Modified. Except for the standards identified in subsection D.1 of this section, no other standards, including the following, can be modified using this process:

a. Number of off-street parking spaces;

b. Uses permitted by the zone in which the property is located;

c. Regulations for nonconforming uses;

d. Standards of Chapter 37 of the Zoning Code (Environmentally Sensitive Areas);

e. Shoreline regulations, where applicable;

f. Standards adopted as part of "H" historic or "D" design overlay zones.

3. Evaluation Criteria for Modification. Any proposal to modify development standards or design guidelines shall not undermine the intent of the standards of this chapter or the intent of the multiple-family design guidelines. The planning director shall not approve a request for modification unless the proposal provides architectural and urban design elements equivalent or superior to what would likely result from compliance with the multiple-family design guidelines and the development standards of the Zoning Code which are proposed to be modified. The planning director shall consider the following criteria in evaluating proposals using this process:

a. The unique characteristics of the subject property and/or its surroundings and how they will be protected or enhanced by modifying the development standards or design guidelines.

b. The positive characteristics of the proposed development and whether such characteristics could be provided by compliance with the development standards and/or design guidelines proposed to be modified.

c. The arrangement of buildings and open spaces as they relate to other buildings and/or uses on the subject property and on surrounding properties.

d. Visual impact to surrounding properties caused by parking facilities in the proposed development and whether such impacts are less than would result from compliance with the development standards and/or design guidelines proposed to be modified.

e. If the development proposes greater building height than permitted by the zone in which the property is located, does the increase in building height result in an increase in the usable open space on the property over what would be provided by meeting the development standards and design guidelines proposed to be modified?

f. If the development proposes greater building height than permitted by the zone in which the property is located, does the increase in building height impact the views or privacy of abutting residentially zoned properties?

g. Does the proposed development result in a mix of permitted residential and commercial uses allowed by the zoning in which the property is located which would not result from compliance with the development standards and/or design guidelines proposed to be modified?
h. Does the proposed design mitigate the impacts that could be caused by relaxation of the standards which are proposed to be modified?
4. Appeal of Planning Director's Decision. An appeal of the planning director's decision using this process shall be reviewed by the hearing examiner in accordance with the City's Local Project Review Procedures Ordinance. Substantial weight shall be given to the decision of the planning director in considering any appeal.

SECTION 8: That Ordinance No. 1671-89 as amended by Section 9 of Ordinance No. 2307-98 (EMC 19.15.080 B) which reads in part as follows:

B. Vehicular Access. On corner lots, the driveway(s) shall be located away from the street intersection. Sites abutting an alley shall be required to gain vehicular access from the alley. No driveway access from the public street shall be allowed unless specifically authorized by the planning director, based upon a recommendation from the city engineer, using Review Process II, when necessary to provide access to off-street parking under the structure which is not otherwise possible due to severe limitations caused by the slope of the property. Approval shall be subject to the following requirements:
1. The width of the driveway shall not exceed twenty-five percent of the width of the lot or twenty feet, whichever is less.
2. Additional yard area equal to the area covered by the portion of the driveway within the setback area shall be provided by an increase in the setback of the building or portion of the building.
3. The driveway shall be located to one side of the lot and away from the center of the site to the maximum extent feasible.
4. On a corner lot access shall be from the side street unless the side street is an arterial street.
5. The location and design of pedestrian access from the sidewalk shall be emphasized so as to be more prominent than the vehicular access.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

B. Vehicular Access. On corner lots, the driveway(s) shall be located away from the street intersection. Sites abutting an alley shall be required to gain vehicular access from the alley. No driveway access from the public street shall be allowed unless specifically authorized by the planning director, based upon a recommendation from the city engineer, using the review process described in the City's Local Project Review Procedures Ordinance, when necessary to provide access to off-street parking under the structure which is not otherwise possible due to severe limitations caused by the slope of the property. Approval shall be subject to the following requirements:
1. The width of the driveway shall not exceed twenty-five percent of the width of the lot or twenty feet, whichever is less.

2. Additional yard area equal to the area covered by the portion of the driveway within the setback area shall be provided by an increase in the setback of the building or portion of the building.
3. The driveway shall be located to one side of the lot and away from the center of the site to the maximum extent feasible.
4. On a corner lot access shall be from the side street unless the side street is an arterial street.
5. The location and design of pedestrian access from the sidewalk shall be emphasized so as to be more prominent than the vehicular access.

SECTION 9: That Ordinance No. 1671-89 as amended by Section 9 of Ordinance No. 1849-92 (EMC 19.16.020 B) which reads in part as follows:

B. Land Uses Permitted Subject to Review Process III.B.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

B. Land Uses Permitted Subject to Review Process as Described in the City's Local Project Review Procedures Ordinance.

SECTION 10: That Ordinance No. 1671-89 as amended by Section 11 of Ordinance No. 1849-92, Section 38 of Ordinance No. 2397-99, Section 1 of Ordinance No. 2445-00 (EMC 19.16.040 B) which reads in part as follows:

B. Land Uses Permitted Subject to Review Process III.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

B. Land Uses Permitted Subject to Review Process as Described in the City's Local Project Review Procedures Ordinance.

SECTION 11: That Ordinance No. 1671-89 as amended by Section 11 of Ordinance No. 1849-92, Section 38 of Ordinance No. 2397-99, and Section 1 of Ordinance 2445-00 (EMC 19.16.040 C) which reads in part as follows:

C. Land Uses Permitted Subject to Review Process II. Government administrative offices, offices, and clinics and medical-related uses are permitted in the R-4 and R-5 C-O zones subject to Review Process II and the following restrictions; provided, however, the planning director shall have the authority to require a government administrative office use to be subject to Review Process III if he/she determines that additional public notification is necessary to address impacts for the proposed use that may be greater than other uses normally allowed in the R-4 and R-5 C-O zones:
1. Permitted only in a mixed-use building in which thirty-three percent of the gross floor area, excluding off-street parking within a parking structure, is devoted to multiple-family housing;

2. No portion of any building constructed as a residential building prior to June 1, 1999, may be converted to government administrative office uses;
3. A covenant shall be recorded on the property acknowledging the limitations stated in this section.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

C. Land Uses Permitted Subject to Review Process as Described in the City's Local Project Review Procedures Ordinance. Government administrative offices, offices, and clinics and medical-related uses are permitted in the R-4 and R-5 C-O zones subject to review process as described in the City's Local Project Review Procedures Ordinance and the following restrictions; provided, however, the planning director shall have the authority to require a government administrative office use to be subject to a higher level of review process if he/she determines that additional public notification is necessary to address impacts for the proposed use that may be greater than other uses normally allowed in the R-4 and R-5 C-O zones:
1. Permitted only in a mixed-use building in which thirty-three percent of the gross floor area, excluding off-street parking within a parking structure, is devoted to multiple-family housing;
2. No portion of any building constructed as a residential building prior to June 1, 1999, may be converted to government administrative office uses;
3. A covenant shall be recorded on the property acknowledging the limitations stated in this section.

SECTION 12: That Ordinance No. 1671-89 as amended by Sections 13 and 14 of Ordinance No. 1849-92 and Section 43 Of Ordinance No. 2397-99 (EMC 19.27.020 A) which reads in part as follows:

A. Building Design.
1. Prefabricated metal buildings and buildings with corrugated metal siding shall be prohibited. Exterior building finish for buildings located within three hundred feet of residentially zoned properties shall be approved by the planning director, using Review Process II.
2. Buildings with exterior walls greater than sixty feet in length shall be required to provide architectural modulation, in accordance with the following standards:
a. Minimum modulation depth equals five feet;
b. Minimum modulation length equals fifteen feet;
c. Maximum modulation length equals sixty feet;
d. Minimum height of modulation equals fifty percent of height of facade;
e. Any other method of architectural modulation which results in an equivalent or superior articulation of the building facade, which gives the building the appearance of not having flat facade surfaces for substantial portions of its length, based upon building plan elevations to be approved using Review Process I. Examples of acceptable architectural treatment include, but are not limited to, building façade modulation, orientation of doors and windows, varying use of building materials and colors, use of landscaping which breaks up flat expanses of building walls, or a combination of techniques providing the desired effect.
3. Exterior building materials shall be selected so as not to project or reflect natural or artificial lighting or glare into residential areas.

4. Mechanical equipment located on the roof, facade, or external portion of a building shall be architecturally screened by incorporating the equipment in the building and/or site design so as not to be visible from adjacent properties or public streets.
5. Equipment or vents which generate noise or air emissions shall be located away from adjoining residentially zoned properties.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. Building Design.
1. Prefabricated metal buildings and buildings with corrugated metal siding shall be prohibited. Exterior building finish for buildings located within three hundred feet of residentially zoned properties shall be approved by the planning director, using the review process as described in the City's Local Project Review Procedures Ordinance.
2. Buildings with exterior walls greater than sixty feet in length shall be required to provide architectural modulation, in accordance with the following standards:
a. Minimum modulation depth equals five feet;
b. Minimum modulation length equals fifteen feet;
c. Maximum modulation length equals sixty feet;
d. Minimum height of modulation equals fifty percent of height of facade;
e. Any other method of architectural modulation which results in an equivalent or superior articulation of the building facade, which gives the building the appearance of not having flat facade surfaces for substantial portions of its length, based upon building plan elevations to be approved using the review process as described in the City's Local Project Review Procedures Ordinance. Examples of acceptable architectural treatment include, but are not limited to, building façade modulation, orientation of doors and windows, varying use of building materials and colors, use of landscaping which breaks up flat expanses of building walls, or a combination of techniques providing the desired effect.
3. Exterior building materials shall be selected so as not to project or reflect natural or artificial lighting or glare into residential areas.
4. Mechanical equipment located on the roof, facade, or external portion of a building shall be architecturally screened by incorporating the equipment in the building and/or site design so as not to be visible from adjacent properties or public streets.
5. Equipment or vents which generate noise or air emissions shall be located away from adjoining residentially zoned properties.

SECTION 13: That Ordinance No. 1671-89 as amended by Sections 13 and 14 of Ordinance No. 1849-92 and Section 43 Of Ordinance No. 2397-99 (EMC 19.27.020 G) which reads in part as follows:

G. Prohibited Manufacturing Uses. The following manufacturing uses are prohibited in the M-1 zone except as otherwise permitted in Section 27.040:
1. Manufacturing involving outdoor storage which exceeds the maximum land area permitted by subsection D of this section;

2. Manufacture or storage of explosives;

3. Stockyards dairies, slaughterhouses, rendering plants, canneries, and other agricultural industries;

4. Petroleum refineries;

5. Bulk fuel storage, unless stored in tanks and accessory to a permitted use located on the same lot;

6. Truck parking, repair and maintenance unless accessory to a permitted use located on the same lot;

7. Cement manufacturing;

8. Blast furnaces;

9. Smelting;

10. Drop forge industries;

11. Fertilizer manufacture;

12. Sanitary landfills;

13. Waste to energy facilities;

14. Solid waste transfer stations;

15. Sewage treatment plants;

16. Lumber, pulp or paper mills;

17. Cargo container storage;

18. Asphalt or concrete batch plant;

19. Other similar heavy manufacturing uses with potentially noxious impacts, as determined by the planning director, except as otherwise provided by this chapter. In making such a determination, the city shall use Review Process II and the notice and appeals provisions attendant thereto.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

G. Prohibited Manufacturing Uses. The following manufacturing uses are prohibited in the M-1 zone except as otherwise permitted in Section 27.040:

1. Manufacturing involving outdoor storage which exceeds the maximum land area permitted by subsection D of this section;

2. Manufacture or storage of explosives;

3. Stockyards dairies, slaughterhouses, rendering plants, canneries, and other agricultural industries;

4. Petroleum refineries;

5. Bulk fuel storage, unless stored in tanks and accessory to a permitted use located on the same lot;

6. Truck parking, repair and maintenance unless accessory to a permitted use located on the same lot;

7. Cement manufacturing;

8. Blast furnaces;

9. Smelting;

10. Drop forge industries;

11. Fertilizer manufacture;

12. Sanitary landfills;

13. Waste to energy facilities;

14. Solid waste transfer stations;

15. Sewage treatment plants;

16. Lumber, pulp or paper mills;

17. Cargo container storage;

18. Asphalt or concrete batch plant;

19. Other similar heavy manufacturing uses with potentially noxious impacts, as determined by the planning director, except as otherwise provided by this chapter. In making such a determination, the city shall use the procedures as described in the City's Local Project Review Procedures Ordinance .

SECTION 14: That Ordinance No. 1671-89 as amended by Section 45 of Ordinance No. 2397-45 (EMC 19.27.040) which reads as follows:

Map number 27-1 - Aggregates extraction, related manufacturing activity.

The following regulations shall apply to the area identified by map number 27- 1:

A. Manufacturing activities which comply with the standards of the M-1 zone shall be permitted subject to Review Process I.

B. Related manufacturing includes asphalt or concrete batch plants, cement products manufacturing, and other similar activities related to aggregates mining occurring on site.

C. Related manufacturing activities existing as of January 13, 1990 may continue in the same capacity. Any change in the type of manufacturing activities on such sites which do not comply with the M-1 zone permitted uses and standards shall be subject to Review Process III, and shall be limited to the area indicated by map number 27-1. The review authority shall establish additional standards and may impose conditions which are necessary to make such manufacturing are as compatible with surrounding properties.

D. Areas reclaimed from aggregates mining shall be limited to other permitted M-1 uses and subject to the standards of the M-1 zone.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Map number 27-1 - Aggregates extraction, related manufacturing activity.

The following regulations shall apply to the area identified by map number 27- 1:

A. Manufacturing activities which comply with the standards of the M-1 zone shall be permitted.

B. Related manufacturing includes asphalt or concrete batch plants, cement products manufacturing, and other similar activities related to aggregates mining occurring on site.

