



**FIRCREST CITY COUNCIL/PLANNING COMMISSION  
SPECIAL MEETING AGENDA**

**TUESDAY, FEBRUARY 6, 2018  
6:00 P.M.**

**COUNCIL CHAMBERS  
FIRCREST CITY HALL, 115 RAMSDELL STREET**

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- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. NEW BUSINESS**
  - A. Introductions**
  - B. Legislative versus Quasi-Judicial**
  - C. Commercial Mixed Use**
  - D. Neighborhood Commercial**
  - E. Hearing Examiner**
- 5. ADJOURNMENT**



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**FIRCREST PLANNING/BUILDING DEPARTMENT  
STAFF MEMO**

***City Council – Planning Commission  
Joint Study Session***

**February 6, 2018**

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**BACKGROUND:**

Resolution No. 809 sets the first Tuesday of February each year as the date for an annual meeting between the City Council and the Planning Commission. The meeting is intended to discuss items of common interest and review community visioning.

**SUMMARY OF AGENDA:**

Based on the 2018 Planning Commission work plan and items of interest suggested by the City Council, the agenda for the joint meeting will focus on four topics:

- Overview of Legislative Decisions versus Quasi-Judicial Decisions
- Commercial Mixed Use District (includes Narrows Plaza presentation)
- Neighborhood Commercial District
- Hearing Examiner

The format this year will be for staff to present a general overview of the topic and then open it up for discussion. Staff has included some discussion starters in the PowerPoint presentation (attachment 1). They are meant to address some of staff's questions or present suggestions that have been made in the past, but are not intended to limit discussion in any way. The goal is to come away with a strong understanding of the direction the City Council would like the Planning Commission and staff to explore this year.

In addition, Jeff Boers will be presenting an update on the sub-area plan for the Narrows Plaza area (west side of Mildred Street). Copies of the Comprehensive Plan and Zoning Code for the two districts have been included as well as an article by Carol Morris, our land use attorney, related to using a hearing examiner. A full copy of the sub-area plan will be available at the meeting for those that are interested.

**Attachment:**

1. PowerPoint Presentation
2. Comprehensive Plan - Commercial Designations
3. Commercial Mixed Use Zone Code
4. Neighborhood Commercial Zone Code
5. Carol Morris Article – Hearing Examiner

## 2018 Joint Meeting City Council – Planning Commission

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## Agenda

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Introductions	6:00
Legislative versus Quasi-judicial	6:05
Commercial Mixed Use	6:15
Neighborhood Commercial	7:10
Hearing Examiner	7:40

Format: Brief Presentation  
Discussion



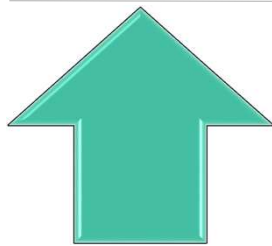
# Introductions

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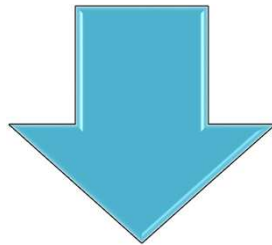


## Legislative versus Quasi-judicial



### **Legislative (*Making the Rules*):**

- Broad policy decision
- Establishing the standards and regulations
- Few procedural requirements
- Decision based upon vision and goals
- Limited liability



### **Quasi-judicial (*Applying the Rules*):**

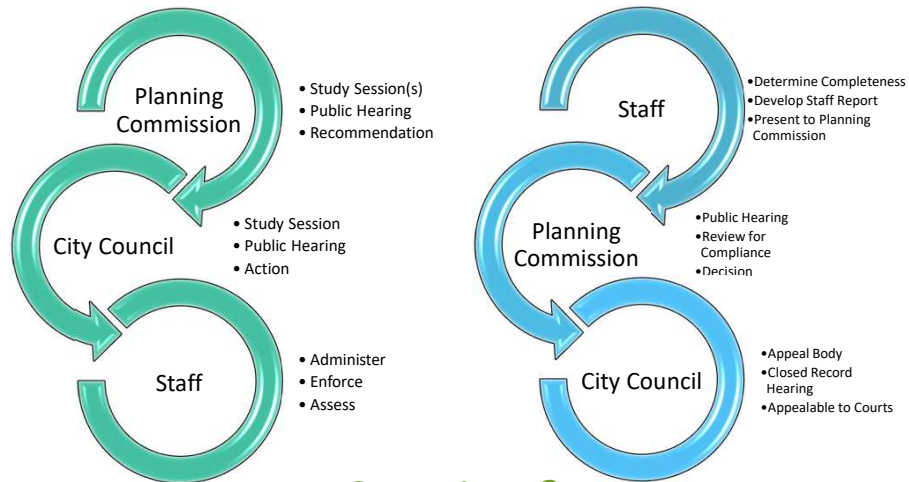
- Specific application decision
- Applying the standards and regulations
- Strict procedural requirements
- Decision based upon facts and evidence
- Huge liability

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## Legislative v. Quasi-judicial Roles



Questions?

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## Commercial Mixed Use

Area Overview

U. P. Update

Discussion

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## Commercial Mixed Use



## Commercial Mixed Use

### Zoning

- District provides for a **broad mix** of uses that provide services for residents and the surrounding community
- Mixed use buildings, retail stores, financial and medical offices, commercial services, entertainment facilities, restaurants, hotels, multi-family, electronics, small-scale assembly, and much more (see FMC 22.50 for a full list)
- Maximum Height: 45 feet; 55 feet with underground parking
- Business Hours: None unless limited through approval process
- 9 acres parcel: Ground floor of 250 feet must emphasis retail



# Commercial Mixed Use

## Design Standards

- Buildings shall be upfront with parking in the rear
- Principal entrance **should** address the street and create an architectural focus
- In general, siding textures and colors **should** reflect regional building patterns using wood siding, shingles, brick, stone, terra-cotta tile, and other features
- Concrete walls **should** be enhanced with texturing, coloring, and/or by incorporating embossed or sculptured surfaces, mosaics or artworks



# Commercial Mixed Use

## Update on University Place Subarea Plan

Jeff Boers

# UP Regional Growth Center

## Subarea Plan

- Adopted November 2017
- Required for PSRC designation of Regional Growth Center
- Center designation enables UP to qualify for federal, state and regional transportation dollars that support growth
- Plan must show how UP can accommodate population of 52,000 and employment of 11,450 jobs by 2040, per VISION 2040 growth target
- 22,270 additional people and 4,389 additional jobs



# UP Regional Growth Center

## Vision Statement

The University Place Regional Growth Center will continue to transform into a vibrant, walkable regional destination with dense mixed use and transit-oriented development in neighborhoods that offer a variety of housing and employment opportunities, shopping and services, culture, arts, entertainment, and parks...



