

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. [Abstract]

AN ORDINANCE amending the City of Bellevue Shoreline Master Program, chapter 20.25E of the Land Use Code (LUC), to remove references to the former East Bellevue Community Council (EBCC), consistent with amendments adopted in Ordinance No. 6670; and to remove references to City Council appeal authority for Process I decisions, consistent with amendments adopted in Ordinance No. 6673; providing for severability; and establishing an effective date.

WHEREAS, on July 18, 2022, the Bellevue City Council adopted Ordinance No. 6670, which amended the Bellevue LUC to remove references to the former EBCC and effectuate certain provisions that were previously not effective in the EBCC jurisdiction; and

WHEREAS, on August 1, 2022, the Bellevue City Council adopted Ordinance No. 6673, which amended 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; and

WHEREAS, due to additional procedural requirements of the State Shoreline Management Act (SMA), Chapter 90.58 RCW, the City's Shoreline Master Program (SMP), chapter 20.25E LUC, which implements the requirements of the SMA, was not amended under Ordinance Nos. 6670 and 6673; and

WHEREAS, the SMP currently contains references to the former EBCC and quasi-judicial appeals to the City Council for Shoreline Process I decisions; and

WHEREAS, amending the SMP is required to conform the City's shoreline regulations and procedures with those currently in effect within the remainder of the LUC, following adoption of Ordinance Nos. 6670 and 6673; and

WHEREAS, minor amendments to chapter 20.35 LUC are required to conform the City's regulations and procedures with those currently in effect within the remainder of the LUC, following adoption of Ordinance No. 6673; and

WHEREAS, the SMA requires the State Department of Ecology review amendments to local SMPs and determine their consistency with the SMA; and

WHEREAS, the City has opted to use the optional joint review process, as authorized per WAC 173-26-104, allowing the City and Department of Ecology to review and solicit comments on the proposed amendments simultaneously; and

WHEREAS, on December 22, 2022, the City and the Department of Ecology issued a joint Notice of Comment Period and Public Hearing, with a minimum comment period of 30 days, and the City held the required public hearing on the proposed LUCA amendments on January 23, 2023; and

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

WHEREAS, on [exact date TBD], the Department of Ecology issued an Initial Determination of Consistency with the SMA for these proposed LUC amendments; and

WHEREAS, the City Council finds that the proposed LUC 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 20.25E.100 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25E.100 Review and appeal procedures.

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B. Framework for Decisions.

1. Shoreline Project Decisions on Permits, Approvals, and Exemptions.
Shoreline decisions are divided into three processes based on who makes the decision, the amount of discretion exercised by the decision maker, the level of potential impact associated with the decision, the amount and type of public input sought, and the type of appeal available. Shoreline project decisions do not include legislative nonproject actions taken by the City Council and described in subsection B.2 of this section.
 - a. Shoreline Process I decisions are quasi-judicial decisions made by the Hearing Examiner. A petition for review (appeal opportunity) is provided to the State Shoreline Hearings Board. Shoreline Conditional Use Permits are a Shoreline Process I decision.

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C. General Procedures Applicable to All Shoreline Project Decisions.

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7. Recommendations and Decisions of the City – Written Record Required. Any recommendation or decision of the Director or Hearing Examiner on a shoreline project application shall be provided in writing. The record may be in the form of a staff report, letter, the permit itself, ordinance, or other written document, and shall indicate whether the application has been approved, approved with conditions, or denied. Any recommendation or decision of the City shall be based on the decision criteria for the applicable shoreline project permit, shall include any conditions necessary to ensure consistency with the SMA, the SMP, and City development regulations, and may include any mitigation measures proposed under the provisions of SEPA.

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D. Notice Procedures Applicable to Shoreline Project Decisions.

1. Notice of Application. Notice of application for shoreline decisions shall be provided within 14 days of issuance of a notice of completeness as required by Table 20.25E.100.D.1:

Table 20.25E.100.D.1.

Shoreline Project Applications	Publication (2)	Mail (3)	Sign (4)
Shoreline Conditional Use Permit	X (5)	X	X
Shoreline Substantial Development Permit	X	X	
Shoreline Variance Approval	X	X	
Shoreline Letter of Exemption (1)			

Notes: Table 20.25E.100.D.1:

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(3) Mailing:

- (a) Mailed notice shall be provided to owners of real property within 500 feet of the project site that includes the following information:

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- (vi) Mailings shall also include mailing notice of the application to each person who has requested such notice for the calendar year and paid any fee as established by the Director. This mailing shall also include a representative from each of the neighborhood groups, community clubs, or other citizens' groups who have requested notice of land use activity. As an alternative to mailing notice to each such person, notice may be provided by electronic mail only, when requested by the recipient.

