

**ORDINANCE NO. 2014-09-043**

**AN ORDINANCE RELATED TO LAND USE PLANNING AND ZONING, AMENDING BMC CHAPTER 20.25 FOR THE PURPOSE OF ADOPTING THRESHOLDS UNDER WHICH DESIGN REVIEW IS APPLICABLE IN THE WATERFRONT DISTRICT, ADOPTING A WATERFRONT DESIGN REVIEW DISTRICT MAP, AND REPEALING BMC CHAPTER 20.39 MIXED USES.**

**WHEREAS**, the City adopted the Waterfront District Subarea Plan and related development codes and design standards in 2013; and

**WHEREAS**, three additional amendments to BMC chapter 20.25 and 20.39 should have been included in the package of amendments that was processed for the Waterfront District; and

**WHEREAS**, the proposed amendments to BMC 20.25 are needed to establish a threshold for projects subject to the design review process, and to adopt a design review area map; and

**WHEREAS**, the proposed amendment to BMC 20.39 is needed to repeal a section of code that is no longer applicable because of the adoption of the Waterfront District development regulations; and

**WHEREAS**, on February 21, 2014, the City of Bellingham as lead agency under the procedures of the State Environmental Policy Act issued a Determination of Non-Significance; and

**WHEREAS**, in accordance with the Growth Management Act, the State of Washington Department of Commerce was notified on March 18, 2014 of the City's intent to adopt the three amendments to the City's development regulations; and

**WHEREAS**, the Bellingham Planning Commission conducted a public hearing on March 27, 2014, on the amendments, with appropriate public notice provided; and

**WHEREAS**, the Planning Commission adopted Findings of Fact, Conclusions and Recommendations to the City Council on March 27, 2014; and

**WHEREAS**, the Bellingham City Council held a public hearing on June 23, 2014, on the amendments, with appropriate public notice provided; and

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**WHEREAS**, the City Council finds that the proposed amendments are needed to provide consistency with the Waterfront District goals, policies, regulations and design standards.

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

**Section 1.** Bellingham Municipal Code Section 20.25.020 concerning Design Review, Applicability, is amended as follows:

**20.25.020 - Applicability**

The following areas and developments are subject to design review under this chapter. No building or sign permit shall be issued for projects regulated under this chapter until design review approval has been issued. The provisions of Chapter 20.14 regarding nonconformance establish which of the standards and criteria in this chapter apply to developed sites. In addition, some standards in this chapter specify the level of development that requires full compliance.

- A. Multifamily Residential Projects.** The following developments shall obtain design review approval when located in any use district except within the city center design review district, institutional general use types that are governed by an adopted institutional master plan, the Fairhaven design review district, the Waterfront design review district, or in an urban village design district:
1. New construction consisting of or resulting in:
    - a. Single-family attached residential development consisting of three or more attached units;
    - b. Residential development consisting of three or more dwelling units on a site;
    - c. Accessory buildings for any of the developments listed above.
  2. Any additions or exterior alterations to buildings of the types listed in subsection (A)(1) of this section and/or to their associated site improvements, if the proposed construction requires a building permit. The design standards apply only to the proposed additions or alterations to the extent feasible while allowing the flexibility to accommodate the design of the existing improvements.
  3. The requirements of this chapter apply to any of the residential uses listed in subsection (A) of this section when part of a commercial or mixed use development. In these situations the director shall determine which requirement statements are applicable and which portions of the development are subject to review based on the context of the use district and the type of development proposed.
  4. The following activities are exempt:

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- a. Interior alterations that do not affect the exterior design of the building.
- b. Development that does not conform to the design standards and is damaged or destroyed by sudden accidental cause may be reconstructed. The reconstructed improvement may not be more nonconforming than it was immediately prior to the damage. An application for a building permit to rebuild or repair the nonconforming improvement must be made within 12 months or the nonconformance shall be considered to be terminated and shall not be resumed. Development that does not conform to other provisions of BMC Title 20 shall continue to be regulated under the provisions of Chapter 20.14 BMC.
- c. Normal maintenance and repair.

B. through E. [NO CHANGES]

**F. Development in the Waterfront Design Review District.**

**1. Commercial and Institutional Mixed-Use Land Use Areas.** All new construction requiring a building permit within Commercial and Institutional Mixed-Use land use areas of The Waterfront Design Review District (**Figure 20.25.020(C)**) shall obtain design review approval unless exempted by this subsection.