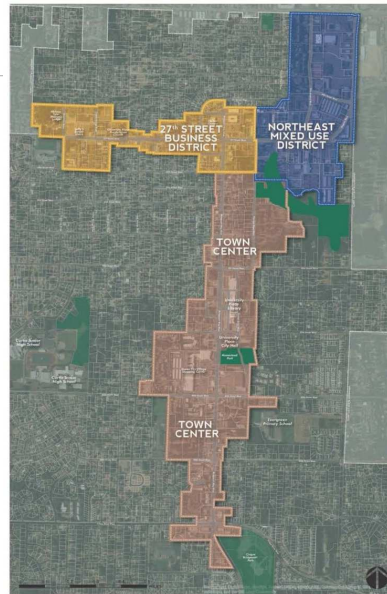


## UP Regional Growth Center

### RGC includes 3 districts:

- Town Center (Bridgeport Way)
- 27<sup>th</sup> Street Business District
- Northeast Mixed Use District (Narrows Plaza and nearby areas)

Figure 1—The Three Districts of the Subarea



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## UP Regional Growth Center

### Northeast Mixed Use District Vision

Continue to focus on building new employment opportunities, as well as providing entertainment uses, personal services, and businesses that serve surrounding neighborhoods as well as the broader region.

Support opportunities to integrate forms of live/work housing, studios, lofts, and other types of residences as influenced by market forces.

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## Northeast Mixed Use District

### Existing Conditions

- Contains mix of properties focused on entertainment with bowling alley, movie theater and restaurants, plus a mix of office buildings, light industrial properties, and multi-family.
- Several large parcels -- vacant and/or underutilized -- are poised for redevelopment.
- Many properties have high percentage of large unused surface parking area.



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## Northeast Mixed Use District

### Assets and Opportunities

- TCC provides educational and housing opportunities to the community and generates revenue from student, faculty and staff expenditures.
- Area benefits from new sidewalks, bike lanes, street trees, and intersection improvements, which help with connectivity within the district and in getting people to and from places such as the college.
- Sound Transit's ST3 plan calls for extending Tacoma Link light rail service to the TCC transit center by 2030.
- One or more of the large underutilized parcels could be a good fit for a major employer or mixed use developer.



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## Proposed Zoning

### Mixed Use Residential (MUR)-75 (light blue)

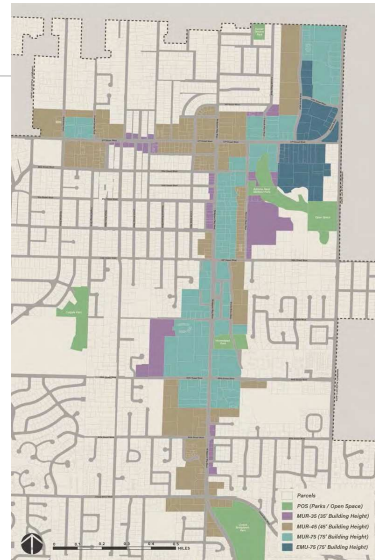
75-foot height limit (7 stories).

Building types include 5 wood frame stories over a one- or two-level concrete podium -- similar to UP Town Center.

Other types of construction that exceed the 75-foot height limit may be possible.

Mixed use -- residential on top floors with active uses (retail, services, exercise studios) at ground floor level.

Density 60 to 100+ units per acre (gross).



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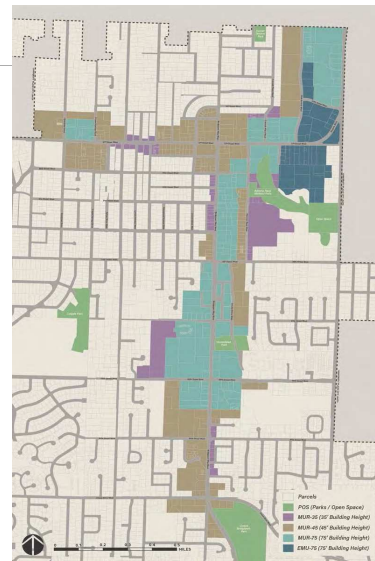
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## Proposed Zoning

### Employment Mixed Use (EMU)-75 (dark blue)

Supports employment uses -- offices, light manufacturing, craft-scale industrial, tech start-ups, plus retail and compatible forms of residential (such as lofts or live/work units).

Maximum height 75 feet. One and two story buildings ok if there is an employment focus that brings increased jobs to community.



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## Conceptual Representation

A conceptual representation of the EMU-75 zoning classification illustrating office and employment urban form, along with neighborhood walkability; not everyone has to drive to the office—residents can walk, bicycle, and take transit.



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## Conceptual Representation

Live/work units, lofts, and flexible work spaces for business, office, and retail uses; integrating residences will bring 24-7 activity to district with more “eyes on the street,” and increase economic vibrancy—they allow artists, tradespeople, and small business start-ups to combine uses into one space, generating financial freedom to invest in company growth and job creation; multi-modal infrastructure connects the employment-based district to surrounding residences and services, creating a strong, localized economy and livable community.



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## Next Step -- Create Redevelopment Master Plan and Design Guidelines

- New street grids/frameworks and potential building form
- Street cross sections + conceptual plans for public and private roadways
- Streetscape and public space design guidelines; street trees and landscape guidelines
- Mixed use architectural character showing examples of preferred styles, materials, colors, and design techniques
- Parking layout preferences
- Pedestrian-friendly active street frontages; flexibility for ground floor uses that emphasize activity at street level (exercise studios, art galleries, professional offices, etc.)
- Height and bonus density provisions, and how these can be achieved

