

**CITY COUNCIL AGENDA TOPIC**

Proposed Land Use Code Amendment streamlining the permitting process and implementing provisions of the Local Project Review Act, RCW 36.70B, as amended by Senate Bill 5290.

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**EXECUTIVE SUMMARY****DIRECTION**

Staff will introduce the proposed Land Use Code Amendment (LUCA) implementing changes made to the Local Project Review Act, Chapter 36.70B RCW, resulting from the adoption of Senate Bill 5290 by the Washington State Legislature. Following discussion, staff is seeking Council direction to prepare the LUCA Ordinance for public hearing and action at a future meeting.

**RECOMMENDATION**

Direct staff to prepare the LUCA Ordinance for public hearing and action at a future meeting.

**BACKGROUND/ANALYSIS****Local Project Review Act Legislative History**

The Washington State Growth Management Act (GMA) directs jurisdictions like the City of Bellevue to adopt internally consistent comprehensive land use plans and to implement those plans through locally adopted development regulations. The GMA further outlines goals to guide the development of regulations in jurisdictions fully planning under the GMA. One of the key goals established in RCW 36.70A.020 establishes that permit applications should be processed in a timely and fair manner to ensure predictability. To help local government agencies meet this goal, in 1995 the Washington State Legislature enacted Chapter 36.70B RCW, known as the Local Project Review Act. This legislation included requirements for reviewing project permits, providing public notice, determining application completeness, and other provisions related to issuing decisions on project permits. In 2001 the Local Project Review Act was amended to include a requirement for local jurisdictions to begin acting on permit applications within 120 days unless additional time was needed. In addition, the bill required certain local government agencies to begin producing annual permit timeline performance reports to provide greater transparency and predictability in the permitting process.

During the 2023 legislative session, the Washington State Legislature passed, and the Governor signed into law, Senate Bill 5290, updating portions of the Local Project Review Act, Chapter 36.70B RCW. The intent of the updates was to further consolidate, streamline, and improve project review and

permitting, with an emphasis on housing development, and to reduce the amount of time it takes for compliant projects to receive approval. To accomplish this goal SB 5290 contained thirteen separate sections including a variety of mandatory and voluntary measures for local government agencies to consider when implementing permit streamlining. The legislation also established a lead agency role for the Washington Department of Commerce. The full provisions of the legislation have been included in Attachment A of tonight's agenda.

### **City Council Initiation**

This LUCA was initiated by the City Council on June 11 and was retained for processing by the City Council alone with no review or recommendation by the Planning Commission. The City Council will hold the required public hearing on the LUCA during a future meeting.

### **Components of Senate Bill 5290 to be Codified**

The SB 5290 updates contained a new series of requirements for local governments, but not all of these requirements will be implemented through the Land Use Code (LUC). Key components of the legislation which will require LUC implementation are summarized below.

#### *Permit Timelines*

The legislation established new permit review time periods for project permits. The updated timelines were established in three separate tiers, based on public involvement, and may be modified by local ordinance. The new default time periods are:

1. 65 days for permits that do not require public notice.
2. 100 days for permits that require public notice, but not a public hearing.
3. 170 days for permits that require public notice and a public hearing.

The time periods include the number of calendar days it takes a local government to reach a final decision and excludes the application completeness check process and time periods when the local government is waiting on an applicant response. As outlined in RCW 36.70B.080, these new permit timelines will take effect on January 1, 2025, unless a local government agency elects to modify the review timelines based on special circumstances.

#### *Procedural Changes*

The legislation also included several procedural updates including but not limited to changes in definitions, requirements for determination of permit application completeness, excluding site plan review for most interior alterations, clarifying permit application submittal requirements, and minor amendments to citations.

