City Council Study Session Report

Vacancy Ordinance

To: Blaine City Council
From: Stacie Pratschner, AICP, RPA / Community Development Services Director
Date: January 22, 2020
Re: Proposed Legislation: Vacancy Ordinance in the Central Business District

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Summary
The Community Development Services Department (CDS or “the Department”) is providing this memorandum in advance of the City Council study session on January 27, 2020. The purpose of this memo is to describe the code amendments that City Council could consider adopting to establish a commercial vacancy ordinance in the Central Business District. The following sections describe the statutory background for vacancy ordinances; provides examples of how these regulations are being applied in other municipalities in Washington; and concludes with a proposed work program to adopt implementing regulations in the Blaine Municipal Code (BMC). Model ordinances from the cities of Everett and Yakima are included as Attachments to this memo.
Background

Economic Development and the Comprehensive Plan
The Growth Management Act (GMA), RCW 36.70A.020, establishes 13 goals that act as the basis for jurisdiction’s comprehensive land use and planning policies. The goal of supporting existing and predicted business activities in Blaine is addressed in the City of Blaine’s Economic Development Element of the 2016 Comprehensive Plan. This Element addresses what types of businesses are located in Blaine; the location and number of employees at those businesses; and what infrastructure and supporting regulations are needed to promote more diverse businesses and employment opportunities.¹

The Economic Development Element identifies six goals, accompanied by proposed policies and actions, to encourage the expansion of businesses that increase vibrancy downtown; diversify the local economy; and spur job creation. Goal 2 of the Economic Development Element specifically encourages the creation and expansion of shops; offices; services; and tourism businesses in the Central Business zoning districts.² One of the implementing Actions for Goal 2 is for the City to coordinate with local arts groups; the Chamber of Commerce, and local property owners to decorate and otherwise enliven vacant storefronts.³

The City Council, in concurrence with Goal 2 of the Economic Development Element of the Comprehensive Plan, has directed the Department to prepare amendments to the Blaine Municipal Code in order to establish a vacancy ordinance for the Central Business District (CBD). CDS sent a letter to property and business owners in the CBD in early January to notify them of these proposed changes (Attachment 1).

Vacant Space in Downtowns
Urban decentralization in the 20th century has resulted in empty storefronts throughout central business districts in towns across America.⁴ In 2006, the United States Conference of Mayors released a report on how to combat the problems caused by vacant properties, citing their negative impact on quality of life and hindrance to cities from achieving their economic development goals. The report identifies a number of best practices to address downtown vacancies, including but not limited to vacant property registration fee programs; beautification programs; and establishment of “anti-blight” teams to identify and enforce vacancy statutes.⁵

¹ Page 3-A of the City of Blaine Comprehensive Plan.
² CB-Market; Town Portal; Waterview; and Garden district (Chapter 17.22 BMC).
³ Page 3-11 of the City of Blaine Comprehensive Plan: Action “G”.
Model Ordinances
A number of cities and towns in Western Washington have developed vacancy ordinances that implement the best practices described by the 2006 Mayors report cited above. These ordinances are authorized through Chapter 35.80 of the Revised Code of Washington (RCW), permitting cities and counties to regulate (and ultimately abate) blighted properties. Blaine’s existing provisions for vacant properties are codified in BMC 8.14.020(F)(2), where a vacant property that has become detrimental to public health and safety is defined as a nuisance.

The following vacancy rule examples from neighboring jurisdictions demonstrate the variety of regulatory tools that the Council may consider implementing in Title 15 - Building Code, and Title 8 – Unfit, Improperly Maintained or Substandard Structures or Premises.

The City of Everett: Everett has adopted Chapter 16.16 (2018) into the city’s Buildings and Construction Code to encourage occupation of commercial space in the Urban Mixed zone. The city requires minimum maintenance of vacant buildings; vacant space registration with an annual fee; and window displays for commercial spaces not occupied for 30 or more days (Attachment 2).

The City of Yakima: Yakima has adopted Chapter 11.48 (2004) into the city’s Building Code to declare vacant buildings a public nuisance. Vacant commercial spaces are subject to annual inspections and additional security to prevent unauthorized entry (Attachment 3).

