

**ORDINANCE** 1438

**AN ORDINANCE** amending Burlington Municipal Code Section 15.15.020 D Application and Purpose, to clarify the application of the FEMA Flood Insurance Study; amending Burlington Municipal Code Section 15.15.030 Definitions, to add a new definition of Critical Facility, amend the definition of Floodplain or Frequently Flooded Areas, delete the definition of Habitable Floor, add a new definition of Lowest Floor, and amend the definition of Substantial Improvement; amending Burlington Municipal Code Section 15.15.040 A 3 Administration to delete references to habitable floor and variances and adding new sections A 6 & 7 to clarify the permit issuance and records requirements; amending Burlington Municipal Code Section 15.15.050 B & D Application of Standards, to clarify permit exemptions; amending Burlington Municipal Code Section 15.15.080 F, G and I Development in floodplains – General, to add sites without base flood elevations and standards for Recreational Vehicles; amending Burlington Municipal Code Section 15.15.100 A 6,7 & 8 Development in Special Flood Risk Zone, to delete open fence exemption, delete balanced cut and fill, set design standards for breakaway walls, and adding new sections C, D, and E prohibiting multi-family structures, short and full subdivisions, and requiring authorization by City Council of any structures over \$250,000 in value located in the Special Flood Risk Zone; repealing Burlington Municipal Code Section 15.15.110 Appeals; adding a new Burlington Municipal Code Section 15.15.115 Critical Facility; and adding a new Burlington Municipal Code Section 15.15.170 Enforcement of the Critical Areas Regulations.

**WHEREAS**, the City of Burlington is coordinating with the Federal Emergency Management Agency on a set of code amendments that will bring the city’s flood regulations up to date, and

**WHEREAS**, the Corps of Engineers Feasibility Study of the Skagit River has identified a significant flood hazard in a 50-100 year flood event, with significant flow through the Gages Slough conveyance corridor, mapped as a Special Flood Risk Zone, and

**WHEREAS**, in order to reduce the flood hazard in the City of Burlington, the City Council finds that it is in the best interest of the public to amend the flood regulations.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGTON DO HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Burlington Municipal Code Section 15.15.020 is hereby amended to read as follows:

**15.15.020 Application, purpose.**

- A. This chapter shall apply to development and platting located in the city limits of Burlington.
- B. The purpose of these regulations is to:
  - 1. Protect human life, property, and the public health and safety of the citizens of Burlington;
  - 2. Minimize the expenditure of public money;
  - 3. Maintain the city's flood insurance eligibility while avoiding regulations which are unnecessarily restrictive or difficult to administer;
  - 4. Ensure that wetland functions and values are protected to provide public benefits.
- C. The following shall constitute critical areas:
  - 1. Wetlands and riparian corridors, including Gages Slough;
  - 2. Areas with a critical recharging effect on aquifers used for potable water;
  - 3. Fish and wildlife habitat conservation areas;

4. Frequently flooded areas; and
  5. Geologically hazardous areas.
- D. Critical areas defined and identified in this chapter shall be mapped whenever possible. These maps shall be advisory and used by the director to provide guidance in determining applicability of the standards to a property. Sites which include critical areas which are not mapped shall be subject to the provisions of this chapter. The Aerial Topographic Map of the City of Burlington, December 13, 1984 and subsequent updates, along with wetland delineation maps in the city of Burlington land use files, are the advisory maps—, along with the "Flood Insurance Study, City of Burlington," dated July 3, 1984, and any revisions thereto, with accompanying flood insurance rate map (FIRM), dated January 3, 1985. That document is on file at Burlington City Hall, 900 East Fairhaven Avenue. These maps are hereby adopted by reference and declared to be part of this ordinance, and any subsequent revisions.

**Section 2.** Burlington Municipal Code Section 15.15.030 is hereby amended to read as follows:

**15.15.030 Definitions.**

**"Best management practices (BMPs)"** refer to physical, structural, and/or managerial practices, that when used singly or in combination, prevent or reduce water pollution. Source control BMPs include those which keep the pollutant from ever coming in contact with storm water, and storm water treatment BMPs include those which consist of various methods of treating storm water. See also BMC Title 14, Surface Water Management.

