

ORDINANCE NO. 2001-01-001

AN ORDINANCE RELATING TO LAND USE CONTROLS WITHIN THE LAKE WHATCOM WATERSHED (SILVER BEACH NEIGHBORHOOD) AND ADOPTING LIMITS ON PERMITTED USES, IMPERVIOUS AREA, EARTHWORK AND RELATED WATER QUALITY PROTECTION MEASURES.

Whereas, Lake Whatcom is the drinking water source for the City of Bellingham and much of the surrounding community; and

Whereas, the City has adopted goals and policies to protect Lake Whatcom, with a primary emphasis of prevention of pollution impacts over treatment strategies; and

Whereas, water quality impacts from urban development have been detected in streams, storm drains and near shore areas of the Lake; and

Whereas, development impacts may be reduced by prohibiting certain non-compatible land uses, limiting impervious area, placing seasonal limits on earthwork, minimizing the use of harmful materials and other best management practices; and

Whereas, a ten member citizens task force have considered water resource preservation and development issues, reviewed scientific literature and made watershed and land use management recommendations to the City Council,

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

SECTION

16.80.010 TITLE

A new chapter is added to the Bellingham Municipal Code, Chapter 16.80 to read as follows:

This Chapter shall be known as the Lake Whatcom Reservoir Regulatory Chapter.

16.80.020 AUTHORITY

This Chapter is adopted pursuant to the provisions of Article 11 of the Washington State Constitution.

16.80.030 PURPOSE

The purposes of this Chapter are to:

- A) Protect, preserve and enhance the overall water quality of the Lake Whatcom Reservoir and its tributaries.
- B) Implement land use controls that will emphasize the prevention of water quality impacts over treatment strategies.
- C) Protect the public health, safety and welfare and ensure a long-term sustainable drinking water source for the community.
- D) Provide for a fair, predictable and consistent application of land use regulation that will also recognize the rights of private property owners and Lake Whatcom watershed residents.

16.80.040 APPLICABILITY

This Regulatory Chapter shall apply to all lands, development actions and land use activities located within that portion of the Silver Beach Neighborhood Plan, within the Lake Whatcom Watershed boundaries, except for sub-areas 11 and 15.

This Chapter applies in an advisory capacity to all lands and development review subject to City of Bellingham inter-local agreement with Whatcom County and/or utility service contract/extension to lands within the Lake Whatcom watershed.

16.80.050 DEFINITIONS

BMC- Bellingham Municipal Code

Best Management Practice- The use of certain materials, techniques and strategies to achieve a desired result, based on best available science and engineering, having been previously applied, tested and observed to be most effective. Example; providing for stormwater infiltration and prohibiting or minimizing the use of harmful yard maintenance chemicals such as herbicides and pesticides.

Earthwork- Clearing of vegetation, grading, filling, excavation or trenching of soil or earth materials that leaves exposed soil or earth.

Foot Print- The exterior perimeter of the outermost vertical faces a building foundation or exterior wall where it meets the ground.

Gross Lot Area- All of the land area within the surveyed perimeter of an individual lot or parcel, including any pipe-stem or joint-access easement area. No portion of any abutting right-of-way may be included, unless vacated by City ordinance to the abutting property. No portion of any lot that has been previously constrained by a conservation easement or deed restriction for the purpose of earning and/or transferring impervious credits as described in BMC 16.80.100 may be included in the gross lot area calculation.

Impervious- A material or surface that restricts the infiltration of water into the underlying soil or earth surface to a rate less than 1/4 of an inch per hour, when dry or unsaturated.

Impervious Area- An artificially created surface that restricts the infiltration of water into the underlying soil or earth surface to a rate less than 1/4 of an inch per hour, when dry or unsaturated.

Impervious areas include; a) asphalt, concrete, bound aggregates, solid sheet building materials, metal, composition or synthetic surfaces that cover the soil/earth, b) the exterior perimeter of all building foot prints, c) shelters including free standing fabric covered frames such as those intended for garden, tool, vehicle, boat or RV storage.

Impervious Area does not include; d) roof eave overhangs of two feet or less, e) cantilever wall overhangs of one foot or less, f) the open, uncovered use of gravel having an aggregate size of 3/4" or greater, g) existing natural soil, rock outcrops and geologic strata that have not been filled or compacted.

Impervious Area Credit- Additional impervious area allocated to a lot or parcel as provided in BMC 16.80.100

Lake Whatcom Watershed- All areas which, due to topography, hydrologically drain directly or indirectly into Lake Whatcom, as determined by the City.