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## Commercial Mixed Use

### Discussion Starters

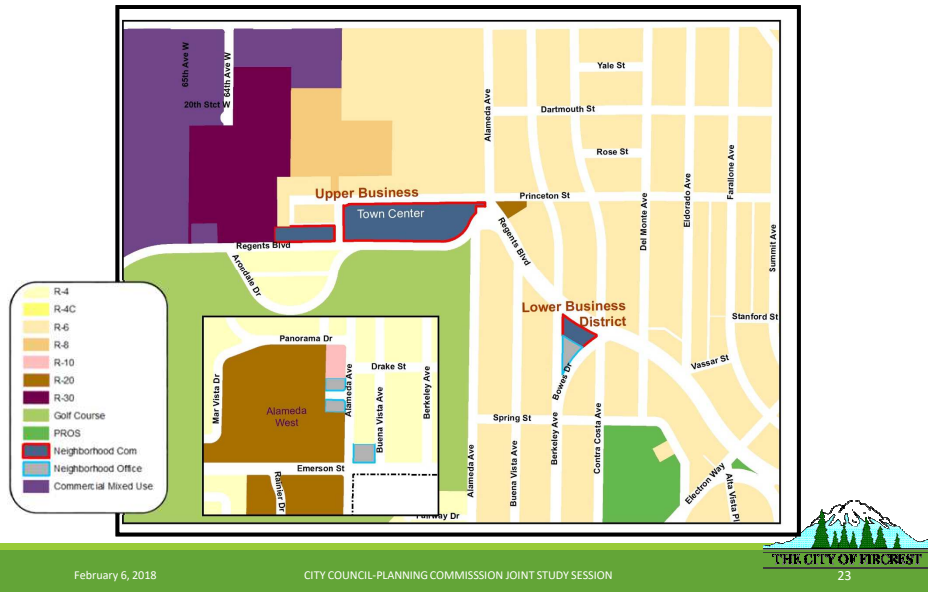
- Future of area
- Maximizing economic value of uses
- Increase height limit for multi-use buildings
- Changes to permitted uses: expand? restrict? compatibility?
- Design standard considerations

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## Neighborhood Commercial



## Neighborhood Commercial

### Zoning

- District provides for small-scale retail convenience goods and personal services primarily for the daily needs of nearby neighborhoods – more pedestrian oriented
- Grocery, pharmacies, retail stores, bakeries, restaurants, coffee shops, fitness studios, salons, medical offices, and much more (see FMC 22.46 for a full list)
- Maximum Height: 30 feet; 40 feet with underground parking
- Business Hours: 6:00 am through 12:00 midnight
- Master plans required for substantial redevelopment

# Neighborhood Commercial

## Design Standards

- Buildings shall be upfront with parking in the rear
- Principal entrance **should** address the street and create an architectural focus
- In general, siding textures and colors **should** reflect regional building patterns using wood siding, shingles, brick, stone, terra-cotta tile, and other features
- Concrete walls **should** be enhanced with texturing, coloring, and/or by incorporating embossed or sculptured surfaces, mosaics or artworks



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# Neighborhood Commercial

## Discussion Starters

- Future of area
- Increased height limit
- Expand Liquor to allow lounges, brew pubs
- Expand area: north side of Regents Blvd across from lower business district
- Expanding business times, especially in the a.m.
- Design standard considerations



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# Hearing Examiner

**The Question:** Is there interest in using a hearing examiner for quasi-judicial applications instead of the Planning Commission?

- **Usually a hired land use attorney**
  - Planning Commissions and City Councils are not trained in complicated land use laws
  - Less likelihood of appearance of fairness problems
- **Reduces liability**
  - The courts will not apply a lesser standard, because it is written by a citizen board
  - Land use decisions expose the city, staff and the individual decision-makers to liability
  - Appeals of land use decisions are frequently accompanied by damage claims
- **Cost**
  - The expensive should be weighed against the cost in land use appeals and damage claims
  - Cost covered by applicant
- **Does not mean the City Council no longer has a say in local decision-making**
  - You still make the rules
  - Removing the quasi-judicial roles, means less restrictions on opinions/testimony
- **Used by a majority of cities for the above reasons**
- **Recommended by Carol Morris, legal counsel**

Thoughts?



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## 2018 Joint Meeting City Council – Planning Commission





# **Comprehensive Plan – Commercial Designations**

## **NEIGHBORHOOD COMMERCIAL**

### ***Allowable Uses***

Neighborhood commercial areas will allow retail businesses and offices for which the primary clientele will most likely be Fircrest residents and local employees. Examples of such businesses include appropriately sized grocery stores, health care and other professional offices, pharmacies, gift shops, delicatessens, small bakeries, clothiers, beauty shops, coffee shops, small restaurants, small financial institutions, etc. Businesses and organizations that are culturally enriching will also be allowed. Examples of such businesses and organizations include art galleries, bookstores, dance studios, museums, live theaters, etc. Additional automobile-oriented businesses such as restaurants with drive-up windows are prohibited in Neighborhood Commercial areas. Businesses providing delivery services may be permitted provided they are compatible with the goals and policies of this Comprehensive Plan.

In addition, residential uses may be allowed on upper floors of vertical mixed use buildings subject to compliance with design guidelines. Residential uses must complement commercial uses and avoid impacting the commercial viability or functional operation of the commercial area. Public facilities, including transit facilities such as stops, shelters and benches that support development in the commercial areas, will be allowed, as will quasi-public facilities that are compatible with the surrounding development. Commercial uses must continue to be the predominant use in Neighborhood Commercial areas. Any noncommercial development should not cause a practical restriction on continued commercial use of the area.

### ***Building Intensity***

Allowable building intensity for new development, rehabilitation, and redevelopment in neighborhood Commercial areas is limited by bulk regulations, impervious surface limits and other provisions specified in the city's Land Development Code (Title 22 FMC).

## **COMMERCIAL MIXED USE**

### ***Allowable Uses***

Commercial Mixed Use areas will allow the same types of retail businesses, offices, and organizations that are allowed in neighborhood commercial areas. In addition, community commercial areas may include businesses that serve a clientele that will most likely be drawn equally from the Fircrest community and the surrounding University Place and Tacoma area. Examples of such businesses include large grocery stores and other retail outlets, consolidated medical and professional centers, major financial institutions, movie theaters, etc. Automobile-oriented businesses such as restaurants with drive-up windows and businesses providing delivery services may only be permitted when they are compatible with the goals and policies of this Comprehensive Plan.

Residential uses are allowed on upper floors of vertical mixed use buildings. In addition, stand-alone residential buildings may be permitted when located toward the rear of a site when separated from a public street by one or more intervening commercial or mixed use buildings. In such instances, the development plan should achieve a predominantly commercial orientation at the ground floor level in areas located between the stand-alone residential

building(s) and the street. Any noncommercial development should not cause a practical restriction on continued commercial activities within a commercial mixed use area.

Public facilities, including transit facilities such as stops, shelters and benches that support development in the commercial areas, will be allowed, as will quasi-public facilities that are compatible with the surrounding development.

***Building Intensity***

Allowable building intensity for new development, rehabilitation, and redevelopment in commercial Mixed Use areas is limited by bulk regulations, impervious surface limits and other provisions specified in the city's Land Development Code (Title 22 FMC).

## Chapter 22.50 COMMERCIAL MIXED USE DISTRICT (CMU)

### Sections:

- [22.50.001](#) Purpose.
- [22.50.002](#) Permitted uses.
- [22.50.003](#) Accessory uses.
- [22.50.004](#) Conditional uses.
- [22.50.005](#) *Repealed.*
- [22.50.006](#) Administrative uses.
- [22.50.007](#) Prohibited uses.
- [22.50.008](#) Development standards.