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Section 2. Section 20.25E.110 of the Bellevue Land Use Code is hereby amended as follows:

Amend subsection (A) to read as follows:

A. Process Described.

1. Applicable Code Section. This section contains procedures the City will use in processing a Shoreline Process I decision. The specific Shoreline Process I procedures are in addition to the general procedures applicable to all shoreline project decisions contained in LUC 20.25E.100.
2. Type of Decision. Decisions on a Shoreline Process I application are quasi-judicial decisions made by the City Hearing Examiner based on a recommendation from the Director. This process begins with a complete application, followed by notice to the public of the application and a public comment period, during which time a public meeting will be held. The Director then makes a recommendation based upon the decision criteria set forth in the code for the applicable shoreline permit.
3. Incorporation of SEPA Threshold Determination. If required by the State Environmental Policy Act (SEPA), a threshold determination associated with a Shoreline Process I decision shall be issued by the Environmental Coordinator as a Land Use Process II decision pursuant to LUC 20.35.230 with an opportunity for appeal to the Hearing Examiner pursuant to LUC 20.35.250. The threshold determination should 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 before 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 be resolved prior to issuance of the Director's recommendation.

4. Hearing Examiner Public Hearing. Following issuance of the Director's recommendation, a public hearing will be held before the City Hearing Examiner. If a SEPA Determination of Nonsignificance (DNS) was issued (no EIS required) pursuant to LUC 20.35.230 and an appeal of the DNS filed pursuant to LUC 20.35.250, the appeal hearing on the DNS will be combined with the public hearing on the Director's recommendation. Following the public hearing, the Hearing Examiner will issue a written report which will set forth a decision to approve, approve with modifications, or deny the Shoreline Process I application. The Examiner's report will also include a final City decision on any DNS or other nonshoreline appeal consolidated with the Shoreline Process I permit as described in LUC 20.25E.100.C.8.
5. Shoreline Process I Decision – When the City Decision is Final. When a decision is made to approve, conditionally approve, or deny an application, the applicant shall be notified. Shoreline Process I decisions are final upon issuance of the Hearing Examiner's written decision on the application.

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Amend subsection (F) to read as follows:

F. Hearing Examiner Decision on Shoreline Process I Applications.

1. Decision. The Hearing Examiner shall approve a project or approve with modifications if the applicant has demonstrated that the proposal complies with the decision criteria for the applicable shoreline permit. The applicant carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that the application merits approval or approval with modifications. In all other cases, the Hearing Examiner shall deny the application.
2. Limitation on Modification. If the Hearing Examiner requires a modification which results in a proposal not reasonably foreseeable from the description of the proposal contained in the public notice provided pursuant to LUC 20.25E.100.D, the Hearing Examiner shall conduct a new hearing on the proposal as modified.
3. Conditions. The Hearing Examiner may include conditions to ensure that a proposal conforms to the relevant decision criteria.
4. Written Decision of the Hearing Examiner. The Hearing Examiner shall within 10 working days following the close of the record distribute a written report supporting the decision. The report shall contain the following:

- a. The decision of the Hearing Examiner on the Shoreline Process I Permit and any nonshoreline appeals consolidated with the permit; and
 - b. Any conditions included as part of the decision; and
 - c. Findings of fact upon which the decision, including any conditions, was based and the conclusions derived from those facts.
5. Distribution. The Office of the Hearing Examiner shall mail the written decision, bearing the date it is mailed, to each person who participated in the public hearing.
6. Effect of Hearing Examiner Decision. The decision of the Hearing Examiner on the application is the final decision of the City and shall be filed with the state pursuant to LUC 20.25E.150.D.

Delete subsection (G), included below, in its entirety:

G. Appeal of Hearing Examiner Shoreline Process I Decision to City Council.

1. The Hearing Examiner's decision on a Shoreline Process I application may be appealed to the City Council as follows:
 - a. Who May Appeal. The decision of the Hearing Examiner may be appealed by any person who participated in the public hearing as provided for in subsection E.1 of this section, or by the applicant or the City.
 - b. Form of Appeal. A person appealing the decision of the Hearing Examiner must file with the City Clerk a written statement of the findings of fact or conclusions which are being appealed and must pay a fee, if any, as established by ordinance or resolution. The written statement must be filed together with an appeal notification form available from the Office of the City Clerk.
 - c. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 14 days following the date the decision of the Hearing Examiner was mailed.
 - d. Hearing Required. The City Council shall conduct a closed record appeal hearing in order to decide upon an appeal of the decision of the Hearing Examiner. The decision on any such appeal shall be made within such time as is required by applicable state law.
 - e. Public Notice of Appeal Hearing.

