

ORDINANCE NO. 2023-08-022

AN ORDINANCE RELATING TO LAND USE PLANNING, AMENDING BELLINGHAM MUNICIPAL CODE (BMC) TITLES 20 AND 21 REGARDING ACCESSORY DWELLING UNITS (ADUs).

WHEREAS, State Law RCW 43.63A.215 and RCW 36.70A.400, adopted as part of the 1993 Washington Housing Policy Act, require Washington cities with populations over 20,000 to adopt regulations to allow accessory dwelling units (ADUs); and

WHEREAS, in 1995, the Bellingham City Council (Council) approved Ordinance No. 10643 which allowed attached ADUs (A-ADUs) citywide; and

WHEREAS, in 2001, Council adopted Ordinance No. 2001-01-001 which added a new chapter (16.80 - Lake Whatcom Reservoir Regulatory Chapter) to the BMC, and included provisions restricting ADUs within the Lake Whatcom Watershed; and

WHEREAS, in 2009, Council adopted Ordinance No. 2009-08-047 which added a new chapter (20.28 - Infill Housing) to the BMC, and included provisions allowing carriage units and detached ADUs (both ADU housing forms) generally in areas that allow housing other than most single-family zones and within the Lake Whatcom Watershed; and

WHEREAS, in 2016, Council adopted the 2016 Bellingham Comprehensive Plan (Comprehensive Plan) via Ordinance 2016-11-037 which includes updated goal and policy guidance on neighborhood preservation, infill development, housing, and ADUs; and

WHEREAS, in 2018, Council adopted Ordinance No. 2018-05-009 which allowed detached ADUs in single family zones citywide (except within the Lake Whatcom Watershed), updated standards for both attached and detached ADUs, and include the following thresholds that, whichever is triggered first, require review by City Council: 1) by December 31, 2025; or 2) when the city issues 200 D-ADU permits citywide; or 3) when the city issues 25 D-ADU permits in any one neighborhood as defined in Chapter 20.00 BMC, Zoning Tables; and

WHEREAS, on March 27, 2020, Washington State adopted SB 6617 which established, with limited exceptions, that cities may not require the provision of off-street parking for ADUs within one-quarter mile of a major transit stop; and

WHEREAS, on April 14, 2021, Washington State adopted SB 5235 which established, with limited exceptions, that a city or town may not regulate or limit the number of unrelated persons that may occupy a household or dwelling unit; and

WHEREAS, as of July 1, 2021, twenty-five (25) D-ADU permits had been issued in the Sunnyland Neighborhood triggering a review of Ordinance No. 2018-05-009 by City Council; and

WHEREAS, on July 26, 2021, following a Planning staff report to Council summarizing the implementation of Ordinance No. 2018-05-009 through July 1, 2021 and that no major or commonly reoccurring issues had been identified with development of D-ADUs in single family zones, Council confirmed the City's continued support of D-ADUs in all residential zones and

directed staff to bring back a draft ordinance with a range of amendment options intended to improve ADU standards, permitting process, affordability, and consistency with state legislation; and

WHEREAS, the Comprehensive Plan directs that:

- The unique character and qualities of existing neighborhoods be protected, while identifying opportunities for improved livability, safety, and housing affordability and diversity (Policy LU-4);
- The City make more efficient use of the remaining City land supply by facilitating development on existing lots of record; developing flexible code provisions that allow a range of housing types; and other steps necessary to make better use of the remaining land supply (Policies LU-10, CD-32 and 33, ED-30, H-16);
- The City encourage preservation, restoration, and appropriate adaptive reuse of historic properties (Policy LU-76);
- The City accommodate the changing needs of residents as they age (Policy LU-85);
- The City provide builders, developers and architects with a set of clear objectives and performance goals which promote the highest attainable standard of quality consistent with economic feasibility for new development (Policy CD-14); and
- The City limit urban sprawl by linking land use and transportation planning (Goal T-1), reduce dependence on single-occupancy vehicles (Goal T-4), and review parking standards to reduce the impacts of parking on urban form, pedestrian mobility, and the natural environment (LU-71); and

WHEREAS, ADUs can provide housing options for those at the beginning of their housing cycle, and those at the end of their housing cycle; and

WHEREAS, on September 8, 2022, the City of Bellingham as lead agency under the procedures of the State Environmental Policy Act issued a Determination of Non-Significance on the proposed amendments; and

WHEREAS, in accordance with the Growth Management Act, the State of Washington Department of Commerce was notified on September 8, 2022 of the City's intent to adopt the amendments to the City's environment and land use regulations; and

WHEREAS, the Bellingham Planning Commission held a public hearing on September 22, 2022 on the amendments, with appropriate public notice provided, and held two work sessions following; and

WHEREAS, the Planning Commission considered the staff report and comments received, and recommended approval of the proposed ordinance with some changes to the proposal; and

WHEREAS, the Planning Commission adopted Findings of Fact, Conclusions and Recommendations to the City Council on January 12, 2023; and

WHEREAS, on January 12, 2023, the City of Bellingham as lead agency under the procedures of the State Environmental Policy Act issued a Final Determination of Non-Significance; and

WHEREAS, the Bellingham City Council held a public hearing on January 23, 2023 on the amendments, with appropriate public notice provided, and held four work sessions following, and an overview of recently adopted state legislative bills on housing on June 5, 2023; and

WHEREAS, subsequent to Planning Commission review and recommendation, and City Council hearing and initial work sessions, the Washington State adopted HB 1337 which amended RCW 36.70A to add significant changes to local government roles for regulating ADUs such that within urban growth areas, counties and cities:

- Must allow two (2) ADUs per single family residential lot in any configuration of attached or detached, or may be conversions of existing structures,
- May not require the owner to occupy the property, and may not prohibit sale as independent units,
- Must allow an ADU of at least 1,000 square feet and must adjust zoning to be consistent with the bill for things such as height, setbacks, and other regulations.
- May not require the provision of off-street parking for ADUs within one-half mile of a major transit stop,
- May not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an ADU,
- Must amend their rules to implement various other provisions of HB 1337; and