**a. The following activities are exempt from design review:**

**i. Interior alterations which do not affect the exterior design of the building.**

**ii. Normal maintenance and repair.**

**iii. Industrial, manufacturing and warehouse facilities, including boat servicing, repair and accessory offices located within the Industrial Mixed-use land use area, provided the buildings are set back at least 20 feet from adjacent arterial streets, trails, or parks, and the street frontage, trail or park is buffered by landscaping.**

**iv. Public infrastructure of permanent or temporary character such as bridges, viaducts, elevated ways, docks, piers, retaining walls, gates, fences, lamp standards, sculptures, bas-reliefs, monuments, and fountains.**

**iv. Buildings and activities which are exempt from design review shall comply with the site lighting standards regarding shielded outdoor lighting.**

**b. The design and layout of buildings within institutional or business campuses may vary from the Waterfront District Design Standards if a master plan or character plan is completed for the campus area with an alternate standard which implements the policies and implementation strategies of the Waterfront District Sub-Area Plan.**

**2. Industrial Mixed-Use Land Use Area.** New construction within the Industrial Mixed-Use land use area is subject to design review if the uses within the proposed building or facility include retail, personal services, cultural or entertainment uses, or if the building is located within 20 feet of an existing or proposed arterial street or park. In these situations the Director shall determine

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which requirement statements are applicable and which portions of the development are subject to review based on the context of the use district, the context of the street or park frontage, and the type of development proposed. Activities exempt from design review are those specified in subsection (F)(1)(a) of this section.

3. The following projects shall be reviewed either by staff, the design review board or the historic preservation commission as noted. The design review board and the historic preservation commission shall provide a recommendation to the director regarding a design review decision. The director shall give substantial weight to the recommendation of the design review board and the historic preservation commission.

a. Projects Subject to Review by the Design Review Board.

i. New buildings and developments; and

ii. Additions or exterior alterations with a valuation of over \$50,000 unless the building is on the city of Bellingham, state or national registers of historic places.

b. Projects Subject to Review by the Historic Preservation Commission.

i. Alterations and exterior additions to buildings on the city of Bellingham, state or national registers of historic places if the alteration or addition has a valuation of over \$50,000. If a certificate of alteration is required under BMC 17.90.060, the commission's decision regarding the certificate of alteration shall be incorporated into the design review decision by the director.

c. Projects Subject to Staff Review. All projects requiring design review under this subsection other than those required under subsections (3)(a) and (b) of this section. The director may refer any project subject to staff review to the design review board for recommendation if staff has identified potential inconsistencies with the design standards.

**Section 2.** Bellingham Municipal Code Section 20.25.020(F) concerning Design Review, Applicability, is amended to add "**Figure 20.25.020(C) Waterfront Design Review District**", attached hereto as **Exhibit A**.

**Section 3.** Bellingham Municipal Code Section 20.25.040 concerning Design Review, Decision Criteria, is amended as follows:

**20.25.040 - Decision Criteria**

**A. through C.** [NO CHANGES]

**D.** For projects listed in section 20.25.020(E), Large Retail Establishments, the Director shall base his or her decision on consistency with the standards in Section 20.25.060

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unless the proposal is located in the City Center Design Review District or the Fairhaven Design Review District, or the Waterfront Design Review District, in which case the standards of those districts shall apply.

E. [NO CHANGES]

F. For projects listed in Section 20.25.020(F), the Waterfront Design Review District, the Director shall base his or her decision on consistency with the Waterfront Urban Village Design Guidelines and Standards in Section 20.25.080 unless an institutional master plan with an alternate design standard has been approved by the City Council for an institutional or business campus.

**Section 4.** Bellingham Municipal Code Section 20.25.080 Waterfront District, is amended as follows:

**20.25.080 WATERFRONT DISTRICT**

**A. Purpose.** This section is intended to implement The Waterfront District Subarea Plan by:

1. Creating a safe, vibrant mixed-use urban district which is welcoming to businesses, residents and visitors.
2. Promoting diverse pedestrian and transit-oriented development at street level.
3. Optimizing public access and views to and from the waterfront.
4. Encouraging a variety of interesting design styles, features and amenities.
5. Promoting sustainable design and development practices consistent with the LEED for Neighborhood Development program.

