

April 10, 2017

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Initiate amendments to the Land Use Code (LUC) to eliminate quasi-judicial appeals to the City Council.

STAFF CONTACTS

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POLICY ISSUES

This item begins the process to amend Part 20.35 of the LUC to eliminate quasi-judicial appeals to the City Council following Process I decisions and Process III recommendations by the Hearing Examiner.

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.

DIRECTION NEEDED FROM COUNCIL

ACTION

DIRECTION

INFORMATION ONLY

This is Council's first study session initiating amendments to the LUC in order to eliminate quasi-judicial appeals to the City Council. No action is requested tonight. If directed, staff will return to present draft LUC amendments and to schedule a public hearing prior to requesting action.

Staff requests direction from Council regarding whether Council will retain authority to conduct the public hearing on the draft LUC amendments or whether the Planning Commission will conduct the public hearing.

BACKGROUND/ANALYSIS

Process I Land Use matters include applications for Conditional Use Permits (CUP), Shoreline Conditional Use Permits (SCUP), Preliminary Subdivision Approval (Plat), and Planned Unit Developments (PUD). Under Part 20.35 LUC, the Hearing Examiner issues final decisions on Process I Land Use matters, and the Hearing Examiner's final decision is appealable to Council.

Process III Land Use matters include applications for all Rezones and SCUPs, along with all CUPs, Plats, and PUDs proposed within the jurisdiction of the East Bellevue Community Council (EBCC). Under Part 20.35 LUC, the Hearing Examiner issues a recommendation—not a decision—to Council on Process III applications. Council considers the Hearing Examiner's recommendation, but Council issues the final decision on Process III Land Use matters (subject to EBCC approval for CUPs, Plats, and PUDs within its jurisdiction). In addition, the Hearing Examiner's recommendation may be appealed to Council, with the merits of the appeal decided contemporaneously with Council's final decision on the rezone or permit at issue.

Under the current Process III framework, the appeal of the Hearing Examiner's recommendation to Council adds process to a matter that is already in front of the Council for a final decision, and eliminating the appeal to Council would streamline Process III decisions. Moreover, because of state law requirements associated with rezones and community council jurisdiction, the Council's role as the decision-maker in Process III applications for these actions would not change.

Similarly, Hearing Examiner Process I decisions do not require further Council action in the absence of an affirmative appeal to Council. Eliminating Process I appeals to Council would streamline Process I decisions and streamline appeals of the Hearing Examiner's final decision.

When Council hears Process I and Process III Land Use appeals, it acts in a quasi-judicial capacity, which requires Council to adjudicate land use matters similar to a judge. Council must abide by specific rules related to contact with citizens regarding matters that Council will hear on appeal, and Council's ultimate decision is subject to appeal to the Superior Court or, where required under state law, to the State Shoreline Hearings Board. On several occasions, Council has indicated a preference that appeals of Process I decisions and Process III recommendations by the Hearing Examiner should be adjudicated by state courts (or by the State Shoreline Hearings Board, where required by law).

In response to Council's request, staff began drafting amendments to the procedures section of Part 20.35 LUC that eliminate quasi-judicial appeals to the Council. The draft LUC amendments would leave the current five land use processes in place. Although Process I decisions would remain quasi-judicial decisions by the Hearing Examiner, any appeal of the Hearing Examiner's Process I decisions to Council would be eliminated. Instead, the Hearing Examiner's decision would be appealed directly to Superior Court, or, as required by law, directly to the Shoreline Hearings Board.

Likewise, the draft LUC amendments would eliminate appeals to the Council of Process III Hearing Examiner recommendations. Although the amendments would eliminate Process III appeals to Council, they would preserve (1) the Hearing Examiner's role in providing a recommendation to Council, (2) Council's role as the final decision-maker, and (3) the EBCC's role in certain land use matters that fall within its jurisdiction. The Council's final decision would remain appealable to Superior Court, or, as required by law, to the Shoreline Hearings Board.

The action to amend the LUC is subject to the State Environmental Policy Act (SEPA). However, the LUC amendments to the Process I and III appeal procedures would be categorically exempt from SEPA review pursuant to WAC 197-11-800(19) which excludes procedural actions.

Attachment A provides a summary of the differences between the existing and amended Process I and Process III provisions.

ALTERNATIVES

1. Initiate the LUC amendments and retain public hearing authority.
2. Initiate the LUC amendments through the Planning Commission and have the Commission conduct the public hearing.
3. Do not initiate the LUC amendments.

RECOMMENDATION

Alternative 1

ATTACHMENTS

A. Comparison of Process I and Process III Land Use Matters Under Existing LUC And Under LUC Amendments.

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N/A