Call to Order

Council Standing Committee Meetings:
Open to the public to attend. Note: there is generally no public comment period for Committee sessions. Standing Committee Members receive reports and information, ask questions and, when appropriate, vote on a recommended action for consideration by the full Council at the Regular Meeting. The notice of Committee Meetings identified below also serves as notice of Special Meetings of the City Council at the times identified as Council Members who are not members of the committee routinely attend and participate in the Committee Meetings. Committee Chairs give a report of the Committee Meeting at the Regular Meeting in the evening prior to deliberation and formal vote in the order shown below:

Committee Of The Whole
Michael Lilliquist, Chair
Hannah Stone, Hollie Huthman, Daniel Hammill, Edwin H. "Skip" Williams, Lisa Anderson, Kristina Michele Martens

23776  1. A Briefing on Launching The Bellingham Plan: A 2025 Periodic Update to the Comprehensive Plan  p. 3

23777  2. Consideration of an Amended Conservation Easement and Conservation Easement Assignment Agreement for Hundred Acre Wood with the Chuckanut Community Forest Park District (CCFPD) and the Whatcom Land Trust (WLT)  p. 27
3. **An Ordinance Creating a New Fund to Account for the Construction of the What-Comm Emergency 911 Facility and Amending the 2023-2024 Biennial Budget – Amendment No. 6**

4. **Work Session to Consider an Ordinance Amending the Old Town Overlay District Development Regulations**

5. **Work Session to Consider a Resolution Authorizing the Mayor to Enter Into a Development Agreement Regarding the Redevelopment Located in the Old Town Subarea**

6. **Discussion of Initiative No. 2023-1 to Raise the Minimum Wage**

7. **Discussion of Initiative No. 2023-02 Regarding Economic Displacement Assistance**

8. **A Resolution Affirming that Affordable Housing and Homelessness are a Public Health Crisis**

9. **Approval of the 6/26/2023 City Council Committee and Regular Meeting Minutes**

**Old/New Business**

**Adjournment**

**Agenda Information**

Council Committee and Regular Meeting agendas and agenda packets, which contain the supporting documentation for agenda items, are available to the public Wednesday afternoon prior to the meeting. They are posted at [https://cob.org/meetings](https://cob.org/meetings). Meetings are streamed live at [https://cob.org/btv](https://cob.org/btv) on the internet as they occur.

**Accessibility**

The Council Chambers is fully accessible. Elevator access to the second floor is available at City Hall’s west entrance. Hearing assistance is available, and a receiver may be checked out through the Deputy City Clerk prior to the evening session. For additional accommodations, contact the Legislative Assistant at 778-8200 in advance of the meeting. Thank you.

**Next City Council Committee Meetings: Monday, July 24, 2023**

Deadline to submit material for any public hearing for inclusion in the published agenda packet is 10:00 a.m. on Wednesday prior to the meeting.
Subject: A Briefing on Launching The Bellingham Plan: A 2025 Periodic Update to the Comprehensive Plan

Summary Statement: The next periodic update to the Comprehensive Plan is due to the State by mid-2025. This significant project, known as The Bellingham Plan, will take two years and will require significant community engagement to complete. Staff seeks feedback on the proposed project scope and engagement plan as the project launches this month.


Fiscal Impact: Substantial amount of staff and consultant hours over the next two years. Preliminary budgets have estimates upwards of $300,000.

Funding Source: Department of Commerce grants and General Funds included in the PCDD budget.

Attachments:
1. 1 STAFF MEMO
2. 1A PROJECT SCOPE
3. 1B ENGAGEMENT PLAN
4. 2 THE BELLINGHAM PLAN LAUNCH PRESENTATION

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<td>07/10/2023</td>
<td>Information/Discussion</td>
<td>Elizabeth Erickson, PCDD</td>
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Recommended Motion:

Council Committee:
Committee Of The Whole

Agenda Bill Contact:
Elizabeth Erickson, Planning and Community Development

Reviewed By              Department          Date
Blake G. Lyon             Planning & Community Development 06/30/2023

Council Action:
Matthew T. Stamps         Legal
Seth M. Fleetwood         Executive
07/03/2023
07/05/2023
MEMORANDUM

TO: City of Bellingham City Council
FROM: Elizabeth Erickson, Senior Planner – Planning and Community Development
SUBJECT: Launching The Bellingham Plan: A 2025 Periodic Update to the Comprehensive Plan
DATE: July 10, 2023

Background
The Comprehensive Plan is the City’s guiding community plan, providing policy on a range of topics to guide growth over the next twenty years. Once a decade, the City updates and/or refines this plan. This next major update is due in mid-2025 and provides a key opportunity to intentionally plan for the City’s future. This update will cover many topics. Rather than a technical exercise, it will allow the City to take a step back to evaluate what future to work towards as we grow over time.

Comprehensive planning is required by the State, including several specific requirements that will be addressed in this update. The previous presentation for the City Council given on May 8th describes these requirements and the overarching process for updating the plan. While these requirements define the basic framework of the update, the plan itself includes much more than is required. It sets forward complex topics and often conflicting issues. It brings the priorities to the forefront and creates a framework for moving them forward. As the City’s important community plan guiding difficult decisions across a myriad of topics, it will be known as “The Bellingham Plan” as it goes through its periodic update. This more accessible title works hand-in-hand with staff’s planned open and accessible engagement strategy.

Project Schedule and Scope
The Bellingham Plan will cover a wide range of issues. The policies within the plan will be revised to reflect the updated vision for the City and to address any changed conditions or requirements. A key portion of the update will focus on revisions to the City’s land use map, which guides zoning classifications across the City. This process will be informed by the 2022 Buildable Lands Report, which evaluates growth accommodated from 2016 to 2021 to assess the effectiveness of policies in the current plan. It will also include an existing capacity
analysis, updates to the land use map itself, and a demonstration of the new land use map’s capacity to accommodate the growth planned for the next twenty years (by 2045).

The update to the City’s land use strategy and associated land use map will be achieved through Countywide analysis of several land use alternatives. The report resulting from this analysis will be known as the Environmental Impact Statement (EIS). The City will develop Bellingham’s portion of these alternatives but will be linked to the Countywide process and timeline.

The schedule below shows the overall project phases and lists the high level analysis, policy work, and engagement anticipated for each phase.

Working with the community will be an essential part of defining the precise scope of updates to be made to the existing plan, though some critical topics have already been identified. Exhibit 1 highlights these areas of the scope, including six cross-topic themes that have been selected. This initial scope is based on the following:

1. New legislation at the state level since the last periodic update completed in 2016;
2. Topics that have come up in other conversations with the community and in work across many departments; and
3. Other issues identified by staff that reflect changed needs or desires when looking forward toward the City’s next twenty years.

One of the issues that crosses many of these topics and themes relates to the affordability and attainability of housing that meets the community’s needs. While the housing supply shortages will be a large portion of the scope of this update, housing affordability and choice
issues are also tied inextricably to economic vitality and transportation issues. Affordability is not only about housing cost but is also linked to both income and access. The plan must address housing today’s residents with options that better suit their needs. It also must plan for, accommodate, and potentially influence the migration of households and jobs, many of which may no longer align geographically, given the recent increases in teleworking opportunities.

State Legislation

Legislation passed in recent years at the state level has defined particular elements of the scope. A summary of those bills passed in the most recent legislative session was presented to the City Council by the Planning and Community Development Department Director on June 5th. The most noteworthy of these and past bills with regard to the Comprehensive Plan include the following.

HB 1220 (2021): This bill made significant changes to the portion of the Growth Management Act related to the requirements of the Housing Element. Its most impactful changes for Bellingham’s update include:

- A process for defining 20-year projections for housing needs for all economic segments of the population and distributing them to each county and city;
- Requirements to plan for and accommodate Bellingham's allocated housing needs, including emergency housing types such as shelters (these have not yet been allocated by city, but 62% of Whatcom County’s allocated units fall below 80% of the Area Median Income (AMI) and therefore qualify as affordable housing need); and
- Requirements to identify and address racially disparate impacts of existing housing policies and regulations including displacement and exclusion.

HB 1110 (2023): Often referred to as the “middle housing bill,” HB 1110 has the most significant impact on permitted residential zoning across the state. Amongst other changes, it requires Bellingham, defined as a Tier 2 City (i.e., a city with a population greater than 75,000 people) by the bill, to allow on any lot zoned primarily for residential use:

- At least four units per lot outright;
- At least six units per lot on those lots within one-quarter mile walking distance of a major transit stop (today, this only includes the Fairhaven Amtrak station, but staff will coordinate with WTA on any planned GO line improvements that may fall within this definition); and
- At least six units per lot if two of the units are made affordable to households earning under 80% AMI for ownership or 60% AMI for rental units.
• Requires only administrative design review (no public hearings, except for variances); and
• Development regulations must be based on objective standards.

HB 1181 (2023): This bill focuses on climate change and resilience. Its main impacts on Bellingham’s comprehensive planning include:

• A new requirement for a climate change and resiliency element, a greenhouse gas (GHG) emissions reduction subelement, and a resiliency subelement;
• Requirements to address the impacts of climate change and reduce both GHG emissions and vehicle miles traveled (Bellingham has already adopted a Climate Protection Action Plan that addresses many of these requirements); and
• Requirements to equitably enhance climate resiliency (Whatcom County has adopted a Natural Hazards Mitigation Plan that addresses many of these requirements).

HB 1337 (2023): Focused on limiting barriers to accessory dwelling unit (ADU) development, HB 1337 includes many requirements that are already addressed by the City of Bellingham’s code and policy. An ongoing process to revise the City’s ADU code was last discussed by the City Council on April 24th. While these changes may be covered by upcoming code revisions, the changes will be evaluated alongside other middle housing topics as part of The Bellingham Plan discussions. This bill’s most substantial impacts on Bellingham’s ADU code provisions include:

• Requiring allowances for at least two attached or detached ADUs per lot where single-family homes are permitted;
• Prohibiting a requirement for the property owner to reside on the same lot as an ADU, often referred to as owner-occupancy;
• Prohibiting a maximum size requirement less than 1,000 square feet or height limit less than 24 feet; and
• Prohibiting a more stringent design review process for ADUs than for single family residential structures.

Community Engagement

Engaging with the community will be a critical portion of work on The Bellingham Plan. The project team has developed a detailed Engagement Plan as shown in Exhibit 2. This outlines the goals, strategies, and schedule of engagement. Outreach will focus on working with and hearing from those community members who have traditionally not taken part in City processes. A goal of more representative engagement will guide much of The Bellingham Plan, including strategies such as:
• A Community Workgroup of representative members meeting throughout the process;
• Outreach through community-based organizations;
• A statistically valid survey on housing preferences;
• Budgeting for and encouraging opportunities for communication in community member’s own language and within their community or neighborhood; and
• Offering on-demand (online, in-person, or paper-based options that can be completed as convenient) alternatives to live events or activities.

Engagement with community members will often revolve around active listening and education using both data and personal experience stories. They will also be encouraged to take part in meaningful dialogue both with staff and one another on critical issues. Additionally, approaches such as surveys or interactive activities will be essential ways to understand community sentiment. After each project phase or major milestone, the project team will report back to the community on what has been achieved to date and what comes next. This system will be critical in allowing community members to understand how staff heard their and others’ input and ultimately incorporated it into the update process.

**Next Steps**

Today, the City Council will provide feedback to staff regarding the planned scope, schedule, and engagement plan for the project. The Planning Commission already reviewed these documents and provided feedback to staff, which was incorporated into today’s materials. Staff will incorporate any further changes given by the Council today and move forward with implementing the plan following today’s session.

Phase 1 of the project will commence through approximately the end of the year. During this phase, staff will build a foundation with the community, especially making connections and building relationships to include a broad range of community members for Phase 2 engagement. Additionally, staff will engage with the community to understand vision, values, and priorities to work with throughout the rest of the update. Staff plan to return to the Council at the end of Phase 1 to provide an update. The City Council also requested an education session on the current Comprehensive Plan, so staff may organize this prior to this next touchpoint in preparation for the more in-depth Phase 2 discussions.

**Exhibits**

A. Project Scope
B. Engagement Plan
## The Bellingham Plan
Scope of work for the 2025 Comprehensive Plan Periodic Update

June 2023

Updates to the plan will focus on changes that...

