

CITY OF BELLEVUE
BELLEVUE PLANNING COMMISSION
STUDY SESSION MINUTES

September 8, 2021
6:30 p.m.

Bellevue City Hall
Virtual Meeting

COMMISSIONERS PRESENT: Chair Malakoutian, Vice Chair Ferris, Commissioners Bhargava, Brown, Goepple, Moolgavkar, Morisseau

COMMISSIONERS ABSENT: None

STAFF PRESENT: Thara Johnson, Department of Community Development; Nick Whipple, Caleb Miller, Department of Development Services; Matt McFarland, City Attorney's Office

COUNCIL LIAISON: Councilmember Barksdale

GUEST SPEAKERS: None

RECORDING SECRETARY: Gerry Lindsay

1. CALL TO ORDER
(6:31 p.m.)

The meeting was called to order at 6:31 p.m. by Chair Malakoutian who presided.

Chair Malakoutian stated that the meeting was being held remotely via zoom in order to comply with the Governor's emergency order concerning the Open Public Meetings Act, which prohibits in-person meetings.

2. ROLL CALL
(6:31 p.m.)

Upon the call of the roll, all Commissioners were present.

Chair Malakoutian took a moment to introduce new Commissioner Goepple. Commissioner Goepple said he has lived in Bellevue since 1999 and has seen the community grow and develop. He said he is a practicing attorney currently working for Terra Power. He said he spent two years living and working in Tokyo and three years in Amsterdam, both of which were formative times for himself and his family. He said he was looking forward to serving as a member of the Commission.

3. APPROVAL OF AGENDA
(6:36 p.m.)

A motion to approve the agenda was made by Vice Chair Ferris. The motion was seconded by Commissioner Goepple and the motion carried unanimously.

4. REPORTS OF CITY COUNCIL, BOARDS AND COMMISSIONS
(6:40 p.m.)

Councilmember Barksdale welcomed the Commissioners back from their summer break and welcomed Commissioner Goepple to the Commission.

Councilmember Barksdale said the Council at its meeting on September 7 discussed the homelessness outreach program. He noted that the two LUCAs to be discussed are certainly on topic.

5. STAFF REPORTS
(6:37 p.m.)

A. Planning Commission Meeting Schedule

Comprehensive Planning Manager Thara Johnson took a few minutes to review the Commission's schedule of upcoming meeting dates and agenda items.

6. ORAL AND WRITTEN COMMUNICATIONS
(6:44 p.m.)

Mr. Greg Eschbacher, 10700 NE 4th Street, Unit 706, said he and his wife have lived in Bellevue for three years and are overwhelmed by the amount of construction that is going on. He referenced a terse email he had sent to the planning department on the topic from the perspective of a resident. He voiced concern that a copy of the email had been included in the Commission's agenda materials. He said he was very concerned about the toxic environment going on in the city about the increasing carbon footprint and the greenhouse effect from all the cars. If the city does not model development and utilize simulations that include variables, it will not be possible to build a city that is undivided. There are currently 36 buildings in less than a one square mile area where there is currently ongoing construction or proposed construction for the coming years.

Ms. Susan Eschbacher, 10700 NE 4th Street, Unit 706, echoed the comments of her husband. She said they live in the heart of Downtown Bellevue and the level of ongoing construction is overwhelming. She voiced concern in regard to the amount of construction and the impact it is having. It is difficult to get out of the building, and parking has become a real issue given that some new buildings do not even have one parking stall for each occupant. The location where Amazon operates its pickup buses on NE 6th Street is filthy and no one seems to be cleaning it up. She questioned who is responsible for keeping the area clean.

Mr. Ryan Murk, 14824 SE 18th Place, with Congregations for the Homeless said he was present both to serve as a resource and to learn more about the issues involved with the two LUCAs. He thanked the Commission and the Council for all they do to make Bellevue a great place to live and work.

