



MEMORANDUM

TO: BELLINGHAM CITY COUNCIL

FROM: KURT NABBefeld, PLANNING AND COMMUNITY DEVELOPMENT

CC: MAYOR SETH FLEETWOOD

SUBJECT: CONSIDERATION OF AN ORDINANCE CREATING AN INCENTIVE PROGRAM FOR INNOVATIVE AFFORDABLE LOW-INCOME HOMEOWNERSHIP PROJECTS

DATE: 2/10/2020

BACKGROUND

The City Council conducted a public hearing and worksession on the proposed ordinance in 2015. During the worksession an alternative proposal was submitted by a councilmember. The alternative created a 2-track system for projects and required substantial staff resources to develop. Due to competing work program items, staff availability and no upcoming projects intended to use the program, the proposal was put on hold.

In 2019 the Planning and Community Development Department was contacted by Kulshan Community Land Trust in hopes of reinstating the proposal as they would like to utilize the program for an upcoming project. This, compiled with the housing crisis facing our community led to the decision to bring back the original ordinance with minor changes, not including a 2-track approach.

PROPOSAL

The ordinance would establish incentives for nonprofit and private development of owner-occupied housing for low-income households with restrictions on resale. Incentives include up to a 50% density increase and other modifications to zoning requirements, including minimum lot size, street frontage, setbacks, parking, lot coverage and useable open space. Housing would have to be affordable to those earning less than 80% of area median income (AMI), with resale restrictions ensuring continued affordability. Projects will also be required to meet design review standards as outlined in the ordinance.

The incentive program was first approved in 2004 and included a sunset clause unless affirmatively renewed by the City Council. The 2004 ordinance expired on December 31, 2014. The 2015 proposal included changes to the original program such as not restricting all housing to permanently affordable housing, thus opening the program to private developers which would agree to a 50-year affordability restriction on resales. This change was intended to stimulate and to encourage greater use of the program. Other 2015 changes include allowing projects with only 75% of the units being affordable, rather than 100%; requiring projects to be within ¼ mile walking distance of a transit route or urban village, design standards, and final decisions moving from City Council to the Hearing Examiner (with appeals to City Council).

2020 AMENDMENTS

Based on discussion with Kulshan CLT and past public comment, staff is recommending three changes to the 2015 ordinance:

- 1) Modify the 75% affordability requirement to 51%. This may further increase the possibility of private developers using the program, which may lead to more affordable housing options overall.
- 2) Eliminate the requirement to be located within ¼ mile walking distance to transit or urban villages. Non-profits are sometimes challenged to find sites within the ¼ mile distance and routes and frequency change, thereby giving no certainty.
- 3) Expand the allowed areas the program can be utilized to include urban village residential transition zones. These residential areas are intended to have more intense development and are closer to services.

Staff recommends the Council pass the ordinance as proposed to ensure the program is readily available for Kulshan CLT's upcoming project and to help stimulate the production of affordable low-income housing.

Attachment 2

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON CREATING AN INCENTIVE PROGRAM FOR INNOVATIVE AFFORDABLE LOW-INCOME HOMEOWNERSHIP PROJECTS IN SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL ZONING DISTRICTS BY ESTABLISHING A NEW CHAPTER IN THE BELLINGHAM MUNICIPAL CODE (BMC) TITLE 20 AND AMENDING BMC CHAPTERS 2.56 AND 21.10.

WHEREAS, in 2004, the Bellingham City Council (Council) approved Ordinance 2004-11-080 which added a new chapter (20.27) to the Bellingham Municipal Code (BMC) creating a demonstration program for innovative permanently affordable homeownership projects; and

WHEREAS, Ordinance 2004-11-080 was set to expire on December 31, 2005 unless affirmatively renewed by Council prior to that date; and

WHEREAS, the Council affirmatively renewed Chapter 20.27 by ordinance five times, with the final renewal (Ordinance 2012-11-049) expiring on December 31, 2014; and