### **22.50.001 Purpose.**

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The CMU zoning district is intended to implement the comprehensive plan's commercial mixed use land use designation. This district provides opportunities for a broad mix of retail and office uses, personal, professional and business services, institutions, recreational and cultural uses, residential uses, and other facilities that provide services for the needs of nearby residents and businesses and the surrounding community. In addition, the commercial mixed use district provides limited opportunities for light industrial activities that enhance the city's economic base and provide employment for residents in the area in a manner that is compatible with neighboring commercial and residential uses. Site and building design encourage pedestrian, bicycle and transit use while accommodating automobiles. Community plazas and other publicly accessible spaces are incorporated into mixed use developments that include a variety of complementary uses. High quality architecture, landscaping, hardscape, artwork and other public amenities contribute to making the area inviting, attractive, functional and vibrant for residents, employees and visitors alike. (Ord. 1562 § 27, 2015; Ord. 1311 § 11, 2002; Ord. 1246 § 11, 2000).

### **22.50.002 Permitted uses.**

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Uses permitted subject to site plan approval in accordance with Chapter [22.72](#) FMC and administrative design review approval in accordance with Chapter [22.66](#) FMC:

(a) Retail sales store including, but not limited to, the sale or rental of the following items: antiques, appliances (new), art and art supplies, bicycles, books, building materials, clothing, fabrics, floor coverings, flowers, food, gifts, groceries, hardware, hobby and craft supplies, home furnishings, jewelry, lawn and garden equipment and supplies, newspapers, office equipment and supplies, paint, music, pets and pet supplies, pharmaceuticals, photography supplies and processing, sporting goods, stationery, toys, vehicle parts (new/remanufactured), videos and wallpaper.

(b) Commercial service including, but not limited to: beauty and hair care, consulting, copying, dry cleaning, fitness/health studios, funeral services, laundry and cleaning (self-service), locksmithing, optical, pet grooming, post office or substation, printing, studio photography, real estate sales, repair of products listed in subsection (a) of this section, security, signs, tailoring, telecommunication sales, title, travel agency service, upholstery and vehicle detailing.

- (c) Food-serving establishment including, but not limited to, bakery, cafeteria, coffee shop, confectionery, delicatessen, espresso stand, ice cream or yogurt shop, restaurant and other sit-down, self-service, or take-out establishments.
- (d) Commercial office including, but not limited to: medical, dental, optometric, business and professional offices.
- (e) Culturally enriching use including, but not limited to: art gallery, dance studio, library, museum, live theater venue and senior center.
- (f) Laboratory, including but not limited to: medical, dental and optical.
- (g) Civic, labor, social and fraternal organization.
- (h) Veterinary clinic, with treatment and storage of animals within an enclosed building.
- (i) Entertainment facility, including but not limited to: arcade, bowling alley, indoor miniature golf course, indoor movie theater, indoor skating rink, racquetball court and tennis court.
- (j) Hotel and motel.
- (k) Financial institution, including but not limited to: bank, savings and loan, and credit union.
- (l) Religious institution.
- (m) Family group home, including adult family home.
- (n) Multifamily dwelling.
- (o) Necessary public or quasi-public utility building, structure or equipment, unstaffed and less than or equal to 500 square feet in gross floor area (subject to compliance with landscape standards in Chapter [22.62](#) FMC). Excludes substation. (Ord. 1562 § 28, 2015; Ord. 1325 § 2, 2003; Ord. 1311 § 12, 2002; Ord. 1246 § 11, 2000).

### **22.50.003 Accessory uses.**

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Uses permitted in conjunction with, or accessory to, a principal use permitted in FMC [22.50.002](#):

- (a) Temporary accessory use or structure (subject to compliance with FMC [22.58.015](#)).
- (b) Home occupation – Type I (subject to compliance with FMC [22.58.013](#)).
- (c) Employee recreation facility and play area.
- (d) Employee cafe or cafeteria operated in conjunction with a principally permitted use.
- (e) Family day-care facility (subject to compliance with FMC [22.58.010](#)).
- (f) Other accessory use or structure that is subordinate and incidental to a principally permitted use, as determined by the director.
- (g) Electric vehicle charging station (subject to compliance with FMC [22.58.025](#)).

(h) Electric vehicle battery exchange station (subject to compliance with FMC [22.58.025](#)). (Ord. 1562 § 29, 2015; Ord. 1509 § 10, 2011; Ord. 1311 § 13, 2002; Ord. 1246 § 11, 2000).

#### **22.50.004 Conditional uses.**

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Uses permitted subject to conditional use permit approval in accordance with Chapter [22.68](#) FMC and administrative design review in accordance with Chapter [22.66](#) FMC:

- (a) Child day-care center.
- (b) Preschool, accredited, public or private.
- (c) Home occupation – Type II (subject to compliance with FMC [22.58.013](#)).
- (d) Automobile and boat sales or rental, new or used.
- (e) Vehicle repair established prior to effective date of the ordinance codified in this section.
- (f) Mini-storage or mini-warehouse (indoor) facility only when located on a parcel that does not have frontage on a public street.
- (g) Service station established prior to effective date of the ordinance codified in this section.
- (h) Entertainment facility, outdoor.
- (i) Drive-in or drive-through facility (subject to compliance with FMC [22.60.012](#)).
- (j) Adult entertainment establishments (subject to compliance with FMC [22.58.014](#)).
- (k) Light industrial uses including: engineering-oriented pursuits such as electronics, robotics, 3-D printing, and the use of computer numerical control (CNC) tools; metalworking, woodworking, and traditional arts and crafts; small-scale assembly and manufacturing of products using processed materials that do not have the potential to create a nuisance for adjoining land uses; wholesale sale of products manufactured on site; and technological and biotechnological uses, including scientific research, testing and experimental development laboratories.
- (l) Essential public facilities, as determined by FMC [22.58.022](#). Excludes family and general group homes and includes correctional group homes.
- (m) Necessary public or quasi-public structure or equipment greater than 500 square feet in gross floor area (subject to compliance with landscape standards in Chapter [22.62](#) FMC). Excludes substation.
- (n) Personal wireless service facility for which a variance is required (subject to compliance with Chapter [22.24](#) FMC).
- (o) A use not listed above which: is not listed in another zoning district as a permitted or conditional use; is similar in nature to the above list of permitted and conditional uses; is consistent with the purpose and intent of this zoning district; and is compatible with the uses on adjoining properties. (Ord. 1562 § 30, 2015; Ord. 1311 § 14, 2002; Ord. 1246 § 11, 2000).