### Build upon what is valued today

- Outdoor recreation and opportunities to explore nature
- Convenient access to friends and family, a variety of activities, services, and more
- Small and local businesses
- Vibrant and unique places
- Mitigation of climate change contributions/GHG emissions
- Connections to Bellingham’s full range of historic periods

### Respond to changed conditions

- Expanded capacity for housing and jobs to meet expected 20-year growth
- Planning for increased telework to jobs based both in Bellingham and elsewhere
- Health resilience and accommodation
- Housing affordable to all income bands (HB 1220), especially those aligned with local employment
- Integrated and comprehensive approach to address gaps in housing and human services
- Approaches to assist vulnerable populations struggling with mental health and addiction issues
- Climate resilience and adaptation (HB 1181)
- A range of housing types to support current and future residents’ housing needs, including a diversification of middle scale housing with larger units (HB 1110, HB 1337)
- Land use investment in planned transit network improvements
- Potential annexation and/or changes to the UGA boundary

### Aspire to a brighter future

- A safe and welcoming environment
- A healthy community, physically and mentally
- Economic vitality, business diversification, and living-wage jobs
- An active community that is informed and engaged on a range of city issues
- Gathering places of varied types and sizes across the city
- An accessible, diverse, equitable, and inclusive community (ADEI)

### Increase the legibility of the plan for a broad range of audiences

- Document simplification and usability improvements
- Links between related topics
- Online interaction in addition to traditional printable format

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Accessibility, Diversity, Equity, & Inclusion (ADEI)  
Climate Mitigation & Resilience  
Economic Vitality  
Housing Options & Affordability  
Public Health & Safety  
Vibrant & Unique Places
Setting the Stage

Comprehensive plans are used by communities to establish a vision for the future and provide a framework for building toward that vision. Bellingham’s document looks forward twenty years and provides guidance for development, capital investments, city programs, and other actions over that timeline. This document provides a framework for staff to follow as they work with the community on a once-a-decade update to the plan.

While an annual process provides a framework for targeted updates to the plan each year, a major update each decade known as the Periodic Update allows the City to respond to changing conditions and needs over time. The City will be working towards the 2025 Periodic Update to its Comprehensive Plan, to be known as “The Bellingham Plan,” over the next two years.

Community engagement is a critical part of the Periodic Update process. Washington’s Growth Management Act (GMA) defines the process, timeline, and requirements for updates and emphasizes the need to engage meaningfully with the community. The City strives to not only meet requirements but to truly engage with the community, collaborating on a plan that will successfully guide the City moving forward.

While part of the update requires technical analysis to be performed by staff and/or consultants, a large portion of the project will rely on bigger-picture planning. Staff will work with the community to understand current values and concerns as well as what they hope for the future. This community feedback will help guide the formation of draft policies and potential map amendments that will be considered by the advisory boards/commissions and ultimately City Council.

Goals of Engagement

The following goals will inform and frame the engagement process throughout the project.

1. Build trust between community members and city staff.
2. Gather broad and representative feedback from a range of community members, including those who live or work in, go to school in, or visit Bellingham.
3. Ensure that groups that have historically been underrepresented in city outreach participate in the planning process.
4. Make the process accessible, understandable and engaging for a broad range of community members.
5. Value community members’ time and respect their input.
7. Understand where general consensus exists. Define what values or experiences are driving this consensus.
8. Define where heightened tensions and disagreement exist. Dive into the details of why each party holds their unique opinion.
9. Strive for understanding and respect, not agreement.
10. Utilize a transparent process that clearly tracks the inputs and outputs of each decision.
Ensuring Equitable Engagement

The goals of engagement for this project include outcomes of equitable outreach and engagement. While staff hope to hear from a broad range of community members and encourage all to participate, certain groups will require additional effort or unique approaches. The intention is to have the range of engaged community members broadly represent the interests and needs of the entire community. This means focusing particularly on those groups that generally do not participate as much as others.

Traditionally, many groups have been under-represented in past planning projects, meaning that a lower percentage has participated than exist in the community as a whole. Exhibit A highlights those groups that will receive focused outreach on this project, particularly those who are traditionally under-represented. Although this plan focuses on engagement with the general public, the project will also engage with public agencies on both technical work and broader engagement efforts. The following approaches will be utilized to focus on these community members with the goal of including a more representative percentage of them in the engagement process:

- Requesting (optional) demographic information from event and survey participants, including basic information regarding age, gender identity, race, income, and neighborhood of residence (or if working in Bellingham but living elsewhere);
- Comparing the demographic information of participants to the percentages present in the community. This does not apply to employees or small business owners, who may not be residents and therefore cannot be compared by percentage to resident demographics;
- Utilizing a variety of opportunities for engagement both in person (at a variety of locations) and remotely accessible;
- Offering both live and on-demand (available on the participant’s schedule) opportunities for providing feedback and engaging with other community members;
- Offering stipends to community-based organizations (CBOs) for organizing outreach and discussion opportunities for under-represented groups;
- Offering stipends to individuals participating in consistent engagement commitments such as the community workgroup;
- Recognize community member’s participation with hospitality at public outreach events;
- Utilizing targeted awareness campaigns such as posting flyers or tabling in areas frequented by these groups;
- Offering presentations or discussions to organizations focusing on serving or working with these groups;
- Focusing social media posts and ads towards groups that traditionally have not participated in planning processes; and
- Providing information in multiple languages, as identified under engagement strategies.

Strategies for Engagement

Throughout the process, a variety of strategies will be used to engage with the community. These generally fall into the following tiered categories of participation. Some approaches may fall into multiple categories, such as if staff mail a flyer (inform) to residents with a survey attached (consult).

Inform – Staff inform the community about the project or future engagement opportunities. This is often used at the beginning of a project to build out an engagement list.
Consult – Staff request feedback about the project. This one-way communication approach is useful for broad, representative engagement from the largest group possible.

Involve – The community engages in two-way communication, discussing the project, providing ideas, and giving feedback.

Collaborate – Community members participate in the project process, providing direct feedback and working with staff and one another to develop recommendations together.

Empower – The community is empowered to make decisions, provide formal recommendations, or otherwise directly impact the project outcome.

The intent for each form of engagement should be clear to participants, defining expectations for that strategy at the start. This ensures that participants’ expectations align with the intended level of engagement for each approach.

The following strategies will be utilized during various phases of the project.

Web Presence – The City will maintain a standard city website with information on formal city processes as well as a link to the Engage Bellingham site, which will be the hub for two-way engagement throughout the project. Social media posts and digital advertisements will be utilized to direct community members to project and event information, sign up for news alerts, or to engage with the project.

Flyers, Newsletters, + Outreach – Staff will work with local businesses, community events, property management companies, and others to get information out to the community about the project and upcoming engagement opportunities. Live events or high foot traffic areas will provide great tabling opportunities, and community members will be able to check Engage Bellingham for future opportunities to connect with staff out in the community. Existing CBOs, non-profits, professional organizations, and others will be important partners in both getting the word out and coordinating events.

Listening Sessions, Presentations, + Discussions – Throughout the project, staff will go out into the community for both city-led events and as invited by community organizations or groups. These events may be in-person, online, or hybrid to allow flexibility in attendance. Throughout the phases of the project, these sessions will shift from an initial focus on listening, to more focused discussion on targeted issues, and ultimately to direct feedback. Presentations may be used as needed to inform the community about the process, but the majority of time will be utilized for staff to hear from the community. Community members will also be encouraged to discuss issues with one another.

On-demand Activities – While live engagement can be beneficial, not all community members will be able to attend specific events. City-led events will include mirrored materials and activities posted on Engage Bellingham. Surveys that are handed out in person may also be mailed to residents and made available online. Additionally, community members will be empowered to
run their own events or discussions, providing information back to staff. Examples of key on-demand activities include:

- A statistically valid housing preference survey to set the stage (Phase 1);
- A visioning and values survey mailed to every household, handed out in person, and available online (Phase 1);
- Targeted surveys and engagement activities on topics identified during Phase 1 engagement (Phase 2);
- “Meeting-in-a-box” style packets for community members to use to host their own engagement events or discussions (Phase 2); and
- Online opportunities to provide feedback on draft updates, reflecting the open houses planned for Phase 3.

Translation + Interpretation – Not all members of the community speak English fluently, so the project team intends to reach and engage with those who may not. In Bellingham, Spanish is by far the most common primary language after English, while many other languages are also spoken first by members of the community. Basic project information, all major surveys, and other significant milestones will be translated into Spanish and will include guidance in a variety of languages regarding how to contact the city for more information, translation, or interpretation. Materials for specific events, such as an event at an international festival or tabling at an ethnic grocer, may be translated into appropriate languages for those groups. Interpreters may also be included for these types of events.

Community Workgroup + Focus Groups – While many of the above approaches will be used to gather basic feedback and hear from the broadest cross section of the community possible, it will also be important to dive deep into certain topics. A Community Workgroup will be set up with a commitment to meet regularly throughout the process. This group will include members of the community that broadly represent the city as a whole and will help staff discuss critical issues, identify successful methods of communication for the public, and generally provide more informed and representative feedback and discussion throughout the project.

Separate from the Community Workgroup, individual stakeholder focus groups will be formed on targeted issues in Phases 2 or 3 of the project. Each will gather only once or twice to tackle a specific issue on which those members have relevant expertise or lived experience.

Report-Backs – A critical part of empowering the community and building relationships with community members is reporting back on how their engagement influenced the process. After each phase of engagement or major engagement activity, staff will summarize what we did, who we reached, what we heard, how it was used, and what comes next.

These strategies will be utilized throughout the process to help define the trajectory of the project, inform key decision points, and refine the plan as it moves forward. While it is unlikely there will be any topic with complete community agreement, this combination of strategies will ensure broad participation and balanced discussion. Not only will all opinions be heard and carefully weighed, but active discussion between opposing viewpoints will be essential at key decision points. This “collaborate” approach will often be used at key decision points, allowing deeper dialogue by bringing disagreeing parties together for meaningful conversation.
June 2023

**Engagement Topics**

The Comprehensive Plan is a broad, long-range planning document that must balance the City’s needs and desires around a myriad of topics. Often, several interests may compete. The Comprehensive Plan needs to define those interests and their potential conflicts clearly. In addition, emphasis on those issues that are most important to the community is critical to prioritizing actions in the future. In a broad sense, the Periodic Update must identify changes to the plan to focus on:

- **Building upon** what is valued by the community;
- **Responding to** changed requirements (such as state mandates) and conditions (such as local issues that have cropped up since the last periodic update); and
- **Aspiring to** a brighter future, setting the framework for actively planning towards a vision for the future.

This means that a combination of reflecting on the past and looking ahead to the future will be needed. The project scope will define the specific items to consider in each of these categories, but it is important that the engagement plan recognizes the need to both reflect and envision.

The early phases of engagement will help further define the topics of most interest to the community, but many themes have already come to the forefront through other City work and engagement with the community. These topics will require both expertise and lived experience as staff engage with the community.

**Engagement Phases**

The planned engagement process is broken out into four phases. These phases are based on several drivers:

1. Start with broad feedback that will help shape the engagement that follows;
2. Build around the Environmental Impact Statement (EIS) process that defines a schedule for developing and analyzing several alternatives for the community’s growth;
3. Allow time for the community to become familiar with draft changes proposed by the project team and provide feedback; and
4. Plan for significant engagement with the City’s boards, commissions, and City Council during the adoption process.

These drivers broadly define the four phases of engagement. Each phase is described in detail below but may be adjusted based on feedback received in early phase(s) of engagement. In particular, engagement activities and strategies will respond to discussions with the community around how best to connect with hard-to-reach or under-represented groups. The topics covered in specific events may be adjusted to meet concerns or interests expressed by the community in previous discussions.
June 2023

The following diagram highlights the anticipated phases of engagement. The timeline for each phase may shift slightly based on engagement opportunities, County timelines, and other unanticipated events. The topics to be covered in each phase may be adjusted or defined based on early community discussions, but they will broadly focus on the following.

**Phase 1: Vision & Foundation**  This phase focuses on setting the stage for the phases to come. Engagement will aim toward two goals:

1. **Gather a robust and diverse set of stakeholders with whom to engage in future phases.** This list-building stage should produce an engaged list of residents, employees, students, and visitors who fully represent the broader Bellingham community. Later phases will continue building upon this list, but those brought in during Phase 1 will likely form the basis for the majority of public participation throughout the project.

2. **Listen to the community’s priorities and garner broad feedback to help support the definition of several possible growth approaches for the next twenty years.** This feedback will focus on filling out the three areas described above under Engagement Topics. It will also develop an understanding of what is working well and what could be improved upon within the topics covered by the existing Comprehensive Plan.

Concurrent with engagement efforts, City and County staff will be working together on growth projections and capacity analysis to inform the development of growth alternatives as inputs for the EIS. As a technical exercise, this will not be a focus for engagement but will need to be summarized in a manner that is understandable to the general public.

**Phase 2: Growth Approach**  This phase focuses on the majority of technical work. Engagement will aim toward three goals:

1. **Educate the community about the issues at play.** Determining the most appropriate approaches to growth requires a deep understanding of the issues at hand. This includes summarizing Phase 1 engagement and how it has been incorporated in potential changes brought forward by staff.
Technical work completed in Phase 1 will also need to be summarized and explained. Finally, general planning concepts and how they relate to one another will need to be described. Often, community values conflict with one another in determining an appropriate approach to growth. Education in Phase 2 will focus on digging into these conflicts so that the community can participate in the selection process in an informed manner.

