

ORDINANCE NO. 2023-12-037

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO LAND USE AND ZONING, AND EXTENDING AN EXISTING MORATORIUM ON DEVELOPMENT APPLICATIONS AND PERMITS RELATING TO MULTI-FAMILY ZONED PROPERTIES WITHIN THE SILVER BEACH NEIGHBORHOOD AND SETTING SIX MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM TO ALLOW THE CITY TO CONTINUE REVIEWING THE EXISTING REGULATIONS TO ENSURE THAT THEY ARE CONSISTENT WITH THE CITY'S ADOPTED GOALS AND POLICIES FOR PROTECTION OF THE WATER QUALITY OF LAKE WHATCOM.

WHEREAS, Lake Whatcom is the drinking water reservoir and resource for approximately 100,000 residents in Bellingham and Whatcom County; and

WHEREAS, Lake Whatcom has been listed as an impaired water body under section 303(d) of the Federal Clean Water Act for low levels of dissolved oxygen, total phosphorus, dieldrin, mercury, and total PCB's; and

WHEREAS, the City, Whatcom County and the Lake Whatcom Water and Sewer District have adopted plans, enacted regulations, programs, and multi-agency coordination that are intended to protect and improve the water quality of Lake Whatcom; and

WHEREAS, BMC 16.80, the Lake Whatcom Reservoir Regulatory Chapter and BMC 15.42, Stormwater Management, include regulations that limit the amount of impervious surface on individual properties in the Lake Whatcom Watershed and require implementation of best management practices for stormwater that reduce the amount of phosphorous entering Lake Whatcom; and

WHEREAS, the City purchases properties in the watershed through its Lake Whatcom Land Acquisition and Preservation Program so that development potential is eliminated, and the properties can be preserved in their natural state or restored to forested condition and protected in perpetuity with conservation easements; and

WHEREAS, the City's efforts to protect the water quality of Lake Whatcom are consistent with a variety of goals and policies in the City's Comprehensive Plan; and

WHEREAS, most properties that are within the City limits and the Lake Whatcom watershed are in the Silver Beach Neighborhood; and

WHEREAS, there are four residential multi-family zones in the Silver Beach Neighborhood; and

WHEREAS, three of these multi-family zones have a specified density of "high" that would allow for significant additional development in the Lake Whatcom Watershed, which could negatively impact Lake Whatcom water quality; and

WHEREAS, the City recently enacted changes to residential multi-family zoning and density requirements to facilitate more dense development in urban areas to increase the supply of housing within proximity to goods, services, and jobs that would be accessible via multi-modal forms of transportation; and

WHEREAS, these recent changes to the City's multi-family zoning and density are consistent with a variety of goals and policies in the City's Comprehensive Plan; and

WHEREAS, there may be an inherent conflict between the high-density zoned areas in the Silver Beach Neighborhood and the Comprehensive Plan goals and policies calling for the protection of Lake Whatcom's water quality; and

WHEREAS, the City desires to evaluate these high-density areas in the Silver Beach Neighborhood to ensure that the City's adopted goals, policies, plans, and regulations are uniquely balanced and continue to meet the needs of the public; and

WHEREAS, RCW 36.70A.390 authorizes the City Council to adopt an immediate moratorium for a period of up to twelve months without holding a public hearing on the proposal provided that a public hearing is held within at least 60 days of its adoption and a work plan is developed for related studies providing for the twelve-month period; and

WHEREAS, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held, and findings of fact are made prior to each renewal"; and

WHEREAS, RCW 35.63.200 provides a similar process for adopting and extending land use moratoriums; and

WHEREAS, moratoriums enacted under RCW 36.70A.390 and/or RCW 35.63.200 are methods by which local governments may preserve the status quo so that new regulations will not be rendered moot by intervening projects; and

WHEREAS, RCW 36.70A.390 and RCW 35.63.200 both authorize the enactment of a moratorium without holding a public hearing if a public hearing is held within at least sixty days of its enactment; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this emergency moratorium is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA); and

WHEREAS, extending the moratorium will provide the City with additional time to explore options and, potentially draft new land use regulations or provide additional clarification regarding the densities in the four multi-family zones in the Silver Beach Neighborhood; and

WHEREAS, the City Council concludes that the City has the authority to establish a moratorium and that the City must adopt a moratorium concerning the filing, acceptance, and processing of new applications for redevelopment of existing or development of new multi-family housing in the four multi-family zones in the Silver Beach Neighborhood; and