**B. Applicability**

- ~~1. All new construction located within Commercial and Institutional Mixed Use land use areas of The Waterfront District is subject to design review under Bellingham Municipal Code 20.25 and the Design Standards within this section unless an institutional master plan with an alternate design standard has been approved by the City Council for an institutional or business campus.~~
- ~~2. The design and layout of buildings within institutional or business campuses may vary from the Waterfront District Design Standards if a master plan or character plan is completed for the campus area with an alternate standard which implements the policies and implementation strategies of the Waterfront District Sub-Area Plan.~~
- ~~3. New construction within the Industrial Mixed Use land use area is subject to design review if the uses within the proposed building or facility include retail, personal services, cultural or entertainment uses, or if the building is located within 20 feet of an existing or proposed arterial street or park. In these situations the Director shall determine which requirement statements are applicable and~~

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~~which portions of the development are subject to review based on the context of the use district, the context of the street or park frontage, and the type of development proposed.~~

~~4.—The following activities are exempt from design review:~~

- ~~a.—Interior alterations which do not affect the exterior design of the building.~~
- ~~b.—Normal maintenance and repair.~~
- ~~c.—Industrial, manufacturing and warehouse facilities, including boat servicing, repair and accessory offices located within the Industrial Mixed-use land-use area, provided the buildings are set back at least 20 feet from adjacent arterial streets, trails, or parks, and the street frontage, trail or park is buffered by landscaping.~~
- ~~d.—Buildings and activities which are exempt from design review shall comply with the site lighting standards regarding shielded outdoor lighting.~~

~~5.—The following design standards are intended to carry out the goals and policies of the Waterfront District Sub-Area Plan, and shall be used by the Design Review Board and Planning Director as the standards for design review under BMC 20.25. Should the provisions of this Section conflict with any other provision in BMC 20.25, the provisions of this Section shall apply.~~

**C.B.**      **Departures from design requirements.** The Director may approve departures from the design requirements in BMC 20.25.080. All requests for departures shall be identified in the application and reviewed by the Design Review Board following the process in BMC 20.25.030(A)(1)(b) unless the request involves a building on the City, State or National register of historic places, in which case it shall be reviewed by the Historic Preservation Commission. A departure may only be allowed if the Director determines that the applicant has demonstrated that either:

1. In response to difficult physical circumstances relating to the size, shape, topography, location or surroundings of the subject property, an alternative solution is required that meets the intent of the requirement to the greatest extent practical, or
2. An alternative design will provide an equal or better solution that:
  - a. Meets the intent of the standard;
  - b. Enhances the character and livability of the Waterfront;
  - c. Enhances the character and environment for pedestrians;
  - d. Enhances or protects the character of the neighborhood or vicinity by protecting natural features, historic sites, open space, or other resources; and
  - e. Will not have any substantial detrimental effect on nearby properties and the City or the neighborhood.

**D.C.**      **Specific Standards**

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1. [NO CHANGES BEYOND THIS POINT]

**Section 5.** Bellingham Municipal Code Chapter 20.39 Mixed Use is repealed in its entirety.

**Section 6.** The Council agrees with, and hereby adopts the March 27, 2014 Findings of Fact, Conclusions and Recommendations of the Planning Commission, attached hereto as Exhibit B.