WHEREAS, HB 1337 states that if a city or county does not amend their rules to be consistent with the law and take effect within six months after the jurisdiction's next periodic comprehensive plan update required under RCW 36.70A.130, the rules in HB 1337 supersede, preempt, and invalidate any conflicting local development regulations; and

WHEREAS, the City is choosing to amend its rules to be consistent with HB 1337 at this time given the current acute housing shortage and the great potential that individual property owners can collectively contribute to the production of housing with one notable exception; and

WHEREAS, City Council elected to retain the current owner occupancy requirement for properties with an ADU in areas zoned residential single until occupancy requirements are preempted by State law; and

WHEREAS, on July 13, 2023, the City of Bellingham as lead agency under the procedures of the State Environmental Policy Act issued an addendum to the Final Determination of Non-Significance to account for amendments to its rules to incorporate HB 1337 into the Bellingham Municipal Code; and

WHEREAS, HB 1337 states that any action taken by a city or county to comply with the requirements are not subject to legal challenge under GMA or SEPA; and

WHEREAS, the City Council finds that the amendments are appropriate and consistent with the State Growth Management Act and the Bellingham Comprehensive Plan;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. BMC 20.08.020 is amended to add a definition for major transit route as follows:

"Major transit route" means a Whatcom Transportation Authority high frequency transit route providing actual fixed route service at intervals of at least fifteen minutes for at least five hours during the peak hours of operation on weekdays.

Section 2. BMC 20.10.036 is amended as shown in **Exhibit A**.

Section 3. BMC 21.10.040 concerning Types of Land Use Decisions, is amended as follows:

A. Land use decisions are classified into seven review process types based on who makes the decision, the amount of discretion exercised by the decision maker and the amount and type of public input sought.

B. *Type I.* A Type I review process is an administrative review and decision by the director. It is exempt from notice requirements. If a Type I decision is not categorically exempt from SEPA and the SEPA review has not been completed with a prior permit, the Type II process shall be used. Appeals of Type I decisions are decided by the hearing examiner unless the rules for a specific permit or decision specify that no administrative appeal is available. The following are Type I decisions when the application does not require a SEPA threshold decision:

1. through 30. [No changes]

31. Accessory dwelling unit, when the land use application does not include a minor modification request pursuant to BMC 20.10.036(B)(3).

32. All other decisions that specify use of the Type I process.

C. *Type II.* A Type II review process is an administrative review and decision by the director. Public notice is required. Appeals of Type II decisions are decided by the hearing examiner. The following are Type II decisions:

1. Accessory dwelling unit, when the land use application includes a minor modification request pursuant to BMC 20.10.036(B)(3);

2. [No changes beyond this point]

Section 4. The Council agrees with, and hereby adopts the November 3, 2022 Findings of Fact, Conclusions and Recommendations of the Planning Commission, attached as **Exhibit B**.

PASSED by the Council this 7th day of August, 2023


Council President

APPROVED by me this 15th day of August, 2023



Mayor

ATTEST: 

Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published:

August 11, 2023

Exhibit A

20.10.036 Accessory dwelling units.

A. Purpose and Authority.

1. It is the purpose of this legislation to implement policy provisions of the city's comprehensive plan promoting increased housing options and innovation that will help meet the needs of the many sectors of the community, including smaller households, students, millennials, baby boomers, people with disabilities, and low-income families; make more efficient use of public infrastructure and services; are within walking distance to shops, jobs, and amenities; encourage well-designed infill development; and improve the economic and social well-being of the community.
2. The director shall have the authority to approve accessory dwelling units (ADUs) which are consistent with ~~single-family neighborhood character and the regulations and provisions herein. It is not the intent of these regulations to provide for ADUs on every residential property and they shall not be deemed to create a right or privilege to establish or maintain an ADU which is not strictly in compliance with these regulations.~~
3. *Enforcement.* The city retains the right (with reasonable notice) to inspect the ADU for compliance with this section.
4. Any property owner with an unpermitted ADU on its property shall be in violation of this subsection and subject to the penalties in Chapter 20.52 BMC.
5. Any property owner with an ADU on its property that is in violation of any standard in subsection (B) of this section shall be in violation of this subsection and subject to the penalties in Chapter 20.52 BMC.

B. Standards and Criteria.

1. Accessory dwelling units (ADUs) may be allowed in ~~use qualifiers~~ general use types where listed as a permitted use if they comply with the requirements listed in this section, except on property regulated by Chapter 16.80 BMC, Lake Whatcom Reservoir Regulatory Provisions.
2. An ADU shall comply with all zoning code provisions for the primary ~~residence~~ dwelling unit, including height, setbacks, floor area, accessory buildings and open space, except as provided in this section. This provision shall also apply to ancillary structures attached to a D-ADU such as garages, carports, garden sheds and workshops.
3. Applicants may request minor modifications to the development and design standards for ADUs. A minor modification is a request by the applicant to meet or exceed a

particular ADU standard through the use of a technique or alternative standard not otherwise listed under the applicable requirement. Minor modifications are not variances and are not required to meet all of the criteria typically associated with a variance application. The director may grant a minor modification if the following criteria are met:

- a. The site is physically constrained due to, but not limited to, unusual shape, topography, easements, existing development on site, or critical areas; or
- b. The granting of the modification will not result in a development that is less compatible with adjacent neighborhood land uses and character; and
- c. The granting of the modification will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated; and
- d. The granting of the modification is consistent with the purpose and intent of this section; and
- e. All reasonable mitigation measures for the modification have been implemented or assured.