WHEREAS, the City of Bellingham (City) determined that it should adopt a new incentive program for innovative affordable low-income homeownership projects in single-family and multi-family residential zoning districts (Incentive Program) to replace the expired program in BMC Chapter 20.27; and

WHEREAS, on November 5, 2014, the City of Bellingham as lead agency under the procedures of the State Environmental Policy Act issued a Determination of Non-Significance for the proposed Incentive Program; and

WHEREAS, in accordance with the Growth Management Act, the State of Washington Department of Commerce was notified on December 8, 2014 of the City's intent to adopt the amendments to the City's development and process regulations to create the proposed Incentive Program; and

WHEREAS, the Bellingham Planning Commission held a public hearing on January 8, 2015, on the amendments to create the proposed Incentive Program, with appropriate public notice provided; and

WHEREAS, the Planning Commission considered the staff report and comments received and recommended approval of the proposed ordinance; and

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Incentive Program for Affordable Homeownership Ordinance (1)

WHEREAS, the Planning Commission adopted Findings of Fact, Conclusions and Recommendations to the City Council on January 8, 2015; and

WHEREAS, the Bellingham City Council held a public hearing on February 23, 2015 on the amendments to create the Incentive Program, with appropriate public notice provided; and

WHEREAS, the City Council finds that the amendments are appropriate and consistent with the State Growth Management Act and the Bellingham Comprehensive Plan;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. BMC 20.27 is hereby repealed and replaced and a new chapter is added to Title 20 of the BMC to create an Incentive Program for Innovative Affordable Homeownership Projects as follows:

Bellingham Municipal Code Chapter 20.29 -- Incentive Program for Innovative Affordable Home Ownership Projects

20.29.010 Authority and purpose.

A. Authority. The Growth Management Act requires the city to provide housing opportunities for all economic segments of the community. Similarly the city's comprehensive plan encourages revisions to the city's development regulations to increase the supply of affordable housing.

B. Purpose. The purpose of this chapter is to facilitate the construction of innovative owner-occupied affordable homes by organizations or applicants that can demonstrate an ability to finance, manage, and monitor affordable home sales to assure continued affordability. This chapter replaces BMC Chapter 20.27 - Demonstration Program for Innovative Permanently Affordable Homeownership Projects which expired on December 31, 2014.

20.29.020 Affordable homeownership defined.

Affordable homes constructed under this chapter shall meet the following requirements:

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A. Annual Income. Household annual income at initial occupancy is 80 percent or less of the median income (determined by HUD), adjusted by family size, of the Bellingham Standard Metropolitan Statistical Area (SMSA); and

B. Housing Expenses. The monthly expenditures by a household, as described in subsection (A) of this section, for housing including mortgage repayment, insurance, taxes and utilities (water and sewer) shall not exceed 38 percent of the gross household income at the time of purchase and the amount for mortgage shall not exceed 30 percent of gross household income. All other variable living expenses associated with the resident's occupancy shall not be a factor in the calculation of affordability.

C. Counseling. Homebuyers must receive housing counseling prior to purchasing an affordable home. Counseling must be through a program that is reviewed and approved by the City, HUD, Washington State Housing Trust Fund or the Washington State Housing Finance Commission.

20.29.030 Approval requirements.

Innovative affordable homeownership projects are subject to the following eligibility requirements:

A. Project Applicant.

1. The organization or applicant can demonstrate experience in the creation and retention of owner-occupied, resale-restricted affordable, income qualified home-ownership.
2. Notwithstanding the requirement in subsection (1) of this section, an organization or applicant that can demonstrate experience in providing market rate housing and a mission statement of its intent to use that experience toward achieving the goal of providing affordable housing shall be deemed to have met this requirement.
3. The organization can demonstrate the ability to employ restrictive resale covenants, or other acceptable mechanisms, to retain the affordable low-income units to income-qualified buyers as defined by BMC 20.29.020.

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4. The organization can demonstrate an ability and commitment to submit reports to the city documenting compliance with the requirements pursuant to BMC 20.29.050.