Ms. Johnson noted that the comments made by the Eschbachers in their email had been forwarded to the Department of Development Services, the department that oversees land use activities, land use entitlement and permitting. She clarified that the issues outlined are not under the purview of the Planning Commission. She also said the Department of Development Services will be making a presentation to the Council on September 13 that will include an update of ongoing development activity and projects that are in the pipeline.

Ms. Johnson stated that an additional email had been sent to the Commission on the topic of

comments from the public relating to the need for the city to assess and provide some relief for homelessness and the need for affordable housing.

7. PUBLIC HEARING – None
(7:00 p.m.)

8. STUDY SESSION
(7:00 p.m.)

A. Land Use Code Amendment (LUCA) to Address Supportive and Emergency Housing

Planning Manager Nick Whipple said the state legislature-approved HB-1220 became effective on July 25. The bill amended RCW Chapter 35A.21, affecting all code cities, including Bellevue. The bill also amended the Growth Management Act in RCW Chapter 36.70A. The bill requires cities to allow for permanent supportive housing and transitional housing in all land use districts where residential dwellings or hotel uses are allowed, and to allow for emergency housing and indoor emergency shelter uses in all land use districts where hotels are allowed. The Council adopted an Interim Official Control (IOC) ordinance on July 12 via Ordinance 6585; the IOC was designed to quickly respond to HB-1220 and bring the city's land use regulations into immediate compliance with state law. The proposed LUCA will replace the IOC which is set to expire on January 12, 2022 unless it is extended by Council action.

Senior Planner Caleb Miller explained that permanent supportive housing and transitional housing are generally intended to be long-term homes for people experiencing homelessness. Residents are provided with an array of supportive services that are meant to maintain their residency either permanently or to transition them into an independent living situation. The state defines the transition period as lasting up to two years. Residents may have certain physical or behavioral disabilities that may require long-term care in order to permanently maintain housing. Permanent supportive housing and transitional housing both involve homes for people, which makes them distinct from emergency housing and emergency shelter.

Mr. Miller said the proposal is to amend the Land Use Code to add a new definition for supportive housing that will cover both permanent supportive housing and transitional housing. In the LUC, anything over 30 days is considered permanent occupancy. Footnotes are proposed to be added to the land use tables where residential or hotel/motel uses are shown, stating that supportive housing is allowed in those districts subject to any and all required approvals and the underlying density and dimensional standards for the districts. The notes will also refer to specific use requirements for supportive housing.

The new section LUC 20.20.845 will clarify the various structures that can accommodate supportive housing and the permitting path for approval of the uses. For example, a single family home may accommodate permanent supportive housing facilities, but only in land use districts where single family homes are allowed. The same goes for multifamily and hotels and motels. All are subject to the density and dimensional design standards of the underlying land use district. The proposal includes a requirement for including kitchens, either in-room or in common areas, for any hotel/motel conversion to supportive housing to create spaces for long-term living.

A registration requirement for permanent supportive housing is also being proposed. The

registration information would be submitted to the Department of Development Services and would not be made part of an additional approval process. The required information would include contact information for the property owners, property managers, on-site staff and any service providers to be contacted in case of any emergency or code violations. The registration will also include standard operating procedures for the specific facility. The proposal includes a requirement to conduct an informational community meeting within 60 days of submitting a registration. The meeting would need to be publicly noticed.

Mr. Miller said there are three modes of outreach for this LUCA. First are the Process IV requirements, which include public noticing and a public hearing. The staff have also had informal discussions with service providers and supportive housing operators. An online presence has been created that includes general information, staff contacts, a general overview of the LUCA process and the schedule, which includes a second study session on September 22 covering the emergency housing and shelter components; a courtesy public hearing before the East Bellevue Community Council on October 5; and a public hearing before the Commission on October 27. The subsequent Council meeting dates are yet to be scheduled. Adoption of the proposed LUCA is anticipated to occur prior to the IOC expiration date of January 12, 2022.