### **22.50.005 Conditional uses – Light industrial lots.**

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*Repealed by Ord. 1562. (Ord. 1518 § 1, 2011; Ord. 1311 § 15, 2002).*

### **22.50.006 Administrative uses.**

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Uses permitted subject to administrative use permit approval in accordance with Chapter [22.70](#) FMC:

(a) Outdoor sidewalk cafe or other food or beverage-serving facility or establishment, when located on a public sidewalk or other public right-of-way area (subject to compliance with FMC [22.58.017](#)).

(b) Outdoor seasonal sales, such as Christmas tree or pumpkin patch lots, or other outdoor special event sales.

(c) Personal wireless service facility (subject to compliance with Chapter [22.24](#) FMC). (Ord. 1562 § 32, 2015; Ord. 1311 § 16, 2002; Ord. 1246 § 11, 2000. Formerly 22.50.005).

### **22.50.007 Prohibited uses.**

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The following uses are prohibited:

(a) Automobile wrecking yard.

(b) Impound yard.

(c) Junk or salvage yard.

(d) Mini-storage or mini-warehouse (outdoor). (Ord. 1562 § 33, 2015; Ord. 1518 § 2, 2011; Ord. 1518 § 2, 2011; Ord. 1311 § 17, 2002).

### **22.50.008 Development standards.**

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Maximum density	30 dwelling units per acre.
Maximum height	45 feet. A maximum 55-foot height may be authorized if one or more levels of structured parking is provided at or below grade level within the building footprint. For other exceptions, see FMC <a href="#">22.58.007</a> .
Front yard and side street side yard setback	Zero feet minimum/20 feet maximum for first two stories. Additional stories shall be stepped back at least 10 feet from the wall plane established for the first two stories.

Minimum interior side yard setback	10 feet for first two stories. Additional stories shall be stepped back at least 5 feet from the wall plane established for the first two stories.
Minimum rear yard setback	10 feet, except when abutting an R district (see below).
Minimum setback when abutting an R district	20 feet for first two stories. Additional stories shall be stepped back at least 10 feet from the wall plane established for the first two stories.
Maximum lot coverage for structures	65% for all structures combined. 75% for all structures combined if at least 50% of required parking is provided at or below grade level within the building footprint.
Maximum impervious surface coverage	85% for structures and other impervious surfaces combined.

Exterior wall modulation	<p>Building elevations greater than 80 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least 4% of the length of the facade, but no less than 6 feet. The projections or recesses shall extend at least 20% of the length of the facade. No uninterrupted length of any facade shall exceed 80 horizontal feet. See FMC <a href="#">22.64.009</a> for an illustration of this requirement.</p> <p>Alternative designs that: incorporate recessed or projecting balconies; use base, middle and top treatments with different forms; include roof modulation; and/or provide strong articulation of the facade through the use of multiple siding materials and textures, various building forms, awnings and variation in colors – in conjunction with appropriate landscaping, may be approved in lieu of compliance with the wall modulation standard specified above.</p>
Business hours	<p>Limitations may be imposed through the site plan review or conditional use permit review processes in order to mitigate impacts on nearby land uses. See Chapters <a href="#">22.68</a> and <a href="#">22.72</a> FMC.</p>



Limitation on nonretail use	<p>For a lot or a group of lots having a gross lot area greater than 0.5 acres, the ground floor of buildings within 250 feet of the Mildred Street ROW on such lots shall be designed to accommodate retail use per FMC <a href="#">22.64.016</a> and FMC <a href="#">22.64.020</a>. Not more than 20% of building floor within this ground floor may be leased or otherwise made available for nonretail use. A lot with an area that exceeds 0.5 acres prior to the effective date of the ordinance codified in this section, and that is subsequently subdivided or otherwise reduced in area to less than 0.5 acres, shall remain subject to these requirements.</p>
Additional specific use and structure regulations	See Chapter <a href="#">22.58</a> FMC.
Pedestrian plaza requirements	See FMC <a href="#">22.58.016</a> .
Parking and circulation	See Chapter <a href="#">22.60</a> FMC.
Landscaping regulations	See Chapter <a href="#">22.62</a> FMC.
Design standards and guidelines	See Chapter <a href="#">22.64</a> FMC.
Ground floor use of a commercial or mixed use building	See FMC <a href="#">22.64.016</a> (a).

Continuous storefront requirement for parking structures	See FMC <a href="#">22.64.016(b)</a> .
Minimum floor to ceiling height for ground floor commercial space	See FMC <a href="#">22.64.016(c)</a> .
Minimum storefront window area for ground floor commercial space	See FMC <a href="#">22.64.020(a)</a> .
Large retail establishment requirements.	See FMC <a href="#">22.64.042</a> .
<i>Calculations resulting in a fraction shall be rounded to the nearest whole number with 0.50 being rounded up.</i>	

(Ord. 1562 § 34, 2015; Ord. 1536 § 1, 2013; Ord. 1311 § 18, 2002; Ord. 1246 § 11, 2000. Formerly 22.50.006).

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**The Fircrest Municipal Code is current through Ordinance 1612, passed December 12, 2017.**

Disclaimer: The City Clerk's Office has the official version of the Fircrest Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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## Chapter 22.46 NEIGHBORHOOD COMMERCIAL DISTRICT (NC)

### Sections:

- [22.46.001](#) Purpose.
- [22.46.002](#) Permitted uses.
- [22.46.003](#) Accessory uses.
- [22.46.004](#) Conditional uses.
- [22.46.005](#) Administrative uses.
- [22.46.006](#) Master plans.
- [22.46.007](#) Prohibited uses.
- [22.46.008](#) Development standards.

### **22.46.001 Purpose.**

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The NC zoning district is intended to implement the comprehensive plan's neighborhood commercial land use designation. This district provides for small-scale shopping areas that offer retail convenience goods and personal services primarily for the daily needs of nearby neighborhoods. This zoning district is designed to reduce vehicle trips by providing convenient shopping for nearby residents. NC zones are located on transit routes, and site and building design also encourage pedestrian, bicycle and transit use. A pedestrian orientation is required for new development and new automobile-oriented uses are prohibited. Neighborhood commercial sites are limited in size to keep them in scale with the neighborhoods they serve and nearby uses. In addition, high quality landscaping is used to make the area attractive and functional and to minimize negative impacts on nearby uses. Other measures, such as buffering requirements and limits on hours of operation, may be used to reduce impacts to nearby residences. Limited residential uses above the ground floor level of mixed-use buildings are encouraged. Master plans are required for substantial redevelopment or substantial new development within areas designated "special planning areas" on the comprehensive plan's land use designation map. (Ord. 1562 § 20, 2015; Ord. 1246 § 9, 2000).