C. Related manufacturing activities existing as of January 13, 1990 may continue in the same capacity. Any change in the type of manufacturing activities on such sites which do not comply with the M-1 zone permitted uses and standards shall be subject to the review process as described in the City's Local project Review Procedures Ordinance, and shall be limited to the area indicated by map number 27-1. The review authority shall establish additional standards and may impose conditions which are necessary to make such manufacturing are as compatible with surrounding properties.

D. Areas reclaimed from aggregates mining shall be limited to other permitted M-1 uses and subject to the standards of the M-1 zone.

SECTION 15: That Ordinance No. 1671-89 as amended by Sections 15-17 of Ordinance No. 1849-92 and Section 47 of Ordinance No. 2397-99 (EMC 19.28.020 D) which reads as follows:

D. Prohibited Manufacturing Uses. The following manufacturing uses are prohibited in the M-M zone:

1. Manufacturing involving outdoor storage which exceeds the maximum land area permitted by Section 28.020C;

2. Manufacture or storage of explosives;

3. Stockyards, dairies, slaughterhouses, rendering plants, canneries, and other agricultural industries;

4. Petroleum refineries;

5. Bulk fuel storage, unless stored in tanks and accessory to a permitted use located on the same lot;

6. Truck parking, repair and maintenance unless accessory to a permitted use located on the same lot;

7. Cement manufacturing;

8. Blast furnaces;

9. Smelting;

10. Drop forge industries;

11. Fertilizer manufacture;

12. Sanitary landfills;

13. Waste to energy facilities;

14. Sewage treatment plants;

15. Lumber, pulp or paper mills;

16. Cargo container storage;

17. Asphalt or concrete batch plant;

18. Other similar heavy manufacturing uses with potentially noxious impacts, as determined by the planning director, except as otherwise provided by this section. In making such a determination, the city shall use Review Process II and the notice and appeals provisions attendant thereto.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

D. Prohibited Manufacturing Uses. The following manufacturing uses

are prohibited in the M-M zone:

1. Manufacturing involving outdoor storage which exceeds the maximum land area permitted by Section 28.020C;

2. Manufacture or storage of explosives;

3. Stockyards, dairies, slaughterhouses, rendering plants, canneries, and other agricultural industries;

4. Petroleum refineries;

5. Bulk fuel storage, unless stored in tanks and accessory to a permitted use located on the same lot;

6. Truck parking, repair and maintenance unless accessory to a permitted use located on the same lot;

7. Cement manufacturing;

8. Blast furnaces;

9. Smelting;

10. Drop forge industries;

11. Fertilizer manufacture;

12. Sanitary landfills;

13. Waste to energy facilities;

14. Sewage treatment plants;

15. Lumber, pulp or paper mills;

16. Cargo container storage;

17. Asphalt or concrete batch plant;

18. Other similar heavy manufacturing uses with potentially noxious impacts, as determined by the planning director, except as otherwise provided by this section. In making such a determination, the city shall use the review process as described in the City's Local Project Review Procedures Ordinance.

SECTION 16: That Ordinance No. 1671-89 as amended by Section 1 of Ordinance No. 2384-99 (EMC 19.29.020) which reads as follows:

Review process.

All proposals for a PD planned development overlay zone shall be reviewed using Review Process V. If the proposed planned development overlay zone involves a specific site development plan indicating actual locations of buildings and other site improvements, it shall be treated as a performance agreement rezone in accordance with Section 41.160.D of this title. If the planned development overlay zone does not involve a specific site development plan indicating actual locations of buildings and other site improvements, it shall be considered a non-project rezone as provided in Section 41.160.D of this title, rather than a performance agreement rezone.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOW:

Review process.

All proposals for a PD planned development overlay zone shall be reviewed using the review process as described in the City's Local Project Review Procedures Ordinance. If the proposed planned development overlay zone involves a specific site development plan indicating actual locations of buildings and other site improvements, it shall be treated as a performance agreement rezone in accordance with Section 41.160.D of this title. If the planned development overlay zone does not involve a specific site development plan indicating actual locations of buildings and other site improvements, it shall be considered a non-project rezone as provided in Section 41.160.D of this title, rather than a performance agreement rezone.

SECTION 17: That Ordinance No. 1671-89 (EMC 19.29.110 D) which reads in part as follows:

D. If the final plan is in substantial compliance with the approved preliminary plan, it shall be approved by the planning director using Review Process II.B.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

D. If the final plan is in substantial compliance with the approved preliminary plan, it shall be approved by the planning director using the review process as described in the City's Local Project Review Procedures Ordinance .

SECTION 18: That Ordinance No. 1671-89 as amended by Section 16 of Ordinance No. 1729-90 and Section 18 of Ordinance 1849-92 (EMC 19.30.060 B(1)) which reads in part as follows:

1. Shoreline Permit Required. All permitted and conditional uses within the floodway and flood fringe district which also meet the requirements for a shoreline

permit shall obtain said permit, using Review Process IIA, IIIB or VB as determined by subsection 2.23.120(1) and Sections 20.12.110 and 20.12.120, prior to obtaining construction permits. Compliance with floodplain requirements shall be addressed within the scope of the shoreline permit process. The shoreline permit shall be obtained prior to application for building permits.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

1. Shoreline Permit Required. All permitted and conditional uses within the floodway and flood fringe district which also meet the requirements for a shoreline permit shall obtain said permit, using the review processes as described in the City's Local Project Review Procedures Ordinance, prior to obtaining construction permits. Compliance with floodplain requirements shall be addressed within the scope of the shoreline permit process. The shoreline permit shall be obtained prior to application for building permits.

SECTION 19: That Ordinance No. 1671-89 as amended by Section 16 of Ordinance No. 1729-90 and Section 18 of Ordinance No. 1849-92 (EMC 19.30.060 B(2)) which reads in part as follows:

2. Construction or substantial improvement of any building or structure and substantial improvement or reconstruction after damage of nonconforming buildings in the floodway and flood fringe not under the jurisdiction of the shoreline permit process shall be required to obtain a flood plain development permit. Permitted and conditional uses shall be reviewed using Review Process II.A and when in compliance with this section, shall be issued a flood plain development permit prior to application for building or public works permits.
Normal maintenance and repair shall be exempt from obtaining a flood plain development permit.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

2. Construction or substantial improvement of any building or structure and substantial improvement or reconstruction after damage of nonconforming buildings in the floodway and flood fringe not under the jurisdiction of the shoreline permit process shall be required to obtain a flood plain development permit. Permitted and conditional uses shall be reviewed using review process as described in the City's Local Project Review Procedures Ordinance and when in compliance with this section, shall be issued a flood plain development permit prior to application for building or public works permits.
Normal maintenance and repair shall be exempt from obtaining a flood plain development permit.

SECTION 20: That Ordinance No. 1671-89 (EMC 19.30.080 A) which reads as follows:

The board of adjustment as established by the city shall hear and decide requests for variances from the requirements of this title. See Sections 41.130 and 42.120.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

The board of adjustment as established by the city shall hear and decide requests for variances from the requirements of this title. See Section 41.130 and the City's Local Project Review Procedures Ordinance .

SECTION 21: That Ordinance No. 1671-89 as amended by Section 1 of Ordinance No. 2206-97 (EMC 19.30A.020) which reads as follows:

Permitted uses.
The following land uses and uses customarily incidental thereto are permitted within WRM zone, subject to the review processes listed herein:
1. Public water supply management and conservation, including storage, treatment, pumping, and residual solids management;
2. Hydro-electric power generation;
3. Forestry management;
4. Biosolids application;
5. Public recreation, where allowed;
6. Wildlife habitat management;
7. Uses incidental to the above listed uses.
a. Review Process I. Land uses consistent with the applicable management plan adopted by the city which are below the city's SEPA thresholds for categorical exemptions or which are exempt from SEPA.
b. Review Process II. Land uses consistent with the applicable management plan adopted by the city which exceed the city's SEPA (State Environmental Policy Act) ordinance thresholds for categorical exemptions.
c. Review Process III. Land uses consistent with the applicable management plan adopted by the city which are located in areas subject to the shoreline substantial development permit requirements of the city's shoreline master program.

BE AND THE SAME ARE HEREBY AMENDED TO READ AS FOLLOWS:

Permitted uses.
The following land uses and uses customarily incidental thereto are permitted within WRM zone, subject to the review processes listed herein:
1. Public water supply management and conservation, including storage, treatment, pumping, and residual solids management;
2. Hydro-electric power generation;
3. Forestry management;
4. Biosolids application;
5. Public recreation, where allowed;
6. Wildlife habitat management;
7. Uses incidental to the above listed uses.

a. Review Process . The appropriate review processes are described in the City's Local Project Review Procedures Ordinance.

SECTION 22: That Ordinance No. 1671-89 (EMC 19.31.020) which reads in part as follows:

Who may apply for rezone. Either a property owner, or an agent acting on behalf of a property owner may apply to form or to have property included within a design overlay zone. The city may also initiate proceedings to form or include property in the design overlay zone. In either case, the proposal shall be reviewed as an area-wide rezone and shall be reviewed using Review Process V.B, described in Chapter 42 of this title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Who may apply for rezone. Either a property owner, or an agent acting on behalf of a property owner may apply to form or to have property included within a design overlay zone. The city may also initiate proceedings to form or include property in the design overlay zone. In either case, the proposal shall be reviewed as an area-wide rezone and shall be reviewed using procedures for certain legislative land use actions, described in the City's Local Project Review Procedures Ordinance.

SECTION 23: That Ordinance No. 1671-89 (EMC 19.31.060) which reads in part as follows:

Design review process. All development of property and construction of buildings on property located within the design overlay zone shall be reviewed as Process IIB, described in Chapter 42 of this title. All appeals of decisions made pursuant to this section using Process IIB shall be reviewed by the city council. The applicant shall provide all information indicated on the application forms available from the planning department and other specific information or materials requested by the planning department necessary to evaluate the proposed development for consistency with the adopting ordinance codified in this title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Design review process. All development of property and construction of buildings on property located within the design overlay zone shall be reviewed in accordance with the review process , as defined in the City's Local Project Review Procedures Ordinance. All appeals of decisions made pursuant to this section shall be in accordance with the procedures set forth in the City Local Project Review Procedures Ordinance. The applicant shall provide all information indicated on the application forms available from the planning department and other specific information or materials requested by the planning department necessary to evaluate the proposed development for consistency with the adopting ordinance codified in this title.

SECTION 24: That Ordinance No. 1671-89 (EMC 19.31.070) which reads in part as follows:

Modification of design criteria. An applicant may request a modification of the design criteria contained within the adopting ordinance. The modification request shall be reviewed by the planning commission using Review Process V.B, described in Chapter 42 of this title. Following planning commission consideration of the modification, the recommendation of the planning commission shall be reviewed by the city council. In order to approve a request for modification, it must be found that the requested modification does not alter the character desired for the area and is consistent with the intent of the city council in adopting the design overlay zone classification.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Modification of design criteria. An applicant may request a modification of the design criteria contained within the adopting ordinance. The modification request shall be reviewed in accordance with the review process as defined in the City's Local Project Review Procedures Ordinance. Following planning commission consideration of the modification, the recommendation of the planning commission shall be reviewed by the city council. In order to approve a request for modification, it must be found that the requested modification does not alter the character desired for the area and is consistent with the intent of the city council in adopting the design overlay zone classification.

SECTION 25: That Ordinance No. 1671-89 (EMC 19.32.020) which reads in part as follows:

Review authority—Review process for planned residential developments. A proposed PRD will be reviewed by either the hearing examiner using Review Process III.B, or by the planning commission using Review Process V.B, based upon the following criteria:
1. Review Process V.B — PRD proposals containing more than fifty dwelling units, unless proposed to be developed in conjunction with a plat.
2. Review Process III.B — All PRD proposals not specified in subsection 1 of this section.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Review authority—Review process for planned residential developments. A proposed PRD will be reviewed in accordance with the review processes as described in the City's Local Project Review Procedures Ordinance.

SECTION 26: That Ordinance No. 1671-89 (EMC 19.32.180) which reads in part as follows:

Final development plan—Contents—Final approval procedure. The final development plan shall consist of elements presented for preliminary approval and the requirement of

the subdivision code, when applicable. The procedure involved in final approval shall consist of the following:

A. The final development plan shall be submitted to the planning department.

B. The planning staff shall review the final development plan to see that it is in substantial compliance with the previously approved preliminary development plan.

C. All schematic drawings presented in the preliminary development stage shall be presented in detailed form, i.e., landscaping, circulation, utilities, building location, etc.

D. If the final plan is in substantial compliance with the approved preliminary plan, it shall be approved by the planning director using Review Process II.B.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Final development plan—Contents—Final approval procedure. The final development plan shall consist of elements presented for preliminary approval and the requirement of the subdivision code, when applicable. The procedure involved in final approval shall consist of the following:

A. The final development plan shall be submitted to the planning department.

B. The planning staff shall review the final development plan to see that it is in substantial compliance with the previously approved preliminary development plan.

C. All schematic drawings presented in the preliminary development stage shall be presented in detailed form, i.e., landscaping, circulation, utilities, building location, etc.

D. If the final plan is in substantial compliance with the approved preliminary plan, it shall be approved using the review process described in the City's Local Project Review Procedures Ordinance.

SECTION 27: That Ordinance No. 1671-89 (EMC 19.33.020) which reads as follows:

Designation - Required review.

The city will review and decide upon each proposal to designate an area as an historic overlay zone on the zoning map using the following procedure:

A. Review by the historical commission, who shall make a recommendation to the planning commission, based upon the designation criteria listed in Section 33.040 of this chapter.