B. Single-Family Home Ownership. The project must create no less than ~~75~~51 percent of the dwelling units as affordable low-income single-family residences that are individually owned by their occupants. It must have controls in place, subject to approval by the planning director or his/her designee, to ensure that the residences remain owner-occupied.

C. Guarantee of Affordability. The project must have controls in place, subject to approval by the planning director or his/her designee, to ensure that the required affordable owner-occupied units remain affordable for fifty (50) years from final plat approval, and in accordance with the definition of affordable homeownership in BMC 20.27.020. The controls shall include:

1. Agreements or covenants restricting resale to qualified low-income households through the affordability period which can be enforced by the City; or
2. Other methods approved by the planning director, or his/her designee, to ensure that the project's low-income single-family residences remain affordable in accordance with this chapter.

D. Project Location. Affordable dwelling units developed under this chapter must be located:

1. In a residential single-family or multifamily zone within the city of Bellingham, except within the Lake Whatcom watershed, ~~and/or~~
2. Within ~~one-quarter (1/4) mile walking distance of a Whatcom Transit Authority (WTA) route or Urban Village,~~ an urban village residential transition zone.

E. Design Review. Projects developed under this chapter must comply with the following design standards to protect, maintain, or enhance neighborhood character and compatibility. This is intended to be accomplished with site and building designs that improve the streetscape public realm and sense of security by providing greater opportunity for more eyes on the street and social interaction, and minimizing the

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presence of garages. Where these standards conflict with other provisions in BMC Title 20, these standards shall apply. Modifications to these standards may be considered through subsection (F) of this section provided the alternative designs proposed are consistent with the purpose of this section.

1. Emphasize single story massing elements on front facades by incorporating porches, stoops, balconies, bays and trim work to provide greater visual interest from the fronting street, lane or pedestrian corridor.
2. Employ a change of materials, colors or textures on front facades of individual homes to provide further articulation and additional variety and character.
3. Apply trim details used on the front façade in a consistent manner to all elevations of a building.
4. Each dwelling shall have a covered front porch or stoop with main entry facing a street, lane, or pedestrian corridor.
5. Front porches and stoops shall have no dimension less than 5 feet and shall occupy no less than 30% of the front façade of a building. The longest dimension of a porch or stoop shall be parallel to the fronting street, lane, or pedestrian corridor.
6. Each residence shall include a front swing door (no slider) access to the corresponding front porch or stoop.
7. A walkway shall be provided from the front porch or stoop to the abutting public street, lane or pedestrian corridor.
8. Minimize the impact of the garage on the streetscape or lane by the following:
 - a. Set garages back at least 4' from the front face of the building (excluding front porches and stoops).
 - b. Restrict garage width to no more than 40% of the front façade of a building.
9. Fencing located between the primary building and the street, lane or

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pedestrian corridor is limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or cyclone fencing is not allowed adjacent to a street, lane, or pedestrian corridor.

10. Landscaping.

a. Use planting materials and landscape structures such as trellises, raised beds and fencing adjacent to streets, lanes and pedestrian corridors to unify the overall site design and enhance the public realm.

b. Landscape beds shall include trees and a mix of small, medium and large plantings for a "layered" appearance, except where landscaping standards require a hedge, or an alternative design is approved by the planning and community development director.

F. Request for Regulatory Modification. Project applicants may request modification of city regulatory requirements listed below, provided that the project complies with applicable Washington state laws. Requests for modification must be accompanied by detailed supporting documentation regarding the appropriateness of, and the need for, the modification. Project applicants must meet all other applicable development regulations in the Bellingham Municipal Code pertaining to single-family detached or attached houses. Requests for regulatory modification must accompany the preliminary plat, short plat, binding site plan, or lot line adjustment application and must be noted on submitted site plans.

1. Minimum density. Increased density of up to 50 percent over the otherwise allowable density in the applicable residential zone may be granted to a project;

2. Other Modifications:

- a. Minimum lot size;
- b. Minimum street frontage;
- c. Minimum front, side, and rear yard setbacks;
- d. Minimum parking requirements;
- e. Maximum lot coverage;
- f. Minimum usable open space;

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g. Other regulations to allow demonstration of innovative approaches to affordable home ownership, energy conservation, low-impact development, and stormwater management.