WHEREAS, on June 5, 2023, the Bellingham City Council adopted Ordinance No. 2023-06-017 which extended the existing moratorium on development applications and permits relating to multi-family zoned properties within the Silver Beach Neighborhood; and

WHEREAS, the City Council held the required public hearing on the ordinance extending the moratorium on June 5, 2023; and

WHEREAS, the existing moratorium is set to expire on January 10, 2024, and

WHEREAS, the City Council has determined it needs additional time to continue to review development options and existing regulations to ensure that they are consistent with the City's adopted goals and policies that are aimed at protection of the water quality of Lake Whatcom; and

WHEREAS, the City Council has determined that the existing moratorium should be extended an additional six months; and

WHEREAS, the City Council adopts the foregoing as its findings of facts justifying the adoption of this ordinance.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Findings of Fact. The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390 and RCW 35.63.200.

Section 2: Definitions.

A. "Multi-Family Zones" means Areas 8, 9, 13 and 18 of the Silver Beach Neighborhood and as identified on EXHIBIT A.

B. "Multi-Family Housing" means Duplex, triplex, fourplex, apartments, condominiums, infill housing as specified in BMC 20.28 and any building or group of buildings consisting of two or more dwelling units.

C. "Application" means any application or permit for demolition, construction, land use or alteration of land including, but not limited to, variances, conditional use permits,

planned development permits, multi-family design review, rezones, use permits or any other applications or permits associated with multi-family housing units. This definition is not expanded to include permits that are necessary for maintenance and repair activities for multi-family housing and as further specified in Section 4 below. In addition, this term does not include any land use or development permit or application that is subject to the vested rights doctrine, and that was submitted to the City and determined by the City staff to be complete on or before the effective date of this ordinance.

Section 3. Purpose. The purpose of this moratorium is to give staff, the Planning Commission, and the City Council adequate time to further analyze the multi-family densities within the Silver Beach Neighborhood and consider options for changes to the existing regulations, if needed, to facilitate additional development without negatively impacting water quality in Lake Whatcom.

Section 4. Moratorium Imposed. The City Council extends the existing moratorium on the filing, acceptance, processing and/or review of any application to redevelop existing or develop new multi-family housing within the four multi-family zones in the Silver Beach Neighborhood identified on EXHIBIT A for an additional six months. Any such application submitted shall be rejected and returned to the applicant.

Applications to replace in-kind, repair, maintain, or otherwise improve an existing multi-family housing structure within the four multi-family zones identified on EXHIBIT A, or any other applications necessary for public health and safety, as determined by the Planning and Community Development Director, shall not be impacted by this moratorium and shall be allowed to proceed through the standard application and review process.

Section 5. Duration of Moratorium. The existing moratorium expires on January 10, 2024. This six-month extension of the existing moratorium shall take effect on January 10, 2024, and ending July 10, 2024, unless an ordinance is adopted amending the Bellingham Municipal Code and/or the Silver Beach Neighborhood Plan and rescinding the moratorium before July 10, 2024. This moratorium may be extended as provided by state statute.

Section 6. Public Hearing Required. As required by RCW 36.70A.390, the City Council has held a public hearing prior to extending this moratorium.


Section 7. Work Plan. During the moratorium period, City staff will continue to study the possible issues associated with the density specifications in the four multi-family zones in the Silver Beach Neighborhood and the adopted plans, goals, and policies regarding the Lake Whatcom reservoir. Staff will prepare appropriate studies, clarifications and / or amendments to the City's regulations and/or plans and conduct the public review process as required for any amendments to be considered.

Section 8. Conflict with other BMC Provisions. If the provisions of this ordinance are found to be inconsistent with other provisions of the Bellingham Municipal Code, this ordinance shall control.

Section 9. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 10. Council agrees with staff's recommendation to initiate and complete a Type VI legislative process that considers the MEDIUM-density and LOW-density options in each of the multi-family zones in the Silver Beach Neighborhood prior to July 10, 2024. Adopting either density option would also require comprehensive plan amendments that include revising the maps and text in the Silver Beach Neighborhood Plan. The Council finds that staff's proposal meets the docketing criteria in BMC 20.20.030 and should be added to the annual review docket.

PASSED by the Council this 4th day of December, 2023.



Council President

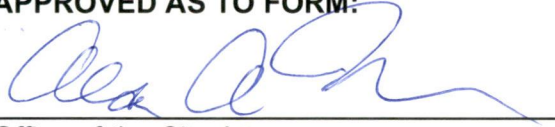
APPROVED by me this 21 day of December, 2023.