B. Review by the planning commission using process VB, for nonproject site-specific rezones, described in Chapters 41 and 42 of this title.

C. Review and final decision by the city council, following the process for nonproject site-specific rezones, described in Chapters 41 and 42 of this title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Designation - Required review.

The city will review and decide upon each proposal to designate an area as an historic overlay zone on the zoning map using the following procedure:

Review by the historical commission, who shall make a recommendation to the planning commission, based upon the designation criteria listed in Section 33.040 of this chapter. Planning Commission's recommendation will be forwarded to City Council for Council's

consideration in accordance with the review process as described in the City's Local Projects Review Procedures Ordinance.

SECTION 28: That Ordinance No. 1671-89 (EMC 19.33.070) which reads in part as follows:

Review of request to alter.
The city will review, and decide upon any proposal to alter a designated significant feature of an historic overlay zone using the process outlined below:
A. All proposals to develop property within or to alter a designated significant feature of an historic overlay zone shall be reviewed by the historical commission. The historical commission shall approve, disapprove or modify a request at its next regularly scheduled meeting or no later than forty-five days from the date of application for development or alternation. In modifying or disapproving a request, the historical commission shall make finds stating why the request was modified or disapproved.
B. Any decision made by the historical commission relating to a request to develop property within or to alter a designated significant feature of an historic overlay zone may be appealed to the city council. Appeals shall be filed in writing with the planning department and shall be accompanied by the current filing fees established by ordinance. Appeals shall be filed within ten working days of the date the historical commission issued its decision.
BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Review of request to alter.
The city will review, and decide upon any proposal to alter a designated significant feature of an historic overlay zone using the process outlined below:
A. All proposals to develop property within or to alter a designated significant feature of an historic overlay zone shall be reviewed by the historical commission. The historical commission shall make a recommendation approving, disapproving or modifying a request to develop within or alter a designated significant feature.. In modifying or disapproving a request, the historical commission shall make findings stating why the request was modified or disapproved.
B. Any decision made by the historical commission relating to a request to develop property within or to alter a designated significant feature of an historic overlay zone shall constitute a recommendation to the Planning Director. The Planning Director's decision is subject to the review process described in the City's Local Project Procedures Review Ordinance.

SECTION 29: That Ordinance No. 1671-89 (EMC 19.33.100 B) which reads in part as follows:

B. Review Procedure. Modifications may be proposed in conjunction with or subsequent to a proposal to designate the subject property as an historic overlay zone as provided in Sections 33.020 through 33.050 of this chapter. The historical commission shall review all requests for modification of code provisions for properties within the H overlay zone and shall make a recommendation to the planning commission, who shall make a

recommendation to the city council. The city council shall make the final decision whether or not to modify any of the provisions of this title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

B. Review Procedure. Modifications may be proposed in conjunction with or subsequent to a proposal to designate the subject property as an historic overlay zone as provided in Sections 33.020 through 33.050 of this chapter. The historical commission shall review all requests for modification of code provisions for properties within the H overlay zone and shall make a recommendation to the city council. The city council shall make the final decision whether or not to modify any of the provisions of this title. This shall be done in accordance with the review procedures set forth in the City's Local Projects Review Procedures Ordinance.

SECTION 30: That Section 2 of Ordinance No. 2170-96 (EMC 19.33A.030) which reads as follows:

Permitted uses.

Permitted public park development uses include any park and recreational activity, including active and passive outdoor recreational activities, trails, open space, cultural activities, park buildings and structures, concessionaires, general park operations and maintenance activities, ranger's or caretaker's quarters, other compatible public uses and structures, and uses customarily incidental thereto, and are permitted in accordance with the following review processes:

A. Review Process I. Public park development land uses approved by the park commission consistent with an adopted park master plan which are below the city's SEPA thresholds for categorical exemptions or which are exempt from SEPA.

B. Review Process II.

1. Public park development uses which are not part of or in conformance with an adopted park master plan, as determined by the parks commission.

2. Public park development land uses which exceed the city's SEPA (State Environmental Policy Act) ordinance thresholds for categorical exemptions.

C. Review Process III. Public park development land uses which are located in areas subject to the shoreline substantial development permit requirements of the city's shoreline master program.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Permitted uses.

Permitted public park development uses include any park and recreational activity, including active and passive outdoor recreational activities, trails, open space, cultural activities, park buildings and structures, concessionaires, general park operations and maintenance activities, ranger's or caretaker's quarters, other compatible public uses and structures, and uses customarily incidental thereto, and are permitted in accordance with the provisions of the City's Local Project Review Procedures Ordinance.

SECTIOIN 31: That Ordinance No. 1671-89 as amended by Section 67 of Ordinance No. 1849-92 (EMC 19.33B.030) which reads in part as follows:

Review process. The institutional zone shall be established only in conjunction with a master plan which generally specifies the parameters for development of the property. The institutional zone and master plan shall be reviewed by the planning commission using Review Process V, described in Chapter 42 of this title. Either the sponsoring institution or the city may initiate the establishment of an institutional overlay zone.

BE AN THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Review process. The institutional zone shall be established only in conjunction with a master plan which generally specifies the parameters for development of the property. The institutional zone and master plan shall be reviewed using the review process described in the City's Local Project Review Procedures Ordinance. Either the sponsoring institution or the city may initiate the establishment of an institutional overlay zone.

SECTION 32: That Ordinance No. 1671-89 as amended by Section 67 of Ordinance No. 1849-92 (EMC 19.33B.060) which reads in part as follows:

Effect of approval. The approval by the city council of a master plan for an institutional zone shall have the effect of a general guide for future development within the institutional zone. The approved master plan shall remain binding upon the sponsoring institution and the city. The review of an individual phase or of the entire development shall be the responsibility of the planning director, using Review Process II.B, for all development which is consistent with the general parameters established by the city council. Minor revisions to the master plan may be approved by the planning director using Review Process II.B, provided that such revisions are consistent with the standards and uses approved by the city council, and do not change the uses or character, or allow an increase in the intensity of development authorized by city council. Any proposed changes which are not consistent with the city council approval shall be reviewed by the planning commission and city council.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Effect of approval. The approval by the city council of a master plan for an institutional zone shall have the effect of a general guide for future development within the institutional zone. The approved master plan shall remain binding upon the sponsoring institution and the city. The review of an individual phase or of the entire development as well as the review of any revision or change shall be in accordance with the review processes described in the City's Local Project Review Procedures Ordinance.

SECTION 33: That Ordinance No. 1671-89 as amended by Section 17 of Ordinance No. 1729-90, Sections 21 and 22 of Ordinance No. 1849-92 and Sections 51-55 of Ordinance No. 2397-99 (EMC 19.34.060 F) which reads as follows:

Quantity and location of parking for uses subject to Review Process III shall be established during the review process, unless already specified in this title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Quantity and location of parking for uses subject to a hearing examiner review processes set forth in the City's Local Project Review Procedures Ordinance shall be established during the review process, unless already specified in this title.

SECTION 34: That Ordinance No. 1671-89 as amended by Section 4 of Ordinance 1793-91 and Section 56 of Ordinance No. 2397-99 (EMC 19.34.070 A) which reads in part as follows:

A. An applicant may request a modification of the parking requirements of this title. The review authority and review process shall be based upon the following criteria:
1. Uses which are reviewed using Review Process III shall have requests for a modification of parking requirements considered during the review process for that use.
2. Variances requesting a reduction of parking requirements by more than ten percent, which are not being considered concurrently with a use which required Review Process III shall be considered using Review Process IV.
3. Requests for a modification of parking requirements of not more than ten percent may be reviewed by the planning director using Review Process II, subject to the following requirements:
a. The planning director may approve a request for such a modification only if such a request is supported by the city traffic engineer, based upon information or documentation contained in a parking analysis, as may be required by the traffic engineer.
b. The planning director may not approve a modification of parking standards for residential uses.
c. The decision of the planning director on a request to modify parking requirements shall be subject to appeal to the hearing examiner, as provided in Section 41.180.
d. In approving a request for a modification to reduce parking standards by not more than ten percent, the planning director shall not be required to make the findings required for variances, described in Chapter 41, but shall issue written findings which are substantiated by the information required by subsection B of this section.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. An applicant may request a modification of the parking requirements of this title. The review authority and review process shall be based upon the following criteria:
1. Uses which are reviewed using a hearing examiner review process as set forth in the City's Local Project Review Procedures Ordinance shall have requests for a modification of parking requirements considered during the review process for that use.
2. Variances requesting a reduction of parking requirements shall be considered using the review processes described in the City's Local Project Review Procedures Ordinance.

SECTION 35: That Ordinance No. 1671-89 as amended by Section 4 of Ordinance 1793-91 and Section 56 of Ordinance No. 2397-99 (EMC 19.34.070 D) which reads in part as follows:

D. Transportation Management Plan for Large Employers. The planning director is authorized, using Review Process II.B, to either require or allow a reduction in the number of off-street parking spaces required by this title for businesses or employment areas that employ more than one hundred persons, based upon a transportation management plan which is addressed in the SEPA environmental review process and approved by the city. The transportation management plan shall include specific traffic reduction measures and incentives such as preferential parking for high occupancy vehicles, increased public transit usage, ride-share/ride-match programs, shift schedules and other traffic/parking reduction measures which will assure that the lower number of off-street parking spaces is sufficient to accommodate the actual parking demand. As part of the approval of any parking reduction, the city may establish penalty provisions for businesses that fail to reduce the parking demand to the extent required by the city.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

D. Transportation Management Plan for Large Employers. The planning director is authorized, using the review process described in the City's Local Project Review Procedures Ordinance, to either require or allow a reduction in the number of off-street parking spaces required by this title for businesses or employment areas that employ more than one hundred persons, based upon a transportation management plan which is addressed in the SEPA environmental review process and approved by the city. The transportation management plan shall include specific traffic reduction measures and incentives such as preferential parking for high occupancy vehicles, increased public transit usage, ride-share/ride-match programs, shift schedules and other traffic/parking reduction measures which will assure that the lower number of off-street parking spaces is sufficient to accommodate the actual parking demand. As part of the approval of any parking reduction, the city may establish penalty provisions for businesses that fail to reduce the parking demand to the extent required by the city.

SECTION 36: That Ordinance No. 1671-89 as amended by Section 59 of Ordinance No. 2397-99 (EMC 19.34.090 B and C) which reads in part as follows:

B. Every hotel, office building, restaurant, assembly structure or similar use shall provide truck loading and unloading berths according to the following standards, except in the B-3 zone or when such use is being reviewed using Review Process III.B or V.B:

Aggregate Gross Floor Area	Number of Berths
20,000 to 50,000 sq. ft.	1
50,000 to 100,000 sq. ft.	2
Above 100,000 sq. ft.	1 for each additional 50,000 sq. ft.

C. For uses with a smaller floor area than the minimum listed in subsections A or B of this section, for uses in the B-3 zone or for uses being reviewed using Review Process III, the traffic engineer shall be authorized to require loading space as necessary to provide for the safe and efficient delivery of merchandise or materials to the specific uses within the building to assure that required off-street parking areas and public right-of-way are protected from unsafe conditions resulting from truck loading and unloading.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

B. Every hotel, office building, restaurant, assembly structure or similar use shall provide truck loading and unloading berths according to the following standards, except in the B-3 zone or when such use is being reviewed using a review process which involves either the hearing examiner or City Council as set forth in the City's Local Project Review Procedures Ordinance:

Aggregate Gross Floor Area	Number of Berths
20,000 to 50,000 sq. ft.	1
50,000 to 100,000 sq. ft.	2
Above 100,000 sq. ft.	1 for each additional 50,000 sq. ft.

C. For uses with a smaller floor area than the minimum listed in subsections A or B of this section, for uses in the B-3 zone or for uses being reviewed using the hearing examiner review process as set forth in the City's Local Project Review Procedures Ordinance, the traffic engineer shall be authorized to require loading space as necessary to provide for the safe and efficient delivery of merchandise or materials to the specific uses within the building to assure that required off-street parking areas and public right-of-way are protected from unsafe conditions resulting from truck loading and unloading.

SECTION 37: That Ordinance No. 1671-89 as amended by Section 31 of Ordinance No. 1849-92 (EMC 19.35, Footnotes for Table 35-1) which reads in part as follows:

(1) All public right-of-way behind the sidewalk shall also be landscaped to Type III standards.
(2) Interior lot lines which do not abut an alley.
(3) See Section 35.080 for landscaping requirements for off-street parking and outdoor display areas.
(4) A-1, R-S, R-S-1, R-1, R-2, R-I (A), R-2 (A) zones.
(5) A-1, R-S, R-S-1, R-1, R-2, R-I (A), R-2 (A), R-3 (L), R-3, R-4, R-5 zones.
(6) B-1, B-2, B-2 (B), B-3, C-1, C-IR, WC zones.
(7) C-2, M-1, M-2, M-M, M-S zones.
(8) See Section 27.020 for additional requirements in M-1 zone.
(9) See subsection 35.060.13 for application of Category IV landscaping.
(10) The minimum landscape width for off-street parking areas abutting street right-of-way shall be fifteen feet.
(11) If lot being developed has an area of five acres or greater, width shall be twenty feet.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

(1) All public right-of-way behind the sidewalk shall also be landscaped to Type III standards.
(2) Interior lot lines which do not abut an alley.
(3) See Section 35.080 for landscaping requirements for off-street parking and outdoor display areas.
(4) A-1, R-S, R-1, R-2, R-I (A), R-2 (A) zones.
(5) A-1, R-S, R-1, R-2, R-I (A), R-2 (A), R-3 (L), R-3, R-4, R-5 zones.
(6) B-1, B-2, B-2 (B), B-3, C-1, C-IR, WC zones.
(7) C-2, M-1, M-2, M-M, M-S zones.
(8) See Section 27.020 for additional requirements in M-1 zone.
(9) See subsection 35.060.13 for application of Category IV landscaping.
(10) The minimum landscape width for off-street parking areas abutting street right-of-way shall be fifteen feet.
(11) If lot being developed has an area of five acres or greater, width shall be twenty feet.