PASSED by the Council this 8<sup>th</sup> day of September, 2014

  
Council President *Pro Tem*

APPROVED by me this 18<sup>th</sup> day of September, 2014

  
Mayor

ATTEST:   
Finance Director

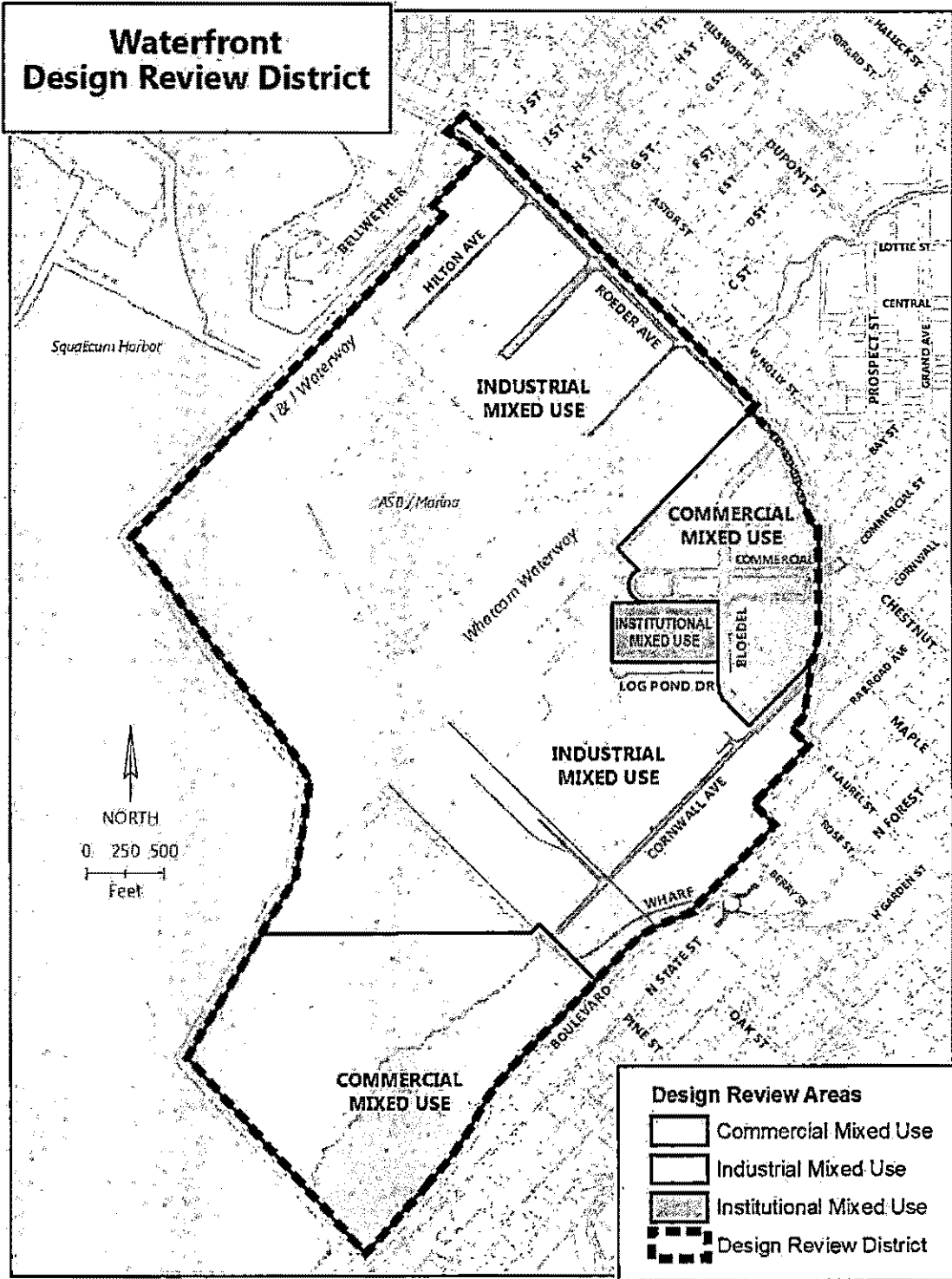
APPROVED AS TO FORM:

  
Office of the City Attorney

Published: September 12, 2014

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# EXHIBIT A



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# EXHIBIT B

## BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

MARCH 27, 2014

### SUMMARY

The City of Bellingham approved the Waterfront District Subarea Plan, development regulations and design standards in 2013. Subsequently, it was discovered by staff that several minor code amendments are needed to complete the regulatory package for the Waterfront District. As a result, staff is proposing several amendments to Bellingham Municipal Code (BMC) sections 20.25 and 20.39. All of the proposed amendments are described as "housekeeping", in that they do not include substantive changes to the package of regulations and design standards that were adopted with the Waterfront District Subarea Plan in 2013.

Following the March 27, 2014 public hearing and deliberation, the Planning Commission finds that the proposed amendments comply with, and will implement, the goals and policies of the Bellingham Comprehensive Plan and the Waterfront District Subarea Plan, and should therefore be adopted by the City Council.

### I. FINDINGS OF FACT

**1. Project Description:** The proposal includes revising the following BMC sections:

1. BMC 20.25.020. This is the design review applicability section that establishes thresholds for when new development is exempt from design review, requires staff review, or requires review by the Design Review Board. Adding the Waterfront District to this section of the code is consistent with the other design review-required areas of the city that have a specific set of design guidelines, such as the City Center and Fairhaven. Adding reference to the Waterfront District it is Amendments are needed to:
  - Add the Waterfront District to this section of the BMC. The proposed text amendments are shown in legislative format in Section 1 of the attached ordinance.
  - Add a Waterfront District Design Review Area Map to the BMC. See Section 2 and Exhibit A in the attached ordinance.
2. BMC 20.25.040. This is the decision criteria section for design review projects. The proposed amendments are needed to specify which design standards apply and where in the code they are found. See the proposed text amendments in Section 3 of the attached ordinance.
3. BMC 20.25.080. This section contains the specific design guidelines and standards that are applicable to the Waterfront District. Amendments to the "Applicability" section are needed to move 'threshold' criteria from this section to where they are more appropriately located in section .020. See Section 4 of the attached ordinance.

