

July 17, 2017

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Public Hearing on a Land Use Code (LUC) amendment that would remove quasi-judicial appeals to the City Council in Process I and Process III land use matters.

FISCAL IMPACT

Development Services conducts discretionary permit review pursuant to procedures adopted into the LUC. Cost for this service is recovered through a combination of permit fees and a general fund subsidy. Under the proposed LUC amendment, the process to a final land use decision for Process I and Process III land use matters will be streamlined, and the LUC amendment is not expected to result in any new permit review obligations for Development Services that would impact either the rates charged for permit review services or the general fund subsidy.

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POLICY CONSIDERATION

The proposed LUC amendment would streamline the land use process, encourage meaningful public engagement early in the process, and promote fair, independent and efficient land use decision-making. The City of Bellevue has adopted two comprehensive plan policies that speak to the efficiency, consistency and predictability of the permitting process that guide citizen and applicant participation in development review:

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 LUC contains the regulations that staff use to implement these Comprehensive Plan policies. The City Council adopted these regulations, along with the underlying policies, through its legislative (law-making) and long-term planning authority. The proposed LUC amendment is consistent with and supports these Comprehensive Plan policies.

The LUC amendment would also optimize the legislative role of the City Council. The removal of Process I and Process III quasi-judicial appeals to the City Council would allow Council to engage with the public during the permit review process without the appearance of bias corrupting a future quasi-judicial appeal decision. Additionally, objective decision-making by a trained Hearing Examiner promotes efficiency, reliability, and cost-effectiveness in the land use process consistent with the Comprehensive Plan policies adopted by the City Council.

BACKGROUND

Procedural History:

The LUC provides for appeals to the City Council of Hearing Examiner decisions and recommendations on Process I and Process III permit matters. The proposed amendment to the text of the LUC would preserve the Hearing Examiner decision and recommendation provisions and remove quasi-judicial appeals of Hearing Examiner actions to the City Council.

On April 10, the City Council held its first study session regarding the potential LUC amendment. Following discussion, the City Council decided to initiate the LUC amendment and retained authority to conduct the public hearing on the draft LUC amendment.

At a second study session on May 22, staff sought direction from the City Council regarding the draft LUC amendment and presented an outlined scope, timeline and engagement approach for moving the requested work forward. Following discussion, the City Council accepted the proposed process and schedule, and directed staff to set a public hearing on the draft LUC amendment, which was scheduled for July 17.

A detailed description of the LUC amendment proposal is included in Section I of the Staff Report that is included with this Memorandum as Attachment A. A copy of the proposed LUC amendment language is included as an attachment to the Staff Report.

Required Notice and Enhanced Outreach:

On June 29, required notice of the July 17 public hearing before the City Council and availability of the Staff Report was provided via the Seattle Times and the Weekly Permit Bulletin. Notice of application for the proposed LUC amendment was also submitted to the Washington State Department of Commerce (Commerce) pursuant to the Growth Management Act (GMA), chapter 36.70A RCW. Commerce confirmed that there were no comments from state departments on the proposed LUC amendment and that the procedural requirements of the GMA had been met.

In response to public comment and direction from Council, staff enhanced public outreach on this LUC amendment beyond the level of public notice required by the LUC. This enhanced public outreach included creation of a Code News website on the Quasi-Judicial LUCA, which can be viewed at the following link:

<https://development.bellevuewa.gov/codes-and-guidelines/code-news/quasi-judicial-land-use-code-amendment/>

Distribution of notice regarding the LUC amendment was expanded as well. In addition to the notice required by the LUC, notice of the proposed LUC amendment was sent to all individuals on the Energize Eastside mailing list and to individuals who have commented on any Process I or Process III

application that is currently in review.

Further, staff provided a courtesy public briefing to the East Bellevue Community Council (EBCC) on June 6, and the EBCC held a courtesy public hearing to take comments concerning the draft LUC amendment following the briefing. Thereafter, on June 22, staff held a courtesy public meeting to provide additional opportunity for public engagement and participation. The date for the July 17 public hearing was announced during the courtesy public hearing.

More detailed information regarding the required and enhanced outreach undertaken for this LUC amendment is provided in Section III of the attached Staff Report. Themes raised by public comments received between April 10 through July 11 have touched on the timing of the LUC amendment adoption during the summer months, grandfathering and the effective date of any amendment adopted by the City Council, Council's role in the Conditional Use Permit (CUP) process, enhanced public engagement during permit review, and the lack of a Planning Commission role in review of the proposed amendment. A summary of the themes that emerged during the public comment period and the associated staff response is included in Section III of the attached Staff Report.