2. *Gather feedback to help support targeted updates to the plan.* This will include targeted outreach on specific issues that will inform updates to goals or policies within the plan. These issues may relate to the growth alternatives also being discussed in Phase 2, but they will also address topics that span all potential approaches to growth. For instance, Phase 2 will require feedback on ways to address resilience to climate change impacts. These policy updates will apply to all growth alternatives. While topics will be added to and further fleshed out for this Phase’s scope following Phase 1 engagement, the following themes will guide discussion.

3. *Consider the potential impacts of various approaches to growing as a community.* These approaches will reflect the elements of the growth alternatives developed at the end of Phase 1. During Phase 2, these alternatives will be undergoing analysis through the EIS. The EIS findings will be wrapped into the final stages of Phase 2 discussions. A preferred growth alternative will be selected based on this engagement and the related discussions with boards, commissions, and the City Council.

While working with the community on the above goals, staff will be developing draft targeted updates to the plan throughout Phase 2. These updates will reflect both technical work, such as incorporating new growth projections and housing needs analysis, and updates reflecting community needs, such as those identified in working with the community in Phase 1. By the end of Phase 2, an initial draft update will be developed that reflects both the preferred growth alternative and any other areas determined for changes in the plan.

**Phase 3: Draft Review** This phase allows the community to reflect on an initial draft of targeted changes being proposed to the plan. Engagement will aim toward two goals:

1. *Familiarize the community with the proposed changes, relevant issues, the work done to date, and how that engagement was wrapped into the draft changes.* Reports from Phase 2 will continue to be utilized in Phase 3 to explain complicated concepts and track community feedback through the proposed changes.

2. *Gather feedback regarding the proposed changes.* This phase is an important way to respond to what was heard in previous phases and ensure that it reflects the communities needs and desires. While not all community members will agree, this phase will allow them to reflect on what others said throughout the process and how it was wrapped into the changes. Staff will then be able to refine the draft changes into a final draft to be brought through the legislative process in Phase 4.

Phase 3 will bleed into Phase 4, as the legislative process also focuses on reviewing the draft plan and includes a recommendation from Planning Commission.

**Phase 4: Legislative Process** This phase includes less targeted community engagement than prior phases but focuses instead on representing community sentiment to decision-makers throughout the legislative process. Reports from each of the prior phases of engagement will be utilized to explain why changes
are suggested throughout the plan. Additionally, the community will be welcomed to participate in public comment opportunities as defined by the **Type VI process**. Engagement will focus on informing stakeholders of these opportunities and educating them on how engagement has been incorporated in the plan updates to date.

**Staffing Strategy**

The project team includes a diverse array of staff focused on implementing various parts of the project. They generally fall into the following categories.

1. **The Core Team**: Four staff members within the long-range planning group in the Planning and Community Development Department have been identified as the central project team members. This group may be augmented by additional staff as the project progresses. This team will organize outreach events and activities, develop public-facing materials, staff engagement events, and coordinate all proposed updates to the plan. They will also manage any consultants that may be utilized for the project to focus on equity, public-facing graphics and documents, survey design and delivery, meeting facilitation, or other engagement foci.

2. **Primary Subject Matter Experts (SMEs)**: Key staff members across all departments have been identified as point people for various topics of the plan. These staff members will act as connections to the rest of their workgroup or department. Additionally, they will help connect the project to community members or organizations for engagement efforts, staff events relevant to their areas of expertise, and provide feedback on the project as specific plan amendments are drafted by the Core Team.

3. **Additional SMEs**: Additional staff members across the City will be pulled in on an as-needed basis to provide expertise, lessons-learned, or assistance on targeted efforts. These staff will generally not work with the public on engagement events or activities unless there are clear synergies with their typical duties.

**Contact Information**

A large, cross-departmental team with representatives across the organization is collaborating on this project. A project email and phone number have been set up for efficient directing of inquiries.

TheBellinghamPlan@cob.org
(360) 778-8310
Exhibit A: Stakeholder groups for focused project outreach

<table>
<thead>
<tr>
<th>Traditionally under-represented community members</th>
<th>Other community members with unique experiences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults utilizing services</td>
<td>Bikers &amp; micro-mobility users</td>
</tr>
<tr>
<td>BIPOC community members</td>
<td>Residents in areas with increased change</td>
</tr>
<tr>
<td>Employees who may live outside the city</td>
<td>such as those within or adjacent to UVs</td>
</tr>
<tr>
<td>Immigrants and others whose primary language is not English</td>
<td>Residents in areas with limited access to basic needs</td>
</tr>
<tr>
<td>Low-income households (Owners and renters)</td>
<td>Residents looking for housing</td>
</tr>
<tr>
<td>Low-income seniors on fixed incomes</td>
<td>Residents of existing middle housing developments</td>
</tr>
<tr>
<td>Mobility-impaired residents</td>
<td>Residents representing array of neighborhood types, such as through neighborhood associations and community spaces</td>
</tr>
<tr>
<td>Renters</td>
<td>Seniors</td>
</tr>
<tr>
<td>Students and youth (aged 14-25)</td>
<td>Single-member households</td>
</tr>
<tr>
<td>Those who have experienced/are experiencing homelessness</td>
<td>Transit users</td>
</tr>
<tr>
<td>Traditionally marginalized community members such as those who are disabled and those who identify on the LGBTQ+ spectrum</td>
<td>Veterans</td>
</tr>
<tr>
<td>Tribal members</td>
<td></td>
</tr>
<tr>
<td>Youth utilizing services</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Community and activism organizations</th>
<th>Professional organizations and businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art organizations</td>
<td>Architects, Developers, Builders (including their professional organizations)</td>
</tr>
<tr>
<td>Climate Advocacy organizations</td>
<td>Businesses located in existing mixed-use nodes or other areas with increased recent changes</td>
</tr>
<tr>
<td>Community-oriented Organizations, such as those focused on particular geographic, ethnic, or topical groups</td>
<td>Designers/builders of middle-scale housing</td>
</tr>
<tr>
<td>Environmental Advocacy organizations</td>
<td>Health providers</td>
</tr>
<tr>
<td>History organizations such as museums</td>
<td>Industrial business owners and organizations</td>
</tr>
<tr>
<td>Organizations that provide services to the community</td>
<td>Large employers</td>
</tr>
<tr>
<td>Those who work with the unhoused</td>
<td>Manufacturers</td>
</tr>
<tr>
<td>Transportation-related Advocacy</td>
<td>Realtors</td>
</tr>
<tr>
<td>organizations</td>
<td>Small business owners</td>
</tr>
<tr>
<td></td>
<td>Sustainability leadership within both public and private organizations</td>
</tr>
<tr>
<td></td>
<td>Tourism-based organizations</td>
</tr>
<tr>
<td></td>
<td>Workforce or employment groups focused on the local economy</td>
</tr>
</tbody>
</table>
Launching The Bellingham Plan
July 10, 2023

Agenda
• Comprehensive Plan Periodic Update Process
• Project Scope
• Project Schedule
• Engagement Plan
• Next Steps
Bellingham’s Plan

- Land Use
- Community Design
- Housing
- Transportation
- Economic Development
- Environment
- Parks, Recreation & Open Space*
- Capital Facilities and Utilities

Project Team

- Consultants (Visual communications & engagement, Research/data, policy assistance, etc)
- Interdepartmental Team Subject Matter Experts (SMEs) (Most departments)
- City/County Planner Group (Planners from all cities in Whatcom County and from the County)
- Staff
- Local Community Based Organizations
- Project Team
- Project Core Team (PCDD)
Plan Implementation

- Development regulations (especially zoning)
- Functional plans (shorter term plans, often actions)
- Capital investments and programming

Public Input

Broad public engagement about:

- **Challenges** facing the City/individuals
- **Strengths** that people would like to see more of/keep
- **Prioritization** of issues
- **Big goals** for the City’s future
Comprehensive Planning in Action

For example: Comprehensive Plan, Environment

**Goal EV-8:** Reduce contributions to climate change.

**Policy EV-46:** Promote energy efficiency in both municipal buildings and in buildings throughout the community.

**Climate Protection Action Plan**

**Action:** Federal Building retrofits (energy-efficiency upgrades to 1913 municipal building)

---

Project Scope

**BUILD UPON** what the community values most

**RESPOND** to changed

- Requirements
- Conditions

**ASPIRE** to a brighter future
Project Themes

ADEI
Climate
Economy
Housing
Public Health and Safety
Placemaking

Schedule Overview: Policies

2023
July Launch
1 Vision & Foundation

2024
2 Growth Approach

2025
3 Draft Review
4 Legislative Process
Q2 Adoption

- 23 -
Schedule Overview: Land Use Alternatives

2023
July Launch
Vision & Foundation

2024
Growth Approach
1. Sort into growth alternatives
2. Select growth alternative
2. Draft policies

2025
Draft Review
3. Review & Adjust

Legislative Process
4. Amend & Adopt

Engagement Goals
- Build trust
- Work with all community members, especially under-represented groups
- Make engaging easy for everyone
- Respect everyone’s time and input
- Collaborate on difficult topics
- Be transparent
- Coordinate with nearby cities, tribes, and Whatcom County
**Engagement Approaches**

- Web Presence
- Flyers, Newsletters, & Outreach
- Listening Sessions, Presentations, & Discussions
- On-demand Activities
- Translation & Interpretation
- Community Workgroup & Focus Groups
- Report-Backs

---

**Engagement Schedule**

**2023**
- July Launch
  - Vision & Foundation
  - Project awareness + relationship building
  - Broad engagement: Visioning + Values
  - Listening sessions
  - Identification of conflicting issues

**2024**
- Growth Approach
  - Focused engagement on identified issues
  - Round table discussions
  - Growth approach comparison

**2025**
- Draft Review
  - Review of draft language
  - Public open houses
  - Board & Commission feedback

- Legislative Process
  - Public comment
  - Planning Commission Rec.
  - City Council Adoption

Q2 Adoption
Next Steps: Phase 1

• Building project team
• Statistically valid housing preference survey
• Visioning survey to every household
• Getting the word out
• Tabling + event presence
• Visioning workshops/events

Comprehensive Plan
2025 Periodic Update

Presented by: Chris Behee, Long Range Planning Manager and Elizabeth Erickson, Senior Planner
Planning & Community Development
360.778.8344 ederickson@cob.org cbehee@cob.org
Subject: Consideration of an Amended Conservation Easement and Conservation Easement Assignment Agreement for Hundred Acre Wood with the Chuckanut Community Forest Park District (CCFPD) and the Whatcom Land Trust (WLT)

Summary Statement: In 2011, the City purchased the Hundred Acre Wood from First Federal Bank for $8.2 million. The City used an interfund loan to pay $3.2 million of the purchase price and was considering a variety of options to pay off the loan, including the sale of a portion of the property. In 2013, the residents in south Bellingham voted to form the CCFPD to tax themselves and use the proceeds to pay off the loan and permanently protect the property. In 2014, the City and CCFPD entered into an interlocal agreement defining their relationship, and in exchange for the loan repayment, the City granted the CCFPD a conservation easement over the property. The CCFPD has paid off the loan and is preparing to assign its interest in the conservation easement to the WLT, and then dissolve. To facilitate these actions by CCFPD, staff recommends Council approve the attached amended conservation easement and conservation easement assignment agreement for Hundred Acre Wood.


Fiscal Impact: N/A

Funding Source: N/A

Attachments: 1. CONSERVATION EASEMENT 2. AGREEMENT

Meeting Activity: Committee Briefing - Vote Requested 07/10/2023 Recommendation: Vote to Approve Presented By: Alan Marriner, City Attorney and Nicole Oliver, Parks & Recreation Director Time: 15 minutes

Recommended Motion:

Council Committee: Committee Of The Whole Agenda Bill Contact: Alan Marriner or Nicole Oliver

Reviewed By:  
- Alan A. Marriner - Legal  
- Nicole C. Oliver - Parks & Recreation  
- Matthew T. Stamps - Legal  
- Seth M. Fleetwood - Executive

Date:  
- 06/30/2023  
- 07/03/2023  
- 07/03/2023  
- 07/05/2023
MEMORANDUM

TO: CITY COUNCIL
FROM: ALAN MARRINER, CITY ATTORNEY
      NICOLE OLIVER, PARKS & RECREATION DIRECTOR
CC: MAYOR SETH FLEETWOOD
SUBJECT: AMENDED CONSERVATION EASEMENT AND CONSERVATION EASEMENT ASSIGNMENT AGREEMENT
DATE: JULY 10, 2023

In October 2011, the City purchased the Hundred Acre Wood from First Federal Bank for $8.2 million. The City used an interfund loan (loan) to pay $3.2 million of the purchase price and was considering a variety of options to pay off the loan, including the sale of a portion of the property.