**"Critical"** areas include the following areas and ecosystems:

1. Wetlands;
2. Areas with a critical recharging effect on aquifers used for potable water;
3. Fish and wildlife habitat conservation areas;
4. Frequently flooded areas; and
5. Geologically hazardous areas.

**"Critical Facility"** means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

**"Development"** means any manmade change to the land or improvements occurring after the effective date of the ordinance codified in this chapter including structures, filling, grading, paving or excavation, and excluding the removal of vegetation. Where a project is dividable into parts, the entire scope of such changes or improvements constituting an integral, functional project should be considered the development for purposes of determining whether such development is allowed or requires a permit.

**"FEMA"** means the Federal Emergency Management Agency and its predecessor and successor agencies.

**"Flood fringe"** means those portions of the floodplain other than floodways and special flood risk zones.

**"Floodplain" or "frequently flooded areas"** are lands subject to a one percent or greater chance of flooding in any given year, which means all lands that would be covered by the 100-year flood (A zones), together with all B zones, as established by FEMA in the "Flood Insurance Study, City of Burlington," dated July 3, 1984, ~~January 3, 1985~~ and any revisions thereto, with the accompanying flood insurance rate map (FIRM), dated January 3, 1985. That document is on file at Burlington City Hall, 900 East Fairhaven Avenue.

**"Floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively

increasing the water surface elevation more than one foot. Floodways in Burlington consist of all areas riverward of the riverward toe of dikes and levees along the Skagit River.

**"Geologically hazardous areas"** are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

~~**"Habitable floor"** means any floor usable for living purposes, including working, eating, sleeping and recreation, and excluding floors used only for storage.~~

**"Habitats of local importance"** include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.

**"Lowest floor"** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, useable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found in Section 15.15.080(G)(6).

**"Mean sea level"** means the average height of the sea for all stages of tide, also equals National Geodetic Vertical Datum.

**"Mobile home"** means any structure designed or used as a permanent residence, built on a permanent chassis, and transportable to site of placement in one or more sections.

**"Mobile home park"** means a parcel of land in one ownership containing two or more mobile homes, sited for habitation.

**"One-hundred-year flood"** means that flood having a one percent chance of being equaled or exceeded in any given year, as established by FEMA.

**"Public facilities"** include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreation facilities, and schools.

**"Public services"** include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

**"Residential health care facilities"** means facilities caring for elderly or infirm persons wherein clients are partly or entirely residents or detainees thereof. Includes hospitals, convalescent homes and homes for the elderly where some supervision or health care is provided.

**"Seismic hazard areas"** are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction. The city of Burlington is located in Seismic Zone 3 and construction is required to comply with the Uniform Building Code seismic standards.

**"Special flood risk zone"** means a zone of high flood risk consisting of those areas of the floodplain described as follows:

1. Those areas in Gages Slough having a ground elevation which is three feet or more below the 100-year floodplain elevation and having alignment with other such areas along Gages Slough, to allow passage of floodwaters;
2. Lying within 300 feet of the landward toe of dikes and levees along the Skagit River, excluding floodways.

**"Species of local importance"** are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species.

**"Steep slope areas"** are areas with slopes greater than 15 percent.

**"Structure"** means a walled and roofed building or mobile home that is principally above ground.

**"Substantial improvement"** means any repair, reconstruction, or improvement to a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the improvement is started; or
2. If the structure has been damaged and is being restored, before the damage occurred.

This term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official to comply with existing state or local health, sanitary, or safety codes which are solely and which are necessary to assure safe living conditions; or
2. Any alteration of a structure listed in the National or State Register of Historic Places.

**"Urban growth"** refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural produce, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

**"Wetland" or "wetlands"** means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However wetlands may include these artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the city.

