

ORDINANCE NO. 2024-02-003

AN ORDINANCE RELATING TO THE ADMINISTRATION OF DEVELOPMENT REGULATIONS; AMENDING BMC 21.10.040, 21.20.090, 21.10.140, 21.10.150, AND 21.10.260.

WHEREAS, the City Council adopted the 2016 Bellingham Comprehensive Plan to guide Bellingham's growth and development for the next 20-years; and

WHEREAS, Title 21 – Administration of Development Regulations of the BMC was adopted to fully implement the Comprehensive Plan; and

WHEREAS, the Planning and Community Development Department has been developing a series of minor code amendments to improve implementation of the City's land use and development codes; and

WHEREAS, the proposed amendments to Title 21 – Administration of Development Regulations are intended to improve implementation of the City's land use and development code, correct inconsistencies, and provide clarity to staff and the public; and

WHEREAS, the proposed amendments comply with and implement the goals and policies of the Comprehensive Plan; and

WHEREAS, the responsible official reviewed the proposed amendments under the procedures of the State Environmental Policy Act and issued a Determination of Non-Significance (SEP2023-0031) on November 2, 2023; and

WHEREAS, staff sent notice of the City's intent to adopt the proposed land use development regulations to the State of Washington Department of Commerce on November 3, 2023, as required by RCW 36.70A.106; and

WHEREAS, the Planning Commission held a properly noticed public hearing on November 16, 2023, to consider the proposed amendments; and

WHEREAS, the Planning Commission considered the established record, including public comments, and thereafter made Findings of Fact, Conclusions and Recommendations for approval of the proposed amendments by a 6-0 vote; and

WHEREAS, the City Council held a properly noticed public hearing on the proposed amendments on January 29, 2024; and

WHEREAS, the City Council has considered the recommendation of the Planning Commission, the established record including public comments, and hereby adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

Section 1. BMC 21.10.040 concerning Types of land use decisions is hereby amended as follows:

A. [No Change].

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. – 30. [No Change].

30. Accessory dwelling unit, when not required to use a Type II process; and

31. Legal lot determinations; and

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

C. – J. [No Change].

Section 2. BMC 21.10.090 (Summary of process steps by review type) is hereby amended as follows:

A. BMC 21.10.100 through 21.10.250 describe the process steps listed in Table 21.10.090 as set forth in Exhibit C attached to the ordinance codified in this chapter and included in this section.

Table 21.10.090 – Summary of Process Steps by Review Type

	Director Ministerial Decision	Director Decisions	Hearing Examiner Decisions	Hearing Examiner Decisions	City Council Final Plat	City Council or Historic Preservation Commission Quasi-Judicial Decisions		City Council Legislative	Certificate of Alteration for a Property Listed on the City of Bellingham's Register of Historic Places
	Type I	Type II	Type III-A	Type III-B	Type IV	Type V-A	Type V-B	Type VI	Type VII
Preapplication conference required	See BMC 21.10.170	See BMC 21.10.170	See BMC 21.10.170	See BMC 21.10.170	No	Yes	No	See BMC 21.10.170	No
Preapplication neighborhood meeting	No	Required for planned developments, institutional site plans, general binding site plans and design review	Required for co-housing, conditional use and nonconforming use or building decisions	Yes	No	Yes	No	Required for site-specific neighborhood plan or comprehensive plan amendments, including those with rezones, and for institutional master plans/amendments	No
Preapplication design guidance meeting	Optional for some permits; see BMC 21.10.100(B) and (D)	Required or optional for some permits; see BMC 21.10.110(C) and (E)	No	No	No	No	No	No	No
Determination of complete application process	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