In February 2013, the residents in south Bellingham voted to form the Chuckanut Community Park District (CCFPD) to tax themselves and use the proceeds to pay off the loan and permanently protect the entire property.

In January 2014, the City and CCFPD entered into an interlocal agreement defining their relationship. In exchange for CCFPD’s repayment of the loan, the City also granted CCFPD a conservation easement over the property.

The interlocal agreement provided that after CCFPD paid off the loan and the City adopted a park master plan for the property, the City could require CCFPD to dissolve within one year. In 2022, CCFPD paid off the loan, and the City adopted a park master plan for the Hundred Acre Wood. In September 2022, the City notified CCFPD that it had one year to dissolve.

Several years ago, CCFPD expressed interest in amending the original conservation easement to increase the protections for the Hundred Acre Wood. City staff and the CCFPD have negotiated an amended conservation easement. CCFPD is preparing to assign its interest in the conservation easement to the WLT and then dissolve. To facilitate these actions by CCFPD, staff recommends City Council approve the attached amended conservation easement and conservation easement assignment for Hundred Acre Wood.
AGREEMENT TO CONSERVATION EASEMENT ASSIGNMENT

THIS AGREEMENT TO CONSERVATION EASEMENT ASSIGNMENT ("Agreement") is entered into this ___ day of ____________, 2023, by and between, the Chuckanut Community Forest Park District, a Washington municipal corporation ("Park District" or "CCFPD"), the City of Bellingham, a Washington municipal corporation ("City"), and the Whatcom Land Trust, a Washington nonprofit corporation ("WLT"). The Park District, the City, and WLT may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the Chuckanut Community Forest Park District is a metropolitan park district organized pursuant to Chapter 35.612 RCW; and

WHEREAS, the Whatcom Land Trust is a 501(c)(3) nonprofit organization with the mission of preserving and protecting wildlife habitat, scenic, agricultural and open space lands in Whatcom County for future generations by securing interests in land and promoting land stewardship; and

WHEREAS, the City is the owner of real property in Whatcom County, Washington, legally described in Exhibit A hereto and fully incorporated herein by reference ("Property"); and

WHEREAS, the Property has been commonly referred to as the "Hundred Acre Wood," "Chuckanut Ridge," or the "Chuckanut Community Forest"; and

WHEREAS, the Property was officially named the Hundred Acre Wood by the City in 2022; and

WHEREAS, the City granted a conservation easement to the Park District, recorded January 6, 2014, at Whatcom County Auditor File No. 2140100259, that encumbers the Property ("Conservation Easement"); and

WHEREAS, the Conservation Easement references an interlocal agreement by and between the City and the Park dated January 3, 2014 ("Interlocal Agreement"); and

WHEREAS, Section IX of the Conservation Easement and Section III of the Interlocal Agreement permits the assignment of the Park District’s interest in the Conservation Easement to another "qualified organization" as that term is defined under Section 170(h) of the Internal Revenue Code of 1954, as amended, RCW 64.04.130, and RCW 84.34.250; and

WHEREAS, WLT is a “qualified organization” as that term is defined by these laws and is authorized under Washington law to acquire and hold conservation easements; and

WHEREAS, pursuant to RCW 35.61.310, a metropolitan park district may be dissolved when the city the district is located within petitions, through its governing officials, for the district to dissolve and agrees to assume the assets and liabilities of the district; and
WHEREAS, on September 16, 2022, the City sent the chair of the Board of Commissioners of the Park District a petition to dissolve the District and to turn over all District assets and liabilities to the City no later than September 21, 2023; and

WHEREAS, the City’s petition for dissolution of the CCFPD requested that, prior to dissolving, the Park District assign its interest in the Conversation Easement to a “qualified organization” and stated a preference that the Whatcom Land Trust be the recipient of that assignment, given the City’s long history of working with the WLT to protect environmentally-sensitive lands; and

WHEREAS, the Park District’s Board of Commissioners has independently decided to assign the Park District’s interest in the Conservation Easement to the Whatcom Land Trust in accordance with the terms herein; and

WHEREAS, the Whatcom Land Trust desires to accept the assignment of the Park District’s interest in the Conservation Easement in accordance with the terms herein; and

WHEREAS, Park District desires to ensure that all of the District’s assets to be turned over to the City upon the dissolution of the Park District will be allocated to the City’s Greenways fund and used exclusively for expenditures related to the Property; and

WHEREAS, the City accepts the Whatcom Land Trust as assignee of the Conservation Easement and its amendment, and waives its right under Section IX of the Conservation Easement and Section III of the Interlocal Agreement to thirty (30) days prior written notice of the Park District’s intent to assign its interest in the Conservation Easement or any amendment; and

WHEREAS, the City and the Park District will amend the Conservation Easement in the manner described herein, concurrent with the assignment of the Park District’s interest to WLT; and

WHEREAS, the foregoing recitals are a material part of this Assignment;

Now, Therefore, in consideration of the promises contained herein, the Parties agree as follows:

AGREEMENT

1. Amendment of Conservation Easement. The Park District and City agree that the current Conservation Easement shall be revised substantially to the form attached as Exhibit B hereto and fully incorporated herein by reference (“Amended Conservation Easement”).

2. Assignment to Whatcom Land Trust. Concurrent with execution of the Amended Conservation Easement, CCFPD shall assign its interest in the Amended Conservation Easement to the Whatcom Land Trust and the Whatcom Land Trust shall accept the assignment. Said assignment shall be accomplished by an Assignment of Interest in Conservation Easement substantially in the form attached as Exhibit C hereto and fully incorporated herein by reference (“Assignment of Interest in Conservation Easement”).
3. **City Acceptance of Whatcom Land Trust as Assignee and Waiver of Notice of Assignment.** The City supports and accepts designation of the Whatcom Land Trust as assignee of the Amended Conservation Easement and waives its right to receive thirty (30) days prior written notice of the Park District’s intent to assign the District’s interest in the Conservation Easement to the Whatcom Land Trust under Section IX of the Conservation Easement and Section III(c) of the Interlocal Agreement.

4. **Consideration for Assignment.** Upon and concurrent with complete execution of the Amended Conservation Easement and Assignment of Interest in Conservation Easement, and prior to the recording of same, the Park District shall pay to the Whatcom Land Trust the sum of Seventy-Five Thousand Dollars ($75,000.00) in cash, in return for its assumption of the perpetual stewardship responsibility associated holding the Amended Conservation Easement.

5. **Completion of Transaction.** Complete and concurrent execution of Amended Conservation Easement between the City and Park District, Assignment of Interest in Conservation Easement between the Park District and Whatcom Land Trust, and payment of Seventy-Five Thousand Dollars ($75,000.00) from the Park District to Whatcom Land Trust, shall occur on or before August 1, 2023, provided that these events may occur sooner by mutual agreement of the Parties. The fully executed originals of these documents shall be delivered to the Park District and the Park District shall promptly record same at its expense. The Park District shall record the Amended Conservation Easement and Assignment of Interest in Conservation Easement concurrently, with the Amended Conservation Easement recorded first and the Assignment of Interest in Conservation Easement recorded immediately thereafter.

6. **Park District to Dissolve.** After the Amended Conservation Easement and the Assignment of Interest in Conservation Easement have been fully executed and recorded, the Park District shall dissolve in accordance with RCW 35.61.310 and the City’s petition. The dissolution of the Park District will occur on or before September 21, 2023. Failure of the Park District to dissolve on or before September 21, 2023 shall authorize the City to take action under Section 10 herein.

7. **Transfer of CCFPD Assets and Liabilities to the City.** Upon dissolution, the Park District will transfer all its remaining assets and liabilities to the City. Prior to the dissolution, the Park District and the City will work together to develop a plan for a smooth transfer. Nothing shall prevent the Park District from making expenditures of its assets in a manner not identified herein prior to its dissolution.

8. **Use of Park District Assets by the City.** The City shall use the Park District’s assets to pay off any Park District liabilities that remain upon dissolution of the District. The City shall allocate any and all remaining Park District funds to the City’s Greenways fund and shall use said funds exclusively for the benefit of the Property. These allocated funds will be supplemental and in addition to, not in lieu of, the City’s budgeted funding plans for the benefit of the Property.

9. **Nonwaiver of Breach.** Failure of a Party at any time to require performance of any provision of this Assignment shall not limit such Party’s right to enforce such provision, nor shall any waiver
of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

10. **City Election to Terminate Amended Conservation Easement Upon Material Breach.** In the event the Park District materially breaches this Agreement by not assigning its interest in the Amended Conservation Easement as required by Section 2, or by failing to dissolve as required by Section 6, the Parties agree that the City, in its sole discretion, may elect to terminate any and all conservation easements recorded against the Property, including the Amended Conservation Easement. Upon receiving such notice to terminate the Grantee, either the Park District or the Whatcom Land Trust, if the Park District has assigned its interest in the Conservation Easement or Amended Conservation Easement to the Whatcom Land Trust, shall timely execute and record an appropriate deed reconveying the Conservation Easement or Amended Conservation Easement to the City. If the Grantee fails to take such action after notice from the City, the City may file a quiet title action in Whatcom County Superior Court to establish that the Conservation Easement and/or Amended Conservation Easement is terminated under the terms of the Conservation Easement and Interlocal Agreement. The City’s right to terminate the Conservation Easement and Amended Conservation Easement shall end if the Park District assigns its interest in the Amended Conservation Easement to the Whatcom Land Trust and formally dissolves in accordance with RCW 35.61.310 by September 21, 2023.

11. **Second Amended Conservation Easement.** Following completion of the transaction as described in Section 5, and dissolution of the Park District as described in Section 6, the City and Whatcom Land Trust shall execute and record a Second Amended and Restated Chuckanut Community Forest Conservation Easement (“Second Amended Conservation Easement”) substantially in the form attached as Exhibit D. The principal purposes of the Second Amended Conservation Easement shall be to memorialize the Whatcom Land Trust as the Grantee and to eliminate certain provisions related to assignment of the conservation easement and to dissolution of the Park District.

12. **Expenses and Attorney’s Fees.** The prevailing Party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of their reasonable attorney’s fees, costs, and expenses.

13. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any lawsuit filed shall lie exclusively in Whatcom County Superior Court.

14. **Survival of Terms.** The terms of this Agreement and the rights and obligations of the Parties hereunder shall survive completion of the transaction identified in Section 5 and shall terminate only upon both the recording of the Park District’s Assignment of Interest in Conservation Easement to the Whatcom Land Trust and the timely dissolution of the Park District.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by any Party prior to or following entry of this Assignment shall be considered a part of this Agreement unless expressly
incorporated herein in writing. This Agreement may be modified in writing only, upon mutual agreement of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

CHUCKANUT COMMUNITY FOREST PARK DISTRICT
P.O. Box 4283
Bellingham, WA 98227

Whatcom Land Trust
412 N. Commercial Street
Bellingham, WA 98227

Frank James
President

Gabe Epperson
Executive Director

City of Bellingham
210 Lottie Street
Bellingham, WA 98225

See attached City signature page

Seth Fleetwood
Mayor
City of Bellingham Signature Page for Agreement to Conservation Easement Assignment with the Chuckanut Community Forest Park District and the Whatcom Land Trust

DATED this _____ day of __________________, 2023, for the CITY OF BELLINGHAM
Contractor:

Attest:__________________________________________

Mayor

Finance Director

Approved as to Form:____________________________________

Departmental Approval:______________________________

Office of the City Attorney
STATE OF WASHINGTON

COUNTY OF WHATCOM

I certify that I know or have satisfactory evidence that Frank James is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the President of Chuckanut Community Forest Park District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: June 13, 2023

TARYN T. MALOY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES NOVEMBER 19, 2025

Printed Name: Taryn T. Maloy
My Commission Expires: 11/19/2025

STATE OF WASHINGTON

COUNTY OF WHATCOM

I certify that I know or have satisfactory evidence that Gabe Epperson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Executive Director of Whatcom Land Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: 06.28.2023

SAVETHA SVANIN
NOTARY PUBLIC
STATE OF WASHINGTON
Expires 09-01-28

Printed Name: Savetha Svanin
My Commission Expires: 09-04-2026
STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss:

I certify that I know or have satisfactory evidence that Seth Fleetwood is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Mayor of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: ______________

________________________________________
NOTARY PUBLIC
Printed Name: ______________________________
My Commission Expires: ______________________
EXHIBIT A TO AGREEMENT

PARCEL A (370212 359328 0000):

The south half of the southwest quarter of the northeast quarter of Section 12, Township 37 North, Range 2 East of W.M., except that right-of-way lying along the easterly line thereof, commonly referred to as 20th Street.