Commissioner Bhargava asked what the requirement for kitchen facilities would entail. Mr. Miller said the code defines what constitutes a kitchen. Commissioner Bhargava noted that many hotels and motels are not outfitted with kitchens and to retrofit them could be expensive depending on what all is required. Mr. Miller agreed. Assistant City Attorney Matt McFarland said the definition involves more than just a hot plate and includes a stove and a range. Just having a refrigerator and a microwave would not qualify.

Commissioner Goepple noted that the registration process as outlined in the proposal refers to the standard operating procedures for the facility, including the number of expected residents, the types of services to be provided, and management plans to ensure the site remains clean and free of hazards and public nuisances. He asked what would be done in terms of follow-up to make sure the facility is operated consistent with the requirements and standard operating procedures. One or two bad actors could create a lot of adverse effects in terms of community acceptance. Mr. Miller answered that exterior property maintenance issues would be addressed on a complaint basis. If the code compliance team were to receive a complaint, they would have the registration process to fall back on. As for the other requirements, such as what services are provided, the city has little control over. Mr. Whipple confirmed that any nuisance issues would be addressed by the code compliance team on a complaint basis.

Commissioner Brown said it was her understanding that the proposed LUCAs are in fact required in order to be in compliance with state law. Mr. Miller confirmed that. The proposals seek to enshrine state law into the city's LUC.

Commissioner Moolgavkar asked if the staff had been able to model or otherwise determine the number of units of permanent supportive housing the proposal might generate. Mr. Miller said no estimates have been made. He added that there are existing facilities throughout the city and said the proposal has been drafted so as to not disrupt their operations.

Commissioner Morisseau said the proposal is well intended and said she hopes it will help to create more housing options, something that is truly needed. She asked what exactly the registration and public engagement processes were intended to accomplish. Mr. Miller explained that the community engagement element is related to comments received from the public around the site in Redmond proposed for supportive housing by King County. The intent is to keep the

public from being surprised when a project is proposed for their neighborhood. As proposed, the informational meeting with the community would be noticed within a radius of 500 feet. The registration requirement is intended to serve as the trigger for the informational meeting. Commissioner Morisseau pointed out that often where there is a community engagement process, the majority of those who show up are opposed to the proposal. She said she feared a community engagement process could open the door to those who are opposed to permanent supportive housing and transitional housing, thus defeating the desired outcome. It might make sense to include in the community engagement element something about ensuring that those who the city is trying to help will be part of the process and will have their concerns addressed. Mr. Miller clarified that the public meetings would be informational only and would not open the door to blocking the development of such facilities. In fact, such facilities may already be open by the time the public meeting is held. He said staff could look into having potential facility residents attend the meetings. Commissioner Morisseau said the fact that the meetings are intended to be informational only should be made very clear.

Mr. Whipple said the community meeting requirements are attached to other types of land use applications, and the city has seen a lot of success in terms of informing the immediate neighborhood. He reminded the Commissioners that the providers would be the ones hosting the meetings and as such would be representing their clientele. He reiterated that the meetings are not intended to build consensus around the use or the operations plan, but they do offer the opportunity for local residents to express their specific concerns for the provider to take into account.

Commissioner Morisseau stressed that community engagement is a great idea. Having everyone at the table is a good first step.

Answering Commissioner Morisseau's question about the purpose for the registration process, Mr. Miller said the intent is to be able to track where facilities are located and to have the necessary contact information in the event that complaints are received.

Commissioner Morisseau reiterated that while the intentions behind them are good, neither the registration process or the public information meeting as presented is necessary and could in fact impede meeting the desired outcome unless there is a clear defined path to ensure the success of the public engagement process. For example, one way to achieve this objective is to separate the data to aggregate the input from the various groups participating in the public engagement and ensure all the different voices are heard and their issues addressed.

Commissioner Morisseau noted that one person who submitted a written communication was not aware that his submittal would be shared with the public. She asked if it is clearly stated on the Commission's website that any communication will most likely become part of the public record. Ms. Johnson said the website does not currently state that but allowed that it could be updated to make that clear.