**Section 3.** Burlington Municipal Code Section 15.15.040 is hereby amended to read as follows:

**15.15.040 Administration.**

- A. The planning director in consultation with the city engineer and the building official, shall be responsible for the administration of this chapter, including:
  1. Review applications for development in the city limits to verify compliance with this chapter;
  2. Reviewing applications for development in the city limits to assure that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required;
  3. Recording and maintaining records of:
    - a. As-built elevation above mean sea level of the lowest ~~habitable~~ floor including basement of all new and substantially improved structures requiring a

- floodplain approval ~~or variance~~ and whether same structure contains a basement,
      - b. Certification by registered professional engineer or architect as required by this chapter,
      - c. Floodplain approvals, ~~variances~~ and other actions pursuant to the administration of this chapter;
  - 4. Notification to adjacent communities and the Department of Ecology prior to any alteration or relocation of a watercourse with copy to FEMA, and maintenance within the altered or relocated portion of said watercourse so that flood-carrying capacity is not diminished;
  - 5. When base flood elevation data has not been provided, obtaining, reviewing, and reasonably utilizing any base flood elevation and floodway data that should become available from a federal, state or other source in order to administer standards and floodways.
  - 6. Issuance of development permits pursuant to BMC Chapter 17.68, Land Use Permits, and BMC Chapter 15.04, Uniform Codes before construction or development begins within the City Limits.
  - 7. Maintain for public inspection all records pertaining to the provisions of this code.
- B. This chapter shall be administered in accordance with chapter 86.16 RCW and chapter 508-60 WAC. This chapter shall be revised as necessary to conform with any changes in state rules pertaining to flood control zones which may be adopted by the State Department of Ecology subsequent to the effective date of delegation of the state's permit program to the city.

**Section 4.** Burlington Municipal Code Section 15.15.050 is hereby amended to read as follows:

**15.15.050 Application of standards.**

The standards of this chapter shall apply to all public and private proposals for new structures, proposed additions to structures, short subdivisions and subdivisions, and grading and drainage activity located on either public or private property. Projects may be exempted from the requirements of BMC 15.14.060 and 15.14.080 when the following situations and/or conditions apply:

- A. When the director determines that there is an emergency that threatens the public health, safety and welfare.
- B. Remodeling of structures in existence on the effective date of this chapter. When these structures are damaged by an act of nature, they may be reconstructed or replaced within one year of the act of nature provided that the new construction or related activity does not further intrude into the critical area, and provided that the substantial improvement and substantial damage provisions of this code floodplain standards are met.
- C. Installation, construction, routine maintenance, repair, replacement, operation, alteration or relocation of all natural gas, telephone, electrical, sewer, cable communications, and other existing utility structures in the rights-of-way, when undertaken pursuant to best management practices to avoid impacts to the critical area.
- D. Developments in the floodplain other than the following shall require a floodplain approval:
  - 1. Minor structures and additions for which a building permit is not required and which create no new residence such as a slab on grade, or a storage building less than 120 square feet in area, or other structures exempt from permits in the Uniform Building Code;

2. Fills of less than 12 cubic yards or which will not raise the level of the land above that of the surrounding area;
3. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets, and accessways;
4. Underground improvements and excavations;
5. Maintenance and minor repair of existing improvements;
6. Improvements to structures listed on the National or State Register of Historic Places, subject to BMC 15.15.110;
7. Other minor developments which cause no significant impoundment or displacement of floodwaters, such as open fences, signs and small unenclosed structures.

**Section 5.** Burlington Municipal Code Section 15.15.080 is hereby amended to read as follows:

**15.15.080 Development in floodplains – General.**

The following provisions shall apply to all lands within the floodplain:

- A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- B. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of the over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
- C. Construction Materials and Methods. All development requiring a floodplain permit shall be constructed utilizing materials and methods which minimize flood damage, which methods shall include anchoring adequately to prevent flotation, collapse, or lateral movement.
- D. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- E. Utilities. New and replacement water and sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from sewage systems into floodwaters.

