

**ORDINANCE NO**~~1998-02-002~~

**AN ORDINANCE RELATING TO LAND USE REGULATION AND ZONING, AMENDING ORDINANCE 9024, ADOPTING NEW PROCEDURES FOR THE PROCESSING OF NEIGHBORHOOD PLAN AMENDMENT APPLICATIONS (REZONES), IN ACCORDANCE WITH THE GROWTH MANAGEMENT ACT, CHAPTER 36.70A.130 RCW.**

**WHEREAS**, the State of Washington adopted the Growth Management Act in 1990, requiring local jurisdictions to adopt a comprehensive plan that complies with the act and thereafter amend said plan a maximum of one time a year; and

**WHEREAS**, the City of Bellingham adopted a comprehensive plan in accordance with the Growth Management Act in 1996, and also adopted the neighborhood plans as a component of the comprehensive plan; and

**WHEREAS**, the City of Bellingham approved Ordinance 9024 (Land Use Development Ordinance) in 1982, including Chapter 20.20, procedures for the review of neighborhood plan amendments (rezones); and

**WHEREAS**, the adoption of Chapter 20.20 preceded the adoption of the Growth Management Act and Bellingham's new comprehensive plan and therefore the procedures contained therein do not comply with the once a year limitation on the processing of neighborhood plan amendments or the early and continuous public participation provisions of the Growth Management Act; and

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**WHEREAS**, the City has reviewed neighborhood plan amendment requests in the context of the Neighborhood Plan Update Process, which began in 1996 and will likely continue until 2003; and

**WHEREAS**, the Neighborhood Plan Update Process often does not allow for the timely review of proposed plan amendments desired by property owners and the City; and

**WHEREAS**, the annual neighborhood plan amendment process contained herein is adopted to comply with the Growth Management Act and to set forth the public participation process and other procedures to be followed by applicants and the City in the review of neighborhood plan amendments; and

**WHEREAS**, certain neighborhood plan amendment requests may be excluded from the application of certain aspects of this new process by the City Council because of a declared emergency or other special circumstances that warrant a different review process; and

**WHEREAS**, the Bellingham Planning Commission held a public hearing on the proposed changes to the Land Use Development Ordinance, Chapter 20.20 on October 30, 1997 and thereafter recommended approval of this new annual neighborhood plan amendment process; and

**WHEREAS**, The Bellingham City Council held a public hearing on the proposed changes to Chapter 20.20 recommended by the Planning Commission in their

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Findings of Fact and Conclusions document on January 12, 1998 and a public worksession on January 26, 1998;

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

Section 1. BMC Title 20 Land Use Development Ordinance, Chapter 20.20.000 Change of Neighborhood Plan Land Use Classification System, is hereby deleted in its entirety and replaced with the following:

**20.20.000 NEIGHBORHOOD PLAN AMENDMENTS**

**.010 INTRODUCTION**

In January 1996, the City of Bellingham adopted a comprehensive plan pursuant to the State Growth Management Act. This comprehensive plan contains several components or elements, including the neighborhood plans. The Growth Management Act and subsequent amendments limit changes to comprehensive plans to once a year. As an element of the comprehensive plan, the neighborhood plans are also subject to this limitation. This section explains the processes for amending Bellingham's neighborhood plans. The goals and policies and other information found in the Bellingham Comprehensive Plan are amended using the process outlined in the Land Use Element of the plan. Neighborhood plan amendments as used in this chapter refer to changes to the text of a plan and/or to changes in land use classification (zoning), density, special conditions, prerequisite considerations or any other sections of the neighborhood plans.

**.015 NEIGHBORHOOD PLAN AMENDMENTS - ELIGIBILITY**

The review of proposed neighborhood plan amendments will occur in one of the following ways:

- A. Through the annual amendment process explained in this chapter; or
- B. Through the Neighborhood Plan Update Process. This process to update all the neighborhood plans to bring them into compliance with the Bellingham Comprehensive Plan was begun in 1996 and is expected to conclude in 2003.

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It is intended for major rewrites and other major changes to the plans. Approximately three or four neighborhood plans are updated each year. Applicants for neighborhood plan amendments should consult with Planning Division staff prior to making application to find out which neighborhood plans have been updated.