G. Recommendation for Regulatory Modification. The planning and community development director or his/her designee, may issue a recommendation to the hearing examiner for modification of regulatory requirements listed in subsection (F) of this section, for projects applying under this chapter if the planning director or his/her designee, determines that approvals of requested regulatory modifications are necessary to facilitate the construction of as many affordable homes as allowable.

H. Request for Exemption from Impact Fees and Stormwater Fee. Project applicant may request an exemption from impact fees for the affordable low-income units as allowed under applicable sections of the Bellingham Municipal Code

20.29.040 Procedures.

Projects applied for under this chapter shall follow the procedures set forth in Chapter 21.10 BMC.

20.29.050 Reporting requirements.

The owner(s) or developers of a project receiving earned increased density under this chapter must report on or before January 1st of every odd-numbered year, to the city planning director and/or designee regarding compliance of the project with resale and occupancy restrictions. The project application and decision must specify the mechanism for reporting and monitoring compliance. Information shall include:

- A. Total number of units in the project;
- B. Number of units that changed ownership during the past year;
- C. The purchase price of each unit that changed ownership; and
- D. The steps taken by the owner to ensure that each unit that changed ownership was transferred at an affordable price in accordance with BMC 20.29.020.

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Section 2. BMC 2.56.050 B. concerning the powers and jurisdiction of the Hearing Examiner is amended as follows:

B. The decision of the hearing examiner on the following matters which shall be within the jurisdiction of the hearing examiner, notwithstanding any other provision in the Bellingham Municipal Code, shall be final, subject only to judicial challenge:

1. Appeals provided for in BMC 4.74.155 (admission tax) and BMC Title 6 (business taxes, licenses and regulations), except only as specifically provided by this code with respect to cable, utility, and telecommunication franchises under Chapters 6.17 and 6.70 BMC;
2. Appeals of determinations of the parks and recreation director provided for in BMC Title 8 or Chapter 13.40 BMC;
3. Appeals and applications provided for in BMC Title 10 (criminal code);
4. Appeals as provided by BMC 11.38.090 and hearings related to towing and impoundment, pursuant to Chapter 11.18 BMC, subject to appeal as provided by BMC 11.18.040 and 11.18.050;
5. Appeals of determinations and variances by the public works director or other decision-making body or board provided for in BMC Title 13 and Chapter 19.06 BMC (traffic impact fees);
6. Applications for variances and other determinations by the hearing examiner as provided for in BMC Title 13;
7. Appeals of the interpretation and/or decisions of the public works department regarding local improvement districts pursuant to BMC 14.02.150;
8. Appeals from the decisions of the utility hearings board relating to water and sewer services as provided by BMC 15.04.120;
9. Unless otherwise provided by law, appeals as provided in BMC Title 16, including but not limited to appeal decisions assigned to the hearing examiner in Chapter 16.20 BMC, Environmental Procedures;
10. Shoreline conditional use applications; provided, that the procedures for decision and appeal shall be as contained in Chapter 21.10 BMC;

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11. The following matters as provided by BMC Title 18:

- a. Appeals from determinations of the planning director regarding lot line adjustments under Chapter 18.10 BMC, and short subdivisions under Chapter 18.12 BMC including two- to four-lot cluster subdivisions;
- b. Appeals from decisions regarding general binding site plans under BMC 18.24.040;
- c. Applications for two- to four-lot cluster subdivisions with hearing under BMC 18.32.060(B);
- d. Applications for minimum lot size exception under BMC 18.36.020(A)(4)(c);
- e. Variances relating to lot line adjustments and short subdivisions including one- to four-lot cluster subdivisions;

12. Applications for conditional use permits pursuant to Chapter 20.16 BMC, and landmark adaptive use permits and landmark special valuation pursuant to BMC 17.90.070 and 17.90.080, respectively;

13. Applications for variance pursuant to Chapter 20.18 BMC;

14. Appeals from decisions relating to permits, administrative determinations, and interpretations of the planning director provided for in BMC Title 20 and BMC 17.82.030;