Chair Malakoutian asked if there were a scenario under which a provider could come to the city with a proposal for a facility only to be denied by the city. Mr. Miller said there could be cases in which a supportive housing facility would require a conditional use permit given that it is to be located in a structure such as a hotel or motel. The quasi judicial conditional use permit process is fairly long and there is always the potential that they could be denied. If a use is permitted in a district by right, the registration process will not serve as an approval or disapproval action.

Chair Malakoutian asked how staff would go about evaluating a situation in which a homeless

facility is proposed for a site adjacent to something like a daycare center where the daycare provider raises an objection. Mr. Whipple said the current draft does not include any separation requirements relative to sensitive uses. That is not part of the proposal and is beyond what the state law mandates. Every application is evaluated against a set of decision criteria in deciding whether or not a project can be approved. Staff recommends approval where the decision criteria are met. In the case of a conditional use permit, the hearing examiner makes the ultimate decision. Decisions regarding land use applications are not predicated on general public opinion.

B. Land Use Code Amendment (LUCA) to Address Residential Occupancy Limits
(7:34 p.m.)

Mr. Whipple explained that the 2021 state legislature passed bill SB-5235. The bill, which became effective on July 25, amends RCW 35A.21 addressing local authority to regulate the number of occupants in a dwelling unit. Cities are restricted from limiting the number of unrelated persons who may occupy a dwelling unit. Bellevue's current LUC defines "family" as a maximum of four unrelated adults, which conflicts with the new state law. The Council adopted IOC Ordinance 6586 to bring the city's land use regulations into immediate compliance, and the proposed LUCA will replace the IOC.

Mr. Miller said the proposed LUCA will amend the definition of "family" to be one or more persons residing as a single housekeeping unit. By definition, a single housekeeping unit is a group of persons each of which has access to the entire home and which shares the general responsibilities of living in a home. The single housekeeping unit definition currently includes a requirement for all occupants to be on a single lease, and the proposal would remove that restriction as the regulation is not based on health or safety and as such is inconsistent with SB-5235. There are a few specific housing types that have their own occupancy limits in the LUC. The ADUs section references the family definition which is proposed for removal. Boarding houses, which are owner-occupied homes where individual rooms are rented, are currently limited to a total of two rooms rented to a maximum of two persons. The proposed LUCA would revise that to an unlimited number of people but would retain the maximum of two rooms. The revision would not apply to transient housing, so short-term rentals such as Airbnb and VRBO will retain the two-person limit. Rooming houses, which are homes not occupied by the owner in which individual rooms are rented, currently limit the number of occupants to five in four rooms. The proposal would remove the occupancy limits but retain the four room maximum.

Mr. Miller said the public engagement process for the proposal follows the Process IV requirements, which include noticing and a public hearing. An online presence has been established on the city's webpage that includes project information, staff contacts, and the LUCA schedule. The public hearing is tentatively slated for October 13. The necessary Council study session dates and final action date have yet to be determined. Adoption of the LUCA is anticipated to occur prior to the IOC expiration date of January 12, 2022.

Commissioner Moolgavkar asked if she was correct in understanding that under the proposal there would be no limits on the number of persons living in a house so long as they all share all spaces within the house. She also asked if there could be situations in which the health and safety of the occupants could be negatively impacted by overcrowding. Mr. Miller said state law allows for regulating the maximum occupancy load per square foot. There are not, however, any existing building codes for single family residences that sets limits. Building officials are able to step in under extreme circumstances where health and safety issues are observed.

Mr. McFarland said Bellevue has on the books and enforces the Uniform Building Code.

Bellevue is a complaint-based city and investigations would be made should a complaint be filed or if a building official were to see a building deteriorating to the point of causing life or safety problems for the occupants of the building. The code compliance division has the regulatory authority to enforce the health and safety provisions. The state law does not change that. The proposed LUCA allows the complaint-based code compliance system to address such concerns.