Mayor

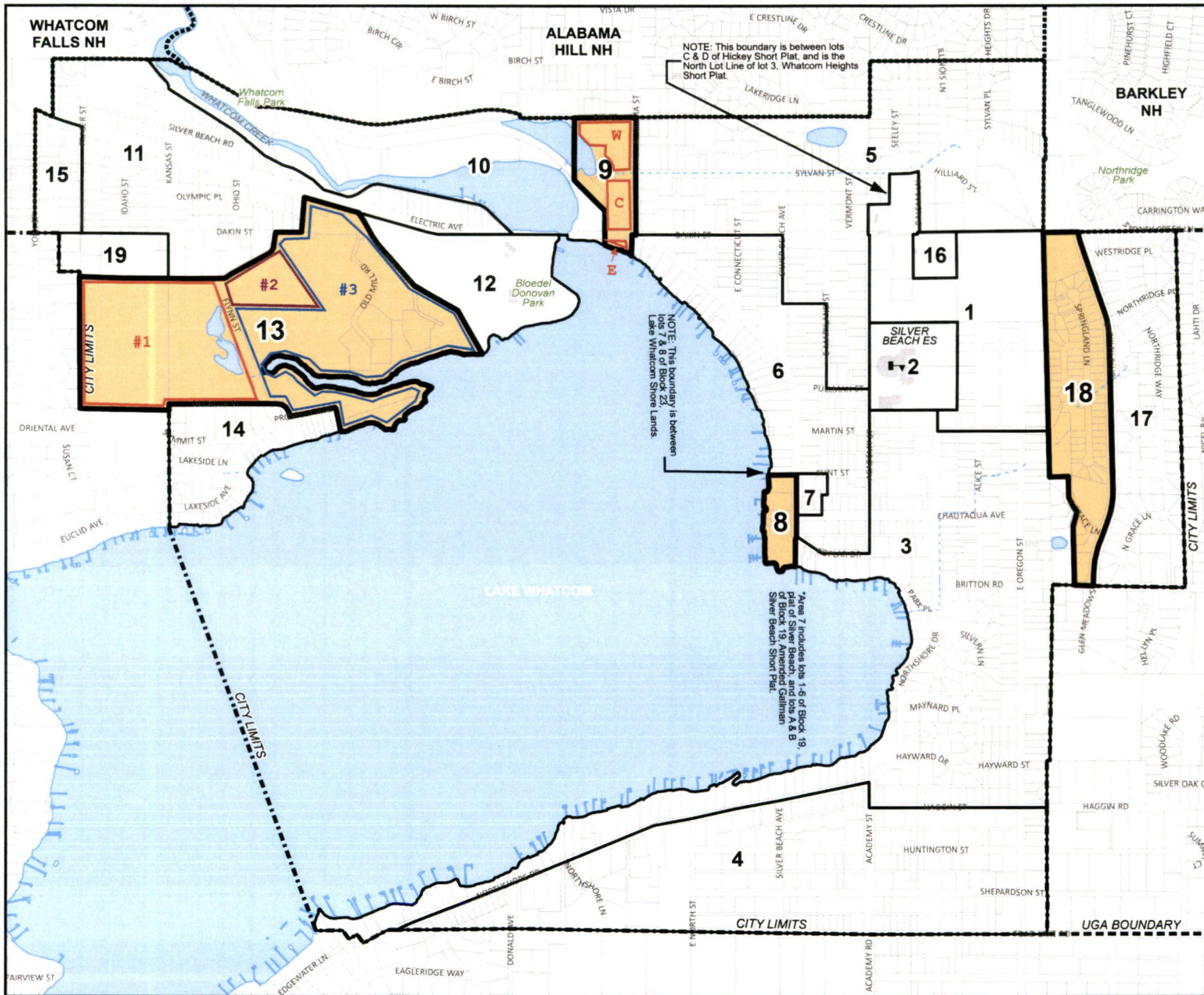
ATTEST: 

Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

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December 8, 2023

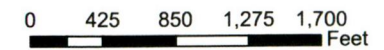


SILVER BEACH NEIGHBORHOOD ZONING

AREA	ZONING DESIGNATION
1	Res. Single
2	Public, Open Space/School
3	Res. Single
4	Res. Single
5	Res. Single
6	Res. Single
7	Commercial, Neighborhood
8	Res. Multi, Multiple
9	Res. Multi, Multiple
10	Public, Open Space/Utilities
11	Res. Single
12	Public, Park/Recreation
13	Res. Multi, Planned
14	Res. Single
15	Res. Single
16	Public, Open Space/Utilities
17	Res. Single
18	Res. Multi, Planned
19	Res. Single

EXHIBIT A

Attache



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