15. Applications for co-housing developments pursuant to BMC 20.10.048;

16. Appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of the city's building, residential, existing building, electrical, fire, mechanical, fuel gas, plumbing, or property management codes;

17. Applications for innovative affordable homeownership projects under BMC 20.29.

Section 3. BMC 21.10.040 D. concerning Types of land use decisions, Type III-A Process, is amended as follows:

D. Type III-A. A Type III-A review process is a quasi-judicial review and decision made by the hearing examiner that has no administrative appeal, with the exception

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Incentive Program for Affordable Homeownership Ordinance (9)

that a shoreline conditional use decision may be appealed to the State Shoreline Hearings Board. The following are Type III-A decisions:

1. Co-housing;
2. Conditional use;
3. Nonconforming building reconstruction when over 50 percent destroyed;
4. Nonconforming use expansion, reconstruction when over 50 percent destroyed or change in use;
5. Shoreline conditional use;
6. Preliminary short plat that is not a Type III-B decision and is rounding up the number of lots from one-half but less than three-fourths when dividing the combined area of two or more lots of record by the allowed density;
7. Variance as provided in BMC 18.48.010 for a short plat, lot line adjustment, binding site plan or preliminary plat that is not being reviewed under Process Type III-B;
8. Variance from the land use development code and/or Chapter 16.80 BMC, Lake Whatcom Reservoir Regulatory Provisions;
9. Critical area variance;
10. Cluster short plats of one to four lots without a density bonus if the director requires Process III-A; and
11. Incentive Program for Innovative Affordable Homeownership Projects pursuant to BMC 20.29; and
12. All other decisions specifying a Type III-A process.

Section 4. BMC 21.10.090 A. concerning Summary of process steps by review type, is amended as follows:

- A. BMC 21.10.100 through 21.10.250 describe the process steps listed in Table 21.10.090 as set forth in Exhibit A attached to the ordinance codified in this chapter and included in this section.

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Incentive Program for Affordable Homeownership Ordinance (10)

Table 21.10.090 – Summary of Process Steps by Review Type

	Director Ministerial Decision	Director Decisions	Hearing Examiner Decisions	Hearing Examiner Decisions	City Council Final Plat	City Council or Historic Preservation Commission Quasi-Judicial Decisions	City Council or Historic Preservation Commission Decisions	City Council Legislative	Certificate of Alteration for a Property Listed on the City of Bellingham's Register of Historic Places
	Type I	Type II	Type III-A	Type III-B	Type IV	Type V-A	Type V-B	Type VI	Type VII
Preapplication conference required	See BMC 21.10.170	See BMC 21.10.170	See BMC 21.10.170	See BMC 21.10.170	No	Yes	No	See BMC 21.10.170	No
Preapplication neighborhood meeting	No	Required for planned developments, institutional site plans, general binding site plans and design review	Required for co-housing, <u>incentive program for innovative affordable homeownership projects</u> , conditional use and nonconforming use or building decisions	Yes	No	Yes	No	Required for site-specific neighborhood plan or comprehensive plan amendments, including those with rezones, and for institutional master plans/amendments	No
Determination of complete application process	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes
Notice of application	No	Yes	Yes	Yes	No	Yes	No	No	Yes
Recommendation by board, commission or hearing examiner	No	Required or optional for some permits; see BMC 21.10.110(D)	No	No	No	Yes, planning commission	No	Yes, planning commission	No
Open record predecision hearing	No	No	Yes, hearing examiner	Yes, hearing examiner	No	Yes, planning commission	Yes, historic preservation commission	Yes, planning commission	Yes, historic preservation commission
Decision	Director	Director; shoreline variances must also be approved by	Hearing examiner; shoreline conditional use must also be approved	Hearing examiner	Council	Council at closed record hearing	Historic preservation commission	Council	Historic preservation commission

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3. Industrial or commercial projects.