4. BMC 20.39. This amendment repeals a "mixed use" provision that was superseded by the 2013 Waterfront District development regulations. See Section 5 of the attached ordinance.

## **2. Background:**

In December 2013, the City Council adopted the Waterfront District Subarea Plan, development regulations and design standards in a 237-acre area along Bellingham's central waterfront. Subsequently, it was discovered by staff that several minor code amendments are needed to complete the regulatory package for the Waterfront District. All of the proposed amendments are described as "housekeeping", in that they do not include substantive changes to the package of regulations and design standards that were adopted with the Waterfront District Subarea Plan in 2013.

## **3. Public Comment:**

No public comments were received regarding the proposed code amendments.

Notice of the Planning Commission hearing was mailed to neighborhood representatives and associations and other parties with an interest in this topic. The notice was also published in the Bellingham Herald. Notices were issued at least 30 days prior to the hearing date.

## **4. State Environmental Policy Act (SEPA) Determination if applicable:**

A Non-Project SEPA determination of Non-Significance was issued by the City of Bellingham on February 21, 2014.

## **5. Consistency with the Bellingham Comprehensive Plan:**

The Comprehensive Plan identifies nine guiding principles to make changes to the City's regulatory system as identified in Chapter 2 of the Land Use section. Within this section, the principles are outlined in Part 3-Land Use Regulatory System, titled "The New System". The specific principles particularly applicable to the proposed amendments are as follows:

- Assure fair and predictable results and avoid unnecessary delays.
- Organize, consolidate and simplify development regulations and permitting procedures.
- Develop a system that is easier and more cost effective to administer.

The proposal will result in development that is consistent with the following Comprehensive Plan goals and policies:

### **Land Use Chapter / Part 9: Land Use Policies**

#### **A. Framework Land Use Policies**

FLU-15: Growth in Bellingham will be accommodated primarily in compact "urban centers" as described in the Community Growth Forum report, while preserving the character of existing single family neighborhoods.

FLU-18: Establish urban center design and development standards to ensure that new urban centers are of a type, scale, orientation and design that maintains the character and livability of the adjacent neighborhoods.

#### **Section F. Commercial and Mixed Use Development Policies**

LU-50: Development regulations should be revised to encourage mixed-use infill development in urban villages. Design and site improvement standards should be established through the master plan process for urban village development.

Infill Strategy Action Step 13: Establish design guidelines for areas that are particularly sensitive and for development types that are particularly controversial.

Infill Strategy Action Step 14: Reinforce staff's ability to insist on high-quality design from project applicants.

#### **Waterfront District Subarea Plan -**

##### **Land Use Policies:**

33. Establish design regulations and a predictable design review process to ensure that building designs are consistent with the intended character of the various development areas.

##### **Implementation Strategies:**

2. Adopt development regulations, design standards and a predictable and efficient development approval process to implement the community vision established in the Waterfront District Sub-Area Plan.

## **II. CONCLUSIONS:**

Based on the staff report and the information presented at the public hearing, the Planning Commission concludes:

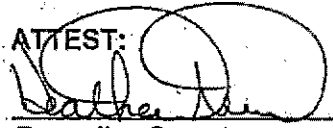
1. The proposed code amendments clarify the Waterfront District design review process, applicability and criteria for staff and applicants.
2. The proposed code amendments are consistent with and implement the goals and policies of the Waterfront District Subarea Plan and the Bellingham Comprehensive Plan.


## **III. RECOMMENDATION:**

Based on the findings and conclusions, the Bellingham Planning Commission recommends that the City Council approve the proposed amendments to Bellingham Municipal Code sections 20.25 and 20.39 as shown in the draft ordinance attached hereto.

ADOPTED this 27th day of March, 2014.

  
\_\_\_\_\_  
Planning Commission Chairperson

ATTEST:   
\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM:   
\_\_\_\_\_  
City Attorney