

ORDINANCE No. 2002-05-036

AN ORDINANCE AMENDING BMC CHAPTERS 20.36 AND 20.38 RESTRICTING ELECTRICAL POWER GENERATION AS A PERMITTED USE AND PROVIDING FOR REGULATION OF THE ESTABLISHMENT OF ELECTRICAL POWER GENERATING FACILITIES, INCLUDING LOCATION, SIZE, TYPE AND PUBLIC PROCESS REQUIREMENTS.

WHEREAS, electrical power is an essential public utility resource to provide for the normal functions, services, and benefits of the city for all citizens; and,

WHEREAS, supply and demand elements in regional power markets may result in wide price fluctuations from time to time, causing financial hardships for individuals, organizations and businesses which rely on this resource; and,

WHEREAS, the City of Bellingham has adopted goals and policies intended to guide the development, distribution and maintenance of essential public utilities commensurate with the current and future needs of the community; and,

WHEREAS, inappropriate siting of certain large, potentially hazardous or otherwise obtrusive types of power generating facilities may have significant adverse impacts on adjacent residents, the environment and all citizens of Bellingham if not carefully considered and regulated.

NOW, THEREFORE THE CITY OF BELLINGHAM DOES ORDAIN:

Ordinance No. 2001-04-027 is hereby suspended and replaced as follows:

TITLE

This ordinance shall be known as the Power Generating Facilities Ordinance.

PURPOSE

The purpose of this ordinance shall be to provide for the appropriate siting of electrical power generating facilities in a manner that is harmonious with the community and environment.

APPLICABILITY

This ordinance shall apply to all existing and proposed electrical power generating facilities located within any Neighborhood Plan sub-area with a Land Use Classification of Light, Heavy, Marine or Planned Industrial designation per B.M.C. 20.36.010 et seq. Establishment of any new facility, or a capacity expansion of any existing permanent electrical power generating facility shall comply with all terms, conditions and requirements of this ordinance.

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AMENDMENT

This ordinance shall amend B.M.C. 20.36.030, Permitted Uses. Hereafter, utility generation shall not be permitted except in any Industrial General Use Type designation as provided herein.

Section 1. BMC 20.36.030 is amended as follows:

20.36.030 - Permitted Uses

A. Uses Permitted Outright. No building or land shall be used within an area designated with an industrial general use type except as permitted below, corresponding to the use qualifier designated for such property.

The following uses shall be permitted outright; corresponding to the designated use qualifier.

Use Qualifier Permitted Use

LIGHT (1) Warehousing and Wholesaling Establishments: excluding the storage and handling of explosives, ammonia, chlorine, and any other similarly dangerous or toxic substances.

...

(10) Transportation and Public Utilities (such as freight operations, terminals, communication services, utility transmission systems, and utility generation systems only as provided in BMC 20.36.030 C)

...

HEAVY (1) Warehousing and Wholesaling Establishments

...

(5) Transportation and Public Utilities (such as freight operations, terminals, communication services, utility transmission systems, and utility generation systems only as provided in BMC 20.36.030 C)

...

MARINE (1) Manufacturing of water related goods such as:

...

(2) Transportation and Public Utilities including:

(a) Motor Freight Transportation and Warehousing

(b) Water Transportation (includes marinas)

(c) Utility transmission systems and utility generation systems only as provided in BMC 20.36.030 C

...

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Section 2. A new paragraph, BMC 26.36.030 C, is added as follows:

C. Electrical Power Generating Facilities

1. Electrical Power Generating Facilities Permitted Outright

- (a) The establishment of any new permanent natural gas fired electrical power generating facility provided the combined total output of all systems is not greater than 5.0 megawatts of energy at peak output, and: (1) provisions are made to minimize noise impacts to adjacent areas zoned or developed for residential uses, and (2) the power generated shall be for use by an on-site or adjacent industrial use only and not for sale on the open power market, and 3) the project complies with all other *Industrial* designation requirements.
- (b) The establishment of any alternative energy power generating facility which utilizes solar, wind, tidal, fuel cell or other non-combustive energy source provided the combined total output of all systems is not greater than 5.0 megawatts of energy at peak output, and 1) provisions are made to minimize noise impacts to adjacent areas zoned or developed for residential uses, and 2) the project complies with all other applicable *Industrial* designation requirements.
- (c) The establishment of any emergency back-up electrical power generation system which is not intended for primary continuous use, but rather for use during power supply interruption due to extreme weather events, earthquake, collision, unanticipated accident or related power failure.