PARCEL B (370212 364207 0000):

That part of the northwest quarter of the southeast quarter, and that part of the southwest quarter of the southeast quarter of Section 12, Township 37 North, Range 2 East of W.M., lying northerly of Chuckanut Drive.

PARCEL C (370212 478165 0000):

Lot B, as delineated on Chuckanut Trust Lot Line Adjustment, according to the plat thereof, recorded under Auditor's File No. 961219101, records of Whatcom County, Washington.

PARCEL D (370212 447323 0000):

Lots 1 through 4 and Lots 21 through 24, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.

PARCEL E (370212 477313 0000):

Lots 5 through 20, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.
EXHIBIT B TO AGREEMENT

After Recording Return To:


DOCUMENT TITLE:
FIRST AMENDED AND RESTATED CHUCKANUT COMMUNITY FOREST CONSERVATION EASEMENT

REFERENCE NUMBER(S) OF PREVIOUSLYRecorded DOCUMENTS:
EASEMENT: 2140100259

GRANTOR:
CITY OF BELLINGHAM

GRANTEE:
CHUCKANUT COMMUNITY FOREST PARK DISTRICT

ABBREVIATED LEGAL DESCRIPTION:
Ptn of S ½ SW ¼ Sec 12 TWP 37 N Rge 3 E
Lot B, as delineated on Chuckanut Trust Lot Line Adjustment
Lots 1-24, Block 1, Map of Diffenbachers Addition to Fairhaven
Full legal description at page _____

ASSESSOR’S TAX PARCEL NUMBERS:
370212 359328 0000
370212 364207 0000
370212 478165 0000
370212 447323 0000
370212 477313 0000
FIRST AMENDED AND RESTATED CHUCKANUT COMMUNITY FOREST
CONSERVATION EASEMENT

I. PARTIES.

This Grant of the First Amended and Restated Chuckanut Community Forest Conservation Easement ("Conservation Easement" or "Easement") is made by the City of Bellingham, a municipal corporation organized under the laws of the State of Washington ("Grantor" or "City"), to the Chuckanut Community Forest Park District, a municipal corporation organized under the laws of the State of Washington ("Grantee" or "Park District").

II. FACTS, OBJECTIVES AND PURPOSES.

Grantor owns real property in Whatcom County, Washington, referred to hereafter as the "Property", the legal description of which is attached as Exhibit A. A sketch map of the Property is attached as Exhibit B.

The City purchased the Property from Washington Federal Savings Bank for $8.2 million using greenways funds, park impact fees, and a Greenways Endowment Fund Loan ("Loan") of $3,232,021.60. On January 3, 2014, the City granted the Chuckanut Community Forest Conservation Easement ("Original Conservation Easement", AFN 2140100259) to the Park District in consideration for: (1) the Park District paying off the Loan and accrued interest on the Loan; and (2) the Park District formally dissolving in accordance with RCW 35.61.310, effective no later than one year from the date the City petitions the Park District to dissolve. On January 3, 2014, the City and the Park District also entered into an "Interlocal Agreement" specifying the terms for the Park District's payment of the Loan, dissolution in accordance with RCW 35.61.310 after repayment of the Loan, and potential termination of the Conservation Easement. The Park District paid off the Loan in early 2022, and the City filed a petition for dissolution of the Park District pursuant to RCW 35.61.310 on September 16, 2022 in accordance with the terms of the Conservation Easement and the Interlocal Agreement.

The City and the Park District have agreed to replace the Original Conservation Easement with this Conservation Easement. Immediately after executing this Conservation Easement, the Park District shall assign their interest as Grantee in the Conservation Easement to the Whatcom Land Trust ("Land Trust"). The Land Trust agrees to accept the assignment, and the City concurs with the assignment of the Conservation Easement to the Land Trust amendments reflected in this amended Conservation Easement. Also, by no later than September 21, 2023, the Park District shall formally dissolve in accordance with RCW 35.61.310.

The intent of the Grantor and Grantee and the purpose of this Conservation Easement is to continue to assure that the natural features, functions and values of the Property are
protected in perpetuity including the existing wetlands, forest, wildlife habitat, wildlife habitat corridors, and other features of ecological significance; while also allowing for the recreational, educational, and scientific uses, named in Section IV. The Grantor shall manage the Property as a low intensity nature park, and the uses allowed pursuant to Section IV and any associated improvements shall be sited, designed, maintained, and operated so as to reduce and limit impacts to the natural environment.

The approximately eighty-two (82) acre Property, named the Hundred Acre Wood, is located on the south side of the City of Bellingham and has also been known as Chuckanut Community Forest or Chuckanut Ridge. The Property is mostly forested and contains wetlands, steep slopes, and a variety of plant species. The Property also provides wildlife habitat and habitat corridors for a number of species and was listed as one of the City’s “significant habitats” in the City of Bellingham Wildlife and Habitat Assessment and Wildlife Habitat Plan, December 1995. The following documents contain additional relevant information about the Property: (1) Baseline Documentation Report prepared by Ann Eissinger, approved by the Grantor on May 16, 2017; and (2) Stewardship Plan prepared by Herrera Environmental Consultants, Inc., dated August 10, 2022

III. GRANT OF CONSERVATION EASEMENT.

Grantor hereby conveys to Grantee, its successors and assigns, in perpetuity, except as limited in Section X. below, a Conservation Easement (“Easement”) pursuant to RCW 84.34.210, over the Property. The Easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below. Rights, obligations and reservations all operate as covenants running with the land in perpetuity. This Conservation Easement replaces the Original Conservation Easement, which the Grantor and Grantee hereby terminate.

IV. PERMITTED USES, PRACTICES AND RIGHTS RESERVED BY GRANTOR.

The Grantor shall have the right to do or permit the following on the Property:

1. Allow nature oriented, non-motorized public recreational, scientific, and educational uses and construction of appropriate facilities to enhance the nature oriented public recreational or educational/research uses such as:
   a. Facilities for motor vehicle parking on the Property located, if possible, near perimeter boundaries;
   b. trails (including, but not limited to, walking, dog walking, bicycling, and disabled accessible trails) and associated boardwalks, and
bridges and also including all maintenance, repair, expansion, improvement, and decommissioning of trails;

c. benches;

d. plaques for recognition, memorial, or educational purposes;

e. directional, informational, or educational signs;

f. outdoor classrooms; and

g. native plant identification gardens.

Provided that: If any of the uses, activities, or facilities listed in Section IV. 1. take place in or impact a critical area or its buffer as defined in the City’s Critical Areas Ordinance (CAO) and as hereafter amended (Bellingham Municipal Code (“BMC”) Chapter 16.55), such use, activity, or facility shall comply with the City’s CAO, as amended. This requirement does not apply to already existing trails, but it does apply to the maintenance, repair, expansion, improvement, and decommissioning of such trails. Grantor will notify Grantee in writing of any intended such uses, activities, or facilities that require a State Environmental Policy Act (SEPA) threshold determination or a Critical Areas Ordinance permit and provide Grantee copies of any SEPA threshold determinations or CAO permits as soon as possible but in no case less than 30 days before initiating any such use, activity, or facility. Grantor will also timely provide Grantee with any available confirmation of completion of the permitted action in compliance with SEPA and/or CAO requirements.

2. With reasonable prior written notice to Grantee, remove trees that are invasive, diseased or present a safety hazard to people or property. However, the Grantor may remove trees without prior notice to Grantee if the trees present an immediate safety hazard.

3. Make modest clearings to create viewpoints.

4. Plant native trees and vegetation and conduct other activity to enhance and protect water quality, critical areas, and wildlife habitat.

5. Control invasive, non-native species by means that do not harm water quality, critical areas or wildlife habitat.
6. Operate motor vehicles for the maintenance and development of the Property consistent with the permitted uses listed herein.

7. Maintain, repair, expand, improve, decommission, and retain trails on Property, consistent with the intent of this Easement.

8. Undertake other activities necessary to protect public health or safety on the Property. Any such activity shall be conducted so that interference with the ecological values of the Property is avoided, or if avoidance is not possible, minimized to the maximum extent possible.

V. RESTRICTIONS ON USE.

Grantor may prohibit uses on the Property independent of this Easement. Except as provided above, the Grantor shall not on the Property do or permit any of the following:

1. Harvest, cut or remove trees or other vegetation except as allowed pursuant to Section IV, consistent with the purposes identified in this Conservation Easement.

2. Build or place roads or buildings of any type.

3. Explore for or extract minerals, hydrocarbons or other materials, except as expressly authorized pursuant to mineral, oil, or gas reservations or leases recorded prior to and continuing in existence on the date of this Easement.

4. Trapping or hunting of animals except to deal with a local public health emergency.

5. Excavate or grade the Property or otherwise materially alter the landscape or topography except as necessary for one of the permitted uses, practices and rights identified in Section IV above.

6. Subdivide the Property in any manner.

7. Make residential, commercial, or industrial use of the Property.

8. Operate motor vehicles, except as is necessary for the development and management of the Property as allowed in Section IV; provided further that, an existing driveway serving a single family residence on an adjoining parcel pursuant to a License Agreement recorded at Whatcom County Auditor File No.893239 which may encroach on the southerly tip of Parcel C on Exhibit B and may continue so long as its use remains limited to providing ingress and egress to said single family residence only and so long as its width and length are not expanded.
9. Store derelict vehicles or waste of any kind.

10. Build or maintain fires.
11. Allow overnight camping except in association with educational activities.

12. Provide athletic facilities or ball fields of any kind.

13. Establish off-leash dog areas.

14. Grant other easements.

15. Use or apply pesticides or herbicides on the Property including for activities allowed under Section IV; except if such use is the only reasonably feasible means to control invasive, non-native species and then only if such use can be accomplished without harming water quality or critical areas. Before any pesticide or herbicide use is allowed, the necessary risks from use shall be evaluated using best available science to determine if such use will cause adverse impacts to water quality or critical areas.

16. Use of the Property contrary to the purposes of this Easement.

VI. RIGHTS AND RESPONSIBILITIES OF GRANTEE.

Grantor grants and Grantee accepts the right and shared responsibility to preserve and protect in perpetuity the natural features, functions and values of the Property including the existing wetlands, forest, and wildlife habitat consistent with the terms of this Easement. In connection with such rights and responsibilities:

1. Grantor grants to Grantee the right to enter the Property, to observe and monitor compliance with the terms of this Easement.

2. Should Grantor, its successors or assigns, undertake any activity on the Property in violation of this Easement, or should Grantor permit an activity on the Property in violation of this Easement, Grantee shall have the right to enjoin and abate any such activity. In addition, Grantee shall have the right to recover damages from Grantor or to compel the restoration by Grantor of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In the event Grantee commences a legal action against the Grantor or otherwise seeks to enforce the terms of this Easement against the Grantor, the prevailing party in any such matter shall be entitled to an award of damages, including, if applicable, costs of restoration, expenses and costs of suit, including attorneys’ fees and expert witness fees.
3. Any forbearance by Grantor or Grantee to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantor's or Grantee's rights hereunder.

4. Grantee shall indemnify, appear and defend, and hold harmless Grantor from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any negligent act or omission by Grantee in connection with its performance under this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Grantor.

VII. BASELINE DATA.

In order to establish the condition of the Property so as to be able to properly monitor future uses and assure compliance with the terms of this Agreement, Grantor and Grantee approved an updated Baseline Documentation Report of the Property on ________, which contains an inventory of the Property’s relevant features and conditions known as baseline data. The baseline data shall be used to establish the condition of the Property as of the date of its preparation and document off-site references made for comparison in Section V.

VIII. GRANTOR’S RESPONSIBILITIES.

1. Grantor agrees to bear all costs of ownership, operation, improvements, administration, upkeep, management and maintenance of the Property and shall indemnify, appear and defend, and hold harmless the Grantee from all claims, lawsuits and liabilities of any kind, including attorney’s fees and costs, arising from any act or omission of Grantor in connection with its ownership, management, maintenance, or administration of the Property, or in connection with public use of the Property, or for any negligent act or omission in connection with its performance of this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Grantee.

2. Grantor shall pay all real property taxes and assessments levied on the Property.

3. Any construction on the Property that goes beyond maintenance shall be identified in the current master plan for the Property and shall be consistent with this Easement.

4. Uses and facilities on the Property shall be located, designed and constructed so as to avoid or where necessary minimize the impact on critical areas and wildlife habitat.

5. Trail details such as decommissioning, re-routting, or upgrading existing trails, creating new trails, and maintaining trails shall be accomplished in a manner
consistent with the Critical Areas Ordinance and Bellingham Park and Recreation Department adopted standards.