Questions Raised by Council:

Councilmembers Robertson and Lee raised issues regarding public engagement during the permit review process that tracked the themes staff heard from the public. Specifically, several commenters on the LUC amendment suggested that the City should implement additional notification techniques aimed at helping to ensure that people understand how to engage in the permit review process, and to encourage early participation in the permit review process when the record is open and the ability to influence the outcome of a City decision is the greatest. Councilmember Robertson also asked for information concerning how the City Council will remain "looped in" to projects in permit review so that Council may stay informed of current projects when it adopts or amends LUC regulations and citywide policies pursuant to legislative authority.

Staff have identified several operational changes to the noticing procedures in response to this feedback, and intend to implement these changes regardless of whether the LUC amendment is ultimately adopted by the City Council. These operational changes include:

1. Use of Postcards to Deliver 500-foot Radius Notices. Currently, the Weekly Permit Bulletin is distributed to individuals who are subscribed to receive it. This same Bulletin is used when mailed notice is required to property owners within 500 feet of a proposed project. The Weekly Permit Bulletin includes notices of application and availability of decisions for all projects citywide. An example can be found at the following link:
https://development.bellevuewa.gov/UserFiles/Servers/Server_4779004/File/pdf/Land%20Use/7-6-17-Weekly-Permit-Bulletin.pdf

Commenters noted that they do not believe most people know how to sift through the Bulletin to identify projects that are proposed in their vicinity. To address this issue, staff plans to develop a postcard to notify recipients of a single project, and this postcard will be used for the 500-foot notifications in lieu of sending the entire Bulletin.

2. Expanded Use of Project Fact Sheets. Currently, Development Services (DS) staff prepare a Project Fact Sheet in response to City Council or public requests for summary details about

projects that are going through permit review. An example of a Project Fact Sheet is included with this memorandum as Attachment B.

Staff plans to proactively prepare Project Fact Sheets for all discretionary approvals (such as CUPs, Design Review, and Planned Unit Developments). This information will be linked to the notice of application, and would be available as a roadmap to the project application materials available on-line. The Weekly Permit Bulletins are available to anyone who subscribes, and the public and the City Council can use this tool, along with the Project Fact Sheets, to stay “looped into” the status of projects that are currently in review.

There are currently 1,388 subscribers who receive the Weekly Permit Bulletins, and the list includes Councilmembers, EBCC members, neighborhood leaders, companies, and interested individuals. The information updates available on the websites are also described to Bellevue Essentials attendees, who are encouraged to subscribe to website pages that interest them as a way to stay involved beyond the Essentials training.

3. Interactive Mapping of Project Applications. The DS home page is one of the top 10 most visited sites on the City’s new website. Public comment received during the enhanced outreach period on the proposed Quasi-Judicial LUC amendment underscored that the public uses and relies upon the DS home page for information regarding current projects.

One of the most downloaded documents on the DS website is the Major Projects List, which provides information regarding private projects in Downtown and BelRed. The Major Project List can be found at the following link:

https://development.bellevuewa.gov/UserFiles/Servers/Server_4779004/File/pdf/Development%20Services/lu_MajorProjects.pdf

As part of a future phase of the City’s website upgrade, DS plans to include an interactive map on the website to show the location of permits that are in review citywide. This project is anticipated to be complete in late 2017 or early 2018. The Project Fact Sheets could then also be linked to the map locations, so that the public and the City Council could access additional information about projects that are of interest to them via the interactive map. When the interactive map project is completed, the new website functionality will be promoted through It’s Your City and the Neighborhood newsletters.

In addition to the comments noted above, Councilmember Simas has asked staff to quantify the number of Process I and Process III permit appeals to the City Council. The current permit application processes were adopted in response to the 1995 Regulatory Reform Act, which required all GMA cities to use the permit procedures outlined within Chapter 36.70B RCW - *Local Project Review*. The purpose of the “regulatory reform” enacted by the State Legislature in 1995 was to simplify and integrate the various state land use and environmental regulations. In general, all GMA jurisdictions were required to develop an integrated and consolidated project permit review process that: (1) combined both procedural and substantive environmental review with project permit review, and (2) allowed no more than one open record hearing and not more than one closed record appeal hearing on both the permit and environmental review.

In order to comply with the mandates of the Regulatory Reform Act, the City amended the substantive and procedural requirements of the LUC. Among other changes, the City eliminated the Board of Adjustments, expanded the Hearing Examiner role in permit review, and diminished the role of the City Council in permit review. The City also reduced the number of administrative appeals available under the amended LUC.