The City of Seattle: Seattle has established a vacant building inspection and code enforcement program through the Fire Department, with focus on public safety and unlawful occupancy: http://www.seattle.gov/DPD/Publications/CAM/cam601.pdf.

The examples cited above are in cities that have established complimenting codes and programs to incentivize downtown redevelopment (similar to programs that Blaine has established), including but not limited to multi-family tax exemptions; downtown beautification programs; and impact fee deferrals.

Next Steps: Work Program to Establish a Vacancy Ordinance
Proposed modifications to Title 8 and/or Title 15 of the BMC require adoption of an ordinance by the City Council. Updates to these Titles are not changes in development regulations, and are therefore exempt from SEPA and a public hearing before the Planning Commission. A proposal for a registration program with an accompanying fee may require concurrent updates to the Unified Fee Schedule (UFS).

The Department requests guidance and feedback from the Council on whether the Department should proceed with the development of a vacancy ordinance for the City of Blaine.

List of Attachments

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6 “Blight” is defined by the State as a property meeting two of the following three conditions: 1) A structure that has not been legally occupied for over a year; 2) a structure that is a threat to public health and safety; and 3) a structure that has been associated with illegal drug activity during the previous twelve months.
2. Chapter 16.16 EMC: Maintenance of Vacant Commercial Space in the Central Business District
3. Chapter 11.48 YMC: Minimum Standards for Vacant Buildings
January 6, 2020

RE: Notice of Proposed Municipal Code Amendment

Dear Downtown Property Owner,

The purpose of this letter is to inform you that the Blaine City Council has directed the Community Development Services Department (CDS or “the Department”) to prepare amendments to the Blaine Municipal Code (BMC) in order to establish a vacancy ordinance for the Central Business District (Attachment 1).

The purpose of establishing the ordinance is to address the negative aesthetic impact of vacant commercial buildings downtown; and to incentivize continued economic development by encouraging owners of vacant buildings to bring their structures back into productive use. The Department will present a suite of legislative options for the Council’s consideration, including but not limited to general building maintenance requirements; vacant space registration; and registration fees.

CDS anticipates beginning the code amendment process in early 2020, with presentation of draft amendments to the City Council for their approval by the mid-year.

Please contact me at 360-332-8311, extension 3307, and spratschner@cityofblaine.com with any questions.

Thank you,

[Signature]

Stacie Pratschner, AICP, RPA
Community Development Services Director

Cc: The Honorable Mayor Bonnie Onyon
    Blaine City Council
    Michael Jones, MPA / City Manager
Chapter 16.16
MAINTENANCE OF VACANT COMMERCIAL SPACE IN THE CENTRAL BUSINESS DISTRICT

Sections:
16.16.010 Scope.
16.16.020 Administration.
16.16.030 Definitions.
16.16.040 General minimum maintenance requirements.
16.16.050 Vacant commercial space registration.
16.16.060 Window displays for commercial spaces not occupied for thirty days.
16.16.070 Fees for vacant commercial space registration.
16.16.080 Delinquent registration fees—Collection.
16.16.090 Duty to amend registration statement.
16.16.100 Inspections.
16.16.110 Enforcement.
16.16.120 Annual report.

16.16.010 Scope.
The provisions of this chapter apply to all structures in the urban mixed zone (UM zone), unless otherwise stated. All responsible persons (as defined in Section 16.16.030) shall comply with the requirements of this chapter. (Ord. 3617-18 § 7, 2018: Ord. 3127-09 § 1, 2009)

16.16.020 Administration.
This chapter will be administered by the building official, who may adopt administrative rules and regulations consistent with its terms. The building official (and his designee), or code enforcement officers, or both are authorized to enforce this chapter. (Ord. 3127-09 § 2, 2009)

16.16.030 Definitions.
For the purposes of this chapter:

“City” means the city of Everett, its officers, employees, and agents.

“Commercial space” means any portion of a structure in the urban mixed zone that is not intended for residential use.

Occupied. A commercial space is considered occupied if a permitted, nonresidential use is physically located and lawfully operating in the space for at least six consecutive months.
“Responsible person” means any person, firm, association, corporation or any agent thereof owning, leasing, renting or having lawful possession of a structure in the urban mixed zone.