Native Vegetation- All naturally occurring vegetation species typically found in Whatcom County uplands, wetlands, meadows, shrub lands and forests.

Pervious- Allows the infiltration of water into the underlying soil or earth, at a rate equal to or greater than 1/4 of an inch per hour, when dry or unsaturated. All areas covered with native vegetation. All areas covered by non-native vegetation and topsoil not less than 2" deep or organic mulch/chip not less than 4" deep. All native, undisturbed, soil, rock and geologic substrata.

Pervious System- A constructed surface that allows water to infiltrate into the underlying soil or earth, at a rate equal to or greater than 1/4 of an inch per hour, when dry or unsaturated. Pervious systems may include;

a) Gravel of an aggregate size 3/4" or greater and 4" minimum depth, b) masonry pavers, not larger than two sq. ft. each, which provide spacing or aggregate in-between, placed on top of a minimum 4" deep gravel base, c) sand at least 4" deep, when used for purposes other than vehicle parking or maneuvering areas, d) matrix, honeycomb, synthetic or metal geo-grid materials, filled with sand, gravel or soil/grass mix, e) uncovered wood frame decking of planks not greater than 6" in width, spaced a minimum 1/2" apart, with open loose soil underneath, f) coarse wood chip or hog fuel comprised of untreated shredded wood, g) systems similar to a through f above, comprised of impervious material components not larger than two sq. ft. in size, which will achieve an infiltration rate equal to or greater than 1/4 of an inch/hour when dry or unsaturated.

Public Land- Land owned by the City of Bellingham, Whatcom County or other public entity.

SEPA- State Environmental Policy Act and the procedures administered thereby.

16.80.060 PERMITTED USES

A. RESIDENTIAL SINGLE PERMITTED USES

Uses Permitted Outright. No building or land shall be used within an area designated residential single, except as follows:

- (1) Single Family Dwelling Unit with less than 5,500 square feet of total floor area.
- (2) Publicly Owned Parks and Playgrounds
- (3) Private Recreation Facilities and/or Common Open Space (when approved by Council as part of a subdivision).
- (4) Mixed Use (where such a use is specifically listed in a neighborhood land use plan, which has been designated with a "mixed" use qualifier).
- (5) Public Utilities (when located within a public right of way).
- (6) Detached Accessory Dwelling Units existing prior to January 1, 1995 (consistent with procedures and requirements outlined in BMC 20.10.035).
- (7) Confidential Shelters subject to the provisions of BMC 20.10.047.
- (8) Wireless Communication Facilities, subject to the provisions of BMC 20.13
- (9) Co-housing developments subject to the requirements of BMC 20.10.048
- (10) Community Public Facilities, subject to the provisions of BMC 20.10.046, with the exception that publicly owned parks, trails and playgrounds are permitted and shall not be subject to the provisions of BMC 20.10.046.
- (11) No residential single lot or parcel may be partially or entirely cleared of vegetation or used as a soil/earth/rock material fill site without having first obtained a valid building permit. Written exemptions shall apply for minor clearing to facilitate land survey, the removal of hazardous trees or noxious weeds or other public nuisance as determined by the City.

B. RESIDENTIAL SINGLE CONDITIONAL USES that are listed as follows may be allowed if approval can be obtained based upon standards and requirements for conditional uses as specified in BMC 20.16.

- (1) School
- (2) Church
- (3) Neighborhood Club/Activity Center
- (4) Nonconforming Use; Signage
- (5) Public Utilities; other than those described in BMC 16.80.060 A (5).
- (6) Agricultural Nursery
- (7) Wireless Communication Facilities, subject to the provisions of Chapter 20.13.
- (8) Animal husbandry including the breeding, rearing or keeping of livestock such as cattle, bison, horses, mules, ponies, donkeys, llamas, alpacas, sheep, goats, pigs or poultry may be permitted, provided the following can be demonstrated:
 - a) The total impervious area will not exceed 15% of the gross parcel area.
 - b) Continuous fencing of all pasture area is provided.

- c) Total animal density shall not exceed 800lbs of combined animal weight per acre of pasture area.
- d) A manure/pasture management plan is provided which will prevent accumulation of raw manure and collect and treat stormwater run-off for fecal coliform and nutrients prior to leaving the parcel.

