

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6673

AN ORDINANCE amending chapter 20.35 of the City of Bellevue Land Use Code to eliminate quasi-judicial appeals to the City Council from Hearing Examiner decisions and recommendations in Process I and Process III land use matters; providing for severability; and establishing an effective date.

WHEREAS, at its June 9 through 11, 2022 meeting, the City Council initiated processing of amendments of its Land Use Code (LUC) to eliminate quasi-judicial appeals to the City Council from Hearing Examiner decisions and recommendations in Process I and Process III land use matters; and

WHEREAS, the City Council finds it was necessary and appropriate to amend the Bellevue Land Use Code without prior review and recommendation from the Planning Commission, as authorized by LUC 20.30J.125.B and 20.35.410.A; and

WHEREAS, after providing legally-required public notice, the City Council held a public hearing on August 1, 2022 on the proposed Land Use Code amendments; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act, Chapter 43.21C RCW and the City's Environmental Procedures Code, Chapter 22.02 BCC for these Land Use Code amendments; and

WHEREAS, the Council finds that eliminating these quasi-judicial appeals will optimize the legislative and policy-making role of the Council; encourage meaningful public engagement early, when the record is open for comment; and promote fair, independent and efficient land use decision-making; and

WHEREAS, the Council finds that the proposed amendments meet the decision criteria of LUC 20.30J.135, are consistent with the Comprehensive Plan, enhance the public health, safety and welfare, and are not contrary to the best interests of the citizens and property owners of the City of Bellevue; now, therefore

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 20.35.045 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.045 Land use decisions – When final.

When a decision is made to approve, conditionally approve, or deny an application, the applicant shall be notified. Process V decisions and minor or ministerial administrative land use decisions that are not subject to administrative appeal shall be final at the time of the Director's decision that the application conforms to all applicable codes and requirements. Process I decisions are final on the date the Hearing Examiner's written decision on the application is mailed. Process II decisions are final upon expiration of any applicable City administrative appeal period, or, if appealed, on the day following issuance of a final City decision on the administrative appeal. Process III and IV decisions are final on the date of the City Council's final decision or action on the application or proposal.

Section 2. Section 20.35.080.B of the Bellevue Land Use Code is hereby amended to read as follows:

B. SEPA Threshold Determination with Process IV or Process V Decisions.

The SEPA threshold determination associated with a Process IV or Process V action shall be merged with the Process IV and Process V action, and processed according to the notice, decision, appeal and other procedures set forth in LUC 20.35.400 through 20.35.440 (Process IV) or LUC 20.35.500 through 20.35.540 (Process V).

Section 3. Section 20.35.085 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.085 Appeals of nonland use matters.

Certain other appealable administrative decisions are made by City departments, including but not limited to decisions pursuant to the City's Traffic Standards Code, Chapter 14.10 BCC; Transportation Impact Fee Program, Chapter 22.16 BCC; the School Impact Fees for Issaquah School District No. 411 and Renton School District No. 403, Chapter 22.18 BCC; the Sewer Utility Code, Chapter 24.04 BCC; the Storm and Surface Water Utility Code, Chapter 24.06 BCC; the Sign Code, Chapter 22B.10 BCC; and the Environmental Procedures Code, Chapter 22.02 BCC. These types of non-Land Use Code appeals are heard and decided by the City Hearing Examiner. When associated with a consolidated Land Use permit application, the appeal will be heard in conjunction with any appeal on the Land Use application. In some cases, the relevant code modifies the appeal process slightly compared to Land Use Code

appeals. (See e.g., Transportation Impact Fee Program: only developer may appeal.) In such cases, and as to those codes only, the procedures governing other appeals shall control. In all cases, however, the final City decision on the administrative appeal is made by the Hearing Examiner. Information on non-Land Use Code appeals is available from the department administering the relevant code and from the City Hearing Examiner.

Section 4. Section 20.35.100 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.100 Process I: Hearing Examiner quasi-judicial decisions.