### **Components of the Proposed LUCA**

The proposed LUCA implementing the requirements of SB 5290 is provided as Attachment B and can be summarized into the following topics:

1. Project Permit Submittal Requirements

2. Application Completeness Check Procedure
3. Permit Timelines
4. Rulemaking
5. Other Measures

#### *Project Permit Submittal Requirements*

SB 5290 provides that the city may only make a decision about the completeness of a project permit application based on the list of submittal requirements available to an applicant when preparing their application. While the city may request additional information from the applicant needed to review their application, anything not identified as part of the submittal requirements cannot be considered in determining whether the application is complete. The proposed LUCA establishes that submittal requirements for each type of project permit application will be provided on the City's official website.

#### *Application Completeness Check Procedure*

The new permit review time periods provided in SB 5290 begin once an application is complete. As a result, the process for determining whether or not an application is complete is important. Under the current code, the Director has 28 days to provide an applicant with written notice that their application is complete, or that the application is incomplete and what is necessary to make the application complete. If the Director does not provide a written determination within these period, the application is deemed complete at the end of the 28<sup>th</sup> day.

While the current approach is roughly consistent with SB 5290, the proposed LUCA implements an updated process to clarify when the 28-day time period begins, and to provide more efficient scrutiny of project permit applications. Once the application review period begins, the 28 days are counted as calendar days, not business days.

The proposed LUCA clarifies that a land use permit application, once submitted, goes through a quick ministerial intake process. During intake, a reviewer checks whether the application purports and appears to include all specified submittal requirements and is formatted as required by the Director. Once intake is complete, the application is considered to be received by the City and the 28-day review period begins. During the 28-day review period, reviewers will determine whether the application materials substantively fulfill the established submittal requirements and are sufficient for continued processing. The Director then has until the end of the 28<sup>th</sup> day to provide notice that the application is complete or incomplete, and if incomplete what materials are required for completion. If the applicant for an incomplete application submits requested information in response, the Director then has 14 days to provide notification whether the application is complete or if additional information is required.

#### *Permit Timelines*

The proposed LUCA implements the 65-, 100-, and 170-day permit timelines as defined in SB 5290, with several specific exceptions. The timelines for review of Critical Areas Land Use Permits, Design Reviews, Master Development Plans, Preliminary Short Plats, and Shoreline Substantial Development Permits have all been moved to 170 days, even though these applications do not require both a public hearing and public notice. These project permit types all often require additional complex analysis

which can naturally extend the required review time.

The number of days an application is in review are counted from the day the application is determined to be complete to the date a final decision is issued. The number of days is determined by counting every calendar day, except for the following periods:

- Periods when an applicant has been notified in writing that additional information is required to process the application, up to the time that the applicant provides responsive information
- Any period when the applicant informs the city in writing that they would like to temporarily suspend review of the application, up to the time that the applicant informs the city in writing that they would like to resume the application
- Any period after an administrative appeal is filed until the appeal is resolved, and any additional time period provided by the appeal has expired

The permit timeline can also restart or extend in certain circumstances. If the applicant proposes a change in use that adds or removes commercial or residential elements from the original application that would make the application fail to meet the determination or procedural completeness for the updated use, the timeline starts over. If the applicant suspends application review for more than 60 days or is not responsive for more than 60 days after being informed that additional information is required, an additional 30 days may be added to the permit timeline.

### *Rulemaking*

Currently, LUC 20.40.100 authorizes the Director of the Development Services Department to adopt rules to implement the City's Land Use Code. Historically, the Department has not promulgated many rules. However, looking ahead, the Department anticipates undertaking rulemaking to implement aspects of several upcoming LUCAs, including the Wilburton LUCA. The Department and the City Attorney's Office are recommending updates to the City's rulemaking process to ensure that the Department has a clear rulemaking procedure to use going forward.