Section 6. BMC 21.10.170 B. concerning preapplication conference, is amended as follows:

B. Applicability – Land Use Applications. A preapplication conference is required for the following land use applications unless a written waiver is granted by the planning director:

1. Preliminary plat (10 or more lots);
2. General binding site plans;
3. Planned development and institutional site plans;
4. Shoreline substantial development permits, conditional uses and variances;
5. Design review (excluding Type I);
6. Co-housing;
7. Conditional use (excluding bed and breakfast and single-family residential uses that do not exceed the thresholds in subsection (C) of this section);
8. Rezones and site-specific comprehensive plan amendments;
9. Institutional master plans (including essential public facilities reviewed under IMP process);
10. Critical area permit (excluding Type I);
11. Incentive program for innovative affordable homeownership ~~Demonstration housing~~; or
12. Preliminary short plat requiring a critical area permit.

Section 7. The Council agrees with, and hereby adopts the January 8, 2015 Findings of Fact, Conclusions and Recommendations of the Planning Commission, attached hereto as **EXHIBIT 1**, and as amended in Section 1 of this ordinance.

PASSED by the Council this _____ day of _____, 2020

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Incentive Program for Affordable Homeownership Ordinance (13)

Council President

APPROVED by me this _____ day of _____, 2020

Mayor

ATTEST:

Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Published: _____

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Exhibit 1

BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

JANUARY 8, 2015

SUMMARY

Following the public hearing and deliberation on the proposed amendments to the Bellingham Municipal Code (BMC), the Bellingham Planning Commission has determined that the proposed changes comply with and will implement the goals and policies of the Bellingham Comprehensive Plan.

I. FINDINGS OF FACT

1. Proposal Description:

Amendments to Bellingham Municipal Code (BMC) Titles 2, 20 and 21 to provide incentives for owner-occupied housing for low-income households.

2. Background Information/Procedural History:

In 2004, the City Council added a new chapter 20.27 to the Bellingham Municipal Code that created a demonstration program for innovative permanently affordable homeownership projects, and setting forth the criteria for such projects. The ordinance (2004-11-080) was set to expire on December 31, 2005 unless affirmatively renewed by City Council prior to that date.

The ordinance was routinely renewed by City Council since that first adoption. See Ordinance 2004-12-093, 2006-12-111 (two year renewal), 2008-12-108 (two year renewal), 2010-12-063 (two year renewal) and 2012-11-049 (two year renewal). The ordinance will effectively expire on December 31, 2014, prior to consideration of a new ordinance.

3. Public Comment:

To date, no public comment has been received regarding the proposed BMC amendments.

Notice of the Planning Commission hearing was mailed to neighborhood representatives, neighborhood associations, and other parties with an interest in this topic. The notice was also published in the Bellingham Herald. Notices were issued at least 30 days prior to the hearing date.

4. State Environmental Policy Act (SEPA) Determination:

A non-project SEPA determination of Non-Significance was issued by the City of Bellingham on November 5, 2014.

5. Consistency with the Bellingham Comprehensive Plan:

The comprehensive plan identifies the guiding principles and goals for administrative and legislative decisions pertaining to the Bellingham Municipal Code. The principles particularly applicable to the proposed amendments are as follows:

- Density bonuses for well-designed housing.
- Achieve a healthy mix of housing types and prices.
- Provide incentives for affordable housing and where development patterns encourage walking, biking and transit use.

The Planning Commission finds that the proposed BMC amendments are consistent with the Bellingham Comprehensive Plan and help achieve the comprehensive plan goals and policies.

II. CONCLUSION

Based on the staff report and the information presented at the public hearing, the Planning Commission concludes:

1. The proposal complies with, and will implement, the goals and policies of the Bellingham Comprehensive Plan, county-wide planning policies, and the State Growth Management Act.

III. RECOMMENDATION

Based on the findings and conclusions, the Planning Commission recommends that the City Council approve the proposed amendments to BMC Titles 2, 20 and 21 as shown in the draft ordinance attached to the staff report.

ADOPTED this 20th day of January, 2015



Planning Commission Chairperson

ATTEST: 

Recording Secretary

APPROVED AS TO FORM:



City Attorney