A. LUC 20.35.100 through 20.35.140 contain the procedures the City will use in implementing Process I. This process begins with a complete application, followed by notice to the public of the application and a public comment period, during which time an informational meeting will be held. If required by the State Environmental Policy Act (SEPA) a threshold determination will be issued by the Environmental Coordinator. The threshold determination may be issued in conjunction with issuance of the Director's recommendation on the application. If an Environmental Impact Statement (EIS) is required, however, the threshold determination will be issued early and the EIS will be completed prior to issuance of the Director's recommendation. If the requirement to prepare an EIS or a supplemental EIS is appealed by the applicant, that appeal will also be resolved prior to issuance of the Director's recommendation.

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C. The decision of the Hearing Examiner on a Process I application is the final City decision on a Process I application. A final decision by the Hearing Examiner on a Process I application may be appealed to Superior Court as set forth in LUC 20.35.070.

D. Subject to LUC 20.35.070, the applicant may commence activity or obtain other required approvals authorized by the Process I decision the day following the Hearing Examiner's final decision approving or approving with modifications the Process I application. Activity commenced before the expiration of the full appeal period in LUC 20.35.070 is at the sole risk of the applicant.

Section 5. Section 20.35.150 of the Bellevue Land Use Code is hereby repealed.

Section 6. Section 20.35.300 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.300 Process III: City Council quasi-judicial decisions.

LUC 20.35.300 through 20.35.355 contain the procedures the City will use in implementing Process III. The process is similar to Process I, except that the Hearing Examiner makes a recommendation to the City Council following the public hearing. The City Council acts as the final decisionmaker.

Section 7. Section 20.35.340.D of the Bellevue Land Use Code is hereby amended to read as follows:

D. Written Recommendation of the Hearing Examiner.

The Hearing Examiner shall within 10 working days following the close of the record distribute a written report including a recommendation on the public hearing. The report shall contain the following:

1. The recommendation of the Hearing Examiner; and
2. Any conditions included as part of the recommendation; and
3. Findings of facts upon which the recommendation, including any conditions, was based and the conclusions derived from those facts; and
4. The date on which the matter has been scheduled for consideration by the City Council.

Section 8. Section 20.35.350 of the Bellevue Land Use Code is hereby repealed.

Section 9. Section 20.35.355 of the Bellevue Land Use Code is hereby amended to read as follows:

20.35.355 City Council decision on the application.

A. General.

The City Council shall, at a public meeting, consider and take final action on each Process III application.

B. Elements to be Considered.

The City Council shall not accept new information, written or oral, on the application but shall consider the following in deciding on an application:

1. The complete record developed before the Hearing Examiner; and
2. The recommendation of the Hearing Examiner.

C. Decision.

The City Council shall either:

1. Approve the application; or
2. Approve the application with modifications; or
3. Remand the application to the Hearing Examiner and the Director for an additional public hearing limited to specific issues identified by the Council; or
4. Deny the application.

Section 10. Section 20.35.400 of the Bellevue Land Use Code is hereby amended to read as follows:

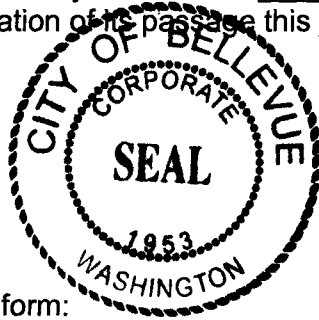
20.35.400 Process IV: City Council legislative actions.

LUC 20.35.400 through 20.35.440 contain the procedures the City shall use to make legislative land use decisions (Process IV actions). The process shall include a public hearing, held by either the Planning Commission or City Council, and action by the City Council. Review under the State Environmental Policy Act (SEPA) and the Bellevue Environmental Procedures Code may be required.

Section 11. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this Ordinance.

Section 12. Effective Date. This Ordinance shall take effect and be in force five (5) days after adoption and legal publication.

Passed by the City Council this 1st day of AUGUST, 2022 and signed in authentication of its passage this 1st day of AUGUST, 2022.
(SEAL)



L. Robinson
Lynne Robinson, Mayor

Approved as to form:

Kathryn L. Gerla
Kathryn L. Gerla, City Attorney

Attest:

Charmaine Arredondo
Charmaine Arredondo, City Clerk

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