C. RESIDENTIAL MULTI PERMITTED USES

Uses Permitted Outright. No building or land shall be used within areas designated RM or RM-Planned except as enumerated below:

- (1) Single Family Dwelling Unit with less than 5,500 square feet of total floor area.
- (2) Duplex and/or multiple attached dwelling units such as apartments or townhouses.
- (3) Publicly Owned Parks and Playgrounds.
- (4) Private Recreational Facilities, when approved as part of a subdivision.
- (5) Public Utilities (when located within a public right of way).
- (6) Confidential Shelters subject to the provisions of BMC 20.10.047
- (7) Wireless Communication Facilities, subject to the provisions of BMC 20.13.
- (8) Co-housing Developments, subject to the requirements of BMC 20.10.048.
- (9) Community Public Facilities, subject to the provisions of BMC 20.10.046, with the exception that publicly owned parks, trails and playgrounds are permitted and shall not be subject to the provisions of BMC Title 20.

D. RESIDENTIAL MULTI CONDITIONAL USES. The following uses may be allowed if approval can be obtained, based upon standards and requirements for conditional uses as specified in BMC 20.16.

- (1) School
- (2) Church
- (3) Neighborhood Club/Activity Center
- (4) Nonconforming Use; Signage
- (5) Public Utilities, other than those described in subsection A. above
- (6) Day Care
- (7) Service Care
- (8) Day Treatment Center
- (9) Wireless Communication Facilities, subject to the provisions of BMC 20.13.

E. COMMERCIAL USES. Commercial uses shall be as permitted and specified in the Neighborhood Plan.

16.80.070 MINIMUM SITE AREA FOR RESIDENTIAL SINGLE DEVELOPMENT

- A.** The minimum site area required for residential single development shall be as stated in the Silver Beach Neighborhood Plan land use classification system under “density”, except in the following instances:

- 1) Development upon legal lots of record recorded prior to February 5, 1973. In which case, the minimum site area shall encompass all adjacent and contiguous lots of record held under common ownership as of the effective date of this Lake Whatcom Reservoir Regulatory Chapter.
- 2) Development upon lots of record approved under Title 18, Subdivisions, of the City of Bellingham.

B. There shall be no exceptions to the requirements of BMC 16.80.080 A.1 and A.2

16.80.080 DEVELOPMENT STANDARDS FOR RESIDENTIAL SINGLE DEVELOPMENT

Development standards for residential single development shall be as required under BMC Title 20, except as modified by this regulatory chapter and as stated below.

- A.** Front Yard Setback. The front yard setback of the main structure for residential single development shall be a minimum of 15' from the front property line of any non-arterial street. The front setback for any portion of a garage facing the street shall be the greater of 15' from the property line or 20' from the back (non-street) side of any sidewalk.
- B.** Parking. Tandem parking, one vehicle behind the other, shall be permitted to satisfy the requirement for two on site parking spaces.
- C.** Residential Single development on individual lots shall be required to provide best management practice for stormwater quality treatment in accordance with the Washington State Department of Ecology Stormwater Technical Manual in effect at the time of permitting. Residential Single lots that are part of an approved subdivision that has already met this requirement may be exempt, as determined by the Public Works Director.
- D.** Impervious area limits for residential single development shall be as described in BMC 16.80.090.

16.80.090 IMPERVIOUS AND PERVIOUS SYSTEM AREA LIMITS

Impervious Area Limits For Residential Single Development:

- A.** The maximum impervious area permitted for an individual lot shall be as follows:
 - 1) The maximum impervious area allowed for each lot shall be the greater of 2000 sq. ft. or 15% of the gross lot area, except for substandard lots as provided in 3) below.
 - 2) For any lot created as part of a cluster subdivision, which meets the requirements of the Subdivision Ordinance, the maximum impervious area allowed shall be the greater of 2000 sq. ft. or 15% of the underlying non-cluster minimum lot size.

- 3) Substandard Lots. For any existing lot of record that is less than 75% of the minimum required lot size (density) specified in the Neighborhood Plan, the maximum impervious area allowed shall be limited to 15% of the gross lot area.
- 4) Impervious area, in addition to the maximum specified in #1-3 above, may be earned as provided in Section 16.80.100 Impervious Area Credits.

B. Re-development of an existing non-conforming lot with regard to impervious area limits. When an owner of a lot that exceeds the impervious limits expressed in BMC 16.80.090 A. desires to remodel or add on to an existing building or impervious area, they may utilize any of the following options:

- 1 Add an additional story to any existing portion of the residential building that will not change the footprint, subject to height limitations in BMC Title 20.
- 2) Remove existing impervious areas, at a ratio of two sq. ft. of impervious area, for every one sq.ft. of new building footprint area until desired project is achieved, or development is within impervious limits. (Example: remove two sq. ft. of concrete driveway for every one sq.ft. of new building footprint to be added. Or, remove 400 sq.ft. of accessory building (old garage) for a new 200 sq.ft. room)
- 3) Earn impervious area credits as necessary to allow for the existing impervious area and the new development impervious area as provided in BMC 16.80.100.