	Director Ministerial Decision	Director Decisions	Hearing Examiner Decisions	Hearing Examiner Decisions	City Council Final Plat	City Council or Historic Preservation Commission Quasi-Judicial Decisions		City Council Legislative	Certificate of Alteration for a Property Listed on the City of Bellingham's Register of Historic Places
	Type I	Type II	Type III-A	Type III-B	Type IV	Type V-A	Type V-B	Type VI	Type VII
Notice of application	No	Yes	Yes	Yes	No	Yes	No	No	Yes
Recommendation by board, commission or hearing examiner	Optional for some permits; see BMC 21.10.100(B) and (D)	Required or optional for some permits; see BMC 21.10.110(C) and (E)	No	No	No	Yes, planning commission	No	Yes, planning commission	No
Open record predecision hearing	No	No	Yes, hearing examiner	Yes, hearing examiner	No	Yes, planning commission	Yes, historic preservation commission	Yes, planning commission	Yes, historic preservation commission
Decision	Director	Director; shoreline variances must also be approved by Department of Ecology	Hearing examiner; shoreline conditional use must also be approved by Department of Ecology	Hearing examiner	Council	Council at closed record hearing	Historic preservation commission	Council	Historic preservation commission
Notice of decision	No	Yes	Yes	Yes	No	Yes	No	No	Yes

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

	Director Ministerial Decision	Director Decisions	Hearing Examiner Decisions	Hearing Examiner Decisions	City Council Final Plat	City Council or Historic Preservation Commission Quasi-Judicial Decisions		City Council Legislative	Certificate of Alteration for a Property Listed on the City of Bellingham's Register of Historic Places
	Type I	Type II	Type III-A	Type III-B	Type IV	Type V-A	Type V-B	Type VI	Type VII
Reconsideration	No	No	Yes	Yes	No	No	No	No	No
Appeal to hearing examiner	Yes, unless otherwise specified by code	Yes, except shoreline permit and shoreline variance appeals are heard by the Shoreline Hearings Board	No	No	No	No	No	No	Yes, closed record
Closed record appeal to city council	No	No	No	Yes	No	No	No	No	No
Judicial appeal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Section 3. BMC 21.10.140 concerning Type V process – City Council quasi-judicial decisions is hereby amended as follows:

A. *Type V-A Process.*

1-5. [No Change].

6. Notice of Intent to Adopt. Notice shall be provided to the Washington State Department of Commerce as required by RCW 36.70A.106(1) and WAC 365-196-630, or as amended.

7~~6~~. *Notice of Planning Commission Public Hearing.* The planning commission shall conduct an open record public hearing on the proposal. Notice of the hearing shall be provided as follows:

- a. *Publishing.* The city shall publish notice of the hearing in a newspaper of general circulation at least 15 days and not more than 30 days prior to the hearing date.
- b. *Mailed Notice.* The city shall mail a hearing notice no less than 15 days prior to the date of the hearing. Mailed notice shall be provided in the same manner as provided in BMC [21.10.200\(D\)](#).
- c. *Posted Notice.* The city shall post one or more hearing notice signs on the site or in a location immediately adjacent to the site that provides visibility from adjacent streets. The signs shall be posted at least 15 days prior to the hearing. The director shall establish standards for size, color, layout, materials, number, placement, maintenance and removal.

8~~7~~. *Planning Commission Hearing.* The planning commission shall conduct an open record public hearing on the proposal. Any person may participate in the hearing by submitting written comments to the planning and community development department prior to the hearing or by submitting written comments or making oral comments at the hearing. All comments received by the department prior to the hearing shall be transmitted to the planning commission no later than the date of the public hearing.

9~~8~~. *Planning Commission Recommendation.* The planning commission shall review the proposal based on the criteria listed in the applicable city code and provide a written recommendation to the city council containing the following:

- a. Findings of fact and conclusions of law; and
- b. Recommendation.

10~~9~~. *Notice of City Council Hearing.* Notice of the city council closed record hearing shall be provided in the same manner as for the planning commission hearing.

1140. *City Council Decision.* The city council shall consider the proposal at a closed record hearing. The city council shall not accept new information on the application, but shall consider the complete record before the planning commission and the recommendation of the planning commission. The city council may:

- a. Approve the application;
- b. Approve the application with modifications;
- c. Remand the application to the planning commission for additional review limited to specific issues identified by the council; or
- d. Deny the application.