4. *Ownership and Occupancy.*

- a. The ADU, or the land on which the ADU is located, shall not be subdivided or otherwise segregated in ownership from the primary dwelling unit or from the land on which the primary dwelling unit is located, but the ADU may be segregated in ownership from the primary dwelling unit.
- b. ~~The total number of persons who may occupy the accessory dwelling unit shall not exceed four, regardless of relationship.~~
- c. Owner occupancy is required for properties that include an ADU (or ADUs) in areas zoned residential single until occupancy requirements are preempted by the State law. Prior to implementation of State law, the following applies. The property owner shall record a covenant with the Whatcom County auditor, submit an affidavit, approved by the director, which shall run with the land acknowledging the owner occupancy requirement for as long as the ADU is maintained on the property or until owner occupancy requirements are preempted by the implementation of State law. The property owner shall submit proof that the covenant has been recorded with the Whatcom County auditor's office, the affidavit to the City prior to issuance of the building permit. The covenant affidavit shall specify the requirements for owner occupancy, and purchaser registration, and biannual verification as follows:

1 i. ~~The~~An owner of the subject property shall reside on the premises, whether in the
2 primary or accessory dwelling; provided, that:

3 (A) In the event of illness, death or other unforeseeable event which prevents
4 the owner's continued occupancy of the premises, the director may, upon a
5 finding that discontinuance of the ADU would cause a hardship on the owner
6 and/or tenants, grant a temporary suspension of this owner-occupancy
7 requirement for a period of one year. The director may grant an extension of
8 such suspension for one additional year, upon a finding of continued
9 hardship.

10 (B) In the case of bringing an unpermitted ADU into compliance with this section,
11 if the property on which the ADU is located complies with all of the
12 requirements of this section except owner-occupancy, the property may
13 continue without occupancy by the owner for the remainder of the lease(s) on
14 the property, not to exceed one year. Thereafter, the property shall be
15 occupied by the owner, or transferred to a different owner who will reside on
16 the premises.

17 ii. Purchasers of homes with an ADU shall register with the planning and community
18 development department within 30 days of purchase.

19 ~~iii. An affidavit, prepared by the planning and community development department~~
20 ~~and signed by the property owner, must be submitted to the department on or~~
21 ~~before January 1st of every odd numbered year attesting to owner occupancy.~~

22 5. *Site Requirements.*

23 a. ~~Only one ADU shall be allowed per lot. No more than two ADUs shall be permitted in~~
24 ~~conjunction with the primary dwelling unit on a single lot of record.~~ The lot may not
25 contain more than one primary dwelling unit. The ADUs ~~is~~are exempt from density
26 limitations ~~due to its small size and low occupancy and may be in any configuration~~
27 of attached or detached units.

28 b. ~~For a D-ADU, the lot shall have alley access, access to more than one public street,~~
29 ~~or the lot size shall be at least 5,000 square feet.~~ The ADU main entrance shall have
30 direct access to a street via a lighted pedestrian path, driveway or alley.

31 6. *ADU Size.*

32 a. *Attached and Detached ADUs.*

i. ~~An ADU shall not exceed 66 percent of the floor area of the primary dwelling (excluding any related garage area attached to the primary dwelling) or 800 1,000 square feet, whichever is less, and shall contain a minimum square footage as required by the building code.~~

ii. ~~No more than two bedrooms may be located within an ADU.~~

b. *Attached ADUs (A-ADU).* ~~The director may allow increased size for an A-ADU in order to efficiently use all, or a portion of, the floor area on one floor of an existing dwelling unit constructed as of January 1, 1995, provided the ADU does not exceed 800 square feet. The maximum floor area in subsection (a) of this section does not apply when the basement of a primary dwelling unit is converted to an A-ADU and the primary dwelling unit has been on the site for at least 5 years.~~

c. *Detached ADUs (D-ADU).* ~~The floor area for D-ADUs shall be calculated using the "general" definition of floor area in BMC 20.08.020, and to include all attached ancillary space (garage, workshop, garden shed, etc.) within. Maximum allowed floor area limits are as follows:~~

i) ~~However, an accessory building that includes a D-ADU and with ancillary space may exceed 800 1,000 square feet when approved by the hearing examiner by conditional use permit pursuant to Chapter 20.16 BMC, provided the floor area of the D-ADU does not exceed that specified in subsection (B)(6)(a)(i) of this section.~~

ii) When an oversized detached accessory building approved by conditional use permit has been on site for at least 5 years, conversion of said building to a D-ADU may occur without subsequent conditional use permit approval.

iii) For subsections (i-ii) above, the floor area of the D-ADU, sans ancillary space, shall not exceed that specified in subsection (B)(6)(a) of this section.

7. *Minimum Yards for D-ADUs.*

- a. Front and side-flanking yards shall comply with the zoning code provisions for the primary ~~residence dwelling unit~~ except that when the vehicular entrance to an attached garage or carport faces a street, the entrance shall be set back a minimum of 25 feet from the front property line, and 10 feet from a side flanking property line.
- b. A five-foot side and rear yard setback shall be provided, measured from the property line to the foundation of the structure, except as follows:

-
- 1 i. When abutting an alley, there is no required side or rear yard setback from the
2 alley.
- 3 ii. A D-ADU may be located in a rear yard and in the rear 22 feet of an interior side
4 yard, provided:
- 5 (A) ~~If such an accessory building a D-ADU~~ is to be located less than five feet
6 from any common property line, a joint agreement with the adjoining property
7 owner(s) must be executed and recorded with the Whatcom County auditor's
8 office and thereafter filed with the city prior to issuance of building permit; or
- 9 (B) If site characteristics warrant such that, in the opinion of the director, impacts
10 to abutting property would be negligible due to, but not limited to, one or more
11 of the following:
- 12 (1) The existing use and development pattern on abutting property.
- 13 (2) Minimal disruption of solar access to outdoor recreation or garden space
14 on abutting property compared to what may otherwise occur with the
15 application of standard development regulations.
- 16 (3) Site characteristics such as building a D-ADU downslope from abutting
17 property.
- 18 (4) Conversion of a detached accessory building ~~existing as of the date of~~
19 ~~adoption of the ordinance codified in this section to a D-ADU that is at~~
20 least five (5) years old and has had no additions within the required side
21 or rear yard within that time period.
- 22 (5) Any minor modification from standard development regulations requested
23 pursuant to this subsection (B)(7)(b)(ii) shall be processed as a request
24 for minor modification pursuant to subsection (B)(3) of this section.
- 25 c. A minimum six feet of separation is required between the primary ~~residence~~ dwelling
26 unit and a D-ADU.
- 27 8. *Building Height for D-ADUs.* A D-ADU shall be no higher than ~~20-24~~ feet under BMC
28 20.08.020, height definition No. 1 or 12 feet under height definition No. 2.
- 29 9. *Parking.* Parking required for an ADU is in addition to that required for the primary
30 dwelling unit.
- 31 a. One on-site parking stall is required for an ADU, except as follows:

i. ~~No parking is required when adding a street curb cut for private on-site parking~~
~~would eliminate public on-street parking~~ improved public street parking is
available on at least one side of the block face whereon the ADU is proposed,
on-street parking is constructed, or the ADU is within one-half mile walking
distance to a major transit route.

ii. ~~The director may reduce parking requirements~~ may waive parking based on the
applicant's demonstration of site-specific factors that justify a lower standard. Any
request for a parking waiver shall be processed as a request for minor
modification pursuant to subsection (B)(3) of this section.

~~Any request for a parking waiver shall be processed as a request for minor~~
~~modification pursuant to subsection (B)(3) of this section.~~

b. Parking stalls shall be at least ~~nine~~ 9 feet by 18 feet.

c. Parking shall not be located in required front or side street setbacks. Parking in the
front portion of the lot shall be discouraged.

d. If the lot abuts an alley or private access easement, parking shall be accessed from
said facility except when the director determines that such access is impractical or
environmentally constrained. Any request to forgo alley access shall be processed
as a request for minor modification pursuant to subsection (B)(3) of this section.

e. Parking accessed from a street or lane shall be limited to one driveway per frontage
with a maximum width of 20 feet.

10. *Privacy.* Where practical, locate and design the ADU to minimize disruption of privacy
and outdoor activities on adjacent properties. Strategies to accomplish this include, but
are not limited to:

a. Stagger windows and doors to not align with such features on abutting properties.

b. Avoid upper level windows, entries and decks that face common property lines to
reduce overlook of a neighboring property.

c. Install landscaping as necessary to provide for the privacy and screening of abutting
property.

11. ~~[Repeal] *Design Standards.* ADU design standards are intended to ensure the single-~~
~~family appearance and character of the property is maintained or improved when viewed~~
~~from the surrounding neighborhood. Any minor modification granted from compatibility~~

with the design of the primary residence should be compatible with the prevailing architectural character of the area.

a. ~~An ADU shall have similar roof pitch, siding, and windows as the primary dwelling.~~

b. ~~Design the size and proportions of a D-ADU to give the appearance that it is secondary to the primary dwelling unit on the site.~~

c. ~~ADU Primary Entry.~~

i. ~~The ADU entry shall be clearly subordinate to that of the primary dwelling when both are visible from the street frontage. Strategies to accomplish this include, but are not limited to, architectural design, entry location, and landscaping.~~

ii. ~~Include an identifying feature such as a stoop and/or an eave overhang that is integral to the overall building design.~~

iii. ~~The main ADU entry shall be a swing door, not slider.~~

iv. ~~The entrance shall have direct access to a street via a lighted pedestrian path, driveway or alley.~~

12. *Utilities.*

a. *Water, sewer, storm.* A primary dwelling unit and an A-ADU(s) may have a shared water service to a water system, a shared sewer service to a sewer system and a shared storm service to a stormwater management system. ~~A primary dwelling unit and a D-ADU may also have shared service connections, in which case the primary dwelling unit will be responsible for all billing and maintenance of the services. however separate~~ Separate and independent services from each building may be required to meet the city's adopted plumbing code. In all cases, the water service shut-off must be accessible to occupants of ~~both~~ all units.

b. *Electrical.* ~~A primary dwelling unit and an A-ADU shall have no more than one electrical service. A primary dwelling unit and a D-ADU(s) are permitted to have one shared electrical service if a single building or two separate electrical services if separate buildings.~~ A separate meter is permitted to serve an A-ADU or a D-ADU, subject to compliance with the city's adopted electrical code. A single main service panel may be allowed; provided, that occupants of ~~both~~ all dwelling units have access to the overcurrent devices supplying their occupancy.

c. Gas. A primary dwelling unit and ADU(s) may share natural gas services. An accessible shut-off valve must be upstream of the gas meter, on the exterior of the structure(s).

d. Any utility lines being installed or altered must have their connections inspected as part of the building permit process.

13. *Compliance with Applicable Codes.* ~~The~~ ADUs shall comply with all standards for health and life safety as set forth in the International Building Code, International Residential Code, Uniform Plumbing Code, National Electrical Code, International Mechanical Code, International Fire Code, and Washington State Energy Code as each code is adopted by the city; and any other applicable codes or regulations, except as provided in this section.

14. *Accessibility.* To encourage the development of housing units for people with disabilities, the director may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the city adopted Building Code.

C. *Existing Illegal Units.*

1. Application may be made for any accessory dwelling unit existing prior to January 1, 1995, to become legally permitted, pursuant to the provisions of this section. Whether an ADU permit is approved or denied, the owner of any nonpermitted unit shall be subject to the penalties provided in this code.

2. An application to legalize an existing ADU shall include an application for an ADU permit and a building permit application, showing changes made to the ~~main residence~~ primary dwelling unit or detached accessory building to accommodate the ADU. Approval shall be consistent with the ADU regulations and process outlined in this section. The ADU shall be reviewed using the current editions of building codes in place at the time its owner brings the unit forward for permit.

3. Nothing in this section shall require that the city permit existing ADUs that are determined to be dangerous.

D. *Permitting Process.* An ADU is required to obtain approval following the procedures established in Chapter 21.10 BMC.