Applications to amend a neighborhood plan must fall in one of the following categories to be reviewed in the annual amendment process:

- C. Requests for amendments to neighborhood plans which have been updated through the Neighborhood Plan Update Process for a least one year. Requests in this category will be automatically scheduled for review by the City Council.
- D. Requests for amendments to neighborhood plans that have not been updated through the Neighborhood Plan Update Process and are not scheduled to be updated during the calendar year when the request would be heard. Requests in this category will be screened by the City Council. Only those amendments which are expected to have relatively minor or localized impacts that can be effectively mitigated will be scheduled for review by the City Council. Amendment requests that are expected to raise significant planning issues and/or are likely to have neighborhood-wide impacts may, at the Council's discretion, be deferred to the Neighborhood Plan Update Process identified in Section 20.20.015B.

**.020 REQUESTING A NEIGHBORHOOD PLAN AMENDMENT**

- A. Amendments to the neighborhood plans can be requested by the City administration, the Planning Commission, the City Council, other governmental agencies, the public, civic or business organizations, or other interested parties before March 20, 1998 for the 1998 amendment process. Thereafter the deadline shall be September 1 for the following year's amendment process. Proposed amendments shall be in the form of a letter or petition submitted to the Planning and Community Development Department. The letter or petition shall be signed by the property owner or owners of at least 75% of the land area directly affected by the proposed change. The submittal shall include a map and legal description of the subject property, and any other maps or written materials containing supporting information with sufficient detail for the City Council to decide if the request should be considered for review. The Director shall compile and maintain a list of all

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suggested changes to the neighborhood plans. The City Council shall review this list each year to decide which requests to include in the annual amendment process, as explained in Section 20.20.015 C and D. The Director shall make written recommendations to the Council as to which amendment requests are appropriate to review in the annual process and which should be deferred to the Neighborhood Plan Update Process.

- B. The neighborhood plan amendment requests included in the review process by the City Council are then assigned to the Planning Commission for initial review. Applicants for neighborhood plan amendments shall follow the procedures and submission requirements set forth in this chapter. Applications that the City Council declines to review may be resubmitted the following year.

### **.030 AUTOMATIC CLASSIFICATION CHANGE**

The neighborhood plans shall be deemed to automatically change (without the need to follow procedures set forth herein) in the following instances:

- A. When land designated "public" ceases to be owned by a public agency, and/or
- B. When land is annexed into the City without benefit of a land use designation.

In those cases the property shall be designated:

General Use Type: Residential Single

Use Qualifier: Detached

Density: 20,000 square foot minimum detached lot size

### **.040 PROCEDURES**

The following procedures shall be used for neighborhood plan amendment applications that are scheduled for review by the City Council.

- A. Preapplication Conference. Prior to submitting a formal application to amend a neighborhood plan, the applicant is advised to arrange a preapplication conference with the planning staff. The purpose of this

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meeting is to obtain guidance on the request.

B. Neighborhood Meeting. Once an application for an amendment to a neighborhood plan has been scheduled for review by the City Council and prior to Planning Commission review, the applicant shall conduct a neighborhood meeting to discuss the proposed change and receive neighborhood ideas and comments. Notice of the date, time and location of the neighborhood meeting shall be provided by the applicant to, 1) the Department of Planning and Community Development, 2) the appropriate representative(s) to the Mayor's Neighborhood Advisory Commission, 3) neighborhood associations, citizens, and media organizations that have filed a request for notice with the Planning and Community Development Department and, 4) to the same persons and in the same manner as the notice required in subsection E, except that signs notifying the public of the neighborhood meeting shall be posted on the site at least fifteen (15) days prior to the meeting. The mail and sign notices shall be on a form provided by the Planning and Community Development Department and shall briefly describe the proposal and its location and it shall include the name, address and telephone number of a representative of the applicant who may be contacted for additional information about the proposal. Notice to the Department of Planning and Community Development shall include a list of the persons and addresses notified of the neighborhood meeting. The application shall include information regarding the date, time and list of persons notified for the neighborhood meeting.