“Urban mixed zone” means the UM zone in the city of Everett as defined by the Everett zoning code, Title 19.

“Vacant commercial space” means any portion of a street-level commercial space that, on or after September 1, 2009, is not occupied and has not been occupied during the preceding ninety days. (Ord. 3617-18 § 8, 2018: Ord. 3127-09 § 3, 2009)

16.16.040 General minimum maintenance requirements.
All responsible persons shall perform the following with respect to each structure they own, lease, rent or lawfully possess:

A. Maintain all exterior surfaces, including but not limited to doors, windows, door and window frames, cornices, porches, trim, balconies, decks, and fences, in good condition.

B. Protect exterior wood surfaces, other than decay-resistant woods, from the elements and decay with paint or other protective covering or treatment. If protection of the surface is compromised, restore adequate protection within a reasonable time; for example, remove peeling, flaking or chipped paint and repaint the compromised surface.

C. Cause all siding and masonry joints and joints between the building envelope and the perimeter of windows, doors, and skylights to be weather-resistant and watertight.

D. Coat all metal surfaces subject to rust or corrosion, except those designed to be stabilized by oxidation, to inhibit rust and corrosion, after first stabilizing any existing rust and corrosion. Remove oxidation stains from exterior surfaces.

E. Maintain all exterior walls free from moss, algae, dirt, grime, holes, breaks, and loose or decaying materials. Weatherproof and properly coat the surface of all exterior walls when required to prevent deterioration.

F. Maintain the roof and flashing of all structures so that they are sound, tight, free of moss, algae or defects that admit rain, attract pests or create a public nuisance. Maintain adequate roof drainage to prevent dampness and deterioration in the walls and inside the structure. Maintain roof drains, gutters, and downspouts in good repair and free from obstructions. (Ord. 3127-09 § 4, 2009)

16.16.050 Vacant commercial space registration.
A. At least one responsible person for each vacant commercial space must register that space with the city within 10 calendar days of the date the space becomes vacant commercial space, as that term is defined in Section 16.16.030, unless:

1. The space is the subject of a current, valid building permit for repair or rehabilitation and the responsible person provides proof, such as receipts, invoices or executed contracts, that the repair or rehabilitation is proceeding without significant delay; or

2. The space meets all applicable codes and regulations that apply to a permitted nonresidential use, and the responsible person is actively attempting to sell, lease, or rent the property (which is evidenced, in part, by appropriate signage); or

3. The property the commercial space is located on is the subject of a land use application for redevelopment for which approval has been granted, but building permits have yet to be issued.
B. A space will be considered to be registered on the date the city receives, on a form provided by the building official and properly completed and signed by a responsible person, the following information:

1. The street address and parcel number of the vacant commercial space;

2. The name, address, and daytime and evening telephone numbers of each responsible person for the vacant commercial space, including any owner or tenant;

3. The period of time the vacant commercial space is expected to remain vacant;

4. Any other information requested by the building official for the administration of this chapter.

C. For every registered vacant commercial space, a responsible person must record a notice that the space is registered with the city as a vacant commercial space with the Snohomish County auditor. The notice must be approved by the building official, and a copy of the recorded notice must be received by the city no later than thirty days from the date the space is registered.

D. A responsible person must post the following notice inside every vacant commercial space so as to be clearly visible to all potential tenants, lessees, renters or buyers upon entering the space but not visible from outside the space:

   This Vacant Commercial Space is registered with the City of Everett.

   This Vacant Commercial Space may not meet all applicable codes and regulations, which may include codes and regulations required to occupy the space for a permitted use in the Urban Mixed Zone.

   The Vacant Commercial Space was registered on [date]

E. A responsible person must renew the registration of each vacant commercial space on or before January 1st of each year that the space remains vacant. A responsible person must submit the renewal application to the city on forms provided by the building official.