SECTION 38: That Ordinance No. 1671-89 as amended by Section 18 of Ordinance No. 1729-90, Section 5 of Ordinance No. 1793-91 and Sections 24 and 25 of Ordinance No. 1849-92 (EMC 19.35.030 C) which reads as follows:

C. Change of Use or Occupancy. When the use of a building or lot changes to another use which does not involve expansion or remodeling as provided in Section 35.030B, such use need not provide additional landscaping except under the following circumstances:
1. Additional off-street parking is required, in which case the landscaping required by Section 35.080 shall be required for all new parking spaces or parking facilities provided.
2. The use is subject to Review Process II, III, IV or V, in which case the review authority shall establish the minimum landscape requirements for the specific use.
3. New uses, storage or other activities which take place outdoors are to occur, in which case the requirements of Section 41.100 shall apply.
4. The previous use did not comply with the requirements of the landscaping regulations in effect at the time it was established, in which case the new use shall comply with such requirements in effect at the time of establishment of the previous use.
If the location of existing buildings prevents conformance with the requirements of this chapter, the planning director shall determine how the code is to be applied.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

C. Change of Use or Occupancy. When the use of a building or lot changes to another use which does not involve expansion or remodeling as provided in Section 35.030B, such use need not provide additional landscaping except under the following circumstances:
1. Additional off-street parking is required, in which case the landscaping required by Section 35.080 shall be required for all new parking spaces or parking facilities provided.

2. The use is subject to a review process in which the review authority has discretionary authority as set forth in the City's Local Projects Review Procedures Ordinance, in which case the review authority shall establish the minimum landscape requirements for the specific use.
3. New uses, storage or other activities which take place outdoors are to occur, in which case the requirements of Section 41.100 shall apply.
4. The previous use did not comply with the requirements of the landscaping regulations in effect at the time it was established, in which case the new use shall comply with such requirements in effect at the time of establishment of the previous use.
If the location of existing buildings prevents conformance with the requirements of this chapter, the planning director shall determine how the code is to be applied.

SECTION 39: That Ordinance No. 1671-89 as amended by Section 31 of Ordinance No. 1849-92 (EMC 19.35.060A) which reads as follows:

Perimeter Landscaping. Table 35-1 of this section establishes the type and width of landscaping required along property lines for the landscape category required for a specific use in each individual zone. This chart establishes the minimum requirements for each landscape category. However, additional standards may be required in individual zones or for uses being reviewed under Processes III, IV and V, when necessary to enhance compatibility between zones and uses. Where a minimum width of landscaping is specified, the actual width of the planting area shall be measured. Curbs, paving or other protective or boundary marking devices shall not be included in the measurement of landscape width.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Perimeter Landscaping. Table 35-1 of this section establishes the type and width of landscaping required along property lines for the landscape category required for a specific use in each individual zone. This chart establishes the minimum requirements for each landscape category. However, additional standards may be required in individual zones or for uses being reviewed under review processes involving the hearing examiner, Board of Adjustment, Planning commission or City Council as set forth in the City's Local Project Review Procedures Ordinance, when necessary to enhance compatibility between zones and uses. Where a minimum width of landscaping is specified, the actual width of the planting area shall be measured. Curbs, paving or other protective or boundary marking devices shall not be included in the measurement of landscape width.

SECTION 40: That Ordinance No. 1671-89 as amended by Section 28 of Ordinance No. 1849-92 (EMC 19.35.070) which reads in part as follows:

A. The planning director may, using Review Process II.B, authorize a reduced width of planting or waive some or all of the landscaping requirements in the following instances:
1. Where, with the exception of the M-1 zone, the requirement of this chapter would require more than fifteen percent of the site area (excluding parking lots) to be

landscaped, the planning director may modify the requirements so that not more than fifteen percent of the site area (excluding parking lots) must be landscaped. The planning director may require more intensive landscaping if the reduction in the required planting area would reduce the effectiveness of the landscaping to a point where the intent of the landscape type cannot be satisfied.

2. When the inclusion of existing vegetation on the site would result in landscaping equivalent to or better than the requirements of this chapter in achieving the intent of the required landscape type.

3. When existing conditions on or adjacent to the site, including, but not limited to, differences in elevation, existing vegetation, location of buildings or utilities would render the requirements of this section ineffective.

4. When Type I visual screening is required, an applicant may request to use plantings that can be expected to form a healthy sight-obscuring evergreen hedge within three years in lieu of two rows of trees. In reviewing such a request for modification, the planning director shall consider the applicant's request in light of the intent of Type I landscaping and the nature of the use or development which is being screened.

5. When the applicant proposes an alternative method of landscaping that would achieve the intent and purpose of the landscaping required in this title and which the director determines to provide superior quality through the use of native vegetation existing on site, preservation of groves of trees, preservation of wetlands and/or wildlife habitat, increasing perimeter landscape width in strategic locations, providing unique focal points of interest, or through other means.

6. When development will occur in phases and development of subsequent phases will result in removal of landscaping required by this title.

7. When the subject property abuts railroad right-of-way developed with rail facilities, the planning director may modify the landscaping requirements for that portion of the property abutting the railroad right-of-way, if such modification will not reduce the compatibility between the subject property and other properties in the vicinity.

B. In approving a request for a modification of landscaping requirements, the planning director shall issue finding upon which the approval is based. The director may attach conditions to any such approval of a request for modification of landscaping requirements if necessary to assure that the intent of the landscape type and any modification thereof is maintained. Any appeal of the planning director's decision approving or disapproving a
[See Printed volume for Table 35-1]
request to modify landscaping requirements is subject to the appeals provisions contained in Chapter 41.

7. When the subject property abuts railroad right-of-way developed with rail facilities, the planning director may modify the landscaping requirements for that portion of the property abutting the railroad right-of-way, if such modification will not reduce the compatibility between the subject property and other properties in the vicinity.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. The planning director may, using the review process described in the City's Local Project Review Procedures Ordinance, authorize a reduced width of planting or waive some or all of the landscaping requirements in the following instances:

1. Where, with the exception of the M-1 zone, the requirement of this chapter would require more than fifteen percent of the site area (excluding parking lots) to be landscaped, the planning director may modify the requirements so that not more than fifteen percent of the site area (excluding parking lots) must be landscaped. The planning director may require more intensive landscaping if the reduction in the required planting area would reduce the effectiveness of the landscaping to a point where the intent of the landscape type cannot be satisfied.

2. When the inclusion of existing vegetation on the site would result in landscaping equivalent to or better than the requirements of this chapter in achieving the intent of the required landscape type.

3. When existing conditions on or adjacent to the site, including, but not limited to, differences in elevation, existing vegetation, location of buildings or utilities would render the requirements of this section ineffective.

4. When Type I visual screening is required, an applicant may request to use plantings that can be expected to form a healthy sight-obscuring evergreen hedge within three years in lieu of two rows of trees. In reviewing such a request for modification, the planning director shall consider the applicant's request in light of the intent of Type I landscaping and the nature of the use or development which is being screened.

5. When the applicant proposes an alternative method of landscaping that would achieve the intent and purpose of the landscaping required in this title and which the director determines to provide superior quality through the use of native vegetation existing on site, preservation of groves of trees, preservation of wetlands and/or wildlife habitat, increasing perimeter landscape width in strategic locations, providing unique focal points of interest, or through other means.

6. When development will occur in phases and development of subsequent phases will result in removal of landscaping required by this title.

7. When the subject property abuts railroad right-of-way developed with rail facilities, the planning director may modify the landscaping requirements for that portion of the property abutting the railroad right-of-way, if such modification will not reduce the compatibility between the subject property and other properties in the vicinity.

B. In approving a request for a modification of landscaping requirements, the planning director shall issue finding upon which the approval is based. The director may attach conditions to any such approval of a request for modification of landscaping requirements if necessary to assure that the intent of the landscape type and any modification thereof is maintained. Any appeal of the planning director's decision approving or disapproving a

[See Printed volume for Table 35-1]

request to modify landscaping requirements is subject to the appeals provisions contained in the City's Local Project Review Procedures Ordinance.

7. When the subject property abuts railroad right-of-way developed with rail facilities, the planning director may modify the landscaping requirements for that portion of the property abutting the railroad right-of-way, if such modification will not reduce the compatibility between the subject property and other properties in the vicinity.

SECTION 41: That Ordinance No. 1671-89 as amended by Sections 20 & 21 of Ordinance No. 1729-90 and Sections 30, 33, & 34 of Ordinance No. 1849-92 (EMC 19.35.080 G) which reads in part as follows:

G. Where off-street parking facilities for multiple-family uses are located adjacent to single-family zones (R-S, R-S-1, R-1 R-2, R-1(A), R-2(A) and A-1), they shall be separated therefrom by a fifteen-foot-wide strip landscaped to Type II standards. The landscape strip may be reduced to ten feet if a six-foot-high solid screening fence constructed of wood, masonry or combination of wood and masonry are erected on the property line between the multiple-family use and the single-family zone and Type I landscaping is provided. Separation between parking areas for multiple-family uses and adjoining multiple-family zoned properties shall be as provided in Section 15.100 of this title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

G. Where off-street parking facilities for multiple-family uses are located adjacent to single-family zones (R-S, R-1 R-2, R-1(A), R-2(A) and A-1), they shall be separated therefrom by a fifteen-foot-wide strip landscaped to Type II standards. The landscape strip may be reduced to ten feet if a six-foot-high solid screening fence constructed of wood, masonry or combination of wood and masonry are erected on the property line between the multiple-family use and the single-family zone and Type I landscaping is provided. Separation between parking areas for multiple-family uses and adjoining multiple-family zoned properties shall be as provided in Section 15.100 of this title.

SECTION 42: That Ordinance No. 1671-89 (EMC 19.36.200A(7)) which reads as follows:

Whenever a lot upon which is located a nonconforming sign is the subject of an application which requires Review Process III, IV or V, the review authority may require removal of any nonconforming sign as a condition of approval.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Whenever a lot upon which is located a nonconforming sign is the subject of an application which requires Review Process III, IV or V as set forth in the City's Local Project Review Procedures Ordinance, the review authority may require removal of any nonconforming sign as a condition of approval.

SECTION 43: That Ordinance No. 1671-89 as amended by Section 40 of Ordinance No. 1849-92 (EMC 19.36.210 A) which reads in part as follows:

A. Comprehensive design plan permits. Application may be made to the planning director for special consideration whereby deviations from the requirements and restrictions of this section may be permitted when an applicant is using a comprehensive

design plan to integrate signs into the framework of the building or buildings, landscaping, and other design features of the property, utilizing an overall design theme. This process may be used to allow flashing, rotating, revolving, swinging and projecting signs or other similar signs creating the illusion of movement; to allow off-premises directional signs; to allow roof signs; or to allow the height of freestanding signs to exceed the standards of this section. Comprehensive design may be used on an existing building where the facade is being altered, when there is new construction, or in freestanding signs. These permits are not to be confused with the procedures for obtaining variances for hardship or unusual circumstances. Rather, these permits are based upon the applicant satisfying the planning director that an exceptional effort has been made toward creating harmony between the sign, the building and the site where it is located through use of a consistent design theme which complements and enhances the surrounding environment. The comprehensive design plan shall be presented to the planning director with a narrative describing the proposed plan. The planning director, using Review Process II.B, shall assess the applicant's information using the following criteria:

1. Whether the proposal manifests exceptional visual harmony between the sign, buildings and other components of the subject property through the use of a consistent design theme;
2. Whether the sign or signs promote the planned land use in the area of the subject property and enhance the aesthetics of the surrounding area;
3. Whether the sign and its placement obstructs or interferes with any other signs or property in the area or obstructs natural scenic views; and
4. Whether the proposed plan is aesthetically superior to what could be installed under existing criteria in this section.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. Comprehensive design plan permits. Application may be made to the planning director for special consideration whereby deviations from the requirements and restrictions of this section may be permitted when an applicant is using a comprehensive design plan to integrate signs into the framework of the building or buildings, landscaping, and other design features of the property, utilizing an overall design theme. This process may be used to allow flashing, rotating, revolving, swinging and projecting signs or other similar signs creating the illusion of movement; to allow off-premises directional signs; to allow roof signs; or to allow the height of freestanding signs to exceed the standards of this section. Comprehensive design may be used on an existing building where the facade is being altered, when there is new construction, or in freestanding signs. These permits are not to be confused with the procedures for obtaining variances for hardship or unusual circumstances. Rather, these permits are based upon the applicant satisfying the planning director that an exceptional effort has been made toward creating harmony between the sign, the building and the site where it is located through use of a consistent design theme which complements and enhances the surrounding environment. The comprehensive design plan shall be presented to the planning director with a narrative describing the proposed plan. The planning director,

using the review process described in the City's Local Project Review Procedures Ordinance, shall assess the applicant's information using the following criteria:

1. Whether the proposal manifests exceptional visual harmony between the sign, buildings and other components of the subject property through the use of a consistent design theme;
2. Whether the sign or signs promote the planned land use in the area of the subject property and enhance the aesthetics of the surrounding area;
3. Whether the sign and its placement obstructs or interferes with any other signs or property in the area or obstructs natural scenic views; and
4. Whether the proposed plan is aesthetically superior to what could be installed under existing criteria in this section.