6. Grantor shall take reasonable steps to direct and confine public access to defined and maintained trail surfaces and designated areas and to prevent damage to ground cover, understory vegetation and disturbance of wildlife from off-trail public use.

7. Grantor shall post signage on the Property stating that all dogs on the Property must be leashed and remain on the trails, and users must properly dispose of all their dog's waste. Failure of Grantor to enforce this Section VIII. 7 shall not constitute a violation of this Conservation Easement.

IX. TERM OF CONSERVATION EASEMENT.

This Easement shall run with the Property in perpetuity and shall bind the Grantor and Grantee, their successors and assigns forever. However, the City may elect to terminate the Conservation Easement if the Park District does not assign its interest in the Conservation Easement to the Land Trust and formally dissolve in accordance with RCW 35.61.310 by September 21, 2023. Upon receiving notice to terminate the Conservation Easement from the City, the Grantee, either the Park District or the Land Trust, if the Park District has assigned its interest in the Conservation Easement to the Land Trust, shall timely execute and record an appropriate deed reconveying the Conservation Easement to the City. If the Grantee fails to take such action after notice from the City, the City may file a quiet title action in Whatcom County Superior Court to establish that the Conservation Easement is terminated under the terms of the Conservation Easement and Interlocal Agreement. The prevailing party in any such quiet title action shall be entitled to an award of reasonable attorneys' fees and costs. The City's right to terminate the Conservation Easement shall end if the Park District assigns its interest in the Conservation Easement to the Land Trust and formally dissolves in accordance with RCW 35.61.310 by September 21, 2023.

X. ASSIGNMENT OF GRANTEE'S INTERESTS.

The Grantee may assign its interests in this Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, and RCW 64.04.130 and RCW 84.34.250. Should the Grantee cease to exist, this Easement would be assigned to such an organization. Grantee shall give the Grantor 30-days advance written notice of its intent to assign its interests in this Easement to a "qualified" organization, including the name of the organization.
XI. PROPERTY INTEREST.

Grantor and Grantee agree that this Easement gives rise to a property right immediately vested in the Grantee, which right has a fair market value that is equal to the proportionate value that the Easement bears to the value of the Property as a whole, upon the date of the execution of the Easement.

If all the purposes of this Easement become impossible to accomplish because of a change of circumstances, this Easement can be extinguished only by judicial proceedings, and on subsequent disposal of the Property, the Grantee is entitled to a portion of the proceeds equal to the proportionate value of the Conservation Easement. In the event of condemnation of the Property in whole or in part, Grantee shall be entitled to compensation proportionate to the loss of conservation values caused by the condemnation.

XII. DISPUTE RESOLUTION.

1. If Grantee has good reason to believe that Grantor has undertaken or is about to undertake an activity in violation of the terms of this Easement, and that activity would have a significant, irremediable impact on the conservation attributes of the Property this Easement is intended to protect, Grantee will make an effort, reasonable under the circumstances, to consult with Grantor in an attempt to deter the activity in question and reach a satisfactory resolution of the situation. If Grantee is not able to reach a satisfactory resolution of the situation, Grantee may seek judicial injunctive relief to prevent any further such activity, and/or to compel the restoration of the Property to the condition that existed prior to the undertaking of the activity in question. Any forbearance by Grantee to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantee’s rights under this Easement.

2. Except in the case of imminent or ongoing activity described above in subsection 1 above, if a dispute arises between the parties concerning whether a proposed activity is consistent with the terms of this Easement, the parties agree not to proceed with the proposed use or activity pending resolution of the dispute. To resolve the dispute, the parties agree to proceed as follows. First, Grantor and Grantee will discuss the dispute in an effort to reach a mutually agreeable resolution. Second, if the parties are not able to resolve the dispute in this manner, they will seek to resolve the dispute utilizing a disinterested, mutually agreed upon mediator and share any associated costs equally. Third, if the dispute is not resolved by mediation, either party may request of the other party in writing that the dispute be submitted to binding arbitration in accord with the Washington Uniform Arbitration Act (RCW 7.04A). If arbitration is pursued, the prevailing party shall be entitled to an award against the non-prevailing party for all costs and expenses related to such arbitration, including, the prevailing party’s attorney fees. If the arbitrator determines that there is no clearly prevailing party, each party will bear its own expenses and the parties will split equally the fees and expenses of the arbitrator.
XIII. MISCELLANEOUS.

1. The terms Grantor and Grantee, wherever used in this Easement, shall include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.

2. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.

3. Notice to Grantee prior to assignment of the Conservation Easement shall be to the Park District; and after said assignment to the Land Trust:

   Secretary of the Board       Executive Director
   Chuckanut Community          Whatcom Land Trust
   Forest Park District         412 N. Commercial St.
   P.O. Box 4283                Bellingham, WA 98225
   Bellingham, WA 98227

Notice to Grantor shall be to the Director of Parks for Grantor, who until further notice shall be:

   Bellingham Parks Director
   210 Lottie St.
   Bellingham, WA 98225

   Copy to: City Attorney
            210 Lottie St.
            Bellingham, WA 98225

4. The entire agreement of the parties is set forth in this Easement and the Interlocal Agreement entered into between the parties on January 3, 2014. No alteration or variation of this instrument shall be valid or binding unless it is in writing and properly executed and acknowledged by both parties. The interpretation and the performance of this Easement shall be governed by the laws of the State of Washington.

5. This Easement shall be liberally construed in favor of the grant to effectuate the objectives and purposes of this Easement particularly as set forth in Section II and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the objectives and purposes of this Easement that would render the provision valid should be favored over any interpretation that would render it invalid.

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IN WITNESS WHEREOF, Grantor and Grantee have executed this Conservation Easement this ____ day of __________________, 2023.

GRANTOR:

CITY OF BELLINGHAM

__________________________
Seth Fleetwood
Mayor

Department Approval:

__________________________
Nicole Oliver
Department of Parks and Recreation
Approved As To Form:

__________________________
Alan Marriner
City Attorney

Attest:

__________________________
Andy Asbjornsen
Finance Director

GRANTEE:

CHUCKANUT COMMUNITY FOREST PARK DISTRICT

__________________________
Frank James
President
STATE OF WASHINGTON  
)  
) ss:  
COUNTY OF WHATCOM  
)  

I certify that I know or have satisfactory evidence that Seth Fleetwood is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Mayor of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: _________________

__________________________
NOTARY PUBLIC
Printed Name: _______________________
My Commission Expires: ______________

STATE OF WASHINGTON  
)  
) ss:  
COUNTY OF WHATCOM  
)  

I certify that I know or have satisfactory evidence that Andy Asbjornsen is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Finance Director of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: _________________

__________________________
NOTARY PUBLIC
Printed Name: _______________________
My Commission Expires: ______________
STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

I certify that I know or have satisfactory evidence that Frank James is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated he was authorized to execute the instrument, and acknowledged it as the President of the Chuckanut Community Forest Park District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: ______________________

____________________________
NOTARY PUBLIC
Print Name: ____________________
My Commission Expires: ____________

B-13
EXHIBIT A

PARCEL A (370212 359328 0000):

The south half of the southwest quarter of the northeast quarter of Section 12, Township 37 North, Range 2 East of W.M., except that right-of-way lying along the easterly line thereof, commonly referred to as 20th Street.

PARCEL B (370212 364207 0000):

That part of the northwest quarter of the southeast quarter, and that part of the southwest quarter of the southeast quarter of Section 12, Township 37 North, Range 2 East of W.M., lying northerly of Chuckanut Drive.

PARCEL C (370212 478165 0000):

Lot B, as delineated on Chuckanut Trust Lot Line Adjustment, according to the plat thereof, recorded under Auditor’s File No. 961219101, records of Whatcom County, Washington.

PARCEL D (370212 447323 0000):

Lots 1 through 4 and Lots 21 through 24, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.

PARCEL E (370212 477313 0000):

Lots 5 through 20, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.
EXHIBIT C TO AGREEMENT

RETURN TO:
Carmichael Clark, PS
Robert A. Carmichael
1700 D Street
Bellingham, WA 98229

DOCUMENT TITLE:
CHUCKANUT COMMUNITY FOREST CONSERVATION EASEMENT ASSIGNMENT

REFERENCE NUMBER OF RELATED DOCUMENTS:
FIRST AMENDED CONSERVATION EASEMENT: 2023-_______________________

ASSIGNOR:
CHUCKANUT COMMUNITY FOREST PARK DISTRICT

ASSIGNEE:
WHATCOM LAND TRUST

ABBREVIATED LEGAL DESCRIPTION:
Pt n of S ½ SW ½ Sec 12 TWP 37 N Rge 3 E
Lot B, as delineated on Chuckanut Trust Lot Line Adjustment
Lots 1-24, Block 1, Map of Diffenbachers Addition to Fairhaven
Full legal descriptions at pages ____ hereto

ASSESSOR'S TAX PARCEL NUMBERS:
370212 359328 0000
370212 364207 0000
370212 478165 0000
370212 447323 0000
370212 477313 0000
ASSIGNMENT OF INTEREST IN CONSERVATION EASEMENT

THIS ASSIGNMENT OF INTEREST IN CONSERVATION EASEMENT ("Assignment") is entered into this _____ day of ____________, 2023, by and between, the Chuckanut Community Forest Park District, a municipal corporation organized under the laws of the state of Washington ("Assignor" or "Park District") and Whatcom Land Trust a Washington nonprofit corporation, ("Assignee" or "WLT"). Assignor and Assignee may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, the City of Bellingham ("Grantor" or "City") granted a conservation easement to the Park District ("Grantee") recorded January 6, 2014, at Whatcom County Auditor File No. 2140100259, ("Original Conservation Easement") that encumbers the real property described in Exhibit A, attached hereto and incorporated herein ("Property"); and

WHEREAS, immediately prior to executing this Assignment, the City and the Park District executed an amendment to the Original Conservation Easement ("Amended Conservation Easement"); and

WHEREAS, the Parties intend to record the Amended Conservation Easement and this Assignment of Interest in Conservation Easement concurrently; and

WHEREAS, the Amended Conservation Easement references an interlocal agreement by and between the City and the Park District dated January 3, 2014 ("Interlocal Agreement"); and

WHEREAS, Section IX of the Amended Conservation Easement and Section III of the Interlocal Agreement permits the assignment of the Park District’s interest in the Amended Conservation Easement to another “qualified organization” as that term is defined under Section 170(h) of the Internal Revenue Code of 1954, as amended, RCW 64.04.130, and RCW 84.34.250; and

WHEREAS, WLT is a “qualified organization” as that term is defined by these laws and is authorized under Washington law to acquire and hold conservation easements; and

WHEREAS, as required by Section IX of the Amended Conservation Easement and Section III(c) of the Interlocal Agreement, the Park District has provided the City with timely advance written notice of the District’s intent to assign its interest in the Conversation Easement to the Whatcom Land Trust; and

WHEREAS, the foregoing recitals are a material part of this Assignment;

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:
ASSIGNMENT

1. **Assignment.** The Park District hereby quit claims, grants, conveys, and assigns to WLT, without warranties, its interest as grantee under the Amended Conservation Easement, and all rights and obligations of the Park District thereunder.

2. **Acceptance of Assignment.** WLT hereby accepts the quit claim, grant, conveyance, and assignment of the Park District's interest as grantee under the Amended Conservation Easement and all rights and obligations of the Park District thereunder.

3. **Inspection of Property.** WLT has had full opportunity to inspect the Property and accepts the Amended Conservation Easement encumbering the Property in its current condition.

4. **Mutual Release.** WLT hereby releases and forever discharges the Park District from any and all claims and costs incurred for causes of action, liabilities, or events arising after the effective date of this Assignment. The Park District hereby releases and forever discharges WLT from any and all claims and costs incurred for causes of action, liabilities, or events arising prior to the effective date of this Assignment.

5. **Run with the Land.** The Assignment entered into by the Parties herein shall be deemed to touch and concern the land, and shall, therefore, run with the land in perpetuity. The rights and obligations of the Parties shall inure to the benefit of and be binding upon their heirs, successors, and assigns.

6. **Modification in Writing.** This Assignment may be modified in writing only, upon mutual agreement of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Assignment on the day and year first above written.

ASSIGNOR:

CHUCKANUT COMMUNITY
FOREST PARK DISTRICT
P.O. Box 4283
Bellingham, WA 98227

ASSIGNEE:

Whatcom Land Trust
412 N. Commercial Street
Bellingham, WA 98227

_________  
Frank James  
President

_________  
Gabe Epperson  
Executive Director

C-3

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I certify that I know or have satisfactory evidence that Frank James is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the President of Chuckanut Community Forest Park District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: ____________

________________________

NOTARY PUBLIC
Printed Name: ____________________________
My Commission Expires: ____________________________

STATE OF WASHINGTON )
) ss:
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that Gabe Epperson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Executive Director of Whatcom Land Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: ____________

________________________

NOTARY PUBLIC
Printed Name: ____________________________
My Commission Expires: ____________________________

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EXHIBIT A

PARCEL A (370212 359328 0000):

The south half of the southwest quarter of the northeast quarter of Section 12, Township 37 North, Range 2 East of W.M., except that right-of-way lying along the easterly line thereof, commonly referred to as 20th Street.