F. Upon satisfactory proof to the building official that the vacant commercial space is occupied as defined in Section 16.16.030, the vacant commercial space will be unregistered. Proof of physical occupation may include, but is not limited to, usable furniture, office equipment, retail inventory or other equipment and inventory in the space that are consistent with the unit's intended use, and persons regularly present at and using the space for its intended use. Proof of physical occupancy must also include documentation, which may include, but is not limited to, a current, executed lease agreement, paid utility receipts reflecting payments for six consecutive months from the month the space is occupied, or valid state and local business licenses, federal income tax or city business and occupation tax statements indicating the subject space is the official business address of the person or business claiming occupancy.

G. The determination of the number of vacant commercial spaces a structure contains will be at the reasonable discretion of the building official. (Ord. 3617-18 § 9, 2018; Ord. 3127-09 § 5, 2009)

16.16.060 Window displays for commercial spaces not occupied for thirty days.
When commercial space is unoccupied for more than thirty days, a responsible person must take steps to maintain a vibrant streetscape and avoid adverse impacts on neighborhood character by applying at least one of the following measures to all ground-floor windows that face sidewalks, streets, or public open space:

A. Paint windows with visually appealing scenes depicting or suggesting business or cultural activities;
B. Display works of art or provide other displays of cultural or educational value, using background panels or other methods to screen views from the street of the unoccupied space;

C. Other measures consistent with these examples approved by the building official. (Ord. 3127-09 § 6, 2009)

16.16.070 Fees for vacant commercial space registration.
A. At least one responsible person shall pay an annual registration fee for each registered vacant commercial space. At least one responsible person must pay the fee to the city at the time the space is registered and on January 1st of each year that the space remains vacant. The fee will be based on the duration of the vacancy as determined by the following scale:

1. Two hundred fifty dollars for each space vacant for less than one year;
2. Five hundred dollars for each space vacant for at least one year but less than two years;
3. Seven hundred fifty dollars for each space vacant for at least two years but less than three years;
4. One thousand dollars for each space vacant for at least three years and for each year thereafter until the building is occupied.

B. The fees are intended to defray the costs of administering this section through Section 16.16.120 and may be changed by resolution of the council to meet these costs. (Ord. 3127-09 § 7, 2009)

16.16.080 Delinquent registration fees—Collection.
If a responsible person fails to pay the registration fee by the due date, the city is authorized to take action to collect the registration fee, including filing civil actions or turning the matter over to collection, in which case costs incurred by the city as a result of the collection process will be assessed to the responsible person or responsible persons in addition to the registration fee. (Ord. 3127-09 § 8, 2009)

16.16.090 Duty to amend registration statement.
Responsible persons for any registered vacant commercial space shall advise the building official, in writing, of any changes to the information on the registration form within thirty days of the occurrence of the change. (Ord. 3127-09 § 9, 2009)

16.16.100 Inspections.
The building official (and his designee), or code enforcement officers, or both are authorized to conduct inspections to enforce the provisions of this chapter. (Ord. 3127-09 § 10, 2009)

16.16.110 Enforcement.
A. Enforcement of the provisions of this chapter will be performed in accordance with Chapter 1.20.

B. No responsible person may violate or fail to comply with any provisions of this chapter. Each responsible person commits a separate offense for each and every day they commit, continue or permit a violation of any provision of this chapter.

C. All responsible persons for a commercial space are jointly and severally responsible with respect to that commercial space for compliance with the provisions of this chapter and for any payments that they may be required to make to the city under this chapter. If the commercial space is subject to a lease, the city shall have discretion to determine whether to enforce this chapter against the commercial space owner, the tenant or both of them, but the city shall consider in this determination whether the lease provides that the compliance with this chapter is the responsibility of the commercial space owner or the tenant. (Ord. 3127-09 § 11, 2009)
16.16.120 Annual report.
The building official shall make a report to the city council in January of every odd year on the status of the vacant commercial space registration program. (Ord. 3127-09 § 12, 2009)

The Everett Municipal Code is current through Ordinance 3707-19, passed November 13, 2019.

Disclaimer: The City Clerk's Office has the official version of the Everett Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: https://everettwa.gov/
City Telephone: (425) 257-8700

Code Publishing Company
Chapter 11.48
MINIMUM STANDARDS FOR VACANT BUILDINGS

Sections:
11.48.010 Definition of vacant building.
11.48.020 Public nuisance—Vacant building.
11.48.030 Inspections.
11.48.040 Annual inspections; maintenance standards.
11.48.050 Occupying or renting vacant buildings.
11.48.060 Notice of civil infraction; continuing offense.
11.48.070 Remedies not exclusive.
11.48.080 Severability.