SECTION 44: That Section 5 of Ordinance No. 1838-91 (EMC 19.37.050 A(9)) which reads in part as follows:

9. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility related activities, public street and public park maintenance activities when undertaken pursuant to best management practices to avoid impacts to environmentally sensitive areas:

a. Normal and routine maintenance or repair of existing utility structures or right-of-way,

b. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using Review Process II.A,

c. Relocation of natural gas, cable communications, telephone facilities, lines, pipes, mains, equipment or appurtenances when required and/or approved by the planning director, using Review Process II.A,

d. Installation or construction in improved street rights-of-way and replacement, operation or alteration of all facilities listed in subdivisions b and c of this subsection,

e. Normal and routine maintenance of public streets, state highways, and public park facilities. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area nor does it include construction of a maintenance road or the dumping of maintenance debris;

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

9. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility related activities, public street and public park maintenance activities when undertaken pursuant to best management practices to avoid impacts to environmentally sensitive areas:

a. Normal and routine maintenance or repair of existing utility structures or right-of-way,

b. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using the review process described in the City's Local Project Review Procedures Ordinance,

c. Relocation of natural gas, cable communications, telephone facilities, lines, pipes, mains, equipment or appurtenances when required and/or approved by the planning director, using the review process described in the City's Local Project Review Procedures Ordinance,

d. Installation or construction in improved street rights-of-way and replacement, operation or alteration of all facilities listed in sections b and c of this subsection,

e. Normal and routine maintenance of public streets, state highways, and public park facilities. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area nor does it include construction of a maintenance road or the dumping of maintenance debris;

SECTION 45: That Ordinance No. 1671-89 as amended by Section 5 of Ordinance No. 1838-91 (EMC 19.37.050 D(3)) which reads in part as follows:

3. If a reasonable economic use of a lot cannot exist by means of either subsection D.1 or D.2 of this section, then the planning director is authorized, using Review Process II.C, to administratively grant a transfer of development rights in addition to subsections D.1 or D.2 of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

a. R-S, R-S-1, R-1 and R-2 Zones: The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-S-1, R-1 or R-2 zone provided that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

i. The number of dwelling units which the planning director determines to be the minimum necessary to allow for reasonable economic use of the restricted property, or

ii. Twenty percent more dwelling units than would be permitted on the receiving site without the transfer of development rights.

In approving a transfer of development rights to the receiving site in the R-S, R-S-1, R-1, or R-2 zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. All such lots shall have a minimum lot width of fifty feet. All dwelling units on such lots shall be single-family dwellings.

b. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

c. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

d. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

3. If a reasonable economic use of a lot cannot exist by means of either subsection D.1 or D.2 of this section, then the planning director is authorized, using the review process described in the City's Local Project Review Procedures Ordinance, to administratively grant a transfer of development rights in addition to subsections D.1 or D.2 of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

a. R-S, R-1 and R-2 Zones: The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-1 or R-2 zone provided that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

i. The number of dwelling units which the planning director determines to be the minimum necessary to allow for reasonable economic use of the restricted property, or

ii. Twenty percent more dwelling units than would be permitted on the receiving site without the transfer of development rights.

In approving a transfer of development rights to the receiving site in the R-S, R-1, or R-2 zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. All such lots shall have a minimum lot width of fifty feet. All dwelling units on such lots shall be single-family dwellings.

b. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

c. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

d. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

SECTION 46: That Ordinance No. 1671-89 as amended by Section 5 of Ordinance No. 1838-91 (EMC 19.37.050 E) which reads in part as follows:

E. Public Utility and Infrastructure Exception. If the application of this section would prohibit a development proposal by a public agency or public utility to construct utility lines for the conveyance of water, sewage, storm drainage, natural gas, or telecommunications; or the construction of collector or arterial streets and highways, the agency or utility may request an exception pursuant to this subsection. Such a request shall be reviewed by the hearing examiner using Review Process III.B. The hearing examiner may approve, or approve with modifications such a request only when the following findings are made:

1. There is no other practicable alternative to the proposed development with less impact on the environmentally sensitive area; and
2. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible; and
3. The proposal does not impact a significant fish or wildlife habitat area.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

E. Public Utility and Infrastructure Exception. If the application of this section would prohibit a development proposal by a public agency or public utility to construct utility lines for the conveyance of water, sewage, storm drainage, natural gas, or telecommunications; or the construction of collector or arterial streets and highways, the agency or utility may request an exception pursuant to this subsection. Such a request shall be reviewed by the hearing examiner using the review process described in the City's Local Project Review Procedures Ordinance. The hearing examiner may approve, or approve with modifications such a request only when the following findings are made:

1. There is no other practicable alternative to the proposed development with less impact on the environmentally sensitive area; and
2. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible; and
3. The proposal does not impact a significant fish or wildlife habitat area.

SECTION 47: That Section 8 of Ordinance No. 1838-91 (EMC 19.37.080 C) which reads in part as follows:

C. Permitted Alterations. Unless associated with another environmentally sensitive area, the planning director, using Review Process II.C, may allow alteration of an area identified as a geologically hazardous area or the standard buffers listed in subsection B of this section if he/she approves a geotechnical report which demonstrates that:

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, erosion or sedimentation to off-site properties or bodies of water;
2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;

3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;
4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;
5. The proposal is consistent with the purposes and provisions of this chapter;
6. The proposal mitigates all impacts identified in the geotechnical report; and
7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

C. Permitted Alterations. Unless associated with another environmentally sensitive area, the planning director, using the review process described in the City's Local Project Review Procedures Ordinance, may allow alteration of an area identified as a geologically hazardous area or the standard buffers listed in subsection B of this section if he/she approves a geotechnical report which demonstrates that:
1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, erosion or sedimentation to off-site properties or bodies of water;
2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;
3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;
4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;
5. The proposal is consistent with the purposes and provisions of this chapter;
6. The proposal mitigates all impacts identified in the geotechnical report; and
7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas.

SECTION 48: That Section 10 of Ordinance No. 1838-91 as amended by Section 1 of Ordinance No. 2332-98 (EMC 19.37.100 E) which reads in part as follows:

E. Standard Wetland Buffer Width Reduction. The planning director may, using Review Process II.C, reduce the standard wetland buffer width only when there has previously been substantial legal alteration of the wetland and/or buffer on the subject lot or adjoining lots. The planning director shall require buffer width averaging rather than allowing a buffer width reduction except when the proposal includes a wetland and buffer enhancement plan that improves the functional values of the buffer and the wetland. An enhanced buffer shall not result in more than a fifty percent reduction in the standard buffer width, and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

E. Standard Wetland Buffer Width Reduction. The planning director may, using the review process described in the City's Local Project Review Procedures Ordinance, reduce the standard wetland buffer width only when there has previously been substantial legal alteration of the wetland and/or buffer on the subject lot or adjoining lots. The planning director shall require buffer width averaging rather than allowing a buffer width reduction except when the proposal includes a wetland and buffer enhancement plan that improves the functional values of the buffer and the wetland. An enhanced buffer shall not result in more than a fifty percent reduction in the standard buffer width, and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.

SECTION 49: That Section 11 of Ordinance No. 1838-91 (EMC 19.37.110 B(1)) which reads in part as follows:

1. Category I Wetlands. All category I wetlands shall be preserved except as provided in this chapter. The planning director, using Review Process II.C, may allow alteration of category I wetlands:

a. Where alteration is allowed pursuant to Section 37.050 of this chapter:

b. The alteration is solely to provide access to deep water for a water-dependent use or to expand an existing water-dependent use in an area which is designated as an urban environment by the shoreline master program, and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

c. The alteration is to allow a public park or public recreational use, or to provide public access to the shoreline within an area designated as an urban or conservancy/recreation environment by the shoreline master program, provided that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated;

d. Enhancement of wetlands is permitted where the wetlands being enhanced are in a degraded condition and the enhancement proposed is likely to provide substantial rehabilitation and improved functional values.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

1. Category I Wetlands. All category I wetlands shall be preserved except as provided in this chapter. The planning director, using the review process as described in the City's Local Project Review Procedures Ordinance, may allow alteration of category I wetlands:

a. Where alteration is allowed pursuant to Section 37.050 of this chapter:

b. The alteration is solely to provide access to deep water for a water-dependent use or to expand an existing water-dependent use in an area which is designated as an urban environment by the shoreline master program, and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

c. The alteration is to allow a public park or public recreational use, or to provide public access to the shoreline within an area designated as an urban or conservancy/recreation environment by the shoreline master program, provided that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated;

d. Enhancement of wetlands is permitted where the wetlands being enhanced are in a degraded condition and the enhancement proposed is likely to provide substantial rehabilitation and improved functional values.

SECTION 50: That Section 11 of Ordinance No. 1838-91 (EMC 19.37.110 B(2)) which reads in part as follows:

2. Category II Wetlands. All category II wetlands shall be preserved except as provided in this chapter. The planning director, using Review Process II.C, may allow alteration of category II wetlands:

a. Where alteration is allowed pursuant to Section 37.050; or

b. The alteration is solely to provide access to deep water for a water-dependent use or to expand an existing water-dependent use in an area which is designated as an urban environment by the shoreline master program, and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

c. The alteration is to allow a public park or recreational use, or to provide public access to the shoreline within an area designated as an urban or conservancy/recreation environment by the shoreline master program, provided that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

d. In areas which are not subject to the shoreline master program, alteration of category II wetlands may only occur under the following circumstances:

i. Water-dependent activities may be approved where there are no practicable alternatives which would not involve a wetland or which would not have other significant adverse environmental impacts.

ii. Non-water-dependent activities may be allowed to alter category II wetlands only upon demonstration that (a) reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid or result in less adverse impact on a regulated wetland or its buffer, will not accomplish the basic purpose of the project; and (b) in cases where the applicant has rejected alternatives to the project as proposed, due to constraints such as zoning, deficiencies of infrastructure, or lot size, the applicant has made a reasonable attempt to remove or accommodate such constraints.

e. Enhancement of wetlands is permitted where the wetlands being enhanced are in a degraded condition and the enhancement proposed is likely to provide substantial rehabilitation and improved functional values.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

2. Category II Wetlands. All category II wetlands shall be preserved except as provided in this chapter. The planning director, using the review process described in the City's Local Project Review Procedures Ordinance , may allow alteration of category II wetlands:

a. Where alteration is allowed pursuant to Section 37.050; or

b. The alteration is solely to provide access to deep water for a water-dependent use or to expand an existing water-dependent use in an area which is designated as an urban environment by the shoreline master program, and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

c. The alteration is to allow a public park or recreational use, or to provide public access to the shoreline within an area designated as an urban or conservancy/recreation environment by the shoreline master program, provided that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

d. In areas which are not subject to the shoreline master program, alteration of category II wetlands may only occur under the following circumstances:

i. Water-dependent activities may be approved where there are no practicable alternatives which would not involve a wetland or which would not have other significant adverse environmental impacts.

ii. Non-water-dependent activities may be allowed to alter category II wetlands only upon demonstration that (a) reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid or result in less adverse impact on a regulated wetland or its buffer, will not accomplish the basic purpose of the project; and (b) in cases where the applicant has rejected alternatives to the project as proposed, due to constraints such as zoning, deficiencies of infrastructure, or lot size, the applicant has made a reasonable attempt to remove or accommodate such constraints.

e. Enhancement of wetlands is permitted where the wetlands being enhanced are in a degraded condition and the enhancement proposed is likely to provide substantial rehabilitation and improved functional values.

SECTION 51: That Section 11 of Ordinance No. 1838-91 (EMC 19.37.110 B(5)) which reads in part as follows:

5. Silver Lake Watershed. The city shall not allow the draining, filling, encroachment or degradation of wetlands within the Silver Lake Watershed, except for the following circumstances:

a. Hydrologically isolated category III or IV wetlands with a surface area of three thousand square feet or less, or hydrologically isolated category IV wetlands less than ten thousand square feet in area. Compensatory wetland mitigation shall still be required for alteration of such wetlands;

b. Where alteration is necessary to allow for reasonable use of property as provided in Section 37.050, or to allow access to a lot; or

c. When the applicant demonstrates to the satisfaction of the planning director and public works director that such activities will result in an enhancement of wetlands which improves the water quality functions of the wetland, or will improve the other functions of the wetland if water quality will not be degraded. Any such proposed activities shall be reviewed using Review Process II.C.

BE AN THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

5. Silver Lake Watershed. The city shall not allow the draining, filling, encroachment or degradation of wetlands within the Silver Lake Watershed, except for the following circumstances:

a. Hydrologically isolated category III or IV wetlands with a surface area of three thousand square feet or less, or hydrologically isolated category IV wetlands less than ten thousand square feet in area. Compensatory wetland mitigation shall still be required for alteration of such wetlands;

b. Where alteration is necessary to allow for reasonable use of property as provided in Section 37.050, or to allow access to a lot; or

c. When the applicant demonstrates to the satisfaction of the planning director and public works director that such activities will result in an enhancement of wetlands which improves the water quality functions of the wetland, or will improve the other functions of the wetland if water quality will not be degraded. Any such proposed activities shall be reviewed using the review process described in the City's Local Project Review Procedures Ordinance.

