

## CITY COUNCIL REGULAR SESSION

Finding of necessity, public hearing and action on 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.

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## EXECUTIVE SUMMARY

At its June 9 through 11, 2022 meeting, Council requested staff to initiate the process for Council to consider amendments to the City's Land Use Code (LUC) that would eliminate appeals to the City Council from Hearing Examiner decisions and recommendations in Process I and Process III land use matters. Ordinance 6673 amends the LUC to eliminate those appeals in chapter 20.35 LUC.

## RECOMMENDATION

Make a finding of necessity, hold the public hearing, and following the public hearing, move to adopt Ordinance No. 6673

## BACKGROUND & ANALYSIS

Chapter 20.35 LUC currently allows appeals to the City Council of Hearing Examiner decisions on Process I land use matters and Hearing Examiner recommendations on Process III matters. Process I matters include applications for Conditional Use Permits, Preliminary Subdivision Approvals, and Planned Unit Developments. Process III matters include applications for Site-specific or Project-Specific Rezones. For Process I matters, the Hearing Examiner holds an evidentiary hearing and then makes a decision on the application. For Process III applications, the Hearing Examiner holds an evidentiary hearing and then makes a recommendation to City Council. The City Council makes the final decision on Process III applications.

Under the current code, the Hearing Examiner's Process I decisions and Process III recommendations may be appealed to the City Council. If they are appealed, Councilmembers are required to act in a quasi-judicial capacity, like judges, rather than in their normal legislative and policy-making role. The Council may not take additional evidence or testimony, but is limited to reviewing the evidence in the record developed by the Hearing Examiner. The Council may only grant an appeal if the person appealing has carried the burden of proof and the Council finds that the Hearing Examiner's decision or recommendation is not supported by material and substantial evidence in the record.

The proposed LUCA would eliminate appeals to the Council of Process I and Process III Hearing Examiner decisions and recommendations. This would optimize the Council's legislative and policy-making role, rather than requiring Councilmembers to act as judges. The LUCA would also encourage meaningful public engagement early, when the evidentiary record is still open for comment, and would promote fair, independent, and efficient land use decision-making, as further described in the Staff Report provided as Attachment A.

The proposed LUCA does not affect parties' rights to seek review by the courts of city decisions in Process I and Process III land use matters. Under the proposed LUCA, the Hearing Examiner's Process I decision can be appealed directly to superior court. As to Process III applications (project- or site-specific rezones), the Council will still retain its role, as required by law, to make the final decision on the application, considering the record developed by, and the recommendation of, the Hearing Examiner. The Council's final decision will remain appealable to superior court.

At its June 9 through 11, 2022 meeting, Council initiated the process to consider this LUCA. Notice of application for this LUCA was published on July 7, 2022, as required by LUC 20.35.415. Notice of the August 1, 2022 public hearing was published on July 14, as required by LUC 20.35.420, along with the attached Staff Report. Staff also provided opportunities for enhanced public engagement, as noted in the Staff Report.

It should be noted that the proposed LUCA only eliminates quasi-judicial appeals to Council of the Hearing Examiner's Process I and III decisions and recommendations that exist in chapter 20.35 LUC. This LUCA does not remove appeals of Hearing Examiner Process I decisions for Shoreline CUPs in LUC 20.25E.100 and .110. Those sections of the Land Use Code are part of the City's Shoreline Management Plan and will require involvement by the State Department of Ecology. Staff anticipates bringing another proposed LUCA to Council at a later time that would remove appeals to Council of Hearing Examiner decisions for Process I Shoreline CUPs.

## POLICY & FISCAL IMPACTS

### Policy Impact

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.

### Fiscal Impact

There is no fiscal impact associated with implementing these changes.

## OPTIONS

1. Make a finding of necessity, hold the public hearing, and following the public hearing, adopt the 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.

2. Make a finding of necessity, hold the public hearing, and following the public hearing, do not adopt the Ordinance and provide alternative direction to staff.

## **ATTACHMENTS**

- A. LUCA Staff Report
- B. LUCA Final Strike-Draft

Proposed Ordinance No. 6673

## **AVAILABLE IN COUNCIL LIBRARY**

N/A