Commissioner Bhargava asked if there are any considerations that may also come into play in terms of the number of cars that can be parked at a house rented by a number of unrelated individuals. Mr. Miller said there are existing regulations that address minimum parking requirements for single family homes. Additionally, there are regulations on where cars can be parked, and there is a 24-hour ordinance for on-street parking. The proposed LUCA does not include any changes to the parking standards, or to the city's public nuisance codes.

Commissioner Goepple said the objectives of the state law are good, and said the way the city is proposing to implement it makes sense. He asked about the single lease requirement and suggested that it is not necessarily a regulation of unrelated persons. Having a single lease drives some overall accountability for a group that is inhabiting a location. Even a number of unrelated individuals could still collectively have a single lease for a house. Mr. Miller said the proposal includes revising the family definition to refer to one or more persons within a dwelling operating as a single housekeeping unit. Requiring a single lease for all occupants would act as a regulation of what constitutes a family without being based on any applicable health or safety regulations. Commissioner Goepple said the proposal would allow someone who owns a five-bedroom house to enter into five separate leases with five or more separate individuals without any overarching accountability for what happens in the house. The house would thus become a de facto apartment building. If all occupants of a house were under a single lease, where there is a single bad actor in the group, the others would by virtue of their individual accountability try to keep things from getting messed up for everyone. The single lease issue is not specifically related to family connection. To the point of renting out individual rooms, Mr. Miller said there is code language in place. Rooming houses are not occupied by the owner and the individual rooms are rented out. In that situation, everyone would be on a separate lease. Rooming houses, however, are well regulated and they are only allowed in certain land use districts, primarily multifamily land use districts, and the maximum number of rooms that can be rented is set at four.

Mr. McFarland said the major revision involved in the proposed LUCA is to the definition of "family." The way the current LUC operates is that it regulates the same number of related people differently from how it regulates the same number of unrelated people. That is what the state is telling local jurisdictions not to do. According to the state statute, the number of persons living in a house is to be based on occupant load and generally applicable health and safety provisions rather than the relation of the persons to each other. The cross reference in the definition of family to the single housekeeping unit gives the latter definition quite a bit of weight. The single lease requirement serves as a limitation on who may or may not be considered a family in the city, which under state law is no longer acceptable given the passage of SB-5235. The state legislation allows local jurisdictions to regulate short-term rentals or transient lodging separately.

Commissioner Goepple said he continued to struggle with how the single lease requirement is a burden or a limitation on unrelated persons sharing a house. It is neutral on its face in that it applies equally to related and unrelated individuals living in a location.

Councilmember Barksdale asked if a landlord, under a single lease where there is a bad actor,

could more easily evict everyone from the house instead of just the bad actor. Commissioner Goepple allowed that under a single lease all occupants could be at risk of eviction. By virtue of that, however, the single lease also would bring with it more joint accountability.

Mr. McFarland said in general the Department of Development Services has tried to take what the state law says and apply it. If it looks like a regulation is not based on occupant load, or is not based on generally applicable health and safety requirements, the staff have not been including it. Staff are generally hesitant to see the city get too involved in private landlord-tenant relationships.

Vice Chair Ferris said in her view the ultimate responsibility rests with the property owner. If there is a problem with the property that needs to be addressed, the city will go to the owner, not the individual tenants.

Commissioner Morisseau said the codes the city has in place to address occupancy issues are adequate. The definition of family as it currently exists in city code is not needed. The proposed change is reflective of the values of the city's demographics. Many of the cultures that are part of the city define family in different ways. She asked about the history behind the current definition of family. Mr. McFarland said it really has always been about transient lodging. The state legislation does not apply to short-term rentals or transient lodging, allowing the city to regulate them separately from the question of allowable occupants within a dwelling unit.

There was consensus to direct staff to schedule the public hearing for the Residential Occupancy LUCA.