C. Reconstruction of a building that is non-conforming with regard to impervious area limits is allowed on a like-for-like basis when damaged by earthquake, fire, windfall of trees, snow/ice/storm damage, vehicular collision or similar accidental causes. Owners of non-conforming lots with regard to impervious area may not re-build buildings that have been abandoned or are more than 50% destroyed by reason of neglect unless they conform to impervious limits in BMC 16.80.090 A.

D. Impervious Limits for Residential Multi and Commercial Development:

The maximum impervious limit for residential multi and commercial development shall be determined during the SEPA review process. The SEPA process shall consider stormwater impacts, ambient water quality, contaminant and nutrient loading and the adopted goals and policies for the Lake Whatcom Watershed in effect at the time of application. All residential multi and commercial development review shall emphasize best management practice prevention efforts over treatment strategies for the minimization of water quality impacts.

E. Pervious System Area Limits for Residential Single development shall be limited to:

2000 sq.ft. or 15% of the gross lot area, whichever is greater, for lots that conform to the minimum lot size requirement stated in the Neighborhood plan. For any existing lot of record that is less than 75% of the minimum required lot size (density) specified in the Neighborhood Plan, the maximum pervious area allowed shall be limited to 15% of the gross lot area.

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16.80.100 IMPERVIOUS AREA CREDITS

- A. Impervious area credit may be allocated to a lot, in addition to those limits described in BMC 16.80.070 A. 1-3, by any of the following means:
- 1) Transfer of impervious area credit from an existing undeveloped legal lot of record. The sending lot must be located within the Silver Beach Neighborhood, except for areas 11 and 15. Additional impervious area allocation will be made to the receiving lot up to the limit of the sending lot as described in 16.80.070 A. 1-3 above. The entire impervious area limit of the sending lot must be transferred to the receiving lot. The entire impervious credit does not, however, need to be used to develop the receiving lot. The sending lot must have a recorded deed restriction stating that no portion of the sending lot may be used for future structural development, impervious area credit or development right transfer. The deed restriction shall state the parcel to which impervious credit is transferred. The remaining sending lot may be combined with other adjacent property to add yard area, open space or building setback relief. All potential marketing, negotiation, sale agreement and purchase shall be made by private parties. The City will review and approve deed restrictions that comply with the above parameters. Deed restrictions must be recorded by the Whatcom County Auditor. The City will also record impervious area credit transfers on building permits and parcel records, including when, where from and where to impervious credits are transferred. All transfers and recording must be complete prior to building permit issuance.
 - 2) Retention or establishment of native vegetation, including coniferous trees, shrubs and groundcover. An impervious credit will be granted at the ratio of 100 sq. ft. of credit for every 1000 sq.ft. of qualifying native vegetation to be retained on the lot to be developed. The maximum impervious credit that may be earned by this mechanism is 1000 sq. ft. Qualifying vegetation must include existing or replanted vegetation within a contiguous area that will yield a density of at least two 6' high conifer trees, ten shrubs, and natural groundcover per 100 sq.ft. of retention area upon acceptance. The native vegetation retention area must be established, inspected and protected from the future placement of structure or alteration by a conservation easement. Said easement shall be shown and recorded on the lot title, inclusive of a satisfactory dimensioned visual exhibit, prior to building permit issuance. (A list of qualifying trees and shrubs is provided in Native Plants for Landscaping in Bellingham, Wa., available from the Planning Department)
 - 3) Vegetation restoration of a degraded area off site. An impervious credit will be granted at the ratio of 100 sq. ft. of credit for every 1000 sq. ft. of restored area off site, within the Silver Beach Neighborhood, except for areas 11 and 15. The maximum impervious credit that may be earned by this mechanism is 1000 sq. ft. Eligible areas may be public or private and must be unrestricted by any contract, easement, covenant or title. Public lands must include written permission from the managing agency. Private land must be able to accept a conservation easement for the restored area. Completed work must yield tree, shrub and groundcover

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density identical to 2) above. All work must be completed, or the proponent must provide sufficient financial surety, prior to building permit issuance.

