



STAFF REPORT

DATE: December 22, 2022

TO: Mayor Robinson and Members of the City Council

FROM: Nick Whipple, Planning Manager, 452-4578
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Development Services Department

SUBJECT: Public Hearing on a proposed Land Use Code Amendment (LUCA) to conform provisions within the Shoreline Master Program (SMP), chapter 20.25E of the Land Use Code (LUC) to remove references to the East Bellevue Community Council (EBCC), and to remove City Council appeal authority for Process I and III land use decisions. This LUCA conforms the City's SMP with Ordinance Nos. 6670 and 6673. File No. 22-128468-AD.

I. BACKGROUND

A. SMP Amendment Process

This LUCA is intended to conform the City's SMP, chapter 20.25E LUC, with recent amendments to other sections of the LUC adopted earlier in 2022. Per the Shoreline Management Act (SMA), Chapter 90.58 RCW, amendments to a jurisdiction's SMP must be reviewed and approved by the Washington State Department of Ecology (Ecology). A jurisdiction may use the optional joint review process through which local and Ecology review the amendments simultaneously, per WAC 173-26-104. Because of the state-mandated process for amending the City's SMP, the proposed amendments in this LUCA are being processed separately from those previously adopted under Ordinance Nos. 6670 (Attachment A) and 6673 (Attachment B).

B. Ordinance No. 6670 (EBCC Sunset LUCA)

On July 18, Council adopted Ordinance No. 6670 (Attachment A), removing references to the former EBCC from the LUC. This Ordinance responded to state legislation, adopted in 2022, that repealed the statutory authority previously granted to community councils under Chapter 35.14 RCW. Prior to this legislation, the EBCC retained authority to approve or deny land use decisions made by the City Council and were a required step in the approval process for certain land use applications and LUCAs. Following the effective date of the legislation, Ordinance No. 6670 was necessary to remove any procedural gaps or ambiguities resulting from the dissolution of the EBCC.

C. Ordinance No. 6673 (Quasi-Judicial LUCA)

On August 1, Council adopted Ordinance No. 6673 (Attachment B), amending Chapter 20.35 LUC to eliminate quasi-judicial appeals to the City Council from Hearing Examiner decisions and recommendations in Process I and III land use matters. Prior to this Ordinance, final decisions made by the Hearing Examiner for Process I land use matters, as well as recommendations from the Hearing Examiner for Process III land use matters, were appealable to the City Council through a closed-record, quasi-judicial process. Following adoption of the Ordinance, Process I decisions are now appealable directly to superior court. Process III Hearing Examiner recommendations are no longer appealable but instead provided to Council for a final decision, which is then appealable to superior court. In adopting the Ordinance, Council found that removing their appeal authority would optimize their legislative and policymaking role, encourage earlier public participation in land use matters, and improve communication between Council and the community on these land use decisions.

D. Proposed LUCA

The proposed LUCA amends the SMP, Chapter 20.25E LUC, to conform with the procedures adopted under Ordinance Nos. 6670 and 6673. The specific amendments proposed under this LUCA are detailed in the strike-draft (Attachment C).

First, the proposed LUCA will remove procedures involving the EBCC, including their final approval authority for land use actions within the EBCC jurisdiction and requirements to send EBCC members legal notices, consistent with the amendments in Ordinance No. 6670. Additionally, consistent with Ordinance No. 6673, the proposed LUCA will remove the opportunity for City Council appeal of Hearing Examiner decisions of Shoreline Process I actions, which only include Shoreline Conditional Use Permits. Under the proposed change, the City Council appeal option is eliminated, and appeals are instead directed to the Washington State Shoreline Hearings Board.

II. REVIEW PROCESS

The content of this LUCA will be introduced and presented to the City Council in early January, during which staff will recommend Council enter a finding of necessity to process this LUCA and hold a public hearing. The public hearing has been tentatively scheduled for January 23.

Following the public hearing, staff will submit the proposed Ordinance to Ecology for an initial Determination of Consistency. Ecology will have approximately 30 days to make this determination, following which Council may adopt the proposed LUCA Ordinance. Upon

adoption, the Ordinance will again be transferred to the Ecology for a final Determination of Consistency.

III. STATE ENVIRONMENTAL POLICY ACT (SEPA)

The Environmental Coordinator for the City of Bellevue has determined that this LUCA is Categorically Exempt from the Threshold Determination requirements of the State Environmental Policy Act pursuant to the terms of WAC 197-11-800(19).