- i. Content of Notice. The City Clerk shall prepare a notice of an appeal hearing containing the following:
 - (1) The name of the appellant, and if applicable the project name;
 - (2) The street address of the subject property, and a description in nonlegal terms sufficient to identify its location;
 - (3) A brief description of the decision of the Hearing Examiner which is being appealed; and
 - (4) The date, time and place of the appeal hearing before the City Council.
 - ii. Time and Provision of Notice. The City Clerk shall mail notice of the appeal hearing on an appeal of the decision of the Hearing Examiner no less than 14 days prior to the appeal hearing to each person entitled to participate in the appeal pursuant to subsection G.1.f of this section.
- f. Closed Record Hearing on Appeal to City Council.
- i. Who May Participate. The applicant, the appellant, the Director, or representative of these parties may participate in the appeal hearing.
 - ii. How to Participate. A person entitled to participate may participate in the appeal hearing by:
 - (1) Submitting written argument on the appeal to the City Clerk no later than the date specified in the City Council's Rules of Procedure; or
 - (2) Making oral argument on the appeal to the City Council at the appeal hearing. Argument on the appeal is limited to information contained in the record developed before the Hearing Examiner and must specify the findings or conclusions which are the subject of the appeal, as well as the relief requested from the Council.
 - iii. Hearing Record. The City Council shall make an electronic sound recording of each appeal hearing.
- g. City Council Decision on Shoreline Process I Appeals.

- i. Decision. The City Council may grant the appeal or grant the appeal with modifications if the appellant has carried the burden of proof and the City Council finds that the decision of the Hearing Examiner is not supported by material and substantial evidence. In all other cases, the appeal shall be denied. The City Council shall accord substantial weight to the decision of the Hearing Examiner.
- ii. Conditions. The City Council may impose conditions as part of the granting of an appeal or granting of an appeal with modifications to ensure conformance with the criteria under which the application was made.
- iii. Ordinance Resolving Appeal. The City Council shall adopt an ordinance supporting the decision. The ordinance shall contain the following:
 - (1) The decision of the City Council;
 - (2) Any conditions included as part of the decision;
 - (3) Findings of fact and conclusions of law which support its decision on the appeal; and
 - (4) A statement explaining the process to file a Petition for Review of the City Council decision to the Shoreline Hearings Board.
- iv. Required Vote. A vote to grant the appeal or grant the appeal with modifications must be by a majority vote of the membership of the City Council. Any other vote constitutes denial of the appeal.

2. Effect of City Council Decision. The decision of the City Council on a Shoreline Process I application is the final decision of the City, and shall be filed with the state pursuant to LUC 20.25E.150.D.

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Section 3. Section 20.25E.120 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25E.120 Shoreline Process II.

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B. Public Meetings.

The Director may require the applicant to participate in a public meeting to inform citizens about a proposal. When public meetings are required, the

meeting shall be held as early in the review process as possible for shoreline applications. Notice of the public meeting shall be provided in the same manner as required for notice of the application pursuant to LUC 20.25E.100.D. The public meeting notice will be combined with the notice of application whenever possible.

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Section 4. Section 20.25E.140 of the Bellevue Land Use Code is hereby amended to read as follows:

20.25E.140 Legislative nonproject actions.

- A. LUC 20.35.400 through 20.35.450 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.

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Section 5. Section 20.35.140 of the Bellevue Land Use Code is hereby amended to delete subsection (D)(4):

- 4. A statement explaining the process to appeal the decision of the Hearing Examiner to the City Council

Section 6. Section 20.35.355.H of the Bellevue Land Use Code is hereby amended to read as follows:

20.25E.140 City Council decision on the application.

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H. Commencement of Activity.

Subject to LUC 20.35.070, the applicant may commence activity or obtain other required approvals authorized by the Process III decision the day following the effective date of the ordinance approving the project or approving it with modifications. Activity commenced prior to the expiration of the full appeal period, LUC 20.35.070, is at the sole risk of the applicant.

Section 7. 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 8. 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 _____ day of _____, 2023 and signed in authentication of its passage this _____ day of _____, 2023.

(SEAL)

Lynne Robinson, Mayor

Approved as to form:
Kathryn L. Gerla, City Attorney

Matthew McFarland, Assistant City Attorney

Attest:

Charmaine Arredondo, City Clerk

Published _____