~~E. *Threshold Review.* This ADU section shall be reviewed by city council, whichever comes first:~~

~~1. By December 31, 2025; or~~

2. ~~When the city issues 200 D-ADU permits citywide; or~~

3. ~~When the city issues 25 D-ADU permits in any one neighborhood as defined in Chapter 20.00 BMC, Zoning Tables.~~

~~The unit count trigger shall only apply to new D-ADUs approved following adoption of the ordinance codified in this section. The unit count trigger shall not apply to D-ADUs in those areas that were annexed into the city after 1995 with a "mixed" use qualifier that allows multifamily residential.~~

Exhibit B

BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

NOVEMBER 3, 2022

SUMMARY

On July 26, 2021, City Council confirmed their continued support of detached accessory dwelling units (ADUs) in all residential zones and directed staff to bring back a draft ordinance with a range of amendments. This proposal is a response to Council's direction and considers amendments to Bellingham Municipal Code Titles 20 and 21 for purposes of improving ADU standards, permitting process, affordability, and consistency with state legislation.

I. FINDINGS OF FACT

1. Project or Proposal Description:

The proposal before the Planning Commission is a legislative development code amendment requiring a Type VI process pursuant to BMC 21.10.040(1)(2). The Commission must hold a public hearing and issue findings of fact and conclusions along with a recommendation to the City Council. The Commission should adopt or modify the draft findings as needed to support the ultimate recommendations.

2. Background Information/Procedural History:

History of the City's current ADU regulations:

- State Law RCW 43.63A.215 and RCW 36.70A.400, adopted as part of the 1993 Washington Housing Policy Act, required Washington cities with populations over 20,000 to adopt regulations to allow accessory dwelling units.
- In 1995, the City approved Ordinance No. 10643 which allowed attached ADUs citywide and included a provision that required the City Council to review the ordinance 1) two years following the effective date of the ordinance, and 2) after the 20th ADU permit is issued in any single neighborhood, with intent to determine how the ordinance was working and to determine what, if any, of the regulations needed to be modified or eliminated.
- In 1997, after two years, the City Council reviewed the ADU ordinance. At that time, 14 ADU permits had been issued and six were completed. Council elected to make no changes to the ordinance at that time.
- In 2001, Ordinance No. 2001-01-001 added a new chapter (16.80 - Lake Whatcom Reservoir Regulatory Chapter) to the BMC and included provisions restricting ADUs within the Lake Whatcom Watershed.
- In 2009, Ordinance No. 2009-08-047 added a new chapter (20.28 - Infill Housing) to the BMC. The new chapter included provisions allowing carriage units and detached ADUs generally in areas that had been or would be annexed to the city. Carriage units and detached ADUs were not allowed in most single-family zones or in the Lake Whatcom Watershed.
- In 2015, the City launched the review and update to the ADU ordinance when the 20th ADU permit was imminent in the South Hill Neighborhood. Focus and technical

groups were used to inform the initial review of the ADU rules. The effort was tabled while the required update to the comprehensive plan was completed.

- In 2016, the 2016 Bellingham Comprehensive Plan was adopted, including updated goal and policy guidance on growth management, infill development, housing choice and affordability, and ADUs.
- In 2018, Council adopted Ordinance No. 2018-05-009 which allowed detached ADUs in single family zones citywide (except within the Lake Whatcom Watershed), updated standards for both attached and detached ADUs, and include the following thresholds that, whichever is triggered first, require review by City Council: 1) by December 31, 2025; or 2) when the city issues 200 D-ADU permits citywide; or 3) when the city issues 25 D-ADU permits in any one neighborhood as defined in Chapter 20.00 BMC, Zoning Tables.
- On March 27, 2020, Washington State adopted SB6617 which established, with limited exceptions, that cities may not require the provision of off-street parking for ADUs within one-quarter mile of a major transit stop.
- On April 14, 2021, Washington State adopted SB5235 which established, with limited exceptions, that a city or town may not regulate or limit the number of unrelated persons that may occupy a household or dwelling unit.
- As of July 1, 2021, twenty-five (25) D-ADU permits were issued in the Sunnyland Neighborhood triggering a threshold review of Ordinance No. 2018-05-009 by City Council.
- On July 26, 2021, following a Planning staff memo to Council summarizing the implementation of Ordinance No. 2018-05-009 through July 1, 2021 and that no major or commonly reoccurring issues had been identified with development of D-ADUs in single family zones, Council confirmed the City's continued support of D-ADUs in all residential zones and directed staff to bring back a draft ordinance with a range of amendment options intended to improve ADU standards, permitting process, affordability, and consistency with state legislation.
- Between May 2018 when the ADU ordinance was last updated and the end of August 2022, the City has received **212 ADU permit applications (71 attached; 141 detached)** with 156 (74%) in single family zones and 56 (26%) in all other zones. Approximately 50 ADU applications have been submitted annually since the 2018 ADU Ordinance update with no significant fluctuations over the 4.16 year period. It is notable that staff was processing approximately 7.1 ADU permits per year prior to the 2018 update with the increased permit volume since then being approximately seven times (7X).
- On September 22, 2022 the Planning Commission held a public hearing on the proposed amendments and shortly thereafter held public work sessions on October 27th and November 3rd to formulate recommendations for City Council consideration.

Summary of Proposed Amendments:

Following the Threshold Review in 2021, City Council directed staff to develop a draft ordinance with a range of amendments aimed at improving ADU standards, the permitting process, affordability, and consistency with state legislation. At that time, City Council provided direction on an early package of proposed amendments developed by staff from which staff used to formulate the proposed amendments being considered by the Planning Commission.

The following is a *partial list* of key proposed amendments recommended by staff and sorted by goal.

EQUITY & AFFORDABILITY

- Remove language that could be construed to discourage or limit the creation of ADUs.
- Remove owner occupancy requirement in all areas, except Residential Single, and remove the owner occupancy reverification that is required every odd year.
- Amend the definition of floor area for Detached ADUs and allow ADUs to be built up to 100% of the floor area of the primary dwelling or 800 SF, whichever is less.
- Allow for increased flexibility in parking requirements to reduce barriers to development.