### **22.46.002 Permitted uses.**

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Uses permitted subject to site plan approval in accordance with Chapter [22.72](#) FMC and administrative design review approval in accordance with Chapter [22.66](#) FMC:

(a) Retail sales store including, but not limited to, the sale or rental of the following items: antiques, appliances (small), art and art supplies, bicycles, books, clothing, fabrics, flowers, gifts, groceries, hardware, hobby and craft supplies, home furnishings, lawn and garden equipment and supplies, paint and wallpaper, music, pets, pharmaceuticals, photography supplies and processing, sporting goods, stationery, and videos.

(b) Commercial service including, but not limited to: beauty and hair care, consulting, copying, fitness/health studios, laundry and cleaning (self-service), locksmithing, office equipment repair, optical, paging, pet grooming, post office or postal substation, studio photography, real estate sales, shoe repair, tailoring, telecommunication sales, and travel agency service.

(c) Food- or beverage-serving establishment including, but not limited to: bakery, cafeteria, coffee shop, confectionery, delicatessen, espresso stand, ice cream or yogurt shop, restaurant and other sit-down, self-service or take-out establishments. See FMC [22.58.029](#) for standards regulating establishments licensed by the Washington State Liquor and Cannabis Board to serve liquor for on-premises consumption. See FMC [22.46.005](#) for establishments serving liquor for on-premises consumption in an outdoor customer seating area.

(d) Commercial office serving primarily a local clientele including, but not limited to: medical, dental, optometric, business and professional office.

(e) Culturally enriching use including, but not limited to: art gallery, dance studio, library, museum, live theater venue and senior center.

(f) Residential dwelling units, including family group homes and adult family homes, located above the ground floor of a commercial establishment, not to exceed a maximum density of six units per gross acre of site area.

(g) Necessary public or quasi-public utility building, structure or equipment, unstaffed and less than or equal to 500 square feet in gross floor area (subject to compliance with landscape standards in Chapter [22.62](#) FMC). Excludes substation. (Ord. 1568 § 1, 2015; Ord. 1562 § 21, 2015; Ord. 1246 § 9, 2000).

### **22.46.003 Accessory uses.**

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Uses permitted in conjunction with, or accessory to, a principal use permitted in FMC [22.46.002](#):

(a) Temporary accessory use or structure (subject to compliance with FMC [22.58.015](#)).

(b) Home occupation – Type I (subject to compliance with FMC [22.58.013](#)).

(c) Employee recreation facility and play area.

(d) Family day-care facility (subject to compliance with FMC [22.58.010](#)).

(e) Other accessory use or structure which is subordinate and incidental to a principally permitted use, as determined by the director.

(f) Electric vehicle charging station (subject to compliance with FMC [22.58.025](#)).

(g) Electric vehicle battery exchange station (subject to compliance with FMC [22.58.025](#)).

(h) Delivery service, when the principal use is located within a neighborhood commercial center abutting a street classified as an arterial in the Fircrest Comprehensive Plan, provided delivery vehicles use an arterial, and do not use an abutting local street, for making deliveries. (Ord. 1575 § 10, 2016; Ord. 1509 § 8, 2011; Ord. 1246 § 9, 2000).

### **22.46.004 Conditional uses.**

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Uses permitted subject to conditional use permit approval in accordance with Chapter [22.68](#) FMC and administrative design review approval in accordance with Chapter [22.66](#) FMC:

- (a) Child day-care center.
- (b) Preschool, accredited, public or private.
- (c) Home occupation – Type II (subject to compliance with FMC [22.58.013](#)).
- (d) Necessary public or quasi-public structure or equipment greater than 500 square feet in gross floor area (subject to compliance with landscape standards in Chapter [22.62](#) FMC). Excludes substation.
- (e) Personal wireless telecommunications facility (subject to compliance with Chapter [22.24](#) FMC).
- (f) A use not listed above which: is not listed in another zoning district as a permitted or conditional use; is similar in nature to the above list of permitted and conditional uses; is consistent with the purpose and intent of this zoning district; and is compatible with the uses on adjoining properties. (Ord. 1246 § 9, 2000).

#### **22.46.005 Administrative uses.**

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Uses permitted subject to administrative use permit approval in accordance with Chapter [22.70](#) FMC:

- (a) Outdoor sidewalk cafe or other food- or beverage-serving facility or establishment, when located on a public sidewalk or other public right-of-way area (subject to compliance with FMC [22.58.017](#)).
- (b) Establishment licensed by the Washington State Liquor and Cannabis Board to serve liquor for on-premises consumption in an outdoor customer seating area (subject to compliance with FMC [22.58.029](#)).
- (c) Uses otherwise subject to site plan or conditional use permit approval which have been authorized by the planning commission as part of a master plan pursuant to FMC [22.46.006](#). (Ord. 1568 § 2, 2015; Ord. 1246 § 9, 2000).

#### **22.46.006 Master plans.**

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Approval of a master plan by the planning commission is required for substantial redevelopment or substantial new development within areas designated “special planning areas” on the comprehensive plan’s land use designation map. Each master plan shall contain a pedestrian plaza with landscaping, seating, tables and complementary uses that render the site a pleasant, safe and comfortable resting, socializing and picnicking area for employees and shoppers in accordance with FMC [22.58.016](#). The master plan shall be processed as a major site plan in accordance with Chapter [22.72](#) FMC. Upon approval of a master plan, specific uses that would otherwise be subject to site plan or conditional use permit approval in Chapter [22.68](#) FMC and determined by the director to be consistent with the approved master plan may be approved in accordance with the administrative use permit review process contained in Chapter [22.70](#) FMC. No additional planning commission approval is required for these previously authorized uses. If a proposed individual use represents a substantial modification to, or departure from, the approved master plan, the proposal shall be processed as a site plan amendment in accordance with FMC [22.72.012](#). (Ord. 1246 § 9, 2000).

#### **22.46.007 Prohibited uses.**

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The following uses are prohibited:

- (a) Drive-up or drive-through facility.
- (b) Off-street parking facility which provides greater than 120 percent of the minimum required number of parking stalls specified in FMC [22.60.003](#).
- (c) Tavern, night club, sports entertainment facility or lounge as defined by the Washington State Liquor and Cannabis Board.
- (d) Adult entertainment establishment.
- (e) Second-hand store, other than antique store. (Ord. 1575 § 11, 2016; Ord. 1568 § 3, 2015; Ord. 1325 § 1, 2003; Ord. 1246 § 9, 2000).