<u>SECTION 52:</u> That Section 11 of Ordinance No. 1838-91 (EMC 19.37.110 C(10)) which reads in part as follows:

10. The city may allow wetland mitigation banking in lieu of other forms of wetland impact mitigation when the mitigation site being used for the credit allowed pursuant to this section is either a wetland created from a site which was previously nonwetland or a wetland of lesser size or functional value than the wetland being altered. Under the wetland mitigation banking process, alteration of a wetland on the development site shall occur only when the created or enhanced wetland is successfully functioning in accordance with an approved wetland mitigation plan. The created or enhanced wetland shall have greater functional value than that being altered. In evaluating a wetland mitigation banking proposal, the planning director shall determine the amount of credit given for mitigation banking using the ratios described in subsection C5 of this section as a guide. The amount of credit will be dependent upon the functional value of the wetland being altered and the wetland being used for mitigation banking. The city, using Review Process II.C, may allow wetland mitigation banking under the following circumstances:

a. When alteration is allowed pursuant to the "reasonable use" exception as provided in subsection 37.050B;

b. When alteration is allowed for a water-dependent or water-related use;

c. When on-site or off-site mitigation is not practicable;

d. When the wetland being altered is of a lower quality and has lesser functional values than the wetland which is being used for the mitigation banking.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

10. The city may allow wetland mitigation banking in lieu of other forms of wetland impact mitigation when the mitigation site being used for the credit allowed pursuant to this section is either a wetland created from a site which was previously nonwetland or a wetland of lesser size or functional value than the wetland being altered. Under the wetland mitigation banking process, alteration of a wetland on the development site shall occur only when the created or enhanced wetland is successfully functioning in accordance with an approved wetland mitigation plan. The created or enhanced wetland shall have greater functional value than that being altered. In evaluating a wetland mitigation banking proposal, the planning director shall determine the amount of credit given for mitigation banking using the ratios described in subsection C5 of this section as a guide. The amount of credit will be dependent upon the functional value of the wetland being altered and the wetland being used for mitigation banking. The city, using the review process described in the City's Local Project Review Procedures Ordinance, may allow wetland mitigation banking under the following circumstances:

a. When alteration is allowed pursuant to the "reasonable use" exception as provided in subsection 37.050B;

b. When alteration is allowed for a water-dependent or water-related use;

c. When on-site or off-site mitigation is not practicable;

d. When the wetland being altered is of a lower quality and has lesser functional values than the wetland which is being used for the mitigation banking.

SECTION 53: That Ordinance No. 1671-89 as amended by Section 14 of Ordinance No. 1838-91 as amended by Section 2 of Ordinance 2332-98 (EMC 19.37.140 D) which reads in part as follows:

D. Standard Stream Buffer Width Reduction. The planning director may, using Review Process II.C, reduce the standard stream buffer width only when there has previously been substantial legal alteration of the stream and/or buffer on the subject lot or adjoining lots. The planning director shall require buffer width averaging rather than allowing a buffer width reduction except when the proposal includes a stream and buffer enhancement plan that improves the functional values of the buffer and the stream. An enhanced buffer shall not result in more than a fifty percent reduction in buffer width, and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

D. Standard Stream Buffer Width Reduction. The planning director may, using the review process as described in the City's Local Project Review Procedures Ordinance, reduce the standard stream buffer width only when there has previously been substantial legal alteration of the stream and/or buffer on the subject lot or adjoining lots. The planning director shall require buffer width averaging rather than allowing a buffer width reduction except when the proposal includes a stream and buffer enhancement plan that

improves the functional values of the buffer and the stream. An enhanced buffer shall not result in more than a fifty percent reduction in buffer width, and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.

SECTION 54: That Section 15 of Ordinance No. 1838-91 (EMC 19.37.150 B(2)) which reads in part as follows:

2. Category II and Category III Streams.
a. Except as provided in this subsection no alteration of a category II or category III stream shall be allowed except as otherwise provided by Section 37.050 of this chapter; or
b. The planning director may, using Review Process II.C, allow alteration or relocation of category II or category III streams only when the applicant can demonstrate that the alteration or relocation enhances the functional values of the stream;
c. Culverting within a stream shall only be permitted as provided by Section 37.050 of this chapter or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Culverting shall be limited to the minimum number of stream crossings required to permit reasonable access. The type of culvert used shall be as required by the Department of Fisheries or Department of Wildlife.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

2. Category II and Category III Streams.
a. Except as provided in this subsection no alteration of a category II or category III stream shall be allowed except as otherwise provided by Section 37.050 of this chapter; or
b. The planning director may, using the review process described in the City's Local Project Review Procedures Ordinance , allow alteration or relocation of category II or category III streams only when the applicant can demonstrate that the alteration or relocation enhances the functional values of the stream;
c. Culverting within a stream shall only be permitted as provided by Section 37.050 of this chapter or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Culverting shall be limited to the minimum number of stream crossings required to permit reasonable access. The type of culvert used shall be as required by the Department of Fisheries or Department of Wildlife.

SECTION 55: That Section 21 of Ordinance No. 1838-91 (EMC 19.37.210) which reads s follows:

Any decision made by the city pursuant to this chapter shall be subject to the appeals provisions of Section 19.41.180 of this Code.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Any decision made by the city pursuant to this chapter shall be subject to the appeals provisions as set forth in the City's Local Projects Review Procedures Ordinance.

SECTION 56 That Section 23 of Ordinance No. 1838-91 (EMC 19.37.230 A) which reads in part as follows:

A. Legal Alterations. Environmentally sensitive areas regulated by this chapter which previously have been legally altered in accordance with all local, state and federal regulations in effect at the time of alteration may be developed in accordance with the requirements of this chapter. Any prior alteration which was legally commenced that resulted in an environmentally sensitive area which is regulated by this chapter being reclassified as buildable shall be evaluated using Review Process II.A. The planning director may approve any development proposal which meets all other requirements of this title, or modify such proposal based upon the impacts that the proposal would have on any remaining area classified by this chapter as environmentally sensitive. The planning director shall use all authority granted by this chapter, SEPA, or other legal mechanism to require enhancement of the previously altered environmentally sensitive area to the condition which would be required by this chapter for new development, to the maximum extent feasible.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. Legal Alterations. Environmentally sensitive areas regulated by this chapter which previously have been legally altered in accordance with all local, state and federal regulations in effect at the time of alteration may be developed in accordance with the requirements of this chapter. Any prior alteration which was legally commenced that resulted in an environmentally sensitive area which is regulated by this chapter being reclassified as buildable shall be evaluated using the review process described in the City's Local Projects Review Procedures Ordinance. The planning director may approve any development proposal which meets all other requirements of this title, or modify such proposal based upon the impacts that the proposal would have on any remaining area classified by this chapter as environmentally sensitive. The planning director shall use all authority granted by this chapter, SEPA, or other legal mechanism to require enhancement of the previously altered environmentally sensitive area to the condition which would be required by this chapter for new development, to the maximum extent feasible.

SECTION 57: That Ordinance No. 1671-89 as amended by Section 23 of Ordinance No. 1838-91 (EMC 19.37.230 B) which reads in part as follows:

B. Unauthorized Alterations.

1. Environmentally sensitive areas regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this title, provided that all environmentally sensitive areas which were illegally altered shall be

considered environmentally sensitive areas and shall be regulated in accordance with the requirements of this chapter. Any proposal to develop on a lot which contains an environmentally sensitive area that has been illegally altered shall be reviewed by the planning director using Review Process II.A.

2. The planning director shall require restoration of the unauthorized area of alteration to a condition which is equivalent or superior to its prior natural condition, to the extent that such condition can be determined. As an alternative to restoration of the illegally altered environmentally sensitive area, the planning director may allow for the recreation of wetlands, stream corridors, or habitat areas of the same type which have been altered in a different location than that which has been altered if the alternative location will result in a net improvement in functional values or a higher quality environmentally sensitive area than possible in the area which has been previously altered.

3. Any illegal alteration of an environmentally sensitive area that occurred prior to the effective date of this chapter which is not proposed for development as allowed by this chapter shall be restored as provided by Section 37.240 of this chapter.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

B. Unauthorized Alterations.

1. Environmentally sensitive areas regulated by this chapter which have been illegally altered may be developed in accordance with the requirements of this title, provided that all environmentally sensitive areas which were illegally altered shall be considered environmentally sensitive areas and shall be regulated in accordance with the requirements of this chapter. Any proposal to develop on a lot which contains an environmentally sensitive area that has been illegally altered shall be reviewed by the planning director using the review process described in the City's Local Project Review Procedures Ordinance.

2. The planning director shall require restoration of the unauthorized area of alteration to a condition which is equivalent or superior to its prior natural condition, to the extent that such condition can be determined. As an alternative to restoration of the illegally altered environmentally sensitive area, the planning director may allow for the recreation of wetlands, stream corridors, or habitat areas of the same type which have been altered in a different location than that which has been altered if the alternative location will result in a net improvement in functional values or a higher quality environmentally sensitive area than possible in the area which has been previously altered.

3. Any illegal alteration of an environmentally sensitive area that occurred prior to the effective date of this chapter which is not proposed for development as allowed by this chapter shall be restored as provided by Section 37.240 of this chapter.

SECTION 58: That Ordinance No. 1671-89 as amended by Section 3 of Ordinance No. 2095-95 (EMC 19.38.030 C) which reads in part as follows:

C. Change. A nonconforming use may be changed to another use only if such use is not more nonconforming than the existing nonconforming use and provided the

nonconforming use has not been discontinued for a period of more than two years. The new use shall be approved using Review Process II.B and the evaluation criteria required for the expansion of nonconforming uses listed in Section 38.090.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

C. Change. A nonconforming use may be changed to another use only if such use is not more nonconforming than the existing nonconforming use and provided the nonconforming use has not been discontinued for a period of more than two years. The new use shall be approved using the review process described in the Citys' Local Project Review Procedures Ordinance and the evaluation criteria required for the expansion of nonconforming uses listed in Section 38.090.

SECTION 59: That Ordinance No. 1671-89 as amended by Section 3 of Ordinance No. 2095-95 (EMC 19.38.030 D) which reads in part as follows:

D. Expansion. A nonconforming use may be expanded up to twenty-five percent in building area, land area and/or parking area using Review Process II.B and the evaluation criteria in Section 38.090. A nonconforming use may be expanded over twenty-five percent in building area, land area and/or parking area if approved using Review Process III.B and the evaluation criteria of Section 38.090. Under no circumstances shall the expansion result in the following:

1. Increasing the number of dwelling units further above the maximum allowed by the zoning code; or
2. Decreasing the number of off-street parking spaces further below the minimum required by the zoning code.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

D. Expansion. A nonconforming use may be expanded up to twenty-five percent in building area, land area and/or parking area using the review process described in the City's Local Project Review Procedures Ordinance and the evaluation criteria in Section 38.090. A nonconforming use may be expanded over twenty-five percent in building area, land area and/or parking area if approved using the review process described in the City's Local Project Review Procedures Ordinance and the evaluation criteria of Section 38.090. Under no circumstances shall the expansion result in the following:

1. Increasing the number of dwelling units further above the maximum allowed by the zoning code; or
2. Decreasing the number of off-street parking spaces further below the minimum required by the zoning code.

SECTION 60: That Ordinance No. 1671-89 as amended by Section 1 of Ordinance No. 2065-95 and Section 4 of Ordinance No. 2095-95 (EMC 19.38.040 A) which reads in part as follows:

A. Alteration or Expansion.

1. Additions, maintenance or repair to a nonconforming structure which does not increase the nonconformity shall be permitted; provided the addition, maintenance or repair complies with building and zoning code requirements.
2. A nonconforming structure which does not meet required setbacks or height may be expanded along the nonconforming setbacks or to the existing nonconforming height if approved by the planning director using Review Process II.A; provided, that the expansion does not make the setback or height more nonconforming; that the expansion complies with all other requirements of this chapter; and that the nonconformity has been certified by the planning department.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. Alteration or Expansion.
1. Additions, maintenance or repair to a nonconforming structure which does not increase the nonconformity shall be permitted; provided the addition, maintenance or repair complies with building and zoning code requirements.
2. A nonconforming structure which does not meet required setbacks or height may be expanded along the nonconforming setbacks or to the existing nonconforming height if approved by the planning director using the review process described in the City's Local Project Review Procedures Ordinance; provided, that the expansion does not make the setback or height more nonconforming; that the expansion complies with all other requirements of this chapter; and that the nonconformity has been certified by the planning department.

SECTION 61: That Ordinance No. 1671-89 as amended by Section 27 of Ordinance No. 1729-90, Section 6 of Ordinance No. 1793-91 and Sections 44-46 of Ordinance No. 1849-92 (EMC 19.38.080 C(2)) which reads in part as follows:

2. All uses of such lots shall meet the following requirements:
a. The resultant area of the lot shall be at least one-half the minimum lot area required by the zone in which it is located, or five thousand square feet, whichever is greater. Lots which do not meet the minimum area requirement of this section may be considered for the uses provided by subdivision 1 of this subsection using Review Process II.B and the general evaluation criteria listed in Section 41.150C of this title.
b. After required setbacks are accounted for, the lot shall have a building area in which a rectangle having minimum dimensions of thirty feet by forty feet can be located. Lots which do not meet this building area requirement may be considered for the uses provided by subdivision 1 of this subsection using Review Process II.B and the general evaluation criteria listed in Section 41.150C of this title.
c. All such lots must be certified as nonconforming as required by Section 41.120.
d. Commercial or industrial lots which have been created through the binding site plan process are exempt from this section.
e. All other requirements of this title.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

2. All uses of such lots shall meet the following requirements:

a. The resultant area of the lot shall be at least one-half the minimum lot area required by the zone in which it is located, or five thousand square feet, whichever is greater. Lots which do not meet the minimum area requirement of this section may be considered for the uses provided by subdivision 1 of this subsection using the review process described in the City's Local Project Review Procedures Ordinance and the general evaluation criteria listed in Section 41.150C of this title.

b. After required setbacks are accounted for, the lot shall have a building area in which a rectangle having minimum dimensions of thirty feet by forty feet can be located. Lots which do not meet this building area requirement may be considered for the uses provided by subdivision 1 of this subsection using the review process described in the City's Local Project Review Procedures Ordinance and the general evaluation criteria listed in Section 41.150C of this title.

c. All such lots must be certified as nonconforming as required by Section 41.120.

d. Commercial or industrial lots which have been created through the binding site plan process are exempt from this section.

e. All other requirements of this title.