1244. *Notice of Decision.* The procedures in BMC [21.10.230](#) apply to a Type V-A process.

13. *Notice of Adoption.* Notice shall be provided to the Washington State Department of Commerce as required by RCW 36.70A.106(2) and WAC 365-196-630, or as amended.

1412. *Appeal of Type V-A Decision.* A Type V-A decision may be appealed to superior court by filing a land use petition which meets the requirements set forth in Chapter [36.70C](#) RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW [36.70C.040](#). Requirements for fully exhausting city administrative appeal opportunities must be fulfilled.

B. [No Change].

Section 4. BMC 21.10.150 concerning Type VI process – City Council legislative decisions is hereby amended as follows:

A-C. [No Change].

D. *Notice of Intent to Adopt.* Notice shall be provided to the Washington State Department of Commerce as required by RCW 36.70A.106(1) and WAC 365-196-630, or as amended.

ED. *Notice of Planning Commission Public Hearing.* The planning commission shall conduct an open record public hearing on the proposal. Notice of the hearing shall be provided as follows:

1. *Publishing.* The city shall publish notice of the hearing in a newspaper of general circulation at least 30 days prior to the hearing date.

2. *Mailed Notice.* Notice of the public hearing shall be mailed at least 30 days prior to the hearing date. For site-specific comprehensive plan amendments, site-specific neighborhood plan amendments, site-specific rezones or institutional master plan adoption or amendments, the city shall mail a hearing notice in the same manner as provided in BMC [21.10.200\(D\)](#). For all other proposals, the hearing notice shall be mailed to the list of mayor's neighborhood advisory commission representatives and neighborhood associations registered with the planning and community development department.

3. *Posted Notice.* For site-specific comprehensive plan amendments, site-specific neighborhood plan amendments, site-specific rezones, or institutional master plan adoption or amendments, the city shall post one or more hearing notice signs on the site or in a location immediately adjacent to the site that provides visibility from adjacent streets. The signs shall be posted at least 30 days prior to the hearing. The director shall establish standards for size, color, layout, materials, number, placement, maintenance and removal.

4. For non-site-specific amendments to the comprehensive plan, neighborhood plan or development regulations, the director shall provide public notice and public participation opportunities appropriate for the proposal and consistent with RCW [36.70A.035](#) and subsections [\(D\)\(1\)](#) and [\(2\)](#) of this section.

FE. *Planning Commission Hearing.* The planning commission shall conduct an open record public hearing on the proposal. Any person may participate in the hearing by submitting written comments to the planning and community development department prior to the hearing or by submitting written comments or making oral comments at the hearing. All comments received by the department prior to the hearing shall be transmitted to the planning commission no later than the date of the public hearing.

GF. *Planning Commission Recommendation.* The planning commission shall review the proposal based on the criteria listed in the applicable city code and provide a written recommendation to the city council containing the following:

1. Finding of fact and conclusions of law; and
2. Recommendation.

HG. *Notice of City Council Hearing.* Notice of the city council public hearing shall be provided in the same manner as for the planning commission hearing.

IH. *City Council Decision.* The city council shall hold an open record public hearing on the proposal. The director shall transmit to the city council the staff report, planning commission recommendation and any written comments received prior to the city council hearing. The city council may confirm, modify or reject the planning commission recommendations.

J. *Notice of Adoption.* Notice shall be provided to the Washington State Department of Commerce as required by RCW 36.70A.106(2) and WAC 365-196,630(2), or as amended.

KI. *Appeal of Type VI Decision.* An action of the city council on a Type VI proposal may be appealed together with any SEPA threshold determination by filing a petition with the Growth Management Hearings Board or the superior court, as applicable. Appeals to the Growth Management Hearings Board are subject to the requirements set forth in RCW 36.70A.290 and must be filed within the 60-day time period set forth in RCW 36.70A.290(2). A land use petition filed with the superior court must meet the requirements set forth in Chapter 36.70C RCW and must be filed and served upon all necessary parties within the 21-day time period as set forth in RCW 36.70C.040.