C. Submittal Requirements.

- (1) Application Form. The Planning and Community Development Department shall prescribe the form to be used for proposed neighborhood plan amendments. Such form shall be signed by owners of at least seventy-five percent (75%) of the land area directly affected by the proposed change.
- (2) Fee. A filing fee established by City Council resolution shall be paid to the City Finance Director at the time of application.
- (3) State Environmental Policy Act (SEPA). A completed SEPA checklist and applicable review fee must accompany all requests for a neighborhood plan amendment.

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*[User Information: Washington State Law (R.C.W. 43.21C) requires that a "threshold determination" of environmental significance be made before City Council action on proposed applications or projects. The "threshold determination" is a consideration of impact that the proposal would have upon the environment. A "declaration of nonsignificance" (also known as a "DNS") is a determination that the proposal would not have significant impact on the environment. This declaration is made by the Department of Planning and Community Development. If a "DNS" cannot be granted, a detailed Environmental Impact Statement may be necessary. This could delay action upon the proposal.]*

(4) Map. A map showing the property directly affected by the proposed amendment with the corresponding legal description shall be submitted.

D. Complete Application. A complete application for a neighborhood plan amendment must be submitted by the cutoff date established by the Planning and Community Development Department. No application shall be accepted unless it is complete and complies with all submittal requirements. A complete application consists of the following:

- (1) Application form
- (2) SEPA Checklist
- (3) Map(s)
- (4) Fee Payment
- (5) Property owner mailing list described in Section 20.20.040E.(2)

E. Planning Commission Review. The Planning Commission shall hold at least one public hearing on any proposed change of land use classification before making any recommendation on the matter.

- (1) Advertising. The City shall advertise the public hearing in a newspaper of general circulation at least fifteen (15), and not more than thirty (30) days before the scheduled hearing date.

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- (2) Written Notice. Written notice of the hearing shall be mailed by the Department of Planning and Community Development no less than fifteen (15) days before the date of the hearing to the applicant, to other reviewing agencies, to all property owners directly affected by the request, to all property owners and/or residents within at least three-hundred (300) feet of the request as measured from the exterior boundary line of the proposal, and to all other individuals and groups who have filed a written request with the Department. A list of property owners for an area larger than the 300-foot boundary may be required in cases where the proposed amendment clearly has impacts outside the 300-foot area. The applicant shall provide the names and addresses within the 300-foot notification area. If an expanded notification area is required by the City, the applicant may elect to obtain the names and addresses or have City staff obtain this information to comply with the required expanded notification area. No additional fees shall be paid by the applicant in instances where an expanded notification area is required by the City.

The notification list shall be from the latest available records of the Whatcom County Assessor's Office. No responsibility will be assumed by the applicant, Commission, Council or City staff in the event the County Assessor's records contain inaccurate or incomplete information, and any such deficiencies will not invalidate any proceedings conducted in reliance of such information. However, failure to notify the affected parties within the guidelines prescribed, when the County Assessor's records are accurate, shall constitute grounds for a rehearing. The applicant and city staff shall make every reasonable effort to notify property owners and residents within the established notification area.

- (3) Posting. The applicant shall post public notice (signs) on the property no less than thirty (30) days before the Planning Commission hearing. The sign(s) shall be of a size, material and content as specified by the Planning and Community Development Department. The sign(s) shall be posted at an area of the site adjoining public rights-of-way and/or at other locations where the signs will be most visible to the public.

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Larger sites will require more than one sign as determined by the Department. The applicant is responsible for posting and maintaining the sign(s) at the site until the City has completed action on the request and for removing the sign(s) thereafter and returning them to the Department.

- (4) Public Hearing. The Commission, in holding the public hearing, shall listen to all relevant arguments for, against, or neutral to the request.

The Planning Director, or authorized representative, shall make an investigation and present written recommendations on each proposed neighborhood plan amendment. Such recommendations shall be available for review by the Planning Commission and interested citizens fifteen (15) days prior to the initial Commission hearing and shall become part of the official record.

The petitioner shall be prepared to offer justification for the plan amendment request. In preparing the justification, the petitioner is advised to consider the factors in Section 20.20.040 F1 through F6. These factors will be used by the Planning Commission and City Council to evaluate requests for neighborhood plan amendments.