- 4) Removal of impervious area off-site and restoration of a pervious groundcover. An impervious credit will be granted on a two removed-for-one allowed basis for the removal of any paved, concrete or building surface area. Areas must be located within the Silver Beach Neighborhood, except for areas 11 and 15. The area considered must be able to be retained in a pervious condition by contract, conservation easement, deed restriction or certainty deemed satisfactory by the City. The city shall record approved projects on both the building permit and parcel records as necessary to ensure credit. All work must be completed prior to building permit issuance.

- B. Under no circumstances shall the application of Impervious Area Credits be combined with the basic Impervious Area Limits to allow the impervious area coverage of any single lot to exceed 70% of the gross lot area.

16.80.110 RESTRICTION ON SUBDIVISIONS

- A. In addition to the provisions of BMC Title 18, Subdivisions:

- 1) Each newly created lot shall include sufficient gross area to support any existing impervious areas within the lot as required by BMC 16.80.090. Subdivision proposals that are unable to meet this requirement shall be disallowed, unless impervious areas are removed or impervious credits are earned as provided in BMC 16.80.100 prior to subdivision approval.

- 2) No part of any lot or parcel that has been previously approved as an impervious credit in BMC 16.80.100 may be included in the gross area required in BMC 16.80.110A.

16.80.120 SEASONAL RESTRICTIONS ON CLEARING AND EARTHWORK

- A. No earthwork, including clearing of vegetation, grading, filling, excavating or trenching of soil or earth materials that will result in an exposed soil or earth area that exceeds 500 sq. ft. shall be permitted from October 1st through April 30th within the Silver Beach Neighborhood, except subareas 11 and 15.
- B. The 500 sq. ft. threshold in BMC 16.80.120A. shall apply to each individual lot, parcel, un-completed short plat, preliminary plat, trail, road, utility or maintenance project.
- C. The seasonal restriction on clearing and earthwork is intended to prevent the start of any earthwork project that will exceed the 500 sq. ft. limit and reduce open soil/earth surfaces to less than 500 sq. ft. per project during the above listed months.

- D.** All bare soil and earth areas in excess of 500 sq. ft. shall be required to be covered during the above listed months with any of the following: 1) Well established grass, sod or a vegetated surface sufficient to prevent the erosion or transport of soil, sediment and silt laden water. No soil or earth may be visible. 2) A minimum of 3" cover of shredded wood chip/fiber, vegetative mulch, hay or straw. 3) Crushed rock or gravel, not less than ¾" in aggregate size and 4" deep.
- E.** The City may approve emergency exemptions to the seasonal restrictions as may be necessary to protect public health, safety, welfare, the environment and private or public property. Exemptions shall be construed narrowly and may be granted by the Planning or Public Works Directors.

16.80.130 VARIANCES

Variances from this Chapter shall be considered in accordance with the standards and procedures found in BMC 20.18 - Variance Procedure.

16.80.140 APPEALS

Appeals of administrative decisions made under this Chapter shall be considered in accordance with the procedures provided in BMC 2.56.

16.80.150 ENFORCEMENT AND PENALTY

The City, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may take or cause to be made such examinations, surveys, or sampling as the City deems necessary.

The Director shall have authority to enforce this chapter and all activities regulated thereunder. All costs, fees, and expenses in connection with such enforcement actions may be recovered as damages against the violator.

Law enforcement officials or other enforcement officials having police powers shall have concurrent authority to enforce this chapter and all activities regulated thereunder.

Any person who commits, takes part in, or assists in any violation of any provision of this chapter is guilty of a misdemeanor and may be fined not more than \$1500.00 for each offense. Each violation of this chapter shall be a separate offense, and in case of a continuing violation each day's continuance shall be deemed to be a separate and distinct offense.

Should a regulated activity occur and it is later discovered that the activity is occurring in violation of this chapter, the Director shall have the authority to issue a stop work order and all activity shall cease until such time as the violator can meet the requirements of this chapter.

In the event of a violation, the Director shall have the authority to order restoration measures for the damaged or destroyed area by the person or agent responsible for the violation. If the responsible person or agent does not complete such measures within a reasonable time specified by the Director following the order, the City of Bellingham may restore the affected area to its prior condition. The person or agent responsible for the original violation shall be liable to the City of Bellingham for the cost of such actions.

16. 80.160 SEVERABILITY

Should any section, clause, designation or provision of this chapter be declared by the Courts to be invalid, the same shall not effect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Passed by the Council this 8TH day of January 2001.

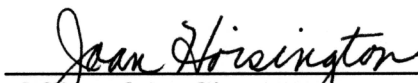

Council President

Approved by me this 22nd day of January 2001.


Mayor

ATTEST: 
Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

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