PARCEL B (370212 364207 0000):

That part of the northwest quarter of the southeast quarter, and that part of the southwest quarter of the southeast quarter of Section 12, Township 37 North, Range 2 East of W.M., lying northerly of Chuckanut Drive.

PARCEL C (370212 478165 0000):

Lot B, as delineated on Chuckanut Trust Lot Line Adjustment, according to the plat thereof, recorded under Auditor's File No. 961219101, records of Whatcom County, Washington.

PARCEL D (370212 447323 0000):

Lots 1 through 4 and Lots 21 through 24, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.

PARCEL E (370212 477313 0000):

Lots 5 through 20, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.
EXHIBIT D TO AGREEMENT

After Recording Return To:


DOCUMENT TITLE:
SECOND AMENDED AND RESTATED CHUCKANUT COMMUNITY FOREST CONSERVATION EASEMENT

REFERENCE NUMBER(S) OF PREVIOUSLYRecorded DOCUMENTS:
CONSERVATION EASEMENT: 2140100259
FIRST AMENDED CONSERVATION EASEMENT: 2023-__________

GRANTOR:
CITY OF BELLINGHAM

GRANTEE:
WHATCOM LAND TRUST

ABBREVIATED LEGAL DESCRIPTION:
Pttn of S ½ SW ¼ Sec 12 TWP 37 N Rge 3 E
Lot B, as delineated on Chuckanut Trust Lot Line Adjustment
Lots 1-24, Block 1, Map of Diffenbachers Addition to Fairhaven

Full legal description at page _____

ASSESSOR'S TAX PARCEL NUMBERS:
370212 359328 0000
370212 364207 0000
370212 478165 0000
370212 447323 0000
370212 477313 0000

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SECOND AMENDED AND RESTATED CHUCKANUT COMMUNITY FOREST
CONSERVATION EASEMENT

I. PARTIES.

This Grant of the Second Amended and Restated Chuckanut Community Forest Conservation Easement ("Conservation Easement" or "Easement") is made by the City of Bellingham, a municipal corporation organized under the laws of the State of Washington ("Grantor" or "City"), to the Whatcom Land Trust, a non-profit corporation organized under the laws of the State of Washington ("Grantee" or "Whatcom Land Trust").

II. FACTS, OBJECTIVES AND PURPOSES.

Grantor owns real property in Whatcom County, Washington, referred to hereafter as the "Property", the legal description of which is attached as Exhibit A. A sketch map of the Property is attached as Exhibit B.

The City purchased the Property from Washington Federal Savings Bank for $8.2 million using greenways funds, park impact fees, and a Greenways Endowment Fund Loan ("Loan") of $3,232,021.60. On January 3, 2014, the City granted the Chuckanut Community Forest Conservation Easement ("Original Conservation Easement", AFN 2140100259) to the Chuckanut Community Forest Park District ("Park District") in consideration for: (1) the Park District paying off the Loan and accrued interest on the Loan; and (2) the Park District formally dissolving in accordance with RCW 35.61.310, effective no later than one year from the date the City petitions the Park District to dissolve. On January 3, 2014, the City and the Park District also entered into an "Interlocal Agreement" specifying the terms for the Park District's payment of the Loan, dissolution in accordance with RCW 35.61.310 after repayment of the Loan, and potential termination of the Conservation Easement. The Park District paid off the Loan in early 2022. The Park District later agreed with the City to an amendment of the Original Conservation Easement ("First Amended and Restated Conservation Easement") and assigned the First Amended and Restated Conservation Easement to the Whatcom Land Trust. The Park District has now dissolved.

The City and the Whatcom Land Trust have agreed to replace the First Amended and Restated Conservation Easement with this Second Amended and Restated Conservation Easement to reflect the Whatcom Land Trust as Grantee and to eliminate certain provisions in the First Amended and Restated Conservation Easement which are no longer relevant.

The intent of the Grantor and Grantee and the purpose of this Conservation Easement is to continue to assure that the natural features, functions and values of the Property are protected in perpetuity including the existing wetlands, forest, wildlife habitat, wildlife

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habitat corridors, and other features of ecological significance; while also allowing for the
recreational, educational, and scientific uses, named in Section IV. The Grantor shall
manage the Property as a low intensity nature park, and the uses allowed pursuant to
Section IV and any associated improvements shall be sited, designed, maintained, and
operated so as to reduce and limit impacts to the natural environment.

The approximately eighty-two (82) acre Property, named the Hundred Acre Wood, is
located on the south side of the City of Bellingham and has also been known as Chuckanut
Community Forest or Chuckanut Ridge. The Property is mostly forested and contains
wetlands, steep slopes, and a variety of plant species. The Property also provides wildlife
habitat and habitat corridors for a number of species and was listed as one of the City’s
“significant habitats” in the City of Bellingham Wildlife and Habitat Assessment and
Wildlife Habitat Plan, December 1995. The following documents contain additional
relevant information about the Property: (1) Baseline Documentation Report prepared by
Ann Eissinger, approved by the Grantor on May 16, 2017; and (2) Stewardship Plan
prepared by Herrera Environmental Consultants, Inc., dated August 10, 2022

III. GRANT OF CONSERVATION EASEMENT.

Grantor hereby conveys to Grantee, its successors and assigns, in perpetuity, a
Conservation Easement (“Easement”) pursuant to RCW 84.34.210, over the Property. The
Easement consists of mutual rights and obligations and is subject to the reservation of rights
set forth below. Rights, obligations and reservations all operate as covenants running with
the land in perpetuity. This Second Amended and Restated Conservation Easement
replaces the First Amended and Restated Conservation Easement, which the Grantor and
Grantee hereby terminate.

IV. PERMITTED USES, PRACTICES AND RIGHTS RESERVED BY
GRANTOR.

The Grantor shall have the right to do or permit the following on the Property:

1. Allow nature oriented, non-motorized public recreational, scientific, and
educational uses and construction of appropriate facilities to enhance the nature
oriented public recreational or educational/research uses such as:

   a. Facilities for motor vehicle parking on the Property located, if
      possible, near perimeter boundaries;

   b. trails (including, but not limited to, walking, dog walking, bicycling,
      and disabled accessible trails) and associated boardwalks, and

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bridges and also including all maintenance, repair, expansion, improvement, and decommissioning of trails;

c. benches;

d. plaques for recognition, memorial, or educational purposes;

e. directional, informational, or educational signs;

f. outdoor classrooms; and

g. native plant identification gardens.

Provided that: If any of the uses, activities, or facilities listed in Section IV. 1. take place in or impact a critical area or its buffer as defined in the City's Critical Areas Ordinance (CAO) and as hereafter amended (Bellingham Municipal Code ("BMC") Chapter 16.55), such use, activity, or facility shall comply with the City's CAO, as amended. This requirement does not apply to already existing trails, but it does apply to the maintenance, repair, expansion, improvement, and decommissioning of such trails. Grantor will notify Grantee in writing of any intended such uses, activities, or facilities that require a State Environmental Policy Act (SEPA) threshold determination or a Critical Areas Ordinance permit and provide Grantee copies of any SEPA threshold determinations or CAO permits as soon as possible but in no case less than 30 days before initiating any such use, activity, or facility. Grantor will also timely provide Grantee with any available confirmation of completion of the permitted action in compliance with SEPA and/or CAO requirements.

2. With reasonable prior written notice to Grantee, remove trees that are invasive, diseased or present a safety hazard to people or property. However, the Grantor may remove trees without prior notice to Grantee if the trees present an immediate safety hazard.

3. Make modest clearings to create viewpoints.

4. Plant native trees and vegetation and conduct other activity to enhance and protect water quality, critical areas, and wildlife habitat.

5. Control invasive, non-native species by means that do not harm water quality, critical areas or wildlife habitat.
6. Operate motor vehicles for the maintenance and development of the Property consistent with the permitted uses listed herein.

7. Maintain, repair, expand, improve, decommission, and retain trails on Property, consistent with the intent of this Easement.

8. Undertake other activities necessary to protect public health or safety on the Property. Any such activity shall be conducted so that interference with the ecological values of the Property is avoided, or if avoidance is not possible, minimized to the maximum extent possible.

V. RESTRICTIONS ON USE.

Grantor may prohibit uses on the Property independent of this Easement. Except as provided above, the Grantor shall not on the Property do or permit any of the following:

1. Harvest, cut or remove trees or other vegetation except as allowed pursuant to Section IV, consistent with the purposes identified in this Conservation Easement.

2. Build or place roads or buildings of any type.

3. Explore for or extract minerals, hydrocarbons or other materials, except as expressly authorized pursuant to mineral, oil, or gas reservations or leases recorded prior to and continuing in existence on the date of this Easement.

4. Trapping or hunting of animals except to deal with a local public health emergency.

5. Excavate or grade the Property or otherwise materially alter the landscape or topography except as necessary for one of the permitted uses, practices and rights identified in Section IV above.

6. Subdivide the Property in any manner.

7. Make residential, commercial, or industrial use of the Property.

8. Operate motor vehicles, except as is necessary for the development and management of the Property as allowed in Section IV; provided further that, an existing driveway serving a single family residence on an adjoining parcel pursuant to a License Agreement recorded at Whatcom County Auditor File No. 893239 which may encroach on the southerly tip of Parcel C on Exhibit B and may continue
so long as its use remains limited to providing ingress and egress to said single
family residence only and so long as its width and length are not expanded.

9. Store derelict vehicles or waste of any kind.

10. Build or maintain fires.

11. Allow overnight camping except in association with educational activities.

12. Provide athletic facilities or ball fields of any kind.

13. Establish off-leash dog areas.

14. Grant other easements.

15. Use or apply pesticides or herbicides on the Property including for activities
allowed under Section IV; except if such use is the only reasonably feasible means
to control invasive, non-native species and then only if such use can be
accomplished without harming water quality or critical areas. Before any pesticide
or herbicide use is allowed, the necessary risks from use shall be evaluated using
best available science to determine if such use will cause adverse impacts to water
quality or critical areas.

16. Use of the Property contrary to the purposes of this Easement.

VI. RIGHTS AND RESPONSIBILITIES OF GRANTEE.

Grantor grants and Grantee accepts the right and shared responsibility to preserve and
protect in perpetuity the natural features, functions and values of the Property including the
existing wetlands, forest, and wildlife habitat consistent with the terms of this Easement.
In connection with such rights and responsibilities:

1. Grantor grants to Grantee the right to enter the Property, to observe and monitor
compliance with the terms of this Easement.

2. Should Grantor, its successors or assigns, undertake any activity on the Property in
violation of this Easement, or should Grantor permit an activity on the Property in
violation of this Easement, Grantee shall have the right to enjoin and abate any such
activity. In addition, Grantee shall have the right to recover damages from Grantor
or to compel the restoration by Grantor of that portion of the Property affected by
such activity to the condition that existed prior to the undertaking of such
unauthorized activity. In the event Grantee commences a legal action against the

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Grantor or otherwise seeks to enforce the terms of this Easement against the
Grantor, the prevailing party in any such matter shall be entitled to an award of
damages, including, if applicable, costs of restoration, expenses and costs of suit,
including attorneys' fees and expert witness fees.

3. Any forbearance by Grantor or Grantee to exercise any rights under this Easement
in the event of a breach shall not be deemed to be a waiver of Grantor's or Grantee's
rights hereunder.

4. Grantee shall indemnify, appear and defend, and hold harmless Grantor from all
claims, lawsuits and liabilities of any kind, including attorney's fees and costs,
arising from any negligent act or omission by Grantee in connection with its
performance under this Agreement; except to the extent such claim, lawsuit, or
liability arises from the negligence of the Grantor.

VII. BASELINE DATA.

In order to establish the condition of the Property so as to be able to properly monitor future
uses and assure compliance with the terms of this Agreement, Grantor and Grantee
approved an updated Baseline Documentation Report of the Property on ________, which
contains an inventory of the Property's relevant features and conditions known as baseline
data. The baseline data shall be used to establish the condition of the Property as of the
date of its preparation and document off-site references made for comparison in Section V.

VIII. GRANTOR'S RESPONSIBILITIES.

1. Grantor agrees to bear all costs of ownership, operation, improvements,
administration, upkeep, management and maintenance of the Property and shall
indemnify, appear and defend, and hold harmless the Grantee from all claims,
lawsuits and liabilities of any kind, including attorney’s fees and costs, arising from
any act or omission of Grantor in connection with its ownership, management,
maintenance, or administration of the Property, or in connection with public use of
the Property, or for any negligent act or omission in connection with its
performance of this Agreement; except to the extent such claim, lawsuit, or liability
arises from the negligence of the Grantee.