SECTION 62: That Ordinance No. 1671-89 as amended by Section 9 of Ordinance No. 2095-95 (EMC 19.38.100 B) which reads in part as follows:

B. Re-establishment — Change to Another Nonconforming Use.

1. Re-establishment. A nonconforming grocery store which has lost its nonconforming status may be re-established; provided, that application to re-establish such use is made to the planning department not later than five years after the use has ceased to operate. An application to re-establish the use shall be subject to Review Process II.A. Any such nonconforming grocery store which is permitted to be re-established shall be limited to retail sales of groceries and related items. Sale of gasoline or other vehicle fuels will not be permitted.

2. Change to Another Nonconforming Use. A nonconforming grocery store may be changed to another neighborhood oriented business using Review Process II.B and the evaluation criteria that apply to expansion of nonconforming uses contained in Section 38.090.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

B. Re-establishment — Change to Another Nonconforming Use.

1. Re-establishment. A nonconforming grocery store which has lost its nonconforming status may be re-established; provided, that application to re-establish such use is made to the planning department not later than five years after the use has ceased to operate. An application to re-establish the use shall be subject to the review process described in the City's Local Project Review Procedures Ordinance. Any such nonconforming grocery store which is permitted to be re-established shall be limited to retail sales of groceries and related items. Sale of gasoline or other vehicle fuels will not be permitted.

2. Change to Another Nonconforming Use. A nonconforming grocery store may be changed to another neighborhood oriented business using Review Process I and the evaluation criteria that apply to expansion of nonconforming uses contained in Section 38.090.

SECTION 63: That Ordinance No. 1671-89 as amended by Sections 11 and 16 of Ordinance No. 2144-96 (EMC 19.39.025 A) which reads in part as follows:

A. Locational Requirements.
1. An adult use business as defined by this title shall be permitted within the city limits only if it meets all of the locational requirements set forth in this section.
2. Adult use businesses shall be prohibited within one thousand feet of any area of the city zoned for residential purposes. Residential zones shall include the R-S, R-S-1, R-1, R-2, R-1(A), R-2(A), R-3, R-3(L), R-4, R-5 zones and any other residential zone hereafter adopted by the city.
3. Adult use business shall be prohibited within one thousand feet of any church, synagogue, mosque, or temple. For purposes of this section, land uses for which the principal use is not a church, synagogue, mosque, or temple but which include such a use as an accessory or incidental use to the principal use, such as a chapel within a hospital, a social service facility which provides religious services such as the Everett Gospel Mission, or other similar arrangement, shall not be deemed to be a church, synagogue, mosque, or temple.
4. Adult use businesses shall be prohibited within one thousand feet of any public or private school offering general education for students between the years kindergarten through twelfth grade. For purposes of this section, athletic training facilities such as gymnastics, judo, karate, and dance and similar uses shall not be deemed to be a school.
5. Adult use businesses shall be prohibited within one thousand feet of any public park or playground operated by the city. For purposes of this section, bike paths, trails, waterways and boat launches shall not be deemed to be a public park.
6. Adult use businesses shall be prohibited within one thousand feet of any designated community development block grant neighborhood.
7. Adult use businesses shall be prohibited from locating within five hundred feet of any other adult use business.
8. Adult use businesses shall be prohibited from locating within five hundred feet of any existing establishment selling alcoholic beverages for consumption on premises.
9. Distances provided for herein shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed adult use business is or is to be located, to the nearest point of the parcel of property or the zoning district boundary line from which the proposed adult use business is or is to be separated.
10. Nothing within locational requirements set forth in this chapter shall preclude an adult use business from conducting more than one adult use activity within a single structure; provided, the adult use business shall comply with provisions of this title and all other city ordinances.
11. In the event an adult use business is legally established in accordance with the requirements of this title and does not constitute a nonconforming use as defined in

subsection B of this section, and a sensitive land use described in subdivisions 2 through 6 of this subsection locates within the required separation distance, the zoning conformity of the legally established adult use shall not be affected.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. Locational Requirements.

1. An adult use business as defined by this title shall be permitted within the city limits only if it meets all of the locational requirements set forth in this section.

2. Adult use businesses shall be prohibited within one thousand feet of any area of the city zoned for residential purposes. Residential zones shall include the R-S, R-1, R-2, R-1(A), R-2(A), R-3, R-3(L), R-4, R-5 zones and any other residential zone hereafter adopted by the city.

3. Adult use business shall be prohibited within one thousand feet of any church, synagogue, mosque, or temple. For purposes of this section, land uses for which the principal use is not a church, synagogue, mosque, or temple but which include such a use as an accessory or incidental use to the principal use, such as a chapel within a hospital, a social service facility which provides religious services such as the Everett Gospel Mission, or other similar arrangement, shall not be deemed to be a church, synagogue, mosque, or temple.

4. Adult use businesses shall be prohibited within one thousand feet of any public or private school offering general education for students between the years kindergarten through twelfth grade. For purposes of this section, athletic training facilities such as gymnastics, judo, karate, and dance and similar uses shall not be deemed to be a school.

5. Adult use businesses shall be prohibited within one thousand feet of any public park or playground operated by the city. For purposes of this section, bike paths, trails, waterways and boat launches shall not be deemed to be a public park.

6. Adult use businesses shall be prohibited within one thousand feet of any designated community development block grant neighborhood.

7. Adult use businesses shall be prohibited from locating within five hundred feet of any other adult use business.

8. Adult use businesses shall be prohibited from locating within five hundred feet of any existing establishment selling alcoholic beverages for consumption on premises.

9. Distances provided for herein shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed adult use business is or is to be located, to the nearest point of the parcel of property or the zoning district boundary line from which the proposed adult use business is or is to be separated.

10. Nothing within locational requirements set forth in this chapter shall preclude an adult use business from conducting more than one adult use activity within a single structure; provided, the adult use business shall comply with provisions of this title and all other city ordinances.

11. In the event an adult use business is legally established in accordance with the requirements of this title and does not constitute a nonconforming use as defined in subsection B of this section, and a sensitive land use described in sections 2 through 6 of

this subsection locates within the required separation distance, the zoning conformity of the legally established adult use shall not be affected.

SECTION 64: That Ordinance No. 1671-89 as amended by Sections 11 and 16 of Ordinance No. 2144-96 (EMC 19.39.025 B(2)) which reads in part as follows:

2. Adult use businesses which are nonconforming uses in the zone in which they are located and which are located within the city limits shall be discontinued within one year of the date of becoming a nonconforming adult use business or upon the expiration of the leasehold period in existence as of the date of becoming a nonconforming adult use business, or upon the sale of the nonconforming adult use business, whichever occurs first. Adult use businesses which are nonconforming as a result of annexation to the city shall be discontinued within one year of the date of annexation. Such nonconforming adult use businesses shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities (extend, expand, enlarge, increase in intensity) shall include:

a. Extension of a nonconforming adult use business to any building or other structure or land area other than one occupied by such use as of the date of becoming a nonconforming adult use business.

b. Extension of any specific type of nonconforming adult use business, as separately defined in Chapter 4 of this title, within a building or other structure to any portion of the floor area that was not occupied by that same type of adult use business as of the date of becoming a nonconforming adult use business.

c. Operation of a nonconforming use in such manner as to conflict with, or to further conflict with if already conflicting as of the date of becoming a nonconforming adult use business.

Any change in a nonconforming adult use business shall be to a use which is legally permitted within the zone in which it is located. In the event a nonconforming adult use business, or portion thereof, is changed to a use which is legally permitted within the zone in which it is located, then the structure or portion thereof which contained the adult use business cannot thereafter be used or reused for any type of adult use business. In the event a nonconforming adult use of a building or structure is vacated, closed or abandoned for a period in excess of six months, the structure shall not thereafter be used except in conformance with a use which is legally permitted within the zone in which it is located.

Repairs and alterations to a nonconforming adult use business building or structure shall be limited to nonstructural repairs and incidental alterations for normal maintenance and shall only be permitted to the extent necessitated by normal wear and tear. No structural alterations shall be allowed.

A building or structure containing a nonconforming adult use business which is damaged or destroyed by fire, wind, earthquake or other natural disaster can be restored and the same use or occupancy continued or resumed provided the total cost of such restoration does not exceed the value of the building or structure at the time of such damage. Restoration of a structure or building housing a nonconforming adult use business or moneys used therefor shall not be used as factors by the examiner when considering any request of a time extension made pursuant to subdivision 3 of this subsection.

BE AN THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

2. Adult use businesses which are nonconforming uses in the zone in which they are located and which are located within the city limits shall be discontinued within one year of the date of becoming a nonconforming adult use business or upon the expiration of the leasehold period in existence as of the date of becoming a nonconforming adult use business, or upon the sale of the nonconforming adult use business, whichever occurs first. Adult use businesses which are nonconforming as a result of annexation to the city shall be discontinued within one year of the date of annexation. Such nonconforming adult use businesses shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities (extend, expand, enlarge, increase in intensity) shall include:

a. Extension of a nonconforming adult use business to any building or other structure or land area other than one occupied by such use as of the date of becoming a nonconforming adult use business.

b. Extension of any specific type of nonconforming adult use business, as separately defined in Chapter 4 of this title, within a building or other structure to any portion of the floor area that was not occupied by that same type of adult use business as of the date of becoming a nonconforming adult use business.

c. Operation of a nonconforming use in such manner as to conflict with, or to further conflict with if already conflicting as of the date of becoming a nonconforming adult use business.

Any change in a nonconforming adult use business shall be to a use which is legally permitted within the zone in which it is located. In the event a nonconforming adult use business, or portion thereof, is changed to a use which is legally permitted within the zone in which it is located, then the structure or portion thereof which contained the adult use business cannot thereafter be used or reused for any type of adult use business. In the event a nonconforming adult use of a building or structure is vacated, closed or abandoned for a period in excess of six months, the structure shall not thereafter be used except in conformance with a use which is legally permitted within the zone in which it is located.

Repairs and alterations to a nonconforming adult use business building or structure shall be limited to nonstructural repairs and incidental alterations for normal maintenance and shall only be permitted to the extent necessitated by normal wear and tear. No structural alterations shall be allowed.

A building or structure containing a nonconforming adult use business which is damaged or destroyed by fire, wind, earthquake or other natural disaster can be restored and the same use or occupancy continued or resumed provided the total cost of such restoration does not exceed the value of the building or structure at the time of such damage. Restoration of a structure or building housing a nonconforming adult use business or moneys used therefor shall not be used as factors by the examiner when considering any request of a time extension made pursuant to section 3 of this subsection.

SECTION 65: That Ordinance No. 1671-89 as amended by Sections 11 and 16 of Ordinance No. 2144-96 (EMC 19.39.025 B(3)) which reads in part as follows:

3. In the event a nonconforming adult use business determines that the period set forth in subdivision 2 of this subsection does not provide the adult use business with a reasonable period of amortization, then no later than one hundred eighty days prior to the expiration of the period, the nonconforming adult use business shall make application to the city land use hearing examiner for an extension of time. Accompanying the application shall be a fee in the amount of two hundred fifty dollars and detailed information addressing the below-listed factors to be considered by the hearing examiner. In determining whether or not to grant the extension, the examiner shall determine whether or not the harm or hardship to the nonconforming adult use business outweighs the benefit to be gained from the public from termination of the use. Factors to be considered by the examiner include the location of the business in relation to sensitive land uses such as schools, parks, churches, residential zone(s), etc., initial capital investment, investment realization to date, life expectancy of the investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternate use of the property exists. The action of the examiner shall constitute a Review Process III decision under Title 15 of this code (as it exists or is hereafter amended).

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

3. In the event a nonconforming adult use business determines that the period set forth in section 2 of this subsection does not provide the adult use business with a reasonable period of amortization, then no later than one hundred eighty days prior to the expiration of the period, the nonconforming adult use business shall make application to the city land use hearing examiner for an extension of time. Accompanying the application shall be a fee in the amount of two hundred fifty dollars and detailed information addressing the below-listed factors to be considered by the hearing examiner. In determining whether or not to grant the extension, the examiner shall determine whether or not the harm or hardship to the nonconforming adult use business outweighs the benefit to be gained from the public from termination of the use. Factors to be considered by the examiner include the location of the business in relation to sensitive land uses such as schools, parks, churches, residential zone(s), etc., initial capital investment, investment realization to date, life expectancy of the investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternate use of the property exists. The action of the examiner shall be in accordance with the review process as described in the City's Local Project Review Procedures Ordinance.

SECTION 66: That Ordinance No. 1671-89 as amended by Section 58 of Ordinance No. 1849-92, Section 5 of Ordinance No. 1864-92 and Section 2 of Ordinance No. 2290-98 (EMC 19.39.040 A) which reads in part as follows:

A. Antennas.

1. Except for amateur radio towers and antennas and as otherwise allowed by subsection 41.150D.1.c of this title, the height of any antenna shall not exceed five feet above the maximum permitted building height above the base elevation of the principal

building, and shall not exceed the horizontal distance between the base of the antenna and the nearest property line.

2. Amateur radio towers and antennas for use by a noncommercial, licensed amateur operator shall be allowed if they:

a. Do not exceed the height of sixty-five feet above the base elevation of the principal building;

b. Are located and constructed in a manner that will prevent it from falling onto adjoining properties;

c. Do not interfere with nearby utility lines, etc.;

d. Are not located within any required setback area.