On-site sewage disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

- F. Subdivisions. Subdivisions shall be designed to minimize flood damage, including:
  1. Public utilities and facilities which are resistant to flood damage;
  2. A drainage system designed to minimize flood damage;
  3. One-hundred-year flood elevation data provided on all subdivisions.
  4. Where base flood elevation data has not been provided or is not available from another authorized source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).
- G. Elevation or Floodproofing of Structures. New and substantially improved residential structures shall have the lowest floor including basement elevated to at least one foot above the 100-year flood elevation and meet the requirements of paragraph G(6) below (openings requirement).

New and substantially improved nonresidential structures excluding structures listed on the National or State Register of Historic Places, shall either be elevated to at least one foot

above the 100 year flood elevation, or together with attendant utility and sanitary facilities, shall:

1. Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to a height of one foot above the 100-year flood elevation;
  2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certification shall be provided to the official as set forth in BMC 15.15.040(3);
  4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in paragraph (6) of this subsection;
  5. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as constructed to one foot below that level);
  6. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
    - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided,
    - b. The bottom of all openings shall be no higher than one foot above grade,
    - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- H. **Manufactured Homes.** All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection B of this section.
- I. Recreational Vehicles. Recreational vehicles shall be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use, on its wheels, is attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions.
- H-J. **Prohibition Against Encroachment.** The cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the 100-year flood more than one foot at any point.

**Section 6.** Burlington Municipal Code Section 15.15.100 is hereby amended to read as follows:

**15.15.100 Development in special flood risk zone.**

- A. Development other than the following is prohibited in the special flood risk zone, provided that nothing in this section shall be construed as authorizing construction or fill in wetlands:
1. Minor structures and additions for which a building permit is not required and which create no new residences;
  2. Minor fills and excavations of less than 12 cubic yards or which will not raise the level of land above that of the surrounding area;

3. Normal maintenance, resurfacing and rebuilding at comparable grade of bridges, streets and accessways;
4. Underground improvements;
5. Maintenance, repair, alteration and like replacement of existing improvements;
6. Other minor development which causes no significant impoundment or displacement of floodwaters, such as open fences, signs and small unenclosed structures;
- ~~7. Developments wherein any floodwater blockage effect is at least equally balanced by excavation or removal of structures elsewhere in the special flood risk zone such that the overall capacity to convey floodwaters is not reduced. Such excavations or structures removed shall not then be eligible for replacement under subdivision 5 of this subsection. Documentation of development in accordance with this subsection shall be retained by the city to demonstrate no net floodwater blockage increase;~~
- 8-7. Elevated structures which allow floodwaters to flow underneath and which meet the following criteria:

- a. All structures shall be elevated so that the lowest supporting member is located no lower than one foot above the 100-year flood elevation, with all space below the lowest supporting member open so as not to impede the flow of water, except for breakaway walls as provided below.
- b. ~~Breakaway walls are allowed below the base flood elevation, provided they are not a part of the structural support of the building and are designed so as to break away in event of flood without damage to the structural integrity of the building on which they are to be used. If breakaway walls are to be utilized, such enclosed space shall not be used for human habitation. Solid walls are prohibited below the base flood elevation to keep the area free of obstruction unless they are designed to breakaway. A breakaway wall shall have a design safe loading resistance of not less than ten and no more than 20 pounds.~~
- c. All structures shall be securely anchored on piling, columns, or foundation walls oriented to the axis of the flow path. Said support elements shall be certified by a registered professional engineer or architect as capable of withstanding all applied loads of the 100-year flood flow.
- d. There shall be no fill used for structural support.

B. Regardless of method of construction, operation, development, substantial improvement, or expansion of residential health care facilities are prohibited in the special flood risk zone.