#### **22.46.008 Development standards.**

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Maximum height	30 feet. A maximum 40-foot height may be authorized if one or more levels of structured parking is provided at or below grade level within the building footprint. For other exceptions, see FMC <a href="#">22.58.007</a> .
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Front yard and side street side yard setback	<p>Zero feet minimum / 20 feet maximum for first two stories. Additional stories shall be stepped back at least 10 feet from the wall plane of the first two stories. On street blocks where a historic main street development pattern is represented by buildings constructed to or near the front property line, new construction shall be built with a comparable setback that places the storefront abutting the sidewalk or in line with other buildings at or near the property line. On other street blocks where this historic pattern is not well established, new construction shall reinforce or establish a historic main street pattern. The maximum setback in such cases shall be 20 feet, unless the building is separated from a street by another principal building on the same lot. At least 75% of the length of the ground floor street-facing facade of a building shall be within the maximum setback.</p>
Minimum interior side yard setback	10 feet when abutting any "R" district; otherwise zero feet.
Minimum rear yard setback	20 feet when abutting any "R" district; otherwise zero feet.
Minimum alley setback	12 feet from an alley lot line; provided, that a structure may project over the required rear yard alley setback if a 14-foot clear vertical distance between the structure and ground level is maintained.

Maximum floor area for a single commercial use	15,000 square feet.
Maximum lot coverage for structures	65% for all structures combined. 75% for all structures combined if at least 50% of required parking is provided at or below grade level within the building footprint.
Maximum impervious surface coverage	85% for structures and other impervious surfaces combined.
Ground floor use of a commercial or mixed use building	See FMC <a href="#">22.64.016(a)</a> .
Continuous storefront requirement for parking structures	See FMC <a href="#">22.64.016(b)</a> .
Minimum floor to ceiling height for ground floor commercial space	See FMC <a href="#">22.64.016(c)</a> .
Minimum storefront window area for ground floor commercial space	See FMC <a href="#">22.64.020(a)</a> .



Exterior wall modulation	<p>Building elevations greater than 60 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least 6 feet. The projections or recesses shall extend at least 20% of the length of the facade. No uninterrupted length of any building elevation shall exceed 60 horizontal feet. See FMC <a href="#">22.64.009</a> for an illustration of this requirement. Alternative designs that: incorporate recessed or projecting balconies; use base, middle and top treatments with different forms; include roof modulation; and/or provide strong articulation of the facade through the use of multiple siding materials and textures, various building forms, awnings and variation in colors – in conjunction with appropriate landscaping, may be approved in lieu of compliance with the wall modulation standard specified above.</p>
Pedestrian plaza requirements	See FMC <a href="#">22.58.016</a> .
Business hours	<p>6:00 a.m. through 12:00 midnight, unless further restricted through the site plan review or conditional use permit review processes – see Chapters <a href="#">22.68</a> and <a href="#">22.72</a> FMC.</p>

Additional specific use and structure regulations, including performance standards	See Chapter <a href="#">22.58</a> FMC.
Parking, circulation, and transit improvements	See Chapter <a href="#">22.60</a> FMC.
Landscaping regulations	See Chapter <a href="#">22.62</a> FMC.
Design standards	See Chapter <a href="#">22.64</a> FMC.
Sign regulations	See Chapter <a href="#">22.26</a> FMC.
<i>Calculations resulting in a fraction shall be rounded to the nearest whole number with .50 being rounded up.</i>	

(Ord. 1562 § 22, 2015; Ord. 1311 § 9, 2002; Ord. 1272 § 6, 2001; Ord. 1246 § 9, 2000).

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**The Fircrest Municipal Code is current through Ordinance 1612, passed December 12, 2017.**

Disclaimer: The City Clerk's Office has the official version of the Fircrest Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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# Should Your City Change to a Hearing Examiner System?

by

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In many cities, quasi-judicial land use project permit applications (conditional use permits, variances, preliminary plats, site specific rezones, etc.) are first given an open record hearing before the planning commission or board of adjustment. A final decision is made by the commission/board, and any appeals are handled by the city council in a closed record hearing.

[1] Or, if the board makes a recommendation instead of a final decision, the city council considers it in the closed record hearing and makes the final decision.

However, many cities have opted for a hearing examiner system, which allows a hearing examiner (usually an attorney) to hold the open record hearing on the quasi-judicial land use application.[2] The hearing examiner's decision may take the form of either a recommendation to the city council or a final decision. If the examiner has made a recommendation, the city council will hold a closed record hearing and then render the final decision. Or, if the examiner has made the final decision, there may be a procedure allowing for reconsideration of the examiner's decision and/or a closed record appeal hearing before the city council.

**There are many reasons to consider switching from a citizen board (like the planning commission or board of adjustment) to a hearing examiner system for quasi-judicial project permit applications:**

1. Most planning commissions/boards of adjustment operate without legal guidance and have trouble understanding complicated land use laws. The city's processing of permit applications involves consideration and integration of many different laws, including but not limited to the Growth Management Act (ch. 36.70A RCW), the Regulatory Reform Act (ch. 36.70B RCW), the State Environmental Policy Act (SEPA) (ch. 43.21C RCW), critical areas regulations, the Shoreline Management Act (ch. 90.48 RCW), the Subdivision Act (ch. 58.17 RCW), as well as federal/state constitutional provisions. Not all of these are reflected in the city's codes. For example, the city's code may address the issue whether or not a particular application is subject to the vested rights doctrine, but most codes do not describe how the doctrine works. Codes do not describe how to fashion individual conditions on permits to address environmental impacts within constitutional constraints. Therefore, the decision-makers must have a comprehensive understanding of these laws in order to make correct decisions.

To make things even more complicated, these laws are constantly changing. Many cities are able to rely upon their city attorneys to guide the process, but in too many financially strapped cities, the planning commission, board of adjustment and city council

must make decisions on land use applications with minimal legal advice. An attorney hearing examiner should be aware of the latest court decisions affecting land use/zoning, and should be able to draft a decision that will be upheld on appeal.

2. The courts will not apply a lesser standard of review to the land use decision, merely because it is written by a citizen board. The courts have established a high standard for administrative land use decision-making. In one case, the court held that: "findings of fact by an administrative agency are subject to the same requirements as finding of fact drawn by a trial court." [3] Statements of the positions of the parties and a summary of the evidence presented, with findings which consist of general conclusions drawn from "indefinite, uncertain undeterminative narration of general

conditions and events” are not adequate.”[4] In many instances, the courts have reversed and remanded (sent back) the final decision of the municipality due to poorly written findings of fact and conclusions of law.[5] An attorney hearing examiner should have more experience and knowledge of the law to be able to draft findings of fact and conclusions that can be successfully meet this sufficiency standard.[6]

3. Appeals of land use decisions are frequently accompanied by damage claims. While all cities must meet deadlines for SEPA threshold decisions and final decisions on subdivisions, many cities planning under GMA are also required to establish deadlines for processing other types of permits.[7] It usually takes longer to process an application before a board because of scheduling the public hearing(s). For example, the board may only meet once a month, there may be a lack of a quorum for vacations, recusals, etc., or the board may simply take more time to review each application (causing a backlog). Significant exposure to liability may arise from even minor delays in permit processing.[8] A hearing examiner may be more flexible in his/her schedule, because a hearing examiner is paid, and will usually schedule additional hearings as needed to ensure that the decision timely issues.