3. An amateur radio tower or antenna may exceed sixty-five feet above the base elevation of the principal building if approved by the planning director using Review Process II.B. In order to approve an antenna or tower height which exceeds sixty-five feet above the base elevation of the principal building, the planning director shall approve the minimum height necessary to reasonably allow for transmission and reception of radio signals, and the antenna or tower shall:

a. Be located and constructed in a manner that will prevent it from falling onto adjacent properties;

b. Not interfere with nearby utility lines;

c. Not be located within any required setback area.

4.a. A freestanding dish antenna which is located in a residential zone shall not be located between a residential building and the front lot line.

b. Subparagraph a of this subdivision notwithstanding, any other freestanding dish antenna shall be considered to be an accessory structure and shall be subject to the setback requirements pertaining thereto.

c. A dish antenna which is roof-mounted shall comply with subdivision Al of this subsection.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. Antennas.

1. Except for amateur radio towers and antennas and as otherwise allowed by subsection 41.150D.1.c of this title, the height of any antenna shall not exceed five feet above the maximum permitted building height above the base elevation of the principal building, and shall not exceed the horizontal distance between the base of the antenna and the nearest property line.

2. Amateur radio towers and antennas for use by a noncommercial, licensed amateur operator shall be allowed if they:

a. Do not exceed the height of sixty-five feet above the base elevation of the principal building;

b. Are located and constructed in a manner that will prevent it from falling onto adjoining properties;

c. Do not interfere with nearby utility lines, etc.;

d. Are not located within any required setback area.

3. An amateur radio tower or antenna may exceed sixty-five feet above the base elevation of the principal building if approved by the planning director using the review

process described in the City's Local Project Review Procedures Ordinance. In order to approve an antenna or tower height which exceeds sixty-five feet above the base elevation of the principal building, the planning director shall approve the minimum height necessary to reasonably allow for transmission and reception of radio signals, and the antenna or tower shall:

a. Be located and constructed in a manner that will prevent it from falling onto adjacent properties;

b. Not interfere with nearby utility lines;

c. Not be located within any required setback area.

4.a. A freestanding dish antenna which is located in a residential zone shall not be located between a residential building and the front lot line.

b. Subparagraph a of this subdivision notwithstanding, any other freestanding dish antenna shall be considered to be an accessory structure and shall be subject to the setback requirements pertaining thereto.

c. A dish antenna which is roof-mounted shall comply with subdivision Al of this subsection.

SECTION 67: That Ordinance No. 1671-89 as amended by Section 58 of Ordinance No. 1849-92 , Section 5 of Ordinance No. 1864-92 and Section 2 of Ordinance No. 2290-98 (EMC 19.39.040 B) which reads in part as follows:

B. Other Building Appurtenances.

1. Except as provided in subsection A or B2 of this section, no building appurtenance shall exceed a height of five feet above the maximum height allowed in the zone for the principal building, unless the planning director determines that the appurtenance must be above such height for proper operation.

2. The planning director, using Review Process II.B, may allow an atrium appurtenance which does not increase the floor area of the building but which allows for passive solar energy usage to exceed the maximum building height allowed by the zone in which the subject property is located by not more than twenty percent of the maximum permitted building height. In reviewing such a proposal, the planning director shall not approve the proposed building appurtenance if it would significantly obstruct views from and solar access for surrounding properties.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

B. Other Building Appurtenances.

1. Except as provided in subsection A or B2 of this section, no building appurtenance shall exceed a height of five feet above the maximum height allowed in the zone for the principal building, unless the planning director determines that the appurtenance must be above such height for proper operation.

2. The planning director, using the review process described in the City's Local Project Review Procedures Ordinance, may allow an atrium appurtenance which does not increase the floor area of the building but which allows for passive solar energy usage to exceed the maximum building height allowed by the zone in which the subject property is located by not more than twenty percent of the maximum permitted building height. In

reviewing such a proposal, the planning director shall not approve the proposed building appurtenance if it would significantly obstruct views from and solar access for surrounding properties.

SECTION 68: That Ordinance No. 1671-89 as amended by Section 49 of Ordinance No. 1849-92 (EMC 19.39.070 A) which reads in part as follows:

A. Height.
1. Except as provided in subsection A.2 of this section, fences in residential zones and fences located on the common abutting property line in nonresidential zones which immediately abut residential zones shall not exceed six feet in height. Within the front yard setback areas, the maximum height shall not exceed forty-two inches, unless approved by the planning director using Review Process II.A.
2. Fences on residentially zoned lots abutting freeways shall be permitted a height of ten feet when located and constructed to reduce the impacts of freeway noise on the residential lot. When the use of the property requires compliance with the landscaping requirements of Section 35.090, the fence shall be set back the distance required to accommodate the landscaping, and provision shall be made for access to the landscape area for maintenance purposes.
3. Fences in commercial and industrial zones shall not exceed ten feet in height, including barbed wire located on top of the fence.
4. Fences in residential zones may exceed six feet in height provided that they meet the building setback requirements and do not exceed the building height requirements of the zone in which they are located.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

A. Height.
1. Except as provided in subsection A.2 of this section, fences in residential zones and fences located on the common abutting property line in nonresidential zones which immediately abut residential zones shall not exceed six feet in height. Within the front yard setback areas, the maximum height shall not exceed forty-two inches, unless approved by the planning director using the review process described in the City's Local Projects Review Procedures Ordinance.
2. Fences on residentially zoned lots abutting freeways shall be permitted a height of ten feet when located and constructed to reduce the impacts of freeway noise on the residential lot. When the use of the property requires compliance with the landscaping requirements of Section 35.090, the fence shall be set back the distance required to accommodate the landscaping, and provision shall be made for access to the landscape area for maintenance purposes.
3. Fences in commercial and industrial zones shall not exceed ten feet in height, including barbed wire located on top of the fence.
4. Fences in residential zones may exceed six feet in height provided that they meet the building setback requirements and do not exceed the building height requirements of the zone in which they are located.

SECTION 69: That Section 2(B) of Ordinance No. 2111-95 (EMC 19.46.010) which reads in part as follows:

Permitted Use—Proportionality to Everett's Population.

1. In order for jails and correctional facilities to be classified as a permitted use, the applicant must demonstrate the existence of proportionality of their distribution throughout the county and its cities. The applicant must make application to the city demonstrating that in relation to Everett, Snohomish County and cities within Snohomish County have accepted their proportional share of jails and correctional facilities. This shall be determined using the following formula:

A ="Everett's current population" **divided by** "Snohomish County's current population"

B ="Current number of jails and correctional facilities' beds in Everett" **divided by** "Current number of jails and correctional facilities' beds in Snohomish County"

2. Jails and correctional facilities shall be a permitted use subject to the location criteria set forth herein unless **A** is less than **B**, in which case they are not a permitted use.

3. The population figures used shall be the current population figures issued by the state of Washington Office of Financial Management. The city shall supply the figures for the current number of beds for jails and correctional facilities both within the city and countywide. If the applicant disagrees with the figures supplied by the city to make the calculation, the applicant can supply his/her own figures along with supporting documentation. This will be considered by the planning department in rendering its written decision.

4. If it is determined that Snohomish County and cities within Snohomish County have accepted their proportional share of jails and correctional facilities in relation to Everett, then the proposed use will be considered a permitted use within those locations defined in Section 46.020 and subject to the appropriate review process. Within twenty-one days of receipt of a completed application, the planning department, using the II-B process, shall render a written decision on whether the applicant has demonstrated that in relation to Everett that the county and other cities within the county have accepted their proportional share of jails and correctional facilities.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Permitted Use—Proportionality to Everett's Population.

1. In order for jails and correctional facilities to be classified as a permitted use, the applicant must demonstrate the existence of proportionality of their distribution throughout the county and its cities. The applicant must make application to the city demonstrating that in relation to Everett, Snohomish County and cities within Snohomish County have accepted their proportional share of jails and correctional facilities. This shall be determined using the following formula:

A ="Everett's current population" **divided by** "Snohomish County's current population"

B ="Current number of jails and correctional facilities' beds in Everett" **divided by** "Current number of jails and correctional facilities' beds in Snohomish County"

2. Jails and correctional facilities shall be a permitted use subject to the location criteria set forth herein unless **A** is less than **B**, in which case they are not a permitted use.

3. The population figures used shall be the current population figures issued by the state of Washington Office of Financial Management. The city shall supply the figures for the current number of beds for jails and correctional facilities both within the city and countywide. If the applicant disagrees with the figures supplied by the city to make the calculation, the applicant can supply his/her own figures along with supporting documentation. This will be considered by the planning department in rendering its written decision.

4. If it is determined that Snohomish County and cities within Snohomish County have accepted their proportional share of jails and correctional facilities in relation to Everett, then the proposed use will be considered a permitted use within those locations defined in Section 46.020 and subject to the appropriate review process. Within twenty-one days of receipt of a completed application, the planning department, using the review process described in the City's Local Project Review Procedures Ordinance, shall render a written decision on whether the applicant has demonstrated that in relation to Everett that the county and other cities within the county have accepted their proportional share of jails and correctional facilities.

SECTION 70: That Section 2(C) of Ordinance No. 2111-95 (EMC 19.46.020) which reads in part as follows:

Locational Criteria. Subject to the provisions of this chapter, jails and correctional facilities shall be a permitted use in the B-3 zone and C-1 zone within the four-block area bounded by Wall on the north, Pacific on the south, Colby on the west and Lombard on the east subject to the III-B review process. Jails and correctional facilities are not permitted uses in any other portion of the B-3 zone, C-1 zone, nor in any other zone.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Locational Criteria. Subject to the provisions of this chapter, jails and correctional facilities shall be a permitted use in the B-3 zone and C-1 zone within the four-block area bounded by Wall on the north, Pacific on the south, Colby on the west and Lombard on the east subject to the review process described in the City's Local Project Review Procedures Ordinance. Jails and correctional facilities are not permitted uses in any other portion of the B-3 zone, C-1 zone, nor in any other zone.

SECTION 71: That Ordinance No. 1671-89 as amended by Sections 55 and 56 of Ordinance No. 1849-92 and Section 13 of Ordinance No. 2146-96 (EMC 19.39.150 C(5)) which reads in part as follows:

5. Rockeries and retaining walls may be located in required setback areas if:

a. The rockery or retaining wall is not being used as a direct structural support for a building;
b. The rockery or retaining wall is reasonably necessary to provide support to a cut or slope;
c. The rockery or retaining wall will not obstruct or interfere with the vision of vehicles and pedestrians using driveways and public rights-of-way; and
d. Any structure retaining soil which is greater than thirty-six inches in height shall comply with building setback requirements, unless otherwise approved by the planning director, using Review Process IIA.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

5. Rockeries and retaining walls may be located in required setback areas if:
a. The rockery or retaining wall is not being used as a direct structural support for a building;
b. The rockery or retaining wall is reasonably necessary to provide support to a cut or slope;
c. The rockery or retaining wall will not obstruct or interfere with the vision of vehicles and pedestrians using driveways and public rights-of-way; and
d. Any structure retaining soil which is greater than thirty-six inches in height shall comply with building setback requirements, unless otherwise approved by the planning director, using the review process described in the City's Local Project Review Procedures Ordinance.

SECTION 72: That Ordinance No. 1671-89 as amended by Section 3 of Ordinance No. 1847-92 as amended by Section 1 of Ordinance No. 1864-92, Sections 1 & 2 of Ordinance No. 1978-93, Section 1 of Ordinance No. 2076-95, Section 1(A) of Ordinance No. 2106-95, Section 2(A) of Ordinance No. 2111-95, Section 1 of Ordinance No. 2290-98 and Sections 12-34 of Ordinance No. 2397-99 (EMC 19.04.020) is hereby amended by the addition of a new definition:

"Should" means encouraged but not required.

SECTION 73: Ordinance No. 1671-89 as amended by Section 36 of Ordinance No. 2397-99 and Section 2 of Ordinance No. 2445-00 (EMC 19.05, Use Standards Table 5.2) is hereby amended by the addition of a new use to the Special Property Use section of the Use Standards Table, Table 5.2 as follows:

Special Aviation Use in M-M, M-1 and M-2 zones as "VA"

SECTION 74: That Ordinance No. 1671-89 (EMC 19.33.030) which reads as follows:

Designation—Who may apply. The proposal to include a specific area or property within the historic overlay zone may be initiated by the city or by an owner of property located within the proposed historic overlay zone. To the extent that these provisions are

inconsistent with the provisions of Chapters 41 and 42 of this title, the provisions of this chapter govern.

BE AND THE SAME IS HEREBY AMENDED TO READ AS FOLLOWS:

Designation—Who may apply. The proposal to include a specific area or property within the historic overlay zone may be initiated by the city or by an owner of property located within the proposed historic overlay zone. To the extent that these provisions are inconsistent with the provisions of this title, the provisions of this chapter govern.

SECTION 75: Nothing in this ordinance shall be construed as abating any official action of the City now pending under or by virtue of any of the ordinances herein amended or superseded by the adoption of this ordinance or as waiving any right of the City under the policies, provisions and regulations amended or superseded by the adoption of this ordinance.

SECTION 76: If any section, subsection, paragraph, sentence, clause or phrase set forth in this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 77: It is expressly the purpose of this ordinance to provide for and promote the health safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance.
It is the specific intent of this ordinance that no provision nor any term used in this ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees.
Nothing contained in this ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees or agents.

SECTION 78: The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

EDWARD D. HANSEN, Mayor

ATTEST:

CITY CLERK

Passed: 8-22-01
Valid: 8-31-01
Published: 9-7-01
Effective Date: 9-16-01

ordinance zoning code amendments-textual changes for adm ord