If for any reason, testimony cannot be completed on the day set for such hearing, the person presiding at such hearing shall, before adjournment or recess thereof, publicly announce the time and place such hearing shall be continued to, and no further notice is required.

- F. Planning Commission Action. The Planning Commission and City Council must carefully evaluate requests to amend the neighborhood plans to determine if approval of the amendment would result in a clear public benefit. The factors listed below should be considered in reviewing such requests.

- (1) Is the proposed amendment to the neighborhood plan supported by or consistent with the existing goals and policies of the comprehensive plan?

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- (2) Have circumstances related to the subject property and the area in which it is located changed sufficiently since the adoption of the relevant neighborhood plan to justify the proposed change? If so, the circumstances that have changed should be described in sufficient detail so that a finding of changed circumstance can be made and a decision as to appropriateness of the proposed neighborhood plan amendment can be reached based on information in the record.
- (3) Have the underlying assumptions found in the comprehensive plan and/or neighborhood plan upon which the land use designation, use qualifier, density or other provisions are based changed, or is new information available which was not considered at the time the neighborhood plan was adopted? If so, the changed assumptions or new information should be described in sufficient detail to enable the Planning Commission and City Council to find that the land use designation or other sections of the plan should be changed. Examples of the underlying assumptions include expected population growth, utility or roadway capacities, available land supply, or demand for land zoned with the existing or proposed designation.
- (4) Does the proposed amendment promote a more desirable land use pattern for the community as stated in the goals and policies in the comprehensive plan? Are there environmental constraints (such as wetlands, steep slopes, significant stands of trees, etc.) present on the site to such a degree that development of the site is economically or physically infeasible under the existing zoning? If so, a description of the qualities of the proposed neighborhood plan amendment that would make the land use pattern more desirable and/or would result in less environmental impact should be provided in sufficient detail to enable the Planning Commission and City Council to find that the proposed neighborhood plan amendment is in the community's long term best interest.
- (5) Could the proposed neighborhood plan amendment be construed as a spot zone? If so, the reasons for changing the land use designation as requested by the applicant should be

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provided in sufficient detail to enable the Planning Commission and the City Council to find that approval as requested would result in a clear public benefit and therefore not constitute a spot zone.

- (6) What impacts would the proposed amendment to the neighborhood plan have on the current use of other properties in the vicinity? What measures should be taken to ensure compatibility with the uses of other property in the area?

In forwarding a recommendation to City Council, the Planning Commission shall include written findings of fact and conclusions that address these six factors and any other information, facts, or conclusions that led to the Commission recommendation.

- G. City Council Action. After proper notice and posting in the same manner as for the Planning Commission hearing, the Council will hold a public hearing(s) and work sessions as necessary to consider the findings and recommendations of the Planning Commission. The City Council shall have the authority to confirm, alter, modify or deny any of the Planning Commission's recommendations or decisions. The Council, in reviewing neighborhood plan amendment applications, shall consider the six factors listed above and the findings, conclusions and record of the Planning Commission.

#### **.050 EXCEPTIONS.**

The following amendments to the neighborhood plans are not subject to the one time a year amendment limitation but may be processed at any time during the year.

- (1) Initial adoption of a subarea or neighborhood plan pursuant to Section 20.20.015B.;
- (2) The adoption or amendment of a shoreline master program under the procedures set forth in RCW Chapter 90.58;
- (3) Whenever a declared emergency exists;
- (4) To resolve an appeal of the comprehensive plan or an implementing development regulation or program that is properly filed with the Growth

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Management Hearings Board or the courts.

In instances where the neighborhood plans are amended pursuant to .050(3) or .050(4), appropriate public participation in the amendment process shall occur as determined by the City Council.

**PASSED** by the Council this 23rd day of February, 1998.

Bob Ryan  
Council President

**APPROVED** by me this 3rd day of March, 1998.

Mark A. ...  
Mayor

**ATTEST:** Lynn Carpenter  
Finance Director

**APPROVED AS TO FORM:**

[Signature]  
Office of the City Attorney

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