



CITY OF BLAINE

COMMUNITY DEVELOPMENT SERVICES DEPARTMENT

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STAFF REPORT and RECOMMENDATION TO PLANNING COMMISSION Type III Legislative Decision – Zoning Text Amendment

To: Planning Commission

From: Stacy Clauson, Project Planner

Date of Report: September 17, 2021

Files: Permit #2021084 – Permit Process Amendments

Hearing Date and Place: Thursday, September 23, 2021 at 6pm
Hearing will take place via videoconferencing.

Introduction

Applicant: City of Blaine, Community Development Services

File No.: 2021084

Site Location: City-wide (No specific location)

Application: Zoning Text Amendment

Review Process: Legislative, Type III Decision: Planning Commission shall hold the public hearing and makes a recommendation to City Council.

Summary of Key Issues: Consistency with the following:

- a. Goals, policies and objectives of the comprehensive plan; and
- b. Compliance with any other special provisions as provided by BMC 17.04.080.

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Summary

The Community Development Services Department (CDS or “the Department”) is providing this memorandum in advance of the Planning Commission meeting scheduled for September 23, 2021 at 6 PM. The meeting will include a public hearing to accept public testimony on the Zoning Text Amendment to amend the Title 17 of the Blaine Municipal Code as follows:

- Designate the Hearing Examiner to hear Appeals, Variances, Conditional Use Permits, and other Quasi-Judicial matters;
- Amend Central Business District standards to eliminate a Conditional Use Permit process for use of public plazas; and
- Revise BMC 17.06 (Project Review and Approval Procedures) and 17.07 (Site Plan Review) to clarify permit processes.

The following sections of this document describe the regulatory background for the yearly amendments; provide a synopsis of the deliberations held by City Council to set the docket; demonstrate the Departments procedural compliance with both State and local regulations for amending city Plans; and make recommendations for the Planning Commissions consideration. **Attachment 1** includes a summary of the proposed changes to Title 17 of the Blaine Municipal Code, and **Attachment 2** includes specific redlines to Title 17.

This report, the previous Planning Commission study session report introducing the proposed Zoning Text Amendment, and the meeting minutes from those study session, are all available at the following city website: <https://www.ci.blaine.wa.us/1064/Title-17---Permit-Process-Amendments>

Background

Regulatory Framework

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, including this proposed amendment. City Council authorized work on these Zoning Text Amendments under Resolution 1843-21.

Findings of Fact

The following sections demonstrate the City’s compliance with the procedural requirements for legislative actions pursuant to local and State requirements:

Compliance with the State Environmental Policy Act:

- The applicant submitted an [environmental checklist](#) for the proposed amendments pursuant to Chapter 197-11 of the WAC and BMC 16.04.090.
- The SEPA official issued a threshold [Determination of Non-Significance \(DNS\)](#) on August 17, 2021. The Threshold Determination was published in the [Bellingham Herald](#) on August 17, 2021.
- The City received correspondence from the Lummi Tribe, indicating that LNTHPO does not wish to comment on this non-project action at this time (Attachment 3).

Conclusion – The proposed amendments satisfy local and State SEPA requirements.

Procedural Compliance with the Growth Management Act (BMC 17.04.090, RCW 36.70A.106 and WAC 365-196-640):

- The City requested review from the Department of Commerce on August 16, 2021.

- Commerce acknowledged receipt of the Notice on August 16, 2021.
- The City must notify the Department of Commerce, at least 60 days in advance, of its intent to adopt comprehensive plan and development regulation amendments.
- Staff will file the ordinance with the Department of Commerce within 10 days of the Councils action.

Conclusion – The proposed code amendment will meet the Growth Management Act requirements.

Public Notice and Comments

- BMC 17.04.060 establishes that Public notification of an open record hearing shall be completed in a manner consistent with the public notification requirements contained in BMC 16.04.120(B). BMC 16.04.120(B) requires notice of the hearing to be published 10 days prior to the hearing, posted at City Hall and mailed persons who have requested notice or agencies with jurisdiction.
- The City published a Notice of Public Hearing on September 7, 2021 in the [Bellingham Herald](#), and posted information on the [City’s website](#) and at City Hall.
- As of the writing of this report, the City has received one public comment (Attachment 4).

Conclusion – The City has met the public notice requirements of BMC 17.04.060 and 16.04.120(B).

Analysis

Policy and Code

The Planning Commission is authorized by BMC 17.04.050.B.5 to recommend whether the amendment should be **approved, approved with modifications or denied** based on an evaluation of the amendment for consistency with the:

- a. Goals, policies and objectives of the comprehensive plan; and
- b. Compliance with any other special provisions as provided by BMC 17.04.080.

Recommendation

The following table analyzes the City’s proposal (Permit #2021084) to revise Title 17 BMC pursuant to the approval criteria for code amendments in BMC 17.04.050.B.4.

BMC 17.04.050.B.4: Approval criteria for Zoning Text Amendments

A. Goals, policies and objectives of the comprehensive plan.

Discussion:

- 1. Designate the Hearing Examiner to hear Appeals, Variances, Conditional Use Permits, and other Quasi-Judicial matters.**
-

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 designate a planning commission with the role of conducting a quasi-judicial hearing. Thus, the City is required to amend its processes to comply with State law.