2. Grantor shall pay all real property taxes and assessments levied on the Property.

3. Any construction on the Property that goes beyond maintenance shall be identified
in the current master plan for the Property and shall be consistent with this
Easement.
4. Uses and facilities on the Property shall be located, designed and constructed so as to avoid or where necessary minimize the impact on critical areas and wildlife habitat.

5. Trail details such as decommissioning, re-routing, or upgrading existing trails, creating new trails, and maintaining trails shall be accomplished in a manner consistent with the Critical Areas Ordinance and Bellingham Park and Recreation Department adopted standards.

6. Grantor shall take reasonable steps to direct and confine public access to defined and maintained trail surfaces and designated areas and to prevent damage to ground cover, understory vegetation and disturbance of wildlife from off-trail public use.

7. Grantor shall post signage on the Property stating that all dogs on the Property must be leashed and remain on the trails, and users must properly dispose of all their dog’s waste. Failure of Grantor to enforce this Section VIII. 7 shall not constitute a violation of this Conservation Easement.

IX. TERM OF CONSERVATION EASEMENT.

This Easement shall run with the Property in perpetuity and shall bind the Grantor and Grantee, their successors and assigns forever.

X. ASSIGNMENT OF GRANTEE’S INTERESTS.

The Grantee may assign its interests in this Easement to a “qualified” organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, and RCW 64.04.130 and RCW 84.34.250. Should the Grantee cease to exist, this Easement would be assigned to such an organization. Grantee shall give the Grantor 30-days advance written notice of its intent to assign its interests in this Easement to a "qualified" organization, including the name of the organization.

XI. PROPERTY INTEREST.

Grantor and Grantee agree that this Easement gives rise to a property right immediately vested in the Grantee, which right has a fair market value that is equal to the proportionate value that the Easement bears to the value of the Property as a whole, upon the date of the execution of the Easement.
If all the purposes of this Easement become impossible to accomplish because of a change of circumstances, this Easement can be extinguished only by judicial proceedings, and on subsequent disposal of the Property, the Grantee is entitled to a portion of the proceeds equal to the proportionate value of the Conservation Easement. In the event of condemnation of the Property in whole or in part, Grantee shall be entitled to compensation proportionate to the loss of conservation values caused by the condemnation.

XII. DISPUTE RESOLUTION.

1. If Grantee has good reason to believe that Grantor has undertaken or is about to undertake an activity in violation of the terms of this Easement, and that activity would have a significant, irremediable impact on the conservation attributes of the Property this Easement is intended to protect, Grantee will make an effort, reasonable under the circumstances, to consult with Grantor in an attempt to deter the activity in question and reach a satisfactory resolution of the situation. If Grantee is not able to reach a satisfactory resolution of the situation, Grantee may seek judicial injunctive relief to prevent any further such activity, and/or to compel the restoration of the Property to the condition that existed prior to the undertaking of the activity in question. Any forbearance by Grantee to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantee's rights under this Easement.

2. Except in the case of imminent or ongoing activity described above in subsection 1 above, if a dispute arises between the parties concerning whether a proposed activity is consistent with the terms of this Easement, the parties agree not to proceed with the proposed use or activity pending resolution of the dispute. To resolve the dispute, the parties agree to proceed as follows. First, Grantor and Grantee will discuss the dispute in an effort to reach a mutually agreeable resolution. Second, if the parties are not able to resolve the dispute in this manner, they will seek to resolve the dispute utilizing a disinterested, mutually agreed upon mediator and share any associated costs equally. Third, if the dispute is not resolved by mediation, either party may request of the other party in writing that the dispute be submitted to binding arbitration in accord with the Washington Uniform Arbitration Act (RCW 7.04A). If arbitration is pursued, the prevailing party shall be entitled to an award against the non-prevailing party for all costs and expenses related to such arbitration, including, the prevailing party's attorney fees. If the arbitrator determines that there is no clearly prevailing party, each party will bear its own expenses and the parties will split equally the fees and expenses of the arbitrator.
XIII. MISCELLANEOUS.

1. The terms Grantor and Grantee, wherever used in this Easement, shall include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.

2. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.

3. Notice to Grantee shall be to the Executive Director of Grantee, who until further notice shall be:

   Executive Director
   Whatcom Land Trust
   412 N. Commercial St.
   Bellingham, WA 98225

Notice to Grantor shall be to the Director of Parks for Grantor, who until further notice shall be:

   Bellingham Parks Director
   210 Lottie St.
   Bellingham, WA 98225

   Copy to: City Attorney
   210 Lottie St.
   Bellingham, WA 98225

4. The entire agreement of the parties is set forth in this Easement. No alteration or variation of this instrument shall be valid or binding unless it is in writing and properly executed and acknowledged by both parties. The interpretation and the performance of this Easement shall be governed by the laws of the State of Washington.

5. This Easement shall be liberally construed in favor of the grant to effectuate the objectives and purposes of this Easement particularly as set forth in Section II and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the objectives and purposes of this Easement that would render the provision valid should be favored over any interpretation that would render it invalid.

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IN WITNESS WHEREOF, Grantor and Grantee have executed this Conservation Easement this ___ day of ______________, 2023.

GRANTOR:

CITY OF BELLINGHAM

__________________________
Seth Fleetwood
Mayor

Department Approval:

__________________________
Nicole Oliver
Department of Parks and Recreation
Approved As To Form:

__________________________
Alan Marriner
City Attorney

Attest:

__________________________
Andy Asbjornsen
Finance Director

GRANTEE:

WHATCOM LAND TRUST

__________________________
Gabe Epperson
Executive Director
STATE OF WASHINGTON ) ) ss:
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that Seth Fleetwood is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Mayor of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: _________________

NOTARY PUBLIC
Printed Name: _______________________
My Commission Expires: ___________________

STATE OF WASHINGTON ) ) ss:
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that Andy Asbjornsen is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Finance Director of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: _________________

NOTARY PUBLIC
Printed Name: _______________________
My Commission Expires: ___________________
STATE OF WASHINGTON
COUNTY OF WHATCOM

) ss.

I certify that I know or have satisfactory evidence that Gabe Epperson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated he was authorized to execute the instrument, and acknowledged it as the Executive Director of the Whatcom Land Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: ____________________

__________________________
NOTARY PUBLIC
Print Name: ____________________
My Commission Expires: ________________

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EXHIBIT A

PARCEL A (370212 359328 0000):

The south half of the southwest quarter of the northeast quarter of Section 12, Township 37 North, Range 2 East of W.M., except that right-of-way lying along the easterly line thereof, commonly referred to as 20th Street.

PARCEL B (370212 364207 0000):

That part of the northwest quarter of the southeast quarter, and that part of the southwest quarter of the southeast quarter of Section 12, Township 37 North, Range 2 East of W.M., lying northerly of Chuckanut Drive.

PARCEL C (370212 478165 0000):

Lot B, as delineated on Chuckanut Trust Lot Line Adjustment, according to the plat thereof, recorded under Auditor’s File No. 961219101, records of Whatcom County, Washington.

PARCEL D (370212 447323 0000):

Lots 1 through 4 and Lots 21 through 24, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.

PARCEL E (370212 477313 0000):

Lots 5 through 20, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.
CONSERVATION EASEMENT
EXHIBIT B

LEGEND
Parcel A - 370212 359328
Parcel B - 370212 364207
Parcel C - 370212 478165
Parcel D - 370212 447323
Parcel E - 370212 477313
Subject: An Ordinance Creating a New Fund to Account for the Construction of the What-Comm Emergency 911 Facility and Amending the 2023-2024 Biennial Budget – Amendment No. 6

Summary Statement: This budget amendment creates a new fund to account for the construction of a new What-Comm Emergency 911 Facility and provides design funding for that project. Additionally, it adds budget authority for the Parks and Recreation Department to perform a feasibility study for a recently purchased property on Meridian Street. Staff memos in this packet provide greater detail for both items.

Previous Council Action: Adoption of the 2023-2024 Biennial Budget

Fiscal Impact: $1,750,000

Funding Source: General Fund; Greenways; State Grant

Attachments:
1. WHAT-COMM 911 STAFF MEMO
2. 4447 MERIDIAN/TINY HOME STAFF MEMO
3. ORDINANCE
4. BUDGET MODIFICATION REQUEST PW-096
5. BUDGET MODIFICATION REQUEST PA-063

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<th>Recommendation</th>
<th>Presented By</th>
<th>Time</th>
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<td>Committee Briefing - Vote Requested</td>
<td>07/10/2023</td>
<td>Pass Ordinance</td>
<td>Forrest Longman, Deputy Finance Director</td>
<td>10 minutes</td>
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Recommended Motion:

Council Committee: Committee Of The Whole

Agenda Bill Contact: Forrest Longman

Reviewed By Forrest W. Longman

Department Finance Department

Date 07/03/2023

Council Action:

Matthew T. Stamps Legal 07/03/2023

Seth M. Fleetwood Executive 07/05/2023
For many years, the City has recognized the What-Comm 911 dispatch building as the facility most critically in need of replacement. This budget ordinance provides $1.5 million to proceed with design of a new facility. Ultimately, the new facility is anticipated to cost $12 million, to be financed through a bond issuance in 2024. The project is expected to be completed in 2025.

What-Comm is a former fire station and over 60 years old. Over the years the City has attempted to prolong the life of the facility, with the knowledge that replacement was needed. In January, the What-Comm Administrative Board approved a proposal to build a replacement What-Comm facility at the current location. Subsequently, the City issued a request for proposal for design and selected SHKS Architects.

The new building will house the What-Comm call taking and police dispatching operation, offices, employee facilities and technology and communications equipment. The building will be fully electrified and meet all the City’s high standards for climate impact and resiliency.

The attached budget ordinance creates a new construction fund for the project and seeds it with $1.5 million to complete design of the new facility. A line-item in the state’s capital budget will reimburse expenses of $1 million. After design is complete, the City will issue bonds for the construction cost and to reimburse the City for design expenses in excess of the state contribution.

Ultimately, What-Comm user fees will pay the debt service. The Finance Department is recommending creation of a stand-alone construction fund to ensure simple transparency for our What-Comm partners. The City’s portion of the debt service is anticipated to be approximately $300,000 annually for the 20-year life of the debt.
MEMORANDUM

TO: BELLINGHAM CITY COUNCIL
FROM: FORREST LONGMAN, DEPUTY FINANCE DIRECTOR
CC: MAYOR SETH FLEETWOOD; ANDREW ASBJORNSEN, FINANCE DIRECTOR
SUBJECT: 4447 MERIDIAN FEASIBILITY FOR DUAL DEVELOPMENT
DATE: JULY 10, 2023

The attached budget ordinance appropriates funds to perform feasibility and concept design for a recently purchased park property on Meridian Street. The work will primarily assess the property for trails, but it will also evaluate a portion of the property as a new location for the Swift Haven and Unity Village tiny home communities.

Status of Current Tiny Home Villages
Both Swift Haven and Unity Village are located on properties that cannot continue to host the villages. As such, finding an alternative site or sites is necessary for continued operation.

Swift Haven’s location at Geri Field was improved with a state Recreation and Conservation Office (RCO) grant that encumbers the parking lot and ballfield. Use as a tiny home village violates the RCO-mandated grant restrictions for recreational use only. The Parks and Recreation Department has worked with RCO to allow Swift Haven as a temporary conversion, but RCO has asked the City to remove the village by March 31, 2024. RCO will grant no more extensions for this use.

Unity Village sits on Wastewater Utility property at the Post Point Wastewater Treatment Plant. The site is needed to accommodate expansion of the plant. While work on the plant was anticipated to begin this year, changes to the City’s plans for Post Point delayed the timeline slightly allowing Unity Village to remain longer than initially anticipated. However, the Public Works Department needs the site vacated in the next 12 months to avoid delaying needed improvements to this critical City infrastructure.

City staff evaluated many public and private properties to host one or both tiny home villages. All had challenges, from wetlands encumbrances to access or facility issues. Staff identified the recently purchased property at Meridian as the best suited for siting both tiny home villages.

The Property
Located at 4447 Meridian, the property was recently purchased by the City using Greenways funds to complete trail connections adjacent to Cordata Park. However, the entire site is not needed for the trails and the “pan handle” portion abutting Meridian is well suited for temporary location of the tiny home villages and a future affordable housing development. It sits near bus access, stores, an educational institution, and other facilities.
Since this property was purchased with Greenways, after the completion of the study budgeted in this ordinance, the City intends to divide the property and purchase the portion next to Meridian with Affordable Housing Sales Tax dollars. This will allow the City ensure Greenways