Section 5. BMC 21.10.260 concerning Vesting is hereby amended as follows:

A-B. [No Change].

C. *Expiration of Vested Status.*

1. Except for ~~lot line adjustments, short subdivisions, preliminary plats, general binding site plans~~ land divisions, planned development permits and critical area permits, or where a different duration of approval is established by city ordinance, an executed development agreement, or state or federal law, the vested status of an approved land use permit under Process Types I, II, III or VII shall expire two years from the date of the city's final decision, unless a complete building permit application is filed before the end of the two-year term or the applicant has obtained an extension from the planning director. The director may grant one extension of up to one year provided the extension request is submitted prior to the original expiration date.

2. Planned development approvals and critical area permits shall expire five years from the date of the city's final decision unless a complete building permit application is filed before the end of the five-year term or the applicant has obtained an extension from the

planning director. The director may grant one extension of up to two years provided the extension request is submitted prior to the original expiration date.

~~3. All land use decisions consolidated into a single application review for a single project that include more than one land use application under Process Types I, II, III and/or VII shall have a vested status and the same opportunity for an extension as listed in subsections (C)(1) and (2) of this section for the land use permit type with the longest vested status. All subsequent land use decisions associated with the project that are not consolidated into the single application review shall not extend the initial vested time limitations of the project. Where a project receives multiple permits under Process Types I, II, III, and VII, or some combination thereof, under a consolidated permit process, the vested status of the land use approval for each permit shall expire on the expiration date of the permit with the longest vested status, unless an extension is granted under subsections (C)(1) or (C)(2) of this section. However, subsequent land use decisions that were not considered during the consolidated permit review process shall not extend the original expiration date of the permits.~~

~~4.3. If a complete building permit application or a public facilities construction agreement is filed prior to the expiration of the land use permit, the vested status of the land use permit shall be automatically extended for the time period during which the building permit application is pending prior to issuance; provided, that if the building permit application expires or is cancelled, the vested status of the land use permit or approval shall also expire or be cancelled. If a building permit is issued and subsequently renewed, the vested status of the subject land use permit or approval under the permit shall be automatically extended for the period of the building permit renewal.~~

D. Extension of Vested Status – Valid Land Use Approvals.

1. The vested status of approved, valid land use decisions that were consolidated into a single application review for a single project that include more than one land use application under Process Types I, II, III and/or VII shall be extended to the longest duration of the land use permit type with the longest vested status and have the same opportunity for an extension as listed in subsections (C)(1) and (2) of this section. All subsequent land use decisions associated with the project that were not consolidated into the single application review shall not extend the initial vested time limitations of the project.

~~One-Time Economic Hardship~~

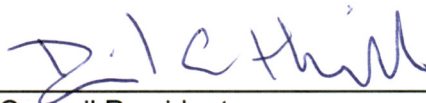
~~The planning and community development director shall grant a one-time two-year extension, from the date of expiration, of the vested status of an issued land use approval under Process Type I, II, III, or VII or a Whatcom County issued land use approval on a property that has been annexed into the city of Bellingham if all of the following criteria are met:~~

- ~~a. The applicant files a written extension request with applicable fee on forms provided by the city by no later than December 31, 2011;~~
- ~~b. The extension request includes a sworn declaration that the work authorized by the land use approval will be delayed as a result of an inability to secure financing; and~~
- ~~c. The extension request is for an issued land use approval set to expire between January 1, 2010, and December 31, 2011.~~

~~2. To the extent the applicant has not obtained an extension identified in BMC [23.12.070](#), [23.16.080](#), and [23.24.090](#) or subsection (C) of this section prior to applying for this one-time extension, the applicant may utilize these other extensions upon conclusion of this two-year one-time extension. Requests for these other extensions shall be submitted to the city prior to the expiration of the one-time two-year extension.~~

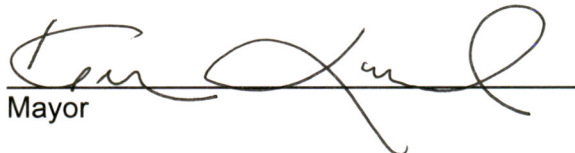
Section 6. The Council agrees with, and hereby adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission, attached as **Exhibit A**.