IMPROVING ADU STANDARDS

- Remove specific D-ADU site requirements related to access and lot size.
- For primary dwellings that have been on site for at least 5 years, eliminate maximum ADU size standards when converting a basement to an A-ADU.
- Allow a 200 SF floor area bonus for a total of 1,000 SF when the bonus area consists of a garage.
- Amend the building height definition for D-ADUs to provide more flexibility on sloping properties and to be consistent with the height allowance for detached accessory buildings.
- Amend design standards to address differences between A-ADUs and D-ADUs.
- Amend code language as necessary to improve clarity and understanding.

PROCESS

- Allow ADU's by right using the Type I land use permit process. This change would require only building permit review for new ADUs, unless the applicant requests a minor modification from the standards in which case it could be bumped up to a Type II (current) process.
- Allow oversized detached accessory buildings approved by a conditional use permit (CUP) that have been on site for at least five years to be converted to a D-ADU without a CUP.
- Clarify D-ADU process language related to adjoining property owner agreement timelines.
- Add a five-year wait period before a homeowner can convert a detached accessory building (garage, shop, etc.) that was first built at a property line as allowed with no setback or design standards, into a D-ADU.
- Remove Threshold Review of the ADU Ordinance because this was completed in 2021.

CONSISTENCY WITH STATE LEGISLATION

- Eliminate the ADU occupancy limit to be consistent with recently adopted state legislation (SB 5235).
- Allow for increased flexibility in parking requirements to maintain consistency with state legislation (RCW 36.70A.698)

3. Comprehensive Plan Goals and Policies:

Development regulations, like those governing the location and construction of ADUs, are intended to implement the goals and policies of the Bellingham Comprehensive Plan. The goals and policies provide guidance and policy direction in the establishment of development regulations. The following are some examples from the 2016 Comprehensive Plan relevant to the discussion regarding ADUs.

Land Use Chapter

- Policy LU-1 The Single-Family Residential designation permits a range of housing densities to achieve the City's housing diversity and affordability goals. In undeveloped or infill areas, new housing may include single-family detached, single-family attached, townhouses, cottage housing, accessory dwelling units, clustered housing and other small-scale housing forms. Accessory, public and semipublic uses are also allowed.
- Policy LU-4 Protect the unique character and qualities of existing neighborhoods, while identifying opportunities for improved livability, safety, and housing affordability and diversity.
- Policy LU-5 Foster neighborhoods with a balanced mix of housing prices that are compatible with the wages and incomes in the community.
- Policy LU-10 To achieve a healthy mix of housing that is affordable to a wide range of incomes, implement and seek new, innovative tools, including, but not limited to:
- Density bonuses;
 - Inclusionary zoning;
 - Cluster subdivisions that preserve open space, retain natural features and provide other public benefits;
 - The Infill Housing Toolkit, which includes small lot homes, townhomes and other housing forms;
 - Accessory dwelling units;
 - Adaptive reuse of existing buildings;
 - Purchase and transfer of development rights (TDR) programs; and
 - Public-private partnerships for shared parking facilities, wetland mitigation, and regional stormwater management.

Housing Chapter

- GOAL H-1 Ensure that Bellingham has a sufficient quantity and variety of housing types and densities to accommodate projected growth and promote other community goals.
- Policy H-9 Update the City's ADU ordinance with priorities on:
- Evaluating and inventorying ADUs in the City;
 - Identifying appropriate areas for detached ADUs;
 - Improving permitting and enforcement; and
 - Requiring owner occupancy in single-family zones.
- Policy H-10 Permit owner-occupied attached ADUs in single-family and multi-family zones.

- GOAL H-2 Foster housing that is safe, healthy, livable, and affordable for all income levels in all neighborhoods.
- Policy H-13 Consider the impacts on citywide housing capacity, affordability and diversity when making land use policy decisions and code amendments.
- Policy H-15 Support fair and equal access to housing for all persons, regardless of race, religion, ethnic origin, age, household composition or size, disability, marital status, sexual orientation or economic circumstances.
- Policy H-16 Increase the supply of affordable rental and ownership housing that is context sensitive throughout the City, especially in areas with good access to transit, employment, education and services (see Land Use Chapter for definition of "context sensitive").
- Policy H-17 Consider the impacts of transportation costs on housing affordability and accessibility of services and other opportunities when planning for housing.
- Policy H-18 Continue evaluating the recommendations of the City's Community Solutions Workgroup on Affordable Housing, including:
- Detached ADUs, small lot and cottage housing in single-family zones;
 - Impact fee reductions for ADUs;
 - Reduced parking requirements; and
 - Other code changes and incentives that allow and encourage well-designed infill development.
- Policy H-19 Continue providing incentives to support housing affordability (e.g. density bonuses, expedited permitting, multi-family tax exemption program and fee reductions) and consider including workforce housing as part of certain incentives programs.
- Policy H-31 Promote high-quality design that is compatible with the overall style and character of established neighborhoods.
- Policy H-34 Encourage the rehabilitation, relocation and reuse, rather than demolition, of existing housing.
- Policy H-44 Periodically review and update the City's residential zoning regulations and design standards to promote quality development with timely and predictable outcomes.

Community Design Chapter

- Goal CD-6 Encourage contextually-appropriate infill development projects and property renovations.
- Policy CD-7 Ensure that new development is of a type, scale, orientation, and design that maintains or improves the character, aesthetics, and livability of neighborhoods. While compatibility is more of an issue in established neighborhoods, new

development needs to take into account the context of the area and should result in an improvement to the surrounding neighborhood.

Policy CD-24 Provide adequate resources to ensure that conditions of approval placed on development projects are monitored and enforced.

Policy CD-32 Provide development standards that are adaptable to a variety of conditions to allow for diversity in building styles within districts and neighborhoods.