IV. PUBLIC ENGAGEMENT

Required Public Notice

The notice required for City Council Legislative Actions (Process IV) is governed by LUC 20.35.415 through 20.35.450. A notice of the LUCA application was published in the Weekly Permit Bulletin on December 8. A notice of the public hearing scheduled for January 23 was published in the Weekly Permit Bulletin on December 22, and in the Seattle Times on December 23. A copy of this staff report was made available in the notice of public hearing provided in the Weekly Permit Bulletin.

Department of Ecology Notice

Pursuant to the SMA, Ecology is tasked with reviewing local SMP amendments and determining their consistency with the SMA, with the option for state and local review to occur under a joint process per WAC 173-26-104. This LUCA is being reviewed under this process. Concurrent with the City's public notice described above, Ecology will also issue a notice of the proposed LUCA to other state agencies and tribes and on their website. Those wishing to provide comments will be directed to submit them directly through City staff. All comments received by the City, along with City staff's response to the comments, will be submitted to Ecology following the public hearing.

Department of Commerce Notice

Under the Growth Management Act (GMA), Chapter 36.70A RCW, proposed amendments to the LUC must be sent to the Washington State Department of Commerce for review and comment. The required notice to the Department of Commerce, including a copy of the strike-draft, were transmitted on December 9 and is available for review in the code amendment file. No comments have been received by Commerce as of the date of this report.

Enhanced Public Engagement

In addition to the public engagement requirements of LUC 20.35.415 *et seq* for City Council Legislative Actions under Process IV, staff has provided enhanced public engagement for this LUCA to include an online presence. A webpage was launched for this LUCA to provide opportunity for the public to learn about the LUCA, with sections on public information

messages regarding LUCA progression and staff contact information to submit written comments.

Public Comments

As of this writing, no public comments have been received on this LUCA. However, during the review process for the EBCC Sunset LUCA (Ordinance No. 6670), public comments were received expressing general opposition to the sunset of community councils by the state legislature. Public comments received for the Quasi-Judicial LUCA (Ordinance No. 6673) expressed support for removing Council from its role in quasi-judicial matters.

V. DECISION CRITERIA

The decision criteria for an application to amend the text of the LUC are in LUC 20.30J.135. Those criteria, and the relationship of these proposed amendment to them, are discussed below:

A. The amendment is consistent with the Comprehensive Plan; and

Finding: The proposed LUCA is supported by the following Comprehensive Plan policies:

- **Comprehensive Plan Policy CE-5:** Develop and maintain Land Use Code provisions that define the process and standards relevant to each stage of land use decision making, and educate the public about these processes and standards to promote meaningful citizen engagement.
- **Comprehensive Plan Policy ED-6:** Strive to provide an efficient, streamlined, timely, predictable, and customer-focused permit processes, conducted in a manner that integrates multiple city departments into a coordinated entity, recognizing the role of development in creating places for economic activity.

The proposed amendments align the City's SMP with the remainder of the LUC. By removing ambiguities resulting from the dissolution of the EBCC, and by conforming the appeal procedures for all land use actions, future applicants are provided with a consistent and reliable pathway for all land use-related projects and appeals.

B. The amendment enhances the public health, safety, or welfare; and

Finding: The LUCA will enhance the public health, safety, and welfare by providing an approval pathway that relies on a trained Hearing Examiner for decisions, which can be appealed through the Shoreline Hearings Board, a similarly objective and impartial process. This reduces the appearance of bias in local decision-making and

prevents decisions that may not be supported by the requisite legal analysis. The amendments also conform all development review and appeal procedures within the City, promoting predictability and transparency citywide, particularly for projects located in the shoreline and former EBCC jurisdictions.

- C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

Finding: The LUCA is not contrary to the best interests of citizens and property owners. As noted above, the amendments related to quasi-judicial decisions and appeals are intended to promote fairness and objectivity in decision-making. These amendments also optimize the City Council's role to shape City policy, as the Council will retain its authority to adopt development regulations, which can be subsequently adjudicated by a separate, trained Hearing Examiner on a case-by-case basis. By removing Council's quasi-judicial role in appeals, the body may now be able to hear directly from the public without the risk of violating closed-record requirements for appeal processes. Further, removing EBCC references and conforming all procedures to be applicable citywide advances the public interest by providing a predictable review process across the city.

VI. RECOMMENDATION

Staff has concluded that the SMP Conformance LUCA, as drafted in Attachment C, is consistent with the decision criteria required for adoption of amendments to the text of the LUC, pursuant to Part 20.30J LUC. Staff recommends the LUCA to the City Council for approval.

ATTACHMENTS:

- A. Ordinance No. 6670
- B. Ordinance No. 6673
- C. Proposed LUCA Strike-Draft