11.48.010 Definition of vacant building.
“Vacant building” as used herein means a building that: 1) is unoccupied, unattended, and is not actively used as a place of residence or business or 2) is frequently open or unsecured so that unauthorized admittance may be gained without damaging any portion of the property. At the discretion of the building official, a portion of a vacant building may be occupied if the occupied portion meets the standards specified in the Yakima Municipal Code and the vacant and closed portion complies with the minimum maintenance standards for vacant buildings specified in this chapter. (Ord. 2004-24 § 1 (part), 2004).

11.48.020 Public nuisance—Vacant building.
Any vacant building that is not maintained in compliance with the minimum standards for vacant buildings imposed by this chapter is deemed and hereby declared to be a public nuisance, which the building official is authorized to abate in accordance with the provisions provided for by applicable law. Such abatement may include, without limitation, securing the building against unauthorized third-party entry as may be necessary in the interests of the health, safety and welfare of the public. In the event that the city secures the building, all costs incurred may be assessed against the owner of the property pursuant to applicable law. (Ord. 2004-24 § 1 (part), 2004).

11.48.030 Inspections.
Upon presentation of proper credentials to the owner or occupant of any vacant building, and with the consent of the owner or occupant, the building official or a representative of the building official may enter at a reasonable time any vacant building, structure, or premises in the city to perform any duty provided for under this chapter. The building official or the building official's representative may also simultaneously conduct inspections of buildings in the manner provided for by law, including as set forth in the Fire Code, the Building Code, or other applicable provision of the Yakima Municipal Code. In any case where entry is denied by the owner or occupant, the building official or the building official's representative shall not enter without a warrant or other appropriate judicial process first having been obtained after reasonable grounds have been shown that a condition exists on the premises that is dangerous or presents a hazard to health or safety, or that the inspection sought is a part of a comprehensive program to have all buildings in the city comply with minimum standards as prescribed by this chapter, or other sufficient grounds under the circumstances then existing. (Ord. 2004-24 § 1 (part), 2004).

11.48.040 Annual inspections; maintenance standards.
Every vacant building shall conform to the standards of this chapter. Each and every owner of a vacant building shall cause his or her property to be inspected not less frequently than annually by a duly licensed and capable private inspector, engineer, or other consultant, who shall, within thirty days after said inspection, submit a written inspection report to the building official verifying that the building is in compliance with this chapter. In the event a vacant building does not conform to these standards or no such report is timely submitted, the building official may order the owner to inspect the property and present satisfactory evidence of compliance with these standards in the form of an inspection report created by a duly licensed and capable private inspector, engineer, or other consultant, verifying that the building is in compliance herewith. The building official or the building official’s representative may utilize expertise of other governmental or private inspectors or agencies, as necessary, to ensure compliance with the following standards.

a. Sanitary Facilities.
   i. All plumbing fixtures connected to an approved water system, sewage system, or natural gas utility system shall be installed in accordance with applicable codes and ordinances and maintained in sound condition and good repair.
   
   ii. All plumbing fixtures connected to an approved water system, sewage system, or natural gas system not installed or maintained in accordance with applicable codes and ordinances shall be removed and the service terminated and the pipes capped in the manner prescribed by applicable codes and ordinances.
b. Electrical System.

i. Every existing outlet and fixture shall be properly connected and wiring and service lines shall be installed and maintained in accordance with applicable codes and ordinances.

ii. Outlets and fixtures not installed or maintained in accordance with applicable codes and ordinances shall be removed and the services terminated in the manner prescribed by applicable codes and ordinances.

c. Safety from Fire.

i. No vacant building or premises on which a vacant building is located shall contain any space used for the storage of flammable liquids or any other materials that could constitute a safety or fire hazard.

ii. Heating facilities or heating equipment in vacant buildings shall be removed or maintained in accordance with applicable codes and ordinances and any fuel supply shall be removed or terminated in accordance with applicable codes and ordinances.