Policy CD-33 Encourage the construction of small-scale housing types that fit the context of single-family neighborhoods, such as accessory dwelling units, cottage housing, townhomes, zero lot line homes, and small lot housing.

Policy CD-38 Promote the maintenance and improvement of the existing housing stock.

Key Opportunities related to Comprehensive Plan Goals and Policies

ADUs have proven to be extremely popular with the numbers of new ADUs exceeding expectations. Coupled with the fact that the City has received negligible complaints on established ADUs, they are seen as a valuable component in achieving the City's infill housing goals.

As highlighted in previous Planning Commission and City Council discussions, there are a range of benefits to enabling ADU development in Bellingham. Increasing housing choice and affordability are two key benefits, as is the opportunity for homeowners to earn additional income and/or age in place. These key benefits are described in more detail below:

- Housing choice – ADUs can provide housing opportunities for those who may not be able to otherwise afford to live in an established single-family neighborhood. These areas have convenient access to services, employment, transportation options, parks, trails and neighborhood schools. These units can also provide housing for friends or family members and those in need of caretaking. Statistics from Portland, Oregon show that 30% of current homeowners with ADUs charge no rent to their tenants.
- Financial benefit to homeowner – ADUs can provide income for the homeowner, allowing them the opportunity to stay in their home and age in place. ADUs add value to the property for resale purposes.

Infill housing is supported by the City's comprehensive plan goals and policies. Allowing ADUs is viewed as a means of incrementally increasing residential density organically, without big changes to architectural or neighborhood character. Allowing ADUs is one way that the City can encourage affordable housing opportunities without government expenditures or subsidies. This is particularly important for local governments, given unpredictable federal support for the construction of affordable housing. And ADUs use existing public infrastructure rather than relying on new roads and utilities that increase the City's financial responsibility to maintain.

The proposal is anticipated to reduce barriers to the construction of new ADUs and create rental housing that is flexible for homeowners to let out to family, friends or unrelated tenants, depending on the financial situations of the homeowners and the prospective tenants. ADUs are especially beneficial financially for multigenerational family and co-housing type living with meal sharing, car-pooling, shared maintenance, and live-in care provider services when needed.

Allowance for such lifestyle opportunities can result in decreased housing costs for both the property owner and the ADU tenant and improved quality of life.

4. Public Comment:

Notice of the Planning Commission hearing was mailed to the Mayor's Neighborhood Advisory Commission, registered neighborhood associations and an ADU email list. The notice was also published in the Bellingham Herald 30 days prior to the hearing.

Public comments were submitted prior to the public hearing and public testimony was taken at the Planning Commission hearing and the Commission duly considered it.

5. State Environmental Policy Act (SEPA) Determination if applicable

A non-project SEPA Determination of Non-Significance was issued on September 8, 2022. Notice was mailed to the appropriate agencies, parties of record, and published in the Bellingham Herald and on the City's website. The SEPA review process evaluated the potential impacts from the Planning Commission's preliminary recommended changes to current ADU regulations.

II. CONCLUSIONS

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

1. The BMC amendments proposed by staff in the draft ordinance, along the following additional amendments proposed by the Planning Commission, will help achieve many of the land use, housing, and community design related goals and policies in the Comprehensive Plan.
 - a. Current code prohibiting ADUs from being segregated in ownership from the primary residence should be revised to allow condo ownership of an ADU and primary residence in consideration that ADUs sold as condo units may offer a relatively lower-cost option for homeownership, particularly in high-cost areas.
 - b. Noting that Bellingham Comprehensive Plan Policy H-9 gives direction to "Update the City's ADU ordinance with priorities on: ... Requiring owner occupancy in single-family zones" and the Comprehensive Plan includes multiple policies encouraging creation of affordable housing, the requirement for owner occupancy should be repealed in all zones except single-family, but allow an exception for owner occupancy to be waived in single-family zones on the condition that the ADU be leased at an "affordable rate", or something lawfully equivalent.
 - c. Staff's proposed amendments for D-ADU design standards should be revised to minimize ambiguity and specifically omit the term "prevailing" from the proposed language.
2. Amending the ADU ordinance will reduce barriers to the construction of new ADUs, promote greater housing affordability and choice for residents across Bellingham, improve permitting processes, and establish more consistency between recent state legislation and City code.

III. RECOMMENDATIONS

Based on the findings and conclusions, the Planning Commission recommends that the City Council approve the draft ordinance, as summarized in the series of recommended amendments below. Note there are a number of non-substantive changes that have been incorporated for purposes of code consistency and documented as updates in the draft ordinance.

1. **Purpose and Authority: Barriers to ADU Development** – Remove language that could be construed to discourage or limit the creation of ADUs. Specifically, the following language should be removed: *...It is not the intent of these regulations to provide for ADUs on every residential property and they shall not be deemed to create a right or privilege to establish or maintain an ADU which is not strictly in compliance with these regulations.* Code Location: BMC 20.10.036(A)(2)
2. **Occupancy Limit** – Eliminate the occupancy limit to be consistent with Washington State SB 5235 adopted in 2021. Code Location: 20.10.036(B)(4)(b)
3. **Ownership and Occupancy** –
 - 1) Current code prohibiting ADUs from being segregated in ownership from the primary residence should be revised to allow condo ownership of an ADU and primary residence. Code Location: 20.10.036(B)(4)(a)
 - 2) Only require owner occupancy in areas zoned Residential Single but allow an exception for owner occupancy to be waived on a condition that the ADU be leased at an "affordable rate", or something lawfully equivalent. Code Location: 20.10.036(B)(4)(c), and
 - 3) Remove the owner occupancy reverification that is required every odd year. Code Location: 20.10.036(B)(4)(c)(iii)
4. **Site Requirements: D-ADUs** – Treat D-ADUs the same as detached accessory buildings and A-ADUs which have no restrictions related to lot size, alley access, or access to more than one public street (such as a corner or through lot). Specifically, remove the following language: *For a D-ADU, the lot shall have alley access, access to more than one public street, or the lot size shall be at least 5,000 square feet.* Code Location: 20.10.036(B)(5)(b)
5. **ADU Size: Attached and Detached ADUs** – Allow ADUs to be built up to 100 percent of the floor area of the primary dwelling or 800 SF, whichever is less. Note: The current code states that an ADU shall not exceed 66 percent of the floor area of the primary dwelling or 800 SF, whichever is less. Code Location: 20.10.036 (B)(6)(a)(i)
6. **ADU Size: A-ADUs** – For primary dwellings that have been on site for at least 5 years, the maximum A-ADU size standards shall not be applicable when converting a basement to an A-ADU. Code Language: 20.10.036(B)(6)(b)
7. **ADU Size: D-ADUs** – Remove the provision requiring the use of the "general" definition of floor area so that floor area calculations are based on the primary use of the property, either Single Family or Infill Toolkit Housing. Code Location: 20.10.036(B)(6)(c)

