



CITY OF BLAINE

COMMUNITY DEVELOPMENT SERVICES DEPARTMENT

435 MARTIN STREET, STE. 3000 • BLAINE, WA • 98230

PHONE: (360) 332-8311 • FAX: (360) 543-9978 • WEBSITE: www.cityofblaine.com

Agenda Item Summary

Study Session - Zoning Text Amendments

Meeting Date: August 12, 2021
Staff Contact: Stacy Clauson

Agenda Item Number: 1

SUMMARY:

Community Development Services (CDS) is providing this memo in advance of the August 12th Planning Commission meeting. This item is a follow-up to the presentation provided by Jon Sitkin and Peter Ruffatto, legal counsel for the City, provided at the July 8th meeting. The Department requests Planning Commission concurrence to schedule this item for public hearing, tentatively scheduled for September 23, 2021.

BACKGROUND

The Community Development Services Department (CDS or “the Department”) has prepared a legislative work program of proposed amendments to the Zoning Code. Blaine Municipal Code (BMC) Chapter 17.04 establishes the process for amendments to the Zoning Code. Unlike Comprehensive Plan and Land Use Map amendment changes, these items can be considered at any time during the year and may be initiated by the following mechanisms:

- Community Development Services Director placement of the proposed amendment(s) on the Planning Commission agenda;
- Planning Commission initiation of amendment by majority vote;
- City Council approval of a Resolution; and
- A citizen-initiated amendment, with submittal of an application and fees.

Through these different mechanisms, CDS has compiled a list of 8 different proposed Zoning Text Amendments, identified in Table 1 below. City Council authorized work on these Zoning Text Amendments under Resolution 1843-21. The **bold** and **shaded items** below indicate the item that CDS would like to review with the Planning Commission at the August 12th meeting. Additionally, staff is proposing related revisions to BMC 17.06 (Project Review and Approval Procedures) and 17.07 (Site Plan Review) to clarify permit processes. Draft code language is provided in Attachment 1.

Table 1: 2021 Zoning Text Amendments (authorized by City Council under Resolution 1843-21)

Item	Applicant	General Description of Amendment	Notes	Schedule
1	City	Periodic update of development regulations for critical areas	State mandated periodic update pursuant to RCW 36.70A.130.	2021 Q1 – 2021 Q4
2	Citizen-Initiated	Revise Manufacturing Subzone B zone to permit live-work units as an accessory use.		2021 Q1 – 2021 Q2
3	City	Revise Highway Commercial, Subzone C zoning district standards.		2021 Q1 – 2021 Q2
4	City	Amend Central Business District standards to eliminate a Conditional Use Permit process for use of public plazas.		2021 Q3 – 2021 Q4
5	City	Amend Title 17 to identify the Hearing Examiner as the appropriate review authority for quasi-judicial land use decisions.	Required to comply with RCW 35A.63.110 (Code cities).	2021 Q2 – 2021 Q3
6	City	Update Sign Code contained in Chapter 17.122 BMC.	Required to respond to the Supreme Court judicial review findings	2021 Q3 – 2021 Q4
7	City	Amend Wireless Facility Regulations contained in BMC 17.106.030.		2021 Q3 – 2021 Q4
8	City	Amend Binding Site Plan provisions contained in Chapter 17.64 BMC	Required to bring the current provisions into consistency with RCW 58.17.035.	2021 Q4 – 2022 Q1

SUMMARY OF PROPOSED TEXT AMENDMENT

Item 4: Amend Central Business District standards to eliminate a Conditional Use Permit process for use of public plazas.

This amendment is found in Section 17.22 of Attachment 1. On June 28, 2021, the City Council adopted Ordinance 21-2961 (Attachment 2) revising Title 12 of the Blaine Municipal Code (BMC) to establish a Plaza Use Agreement and Lease Program regulating commercial use of the H Street, G Street and Martin Street plazas. The Ordinance amended Chapter 12.27 BMC, which governs rights-of-ways and public areas such as the plazas, by creating a new plaza use agreement and an established fee in the City’s Streets Unified Fee Schedule. This new plaza use agreement was intended to replace the Conditional Use Permit process established in BMC 17.22.140. This amendment would memorialize this change in the permit process within Title 17.

Item 5: Amend Title 17 to identify the Hearing Examiner as the appropriate review authority for quasi-judicial land use decisions.

This proposed text amendment has been submitted by Community Development Services. This amendment is required to make the City's planning process for quasi-judicial decisions¹ to be consistent with state law.

The City of Blaine like most Washington cities is classified as a "code city". See Chapter [1.08](#) of the Blaine Municipal Code for more information. Code cities operate under the Optional Municipal Code ([Title 35A RCW](#)). Created in 1967, the Optional Municipal Code provides an alternative to the basic statutory classification system of municipal government. It was designed to provide broad statutory home rule authority in matters of local concern. More information on this system of government is available here: <https://mrsc.org/getdoc/9ffdd05f-965a-4737-b421-ac4f8749b721/City-and-Town-Classification-Overview.aspx>

As it relates to process related to quasi judicial land use decisions and appeals, [RCW 35A.63.110](#) provides code cities, such as the City of Blaine, three alternatives for deciding variances, conditional use permits, and other quasi-judicial and administrative determinations as may be delegated by ordinance:

1. Establish a board of adjustment;
2. Reserve the authority to decide appeals, variances or conditional use permits with the legislative body itself; or
3. Provide for a hearing examiner.