Cities and counties in Washington State have statutory authority to establish a hearing examiner system. Under a hearing examiner system, a city or county hires or contracts with a hearing examiner to conduct quasi-judicial hearings, usually in place of local bodies such as the planning commission, the board of adjustment, or the city council.

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.

The City has previously created the position of a hearing examiner, which has served as the alternative to a board of adjustment for the hearing of permit appeals (see Chapter 2.58 of the Blaine Municipal Code).

The City must now amend the provisions in BMC Chapter 2.58 and Title 17 so that the hearing examiner will assume all duties that would have been delegated to a board of adjustment under the provisions of [RCW 35A.63.110](#). In addition to appeals, these include:

1. Variances,
2. Conditional use permits, and
3. Other quasi-judicial and administrative determinations, as may be delegated under ordinance.

Under the provisions of #3, Community Development Services is proposing to delegate the Hearing Examiner with the responsibility to hear and decide and/or recommend additional quasi-judicial permits. Under the authority of [RCW 35A.63.170²](#), these can include:

1. Shoreline permits;
2. Subdivisions; and
3. Other types of applications that pertain to development of land or land use. This would include planned unit developments, general binding site plans and other Process II-C applications that are decided upon by the City Council.

The basic purpose of having a hearing examiner conduct these hearings is to have a professionally trained individual, typically an attorney, make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows the Planning Commission, who might otherwise conduct these hearings, to better concentrate on policymaking matters through their work advising the City Council on legislative planning matters. It can also potentially reduce local government liability exposure to a local government.

The delegation of these additional types of applications to a Hearing Examiner has been adopted by many jurisdictions in Western Washington³, including (locally):

1. Ferndale;
2. Bellingham; and
3. Whatcom County.

Analysis: This proposal is consistent with Land Use Goal 5 and Policy 5.1⁴. The Growth Management Act places a strong emphasis on implementation, and the goals in the City of

² RCW 35A.63.170 authorizes a city to use a hearing examiner to perform certain functions that would normally be carried out by a planning agency or planning commission

³ More examples are available here: <https://mrsc.org/Home/Explore-Topics/Planning/Land-Use-Administration/Hearing-Examiner-System.aspx>

⁴ Land Use Goal 5 states: "GOAL 5: Implement the City of Blaine Comprehensive Plan; Whatcom County County-Wide Planning Policies, and the goals of the Washington Growth Management Act."

Blaine’s comprehensive plan cannot be achieved without strong regulatory support. The changes proposed will ensure that the City is processing quasi-judicial applications consistent with state law and best practices adopted by other jurisdictions throughout Western Washington.

2. 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.

Analysis: This Amendment is consistent with Economic Development Goal 1, Policy 1.3 and Action Items B and C⁵. This action will eliminate the now unnecessary Conditional Use Permit process, which has been replaced with a Plaza Use Agreement.

3. Revise BMC 17.06 (Project Review and Approval Procedures) and 17.07 (Site Plan Review) to clarify permit processes.

This set of amendments has several objectives:

- Eliminate the Technical Review Committee and revise the permit process information to reflect how technical review of applications is handled through coordination with City departments and other agencies;
- Insert a new table to designate the land use decision type for various permits identified in Title 17;
- Change the appeal body for appeals of Hearing Examiner decisions; and
- Modify the timeline for appeal of Type II-CC decisions to be consistent with state law.

Land Use Policy 5.1 states: “5.1 City of Blaine land use and environmental regulations should be consistent with adopted City of Blaine Comprehensive Plan Policies, Whatcom County planning policies and applicable state and federal laws. To be consistent with State Growth Management legislation, City of Blaine Comprehensive Plan changes and zoning revisions must be limited to once per year, with the exception of amendments to the capital facilities element which can be amended concurrent with the adoption or amendment of the City’s budget.”

⁵ Economic Development Goal 1, Policy 1.3 states: “The City supports affordable development costs by avoiding or reducing unnecessary permit requirements, costs and delays.”

Economic Development Goal 1, Action B states “City staff should evaluate how permit processes could be streamlined, or where fees and utility connection charges could be reduced without conflict with other adopted community goals.”

Economic Development Goal 1, Acton C states: “City staff should maintain clear, easily-understood information on permits, development requirements and approval processes for business development.”

Analysis: This proposal is consistent with Land Use Goal 5 and Policy 5.1⁴ and Economic Development Goal 1, Policy 1.3 and Action Items B and C⁵. These changes clarify review processes and make provisions consistent with state law.

B. Compliance with any other special provisions as provided by BMC 17.04.080.

Discussion: Under the provisions of BMC 17.04.030, the Community Development Services Director initiated the amendment. The Department prepared a legislative work program of proposed amendments to the Zoning Code, including this item, which has been authorized for review by the City Council under Ordinance 1843-21⁶.

Recommendation: The Planning Commission should consider recommending that the City Council **adopt** the proposed amendments contained in Attachment 2.

Next Steps

The Planning Commission shall accept public testimony and deliberate on the proposed amendments to the Comprehensive Plan. The Department will forward the Commission's recommendations and recorded motion to the City Council in October 2021. The Council must approve the final adoption.

List of Attachments

1. Summary of Text Amendments
2. Draft amendments to Title 17 BMC
3. Comment from Lummi Nation
4. Comment from Kevin Cricchio, AICP, ISA

⁶ Items 4 and 5 as authorize for review under Ordinance 1843-21.