d. All vacant buildings shall be properly weather-protected to prevent deterioration of the exterior and interior of the building. This weather protection shall be approved by the building official and shall include all roof and wall assemblies.

e. All vacant buildings shall be closed to unauthorized entry according to the following standards:

i. All windows or similar openings shall be protected by intact glazing (glass). All windows or similar openings lacking intact glazing (glass), the sills of which are located ten feet or less above grade, stairway, landing, ramp, porch, roof, or other similarly accessible area, shall provide resistance to entry equivalent to or greater than that of a solid sheet of one-half-inch plywood. Any such material used to protect window or similar openings shall be painted in a color matching the existing structure to protect it from weather deterioration, cut to completely cover the opening, and securely fastened by minimum one and one-quarter-inch long sheetrock screws at six inches on center.

ii. Doors and service openings with thresholds located ten feet or less above grade, a stairway, landing, ramp, porch, roof or similarly accessible area, shall provide resistance to entry equivalent to or greater than that of a closed single panel or hollow core door one and three-eighths inches thick equipped with a half-inch throw deadbolt. Exterior doors, if openable, may
be closed from the interior of the building by securing them to the doorframe using minimum one
and one-quarter-inch long sheetrock screws at six inches on center.

iii. There shall be one operable door into each building and into each housing unit. If an
existing door is operable, it may be used and secured with a suitable lock such as a hasp and
padlock or a one-half-inch deadbolt or dead latch. All locks shall be kept locked. When a door
cannot be made operable, a door shall be constructed of three-quarter-inch CDX plywood
painted in a color matching the existing structure to protect it from weather deterioration and shall
be equipped with a lock as described above.

f. All debris, combustible materials, hazardous or noxious vegetation, litter and garbage shall be
removed from vacant buildings and premises on which a vacant building is located and further
accumulation of the same prevented. Further, each and every owner of any vacant building shall
remove or destroy all grass, weeds, shrubs, bushes, trees or vegetation growing or which has grown
and died upon property owned or occupied by such owner, and which are a fire hazard or a menace to
public health, safety and welfare.

g. All vacant buildings shall have plainly visible house numbers or address numbers as required by
the Fire Code or other applicable law. (Ord. 2004-24 § 1 (part), 2004).

11.48.050 Occupying or renting vacant buildings.
After a notice of violation, order or emergency order is issued in accordance with any applicable code
with respect to any vacant building, no one shall use, occupy, rent, or cause, suffer, or allow any
person to use or occupy or rent said vacant building, unless written approval from the building official
has been first obtained. (Ord. 2004-24 § 1 (part), 2004).

11.48.060 Notice of civil infraction; continuing offense.
When the building official, or the building official’s designee, determines that a violation of this chapter
has occurred or is occurring, and is unable to secure voluntary correction, the building official or
designee may issue a notice of civil infraction to the person responsible for the violation. Said notice
shall be in the form prescribed by Chapter 7.80 RCW or applicable Yakima Municipal Code provisions.
The notice of civil infraction shall be prosecuted and heard in the manner required by law as set forth
in Chapter 7.80 RCW or in other applicable provisions of the Yakima Municipal Code. A person is
guilty of a separate offense for each day or any portion thereof in which a violation of any provision of
this chapter is committed, continued, or permitted, and may be cited accordingly. (Ord. 2004-24 § 1
(part), 2004).

11.48.070 Remedies not exclusive.
Nothing herein shall be construed to limit any other remedy available to the city for noncompliance with applicable codes or other law, including, without limitation, the power of condemnation and sale as provided by Chapter 35.80 RCW, or as the same may be hereafter amended. (Ord. 2004-24 § 1 (part), 2004).

11.48.080 Severability.
The provisions of this chapter are declared to be separate and severable, and the invalidity of any section, subsection, provision, clause, or portion of this chapter, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this chapter or the validity of its application to other persons or circumstances. (Ord. 2004-24 § 1 (part), 2004).


Disclaimer: The city clerk’s office has the official version of the Yakima Municipal Code. Users should contact the city clerk’s office for ordinances passed subsequent to the ordinance cited above.

Click here to view recently enacted ordinances not yet codified.

City Website: https://www.yakimawa.gov/
City Telephone: (509) 575-6037

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