In response to the question posed by Councilmember Simas, a summary of the information available from the Hearing Examiner's Office about permit volumes and appeals, since the regulatory reform amendments were adopted in the City of Bellevue in 1997, is provided below:

- Number of Process I and Process III applications appealed to the City Council: 8
- Number applications where the City Council granted the appeal: 1
- Number of applications where the City Council denied the appeal: 4
- Number of appeals the City Council remanded to the Hearing Examiner: 3
- Longest amount of time the City Council spent processing a quasi-judicial appeal: 1 year, 9 mos.
- Shortest amount of time the City Council spent processing a quasi-judicial appeal: 2 mos., 8 days

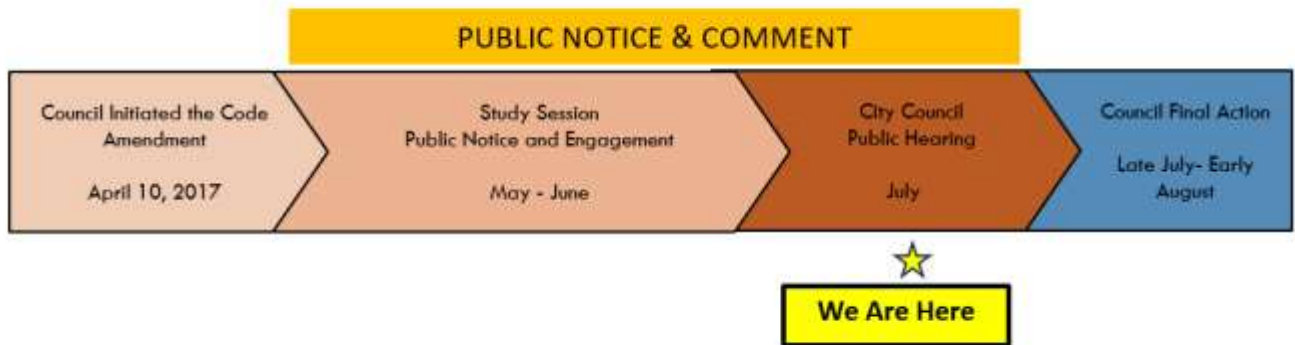
Subsequent to the 1995 regulatory reform, many local jurisdictions throughout the State have increased authority to Hearing Examiners and removed their city councils from quasi-judicial land use appeals—comparable to the LUC amendment currently under consideration by the City Council. The reasons given for the adoption of this quasi-judicial process change include increased city council access to the public during permit review, the avoidance of political influence or pressure in the quasi-judicial land use process, reduced city council exposure to liability, reduced judicial challenges to city land use decisions, and the goal of efficient, predictable, and consistent land use decision-making.

Most recently, on June 20, the City of Redmond removed its city council from Redmond's Type I and Type II quasi-judicial appeal process. Similarly, Everett, Covington, Edmonds, Kirkland, Mercer Island and Shoreline provide that appeals of Hearing Examiner decisions are adjudicated by state courts, rather than the city council. On the other hand, Vancouver's land use process allows quasi-judicial appeals to the city council, and Seattle's Land Use Code provides for quasi-judicial appeals to the city council of certain Hearing Examiner recommendations.

On several occasions, the City 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 Shoreline Hearings Board, where required by law). Under the draft LUC amendment, Council would retain its legislative authority to adopt clear and effective policies and codes that govern all land use permits, but Council would not adjudicate land use appeals as part of the permit review process. The Council-requested LUC amendment is intended to provide a more efficient and reliable land use permitting process, and encourage public participation and citizen engagement to occur early, and to continue throughout, the process with the augmentations that are described above.

Schedule for the Amendment:

On July 17, the City Council will hold a public hearing on the proposed LUC amendment. A schedule of the code amendment process for this quasi-judicial LUC amendment is depicted below. Following the public hearing, staff will ask for Council direction on whether to finalize the ordinance for approval at a future meeting.



EFFECTIVE DATE

N/A

OPTIONS

1. Direct staff to finalize the LUC amendment to the quasi-judicial permit process at a future meeting.
2. Do not direct staff to finalize the LUC amendment to the quasi-judicial permit process and provide alternative direction to staff.

RECOMMENDATION

Option 1

MOTION

N/A

ATTACHMENTS

- A. Staff Report
- B. Sample Project Fact Sheet

AVAILABLE IN COUNCIL DOCUMENT LIBRARY

N/A