4. The city, staff and the individual decision-makers have exposure to liability for land use decision-making.[9] There are several state and federal statutes that allow claims to be brought against the city and/or individual decision-makers for arbitrary, capricious, illegal or unconstitutional actions.[10] Most boards and commissions do not understand the tests used by courts to determine validity or constitutionality of the board’s action/decisions. Action on the least complicated permit application may result in an appeal involving enormous damages claims due to construction delays and the resulting increase in project costs and attorneys’ fees.[11] An experienced land use hearing examiner should be able to avoid many of the common mistakes made by boards and commissions.

Furthermore, some property owners file lawsuits against the individual decision-makers (and their spouses) just to place pressure on the individuals, believing that the city will be more likely to settle the case in the developer’s favor. This tactic may or may not succeed, but it could also have a chilling effect on the willingness of citizens to serve on the planning commission, board of adjustment or city council. On the other hand, it is rare for a developer to file a lawsuit for damages against a hearing examiner personally.

5. With an attorney hearing examiner, there is less likelihood of appearance of fairness problems. Most small cities have planning commissions, boards of adjustment and city councils charged with the responsibility to make decisions on permit applications that may be submitted by their relatives, friends and business associates. Sometimes, these boards may not be aware of the breadth of the appearance of fairness doctrine or how conflict of interest issues impact their decision making. Some boards/councils may not seek, or decide to simply ignore, the legal advice of the city attorney on appearance of fairness issues that arise during the hearing.[12] While the remedy for an appearance of fairness violation is invalidation of the decision and not damages, the city may still incur significant expense with an appeal of the decision and remand after invalidation – after all, the entire process must be repeated. An attorney hearing examiner usually will not encounter the types of appearance of fairness challenges that are met by a board of citizens from the community, and should have the experience and knowledge to observe the appearance of fairness doctrine and correct hearing procedure.

6. Use of the hearing examiner system does not mean the city council no longer has a say in local decision-making. One reason city councils may give in opposition to the hearing examiner system is the anticipated lack of receptivity the examiner will have to citizen concerns. However, no decision-maker, whether it is a hearing examiner, planning commission, board of adjustment or city council, can approve or deny a project permit application based on public sentiment.[13] All

decision-makers must analyze the facts with regard to the city's codes when making quasi-judicial decisions, and apply the facts to the law (the criteria for approval of the permit).

Keep in mind that with the hearing examiner system, the council may still opt for a procedure that allows them to make the final decision (on the permit or on any appeal). While the council usually doesn't accept new evidence during a closed record hearing or appeal, it may still have an opportunity to correct the examiner's decision. However, if the examiner is an attorney, it is less likely that the examiner will make an error of law/procedure, act unconstitutionally, or issue a decision that is not based on substantial evidence in the record. Even if the attorney hearing examiner makes the final decision on a development permit, the council can adopt an ordinance that allows them to reconsider the final decision.

7. The hearing examiner system may be more expensive than a citizen board, but this should be weighed against the cost involved in land use appeals and damage claims. The planning commission and board of adjustment are comprised of volunteers, and their time is donated to the city. An attorney hearing examiner is not free, and usually bills hourly. However, hiring a hearing examiner with experience usually is less expensive to the city overall, considering reduced demands on staff and the city attorney. A hearing examiner should act professionally and impartially, treating everyone with courtesy and respect — thereby reducing misunderstandings that may occur when the applicant is personally known to the citizen board. If the hearing examiner is an attorney who is knowledgeable on land use law, his/her decisions will be less likely to be appealed or to expose the city to liability.

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[1] For those cities required to plan under RCW 36.70A.040 (GMA), only one open record hearing may be held on a project permit application. No more than one closed record hearing (or appeal) may be held after the open record hearing. RCW 36.70B.060(6).

[2] The authorization for a hearing examiner system is in RCW 35.63.130 and RCW 35A.63.170.

[3] *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35, 873 P.2d 498 (1994).

[4] *Id.*, 124 Wn.2d at 36.

[5] *Citizens for Responsible and Organized Planning v. Chelan County*, 105 Wash. App. 753, 21 P.3d 265 (2001) (commissioners adopted findings and conclusions prepared by planning staff which did not address the central question in dispute, nor did the findings specify any reasons for the conclusions, so the court reversed and remanded the decision); *Levine v. Jefferson County*, 116 Wn.2d 575, 807 P.2d 363 (1991).

[6] However, in the case cited for the standard to be applied to administrative decisions, the court found that the decision of the county's hearing examiner was inadequate. *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994).

[7] *See*, RCW 36.70B.080, which requires cities planning under RCW 36.70A.040(GMA) to include a deadline for issuance of a final decision in their codes (usually 120 days). Otherwise, all cities are required to follow state law in the issuance final decisions for short plats, final plats and preliminary plats. RCW 58.17.140.

[8] *See, Mission Springs v. Spokane*, 134 Wn.2d 947, 954 P.2d 250 (1998) (delay of three weeks for grading permit issuance after council ordered traffic study to be prepared).

[9] *See, Westmark v. Burien*, 140 Wash. App. 540, 166 P.3d 813 (2007) (over ten million dollars in damages awarded against city under several claims, including a three year delay in the issuance of a SEPA threshold decision, several city employees and city attorney sued personally in separate federal court action). *See also, Hunt Skansie v. Gig Harbor*, Slip Copy, 2010 WL 1981040, W.D. Wash. 2010, May 17, 2010; councilmembers, their spouses and marital communities were sued (in addition to the city) because they filed judicial appeals of the city hearing examiner's decision approving development permits. The developer claimed that the judicial appeals alone prevented it from developing, even though the city did not request a stay. The court dismissed all claims against the individuals, and eventually dismissed all claims against the city in *Hunt Skansie v. Gig Harbor*, Slip Copy 2010 WL 5394991, W.D. December 23, 2010 (No. C10-5027 RBL).

[10] RCW 64.40.020; 42 U.S.C. Sec. 1983, 1988.

[11] In the *Mission Springs* case, the city, individual council members and city officials were sued personally because of their decision to withhold a grading permit until a traffic study was performed.

[12] See, *Mission Springs v. Spokane*, 134 Wn.2d 947, 954 P.2d 250 (1998).

[13] *Maranatha Mining v. Pierce County*, 59 Wash. App. 795, 801 P.2d 985 (1990).