C. New multi-family residential structures are prohibited in the special flood risk zone.

D. Subdivision of new residential lots, including short plats and full subdivisions shall be prohibited unless the applicant can demonstrate that there will be a positive effect on the special flood risk area, including but not limited to the following:

1. New structures shall be located further away from the Slough than prior to subdivision.
2. New structures shall fully comply with this chapter.
3. New structures shall be located outside the special flood risk zone boundary, while some yards may encroach into the special flood risk zone.

E. New construction exceeding \$250,000 in value shall be reviewed by the City Council. The following criteria shall be met in order to approve the proposed structure:

1. The proposed structure does not have a significant adverse impact on flood hazard.
2. All physically feasible alternatives to locating in the Special Flood Risk Zone have been evaluated and there is no viable choice other than to locate in the Special Flood Risk Zone.
3. Mailed notice shall be sent to adjacent property owners, if public notification is not already required by Chapter 17.68 of the Burlington Municipal Code.
4. Impact on the character of the existing neighborhood.



EF. Developments for which a floodplain approval is required are prohibited between the riverward toe of dikes and levees along the Skagit River and a line one hundred feet landward of the landward toes of said dikes and levees, except that this prohibition shall not apply to improvements to the dikes and levees themselves or improvements designed to aid in floodfighting.

**Section 7.** Burlington Municipal Code Section 15.15.110 is hereby repealed.

**Section 8.** A new Burlington Municipal Code Section 15.15.115 is hereby added to read as follows:

**15.15.115 Critical Facility.**

Construction of new critical facilities shall have the lowest floor elevated three feet or more above the 100 year flood elevation.

**Section 9.** A new Burlington Municipal Code Section 15.15.170 is hereby added to read as follows:

**15.15.170 Enforcement of the Critical Areas regulations.**

**1. Violations.**

A. It is a violation of BMC Chapter 15.15 for any person to initiate or maintain or cause to be initiated or maintained the use of any structure, land or property within the city without first obtaining the permits or authorization required for the use by BMC Chapter 15.15.

B. It is a violation of BMC Chapter 15.15 for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the city in any manner that is not permitted by the terms of any permit or authorization issued pursuant to BMC Chapter 15.15, provided that the terms or conditions are explicitly stated on the permit or the approved plans.

C. It is a violation of BMC Chapter 15.15 to remove or deface any sign, notice, complaint or order required by or posted in accordance with BMC Chapter 15.15.

D. It is a violation of BMC Chapter 15.15 to misrepresent any material fact in any application, plans or other information submitted to obtain any critical areas authorization.

E. It is a violation of BMC Chapter 15.15 for anyone to fail to comply with the requirements of BMC Chapter 15.15.

**2. Duty to enforce.**

A. It shall be the duty of the director to enforce BMC Chapter 15.15. The director may call upon the police, fire, health or other appropriate city departments to assist in enforcement.

B. Upon presentation of proper credentials, the director or duly authorized representative of the director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the critical areas code.

C. The critical areas code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this critical areas code to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land, wetlands, shorelines, and buildings within the scope of this code.

E. No provision of or term used in this code is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

**3. Investigation and notice of violation.**

A. The director shall investigate any structure or use which the director reasonably believes does not comply with the standards and requirements of the critical areas code.

B. If after investigation the director determines that the standards or requirements have been violated, the director shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated, shall state what corrective action, if any, is necessary to comply with the standards or requirements; and shall set a reasonable time for compliance. The notice shall state that any subsequent violation may result in criminal prosecution as provided in BMC 15.15.170 Subsection 10. In the event of violation of the standards or requirements of BMC Chapter 15.15 required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as restoration of the area and replacement of damaged or destroyed trees.

C. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the director makes an affidavit to that effect, then service of the notice upon such person or persons may be made by:

1. Publishing the notice once each week for two consecutive weeks in the city official newspaper; and
2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.

D. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to BMC 15.15.170 Subsection 10.

F. The director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.

G. A notice or an order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

**4. Time to comply.**

A. When calculating a reasonable time for compliance, the director shall consider the following criteria:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
5. Any other circumstances beyond the control of the responsible party.