PASSED by the Council this 12th day of February, 2024.



Council President

APPROVED by me this 16th day of February, 2024.

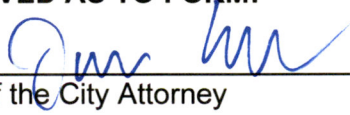


Mayor

ATTEST: 

Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

Published:

February 16, 2024

BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

NOVEMBER 16, 2023

SUMMARY

Following the public hearing and deliberation on the proposed amendments to various provisions in BMC Title 21 – Administration of Development Regulations, the Bellingham Planning Commission has determined that the proposed code changes provide additional clarification, correct inconsistencies and grammar, and include minor code provisions that will further implement the Comprehensive Plan.

I. FINDINGS OF FACT

1. Proposal Description:

The proposed amendments represent a culmination of Planning and Community Development Department staff's 'running list' of code changes. The proposed amendments to Bellingham Municipal Code (BMC) Title 21 are broad based amendments intended to improve implementation of the City's land use and development code, correct code inconsistencies, and provide code clarity.

The City's development review process includes several steps generally starting with pre-application conferences, moving to land use application submittal, infrastructure plan review, building permit submittal, construction and inspections culminating with final occupancy approval. Many projects require multiple permits, which may have different review process types (I, II, III, etc.) and expiration periods. Having different expiration periods often complicates construction timing where one permit for a project may expire while another is still valid. This adds confusion, time, and expense for the community and developer. Proposed code amendments will rectify this situation.

2. Background Information/Procedural History:

2004 – Present: The City adopted Title 21 BMC, with subsequent amendments, to standardize procedures for land use and development permit decision made by the city of Bellingham.
October 11, 2023: Staff issued notice of a public hearing before the Planning Commission.
November 2, 2023: The responsible official issued a non-project SEPA Determination of Nonsignificance.

November 3, 2023: Staff submitted a notice of Intent to Adopt to the Washington State Department of Commerce.

November 16, 2023: The Planning Commission held a public hearing.

3. Public Comment:

Staff mailed notice of the public hearing before the Planning Commission to neighborhood representatives, neighborhood associations, and other parties with an interest in this topic. The notice was also published in the Bellingham Herald 30 days prior to the hearing.

4. State Environmental Policy Act (SEPA) Determination:

The responsible official issued a non-project SEPA Determination of Non-Significance (DNS) on November 2, 2023. A notice of the threshold decision was mailed to the appropriate agencies, parties of record and published in the Bellingham Herald and on the City's website. The City did not receive public comments in response to the publication of this DNS.

5. Consistency with the Bellingham Comprehensive Plan:

Regulations intended to implement zoning and development regulations should be reviewed and amended periodically to address changing circumstances and to implement the goals and policies of the comprehensive plan.

II. CONCLUSIONS

The Planning Commission finds that proposed amendments will:

1. Include missing land use decision(s) that require a Type 1 review process.
2. Correct inconsistencies in the development regulations.
3. Improve the City's administration of the development regulations and better align the vested status of land use permits issued under different processes to avoid confusion and duplicative application reviews.
4. Further the implementation of the goals and policies of the Bellingham Comprehensive Plan.


III. RECOMMENDATIONS

After careful consideration of all public comments, the staff report, other meeting materials, and the Findings and Conclusions, the Planning Commission recommends, with a 6-0 vote, that the City Council approve the proposed amendments to the Bellingham Municipal Code as shown in the draft ordinance.


ADOPTED this 16th day of November, 2023.



Planning Commission Chairperson

ATTEST: 

Recording Secretary

APPROVED AS TO FORM: 

City Attorney