In reference to the Supportive Housing LUCA, Commissioner Morisseau reiterated her view that the public engagement process relative to registration and a public meeting as presented was not adding support to what is to be accomplished. She asked if the Commission would need to await the public hearing to discuss whether or not it needs to be part of the proposal, or if the Commission could have the conversation ahead of the public hearing. Ms. Johnson allowed that such a conversation could occur at any time, including as part of a study session prior to the public hearing.

Commissioner Morisseau asked if the Commission was open to eliminating the community engagement elements, or add language to clarify the intent of the process and its success.

Vice Chair Ferris said she was comfortable with including both the registration and the public meeting.

Commissioner Moolgavkar suggested that if Commissioner Morisseau wanted to include some language clarifying the intent of the public engagement requirements, staff should draft something for the Commission to review during the next study session. She said she leaned toward being comfortable with requiring both but agreed the points raised by Commissioner Morisseau were important and should be further discussed ahead of the public hearing. The other Commissioners concurred with the proposal. Commissioner Goepple added that so long as the purpose for the public meeting is made clear, it would be a good thing; it is always better to have conversations in the light of day rather than in the mess of social media.

Commissioner Morisseau said she would like to see staff add language highlighting the reasons for the public engagement as well as language assuring that those who will benefit from the proposed LUCA will be part of the process as well.

Chair Malakoutian said his opinion was that both registration and the public meeting should be required.

Mr. Whipple agreed to bring some language to the next meeting.

9. OTHER BUSINESS – None

10. APPROVAL OF MINUTES – None

11. CONTINUED ORAL COMMUNICATIONS

Mr. Greg Eschbacher, 10700 NE 4th Street, Unit 706, said it sounded to him as though the issues in both proposals were set in concrete and cannot be changed, leaving the Commission to only question what the requirements really mean. He asked if in fact the Commission was able to refine the requirements.

Ms. Susan Eschbacher, 10700 NE 4th Street, Unit 706, said she was concerned that Commissioner Morisseau questioned the need to notify the public. Everyone would be better served if the city were open and honest and were to give out the correct information. It appears as though the city is trying to sweep things under the rug.

Ms. Leslie Geller, 15102 SE 43rd Street, said she had listened with interest to the comments and discussion about the public meeting requirement. She said by virtue of the fact that she lives in the Eastgate area where the development of a shelter is under discussion she has very much appreciated the providers Congregations for the Homeless and Plymouth Housing have conducted public meetings. She said she had learned a lot from the meetings and felt that the meetings served to build bridges in the community. She noted her full support for having public meetings when such developments are under consideration, in process or in operation.

Ms. Johnson reiterated that the two proposed LUCAs are intended to bring the city's code into compliance with state law. The Commission has the ability to make recommendations to the code language or ask the staff to make further refinements to the code language. In the end, however, the outcome must be consistent with state law.

Mr. McFarland added that the two LUCAs are somewhat unique in that they are the result of state mandates. Unlike the Commission's work to develop policy for a subarea or in consideration of the city's vision for the future, the focus is entirely on amending the city's land use regulations to comply with the state mandates.

Commissioner Morisseau said she truly values community engagement and has made that very clear during her tenure with the Commission. She said she has encouraged the Commission to go out into the public realm and hold its meetings. Community engagement is very important and it should be part of the first step of the process. She said her issue with the language of the LUCA as presented was that it is not clear as to the intention and purpose with regard to what registration and the public meeting was to accomplish. Engagement done in the past has not necessarily addressed the needs of those the city was trying to help. Staff and the Commission need to listen to the concerns of everyone, and that is why steps should be taken to create a process that welcomes everyone to the table, including those who will benefit from the outcome.

12. EXECUTIVE SESSION – None

13. ADJOURNMENT

A motion to adjourn was made by Commissioner Brown. The motion was seconded by Commissioner Morisseau and the motion carried unanimously.

Chair Malakoutian adjourned the meeting at 8:26 p.m.



10/20/2021

Thara Johnson
Staff to the Planning Commission

Date



10/20/2021

Mohammad Malakoutian
Chair of the Planning Commission

Date