B. Unless a request for review before the director is made in accordance with BMC 15.15.170 Subsection 7, the notice of violation shall become the final order of the director. A copy of the notice shall be filed with the Skagit County auditor. The director may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

**5. Stop work order.**

Whenever a continuing violation of this code will materially impair the director's ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public, the director may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a violation of this land use code.

**6. Emergency order.**

A. Whenever any use or activity in violation of this code threatens the health and safety of the occupants of the premises or any member of the public, the director may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this land use code.

B. Any condition described in the emergency order which is not corrected within the time specified is declared to be a public nuisance and the director is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

**7. Review by the director.**

A. Any person significantly affected by or interested in a notice of violation issued by the director pursuant to BMC 15.15.170 Subsection 3 may obtain a review of the notice by requesting such review within 15 days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the request, the director shall notify any persons served the notice of violation and the complainant, if any, of the date, time and place set for the review, which shall be not less than 10 nor more than 20 days after the request is received, unless otherwise agreed by all persons served with the notice of violation. Before the date set for the review, any person significantly affected by or interested in the notice of violation may submit any written material to the director for consideration at the review.

B. The review will consist of an informal review meeting held at the department. A representative of the director who is familiar with the case and the applicable ordinances will attend. The director's representative will explain the reasons for the director's issuance of the notice and will listen to any additional information presented by the persons attending. At or after the review, the director may:

1. Sustain the notice of violation;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information; or
4. Modify the notice of violation, which may include an extension of the compliance date.

C. The director shall issue an order of the director containing the decision within seven days of the date of completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation, mailed to the complainant, if possible, and filed with Skagit County auditor.

**8. Extension of compliance date.**

- A. The director may grant an extension of time for compliance with any notice or order, whether pending or final, upon the director's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension.
- B. An extension of time may be revoked by the director if it is shown that the conditions at the time the extension was granted have changed, the director determines that the conditions at the time the extension was granted have changed, the director determines that a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered as the compliance date. The procedures for revocation, notification of parties, and appeal of the revocation shall be established by rule.

**9. Civil penalty.**

- A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of BMC Chapter 15.15 shall be subject to a cumulative penalty in the amount of \$75.00 per day for each violation from the date set for compliance until the order is complied with.
- B. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The director shall notify the city attorney in writing of the name of any person subject to the penalty, and the city attorney shall, with the assistance of the director, take appropriate action to collect the penalty.
- C. The violator may show as full or partial mitigation of liability:
1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
  2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

**10. Criminal penalties.**

- A. Any person violating or failing to comply with any of the provisions of this critical areas code and who has had a judgment entered against him or her pursuant to BMC 15.15.170 Subsection 9 or its predecessors within the past five years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding \$5,000 or be imprisoned in the city jail for a term not exceeding one year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of this critical areas code shall constitute a separate offense.
- B. A criminal penalty, not to exceed \$5,000 per occurrence, may be imposed:
1. For violations of BMC 15.15.170 Subsection 1 D.
  2. For any other violation of this code for which corrective action is not possible;
  3. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this code.

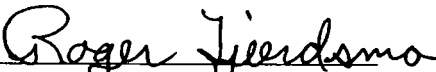
**11. Additional relief.**

The director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this critical areas code when civil or criminal penalties are inadequate to effect compliance.


**Section 10.** This ordinance shall be in full force and effect thirty days after its passage, approval and publication as provided by law.

**INTRODUCED AND PASSED** and approved at a regular meeting of the City Council this  
12th day of October, 2000.

THE CITY OF BURLINGTON

  
\_\_\_\_\_  
Roger W. Tjeerdsma, Mayor

ATTEST:

  
\_\_\_\_\_  
Richard A. Patrick, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marilyn Niteberg, City Attorney

FILED WITH THE FINANCE DIRECTOR:	10/5/00
PASSED BY THE CITY COUNCIL:	10/12/00
SIGNED BY THE MAYOR:	10/12/00
PUBLISHED:	10/18/00
EFFECTIVE DATE:	11/18/00