8. **ADU Size: D-ADUs (part 2)** – To incentivize creating covered parking and decreasing surface parking and lot coverage, allow up to a 200 SF floor area bonus for a total of 1,000 SF when the bonus area consists of a garage, provided all other size restrictions for the ADU itself still apply. Code Location: 20.10.036(B)(6)(c)(i)
9. **ADU Size: D-ADUs (part 3)** – Using a Type I review process, allow oversized detached accessory buildings that were approved by Conditional Use Permit (CUP)(Type III process) to be converted to D-ADUs without subsequent CUP approval provided: 1) The floor area of the ADU itself cannot exceed adopted size limits, and 2) the oversized building has been on site for at least 5 years. Code Location: 20.10.036(B)(6)(c)(iii) and (iv)
10. **Minimum Yards for D-ADUs: Conversion of a Detached Accessory Building to a D-ADU** – Add a five-year wait period before a homeowner can convert a detached accessory building (garage, shop, etc.) that was first built at a property line as allowed with no setback or design standards, to a D-ADU. The purpose is to deter homeowners from building detached accessory buildings with the intent of converting them to D-ADUs. Five years is deemed an appropriate wait period for a deterrent yet allows for future retrofits over time as the City evolves and property ownerships changes. Code Location: 20.10.036(B)(7)(b)(B)(4)
11. **Building Height for D-ADUs** – Add a 12' height limit option for D-ADUs based on height definition #2 (see BMC 20.08.020) consistent with that currently allowed for detached accessory buildings in BMC 20.30.100(B)(1)(a). Code Location: 20.10.036(B)(8)
12. **Parking** – Incorporate the following exceptions to the requirement for one (1) on-site parking stall: No parking is required if: *Improved public street parking is available on at least one side of the block face whereon the ADU is proposed, on-street parking is constructed, or the ADU is within ¼ mile walking distance to a Whatcom Transportation Authority high frequency transit route (GO Line).* This last provision is consistent with recently adopted state legislation in RCW 36.70A.698. Code Location: 20.10.036(B)(9)(a)(i)
13. **Design Standards** – Amend the designs standards to specifically address differences between A-ADUs and D-ADUs. The current language which states that all ADUs shall have similar roof pitch, siding, and windows as the primary dwelling should be made a requirement specific to A-ADUs, and language should be added stating that the design of D-ADUs may deviate from that of the primary dwelling provided it is compatible with the architectural character of the area. Code Location: 20.10.036(B)(11)(a)
14. **Threshold Review** – Remove the threshold review required for the ADU Ordinance because it was completed on 7/26/2021 when the Sunnyland Neighborhood reached 25 D-ADUs and it holds no further regulatory purpose. Code Location: 20.10.036(E)
15. **ADU Review Process** – Amend various provisions of BMC Title 21 Administration of Development Regulations to:
 - 1) Streamline the review process for ADUs to be reviewed and permitted administratively (by right) via a Type I building permit (currently Type II) when ADU design strictly adheres to the code consistent with that for detached accessory buildings (garages, shops, etc.), and Code Location: 21.10.040(B)

- 2) Retain the existing Type II discretionary review and approval process for applications that request "minor modifications" to the code. Code Location: 21.10.040(C)

16. **General Clean Up** - Amend code as necessary to improve clarity and understanding.

ADOPTED this 12TH day of JANUARY, 2023.

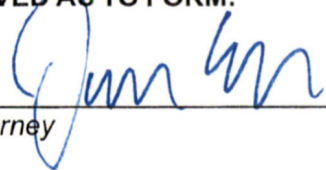


Planning Commission Chairperson

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210 LOTTIE ST
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kngoetz@cob.org

**City of Bellingham Ord.
#2023-08-02**

An Ordinance of the City of Bellingham Amending Bellingham Municipal Code Chapter 10.08 to Adopt by Reference the New State Laws Addressing the Possession and Public Use of Controlled Substances.

City of Bellingham Ord. #2023-08-022

An Ordinance Relating to Land Use Planning, Amending Bellingham Municipal Code (BMC) Titles 20 and 21 Regarding Accessory Dwelling Units (ADUs).
IPL0134858
Aug 11 2023

Stefani Beard, being duly sworn, deposes and says: That he/she is the Principal Clerk of The Bellingham Herald, a daily newspaper printed and published in Bellingham, Whatcom County, State of Washington, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of six months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Bellingham Herald, as amended, for:

1 insertion(s) published on:
08/11/23

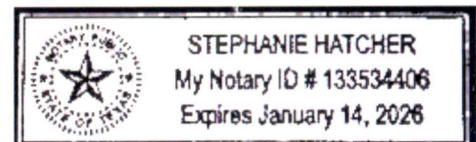
Stefani Beard

(Principal Clerk)

Subscribed and sworn on this 17th day of August in the year of 2023 before me, a Notary Public, personally appeared before me Stefani Beard known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Stephanie Hatcher

Notary Public in and for the state of Texas, residing in Dallas County



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