2. Electrical Power Generating Facilities Restricted

- (a) All types of permanent electrical power generating facilities that utilize any form of nuclear, coal, diesel, heavy bunker oil, wood, wood residuals or other waste material fuels, *except steam*, shall be prohibited.
- (b) All new electrical power generating facilities, and expansion of existing lawfully established natural gas fired electrical power generating facilities, producing more than 5.0 megawatts may be considered via the Planned Development process provided in *B.M.C. 20.38.010* subject to the following requirements and considerations:
 - (1) All applications for new power facilities or expansion of existing power facilities shall be required to submit a SEPA Checklist and be reviewed for potential environmental impacts and receive an appropriate threshold determination as provided in WAC 197-11-330 and *B.M.C. 16.04 as current or amended by ordinance*.
 - (2) Consideration should be made for siting such systems at a single or limited location(s) in order to limit the impacts attributable to installation or operation of such systems within the City.
 - (3) Minimize impacts to the Bellingham waterfront.
 - (4) Minimize impacts to hospitals and health care facilities.
 - (5) Minimize impacts to urban residential concentrations.

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- (6) Preference should be given to areas adjacent to or with reasonable access to existing corridors for energy transmission systems such as natural gas pipelines and electric power lines.
- (7) Facilities should be sized to meet city energy needs.
- (c) Any *Planned Development Application* made for any new electrical power generating facility or expansion of any existing power generating facility regulated under Section 2 of this ordinance may be denied by the Planning Director if found to be inconsistent and/or incompatible with the criteria in C. 2. (b), (1) through (7) above.
- (d) Normal maintenance, repair, replacement or modification of equipment for lawfully established electrical power generating facilities may occur without requirement for a new *Planned Development Application* provided: (1) There is no net increase in air, water or solid waste emission or discharge, and (2) All other SEPA and *Industrial* requirements are met. This provisional determination shall be made by the Planning Director and provided in writing prior to any generator equipment replacement or modification.

3. Application and Public Process Expenses

With regard to applications for siting permanent gas fired electrical power generating facilities only, as a condition to acceptance of any such application, an applicant must agree to reimburse of the City of Bellingham for the reasonable, actual costs of processing and evaluating the application, including but not limited to the cost of consultants and experts retained by the City.

4. Appeal

Any aggrieved party may appeal any administrative decision of the Planning Director as provided herein upon submittal of a notice of appeal to the Hearing Examiner's Office within 14 days of the date of Director's decision. There is a fee for this appeal process. Review of the determination of the Hearing Examiner shall be by judicial challenge before the Whatcom County Superior Court.

Section 3. BMC Chapter 20.38, providing for Planned Development, is amended as follows:

20.38.050 - Standards.

A. Generally.

. . .

D. Planned Industrial.

(1) For all land designated industrial, the following standards shall apply.

(2) Range of uses possible. (9173) Any of the following uses may be permitted in a planned proposal within an industrial general use type designation; provided that any of such uses shall not be permitted where prohibited within the applicable neighborhood plan. Certain uses may also be excluded from a particular planned industrial area by the Commission if such use(s) are found to be

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incompatible with the surrounding area or unsuitable to the particular site. The final decision shall set forth the uses permitted for the subject property.

Range of Uses:

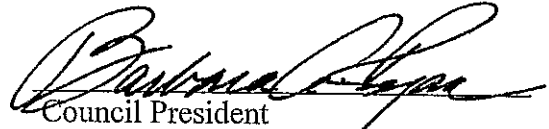
(a) Warehousing and wholesaling of the following goods:

...

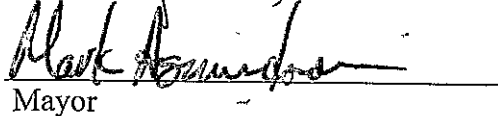
(h) Transportation and public utilities (such as freight operations, terminals, communication services, utility transmission systems, and utility generation systems only as provided in BMC 20.36.030 C).

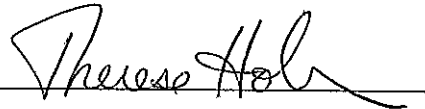
[no further changes to this section]

PASSED by the Council this 6TH day of MAY, 2002.

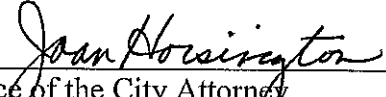

Council President

APPROVED by me this 27th day of May, 2002.


Mayor

ATTEST: 

APPROVED AS TO FORM:


Office of the City Attorney

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