The State legislature has not expressly delegated to a code city the authority to grant a planning commission the authority to conduct a quasi-judicial hearing. Thus, the City is required to amend its processes to comply with State law. The City created a hearing examiner as the alternative to a board of adjustment (see [Chapter 2.58](#) of the Blaine Municipal Code). The hearing examiner currently only hears permit appeals.

Revisions are required to Title 17 to identify the Hearing Examiner as the appropriate review authority for quasi-judicial land use decisions. Certain administrative decisions may be delegated to a departmental decision-maker with an appeal to the hearing examiner.

¹ Planning activity is divided into two categories: legislative and administrative actions. "Legislative actions" express the community's plans and policies and create the rules by which the community is governed articulate. Examples of legislative actions include comprehensive planning, functional plans such as for sewer or water, and development regulations, including zoning and critical areas ordinances. Legislative actions are always taken by city councils and must be expressed in documents officially adopted by the governing body of the particular jurisdiction.

"Administrative actions" enforce or administer the community's plans, policies, and regulations on a case-by-case, site-specific basis. Administrative actions include decisions approving plats or site plans for buildings, approving conditional use permits or variances. Administrative actions apply adopted rules or standards to particular properties or situations. When an administrative action requires a hearing and a decision based on the record, it is considered to be "quasi-judicial." Quasi-judicial actions include approving plats, shoreline permits, special use permits, and related actions.

Attachment 1 contains revisions throughout Title 17 to implement this change in review authority. The following is a summary of these changes:

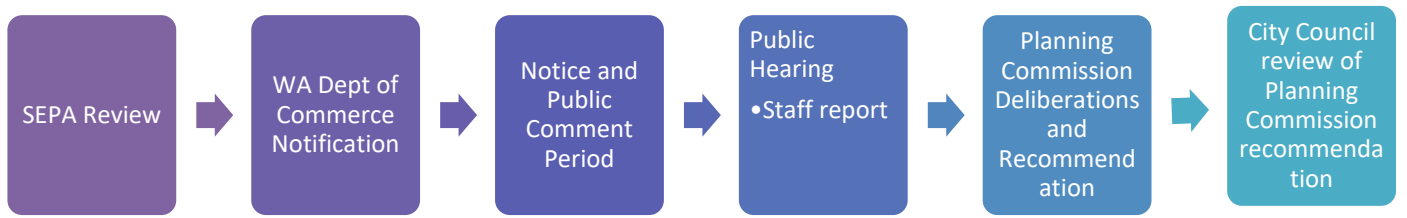
Section	Description
Various	Replace “planning commission” with “hearing examiner”
Various	Replace “Type II-PC” with “Type II-HE”
BMC 17.02.050.C and D	Modify permit review authorities for Hearing Examiner and Planning Commission
BMC 17.06.040	Delete references to Type II-PC permit process
BMC 17.14.210.E	Deletes this provision, which is inconsistent with the City’s enforcement provisions
BMC 17.68.090	Designates the Community Development Director as approving authority for PUD Master Plan

Additionally, staff is proposing some related revisions to BMC 17.06 (Project Review and Approval Procedures) and 17.07 (Site Plan Review) to clarify permit processes.

Section	Description
BMC 17.02.050	Technical review of applications is handled administratively through coordination with City departments and other agencies. This amendment reflects this approach and eliminates the Technical Review Committee (TRC) as an official advisory body.
Table 17.06.A	Inserts a new table to designate the land use decision type for various permits identified in Divisions 1-7 of Title 17. As noted in BMC 17.06.040.F, each Chapter was intended to indicate the land use decision type; however, only Division 4 (Land Division and Major Developments) had done this. This proposed amendment corrects this oversight.
BMC 17.06.180.B	Changes appeal body for appeals of Hearing Examiner to Whatcom County Superior Court
BMC 17.06.190	Modifies appeal filing timeline to be consistent with RCW 36.70C.040(3)
BMC 17.07.040	Technical review of applications is handled administratively through coordination with City departments and other agencies. This amendment reflects this approach and deletes references to the TRC. The amendment also clarifies when a Notice of Decision is issued under the provisions established in Chapter 17.06 BMC.

PROCESS TO AMEND THE ZONING CODE

BMC 17.04 outlines the process for zoning text amendments as follows:



Public Comment: The proposal will receive at least one public hearing and written comment period before the Planning Commission, consistent with the process for zoning text amendments outlined in BMC 17.04.

In making a recommendation on the proposed text amendment, the Planning Commission should consider:

- a. The amendment’s relationship to the goals, objectives and policies of the Blaine comprehensive plan;
- b. The environmental implications as identified by the city SEPA official, if any; and
- c. Any other special provision as set forth in BMC 17.04.080.

SCHEDULE

Table 1 provides a tentative schedule for review of this amendment. Tentatively, a public hearing is scheduled for September 23, 2021.

ACTIVITY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER
Planning Commission Study Session (S)	08/12/2021 (S)			
Commerce Review	08/13/2021 to 10/12/2021			
SEPA Issuance and Appeal	08/13/2021 to 08/27/2021			
Publish Notice of Availability and Planning Commission Public Hearing	Send to newspaper on 9/09/2021: publish on 9/13/2021.			
Transmit Staff Report and Attachments to the Planning Commission		9/17/2021		
Planning Commission Public Hearing (PH)		9/23/2021 (PH)		
Planning Commission Deliberation ²		9/23/2021		
City Council Study Session (S)			10/11/2021 (S)	
Transmit RFCA; Draft ORD; and Amendments to the City Council			10/25/2021	
City Council Deliberations and Potential Adoption			10/25/2021	
Send Notice of Adoption to Commerce			10/25/2021	

² If needed.