The current rulemaking procedure is set out in LUC 20.40.100 and can be summarized as follows:

1. Publish notice in a newspaper.
2. 14-day notice period.
3. Hold public hearing.
4. Director takes action on the rule.

While LUC 20.40.100 sets out a procedure, it's very basic and doesn't explicitly address some key procedural considerations, including:

1. Compliance with the State Environmental Review Act (SEPA);
2. Vested Rights;
3. Emergencies;
4. Distinction between a rule and a project-specific interpretation under Part 20.30K LUC; and

5. Appeals of a rule.

The proposed LUCA will address these concerns as follows:

1. Require environmental review for rules where required under SEPA;
2. Allow land use permits to vest to rules in the same manner as they would vest to the Land Use Code under LUC 20.40.500.
3. Provide a procedure for the temporary adoption, amendment, or repeal of a rule to respond to an emergency. Emergency rulemaking would not remain in effect for longer than 90 days.
4. Clarify that interpretations under Part 20.30K LUC must relate to a specific site, a specific project permit application, or to interrelated project permit applications for a specific project and, further, that a rule could be interpreted pursuant to Part 20.30K LUC.
5. Provide clear appeal procedures.

In addition, the Development Services Department is recommending some changes to the current rulemaking procedure. If adopted, the proposed LUCA would create a revised rulemaking procedure that can be summarized as follows:

1. Provide notice of proposed rulemaking through an expanded list of modern options, beyond just publishing notice in a newspaper.
2. Provide a 21-day comment period during which written comment can be submitted to the Department on the proposed rulemaking.
3. Director takes action on the rule.
4. Publish notice of the adoption of the rule.

Staff is recommending replacing the current public hearing requirement with an expanded comment period accompanied by more robust and modern notice procedures, which would offer a more effective and accessible way for the public to engage with the rulemaking process. This approach mirrors the practices in King County and the City of Seattle, with neither jurisdiction requiring a public hearing during rulemaking.

While a public hearing is one means of providing public comment, staff believe the proposed revisions to the rulemaking procedure would result in more meaningful public engagement. Specifically, rules, by their nature, are often highly technical in comparison to other types of policymaking. Written comments—as opposed to oral comments at a public hearing—can be more precise and can provide greater insight and feedback to the City on the proposed rulemaking.

Furthermore, by extending the minimum comment period from 14 to 21 days and implementing modern noticing procedures, we can ensure that a broader and more diverse audience is informed and able to participate in the rulemaking process. Staff anticipates that this approach will facilitate more meaningful public participation compared to traditional public hearings. Additionally, this approach is more streamlined and will enable the Department to respond more quickly to project needs and address community questions and issues regarding the interpretation and application of the LUC as they arise.

### *Other Measures*

The proposed LUCA also implements other amendments to help support the implementation of SB 5290. These include:

- *Pre-Application Conferences:* Pre-application conferences are currently required prior to submitting an application for Conditional Use Permits, preliminary subdivision approvals, planned unit developments, Master Development Plans, Design and Mitigation Permits required pursuant to Part 20.25M LUC, Light Rail Overlay District, and design review projects, unless waived by the Director. The LUCA will add a pre-application conference as a requirement for short plats and Critical Areas Land Use permits as well.
- *Site Plan Review:* Under the law, the city cannot require site plan review for applications which only include interior improvements. The proposed LUCA provides a definition of site plan review to clarify when this is applicable.

## **POLICY & FISCAL IMPACTS**

### **Policy Impact**

#### RCW 36.70B.080

New permit timelines will take effect on January 1, 2025, unless a local government agency elects to modify the review timelines based on special circumstances. As a potential consequence for not meeting the timelines established in state law or by local ordinance, local permitting agencies may be subject to permit fee refunds that range from 10-20%. The proposed LUCA implements review timelines consistent with RCW 36.70B.080. Separate from the proposed LUCA, the Department will be recommending the adoption of three streamlining measures that, if adopted, will provide an initial safe harbor from the requirement to provide fee refunds.

### **Fiscal Impact**

There is no fiscal impact associated with implementing these changes.

## **OPTIONS**

1. Direct staff to prepare the proposed LUCA ordinance for public hearing and action at a future meeting.
2. Provide alternative direction to staff.

## **ATTACHMENTS**

- A. Senate Bill 5290
- B. Proposed LUCA Strike-Draft

## **AVAILABLE IN COUNCIL LIBRARY**

N/A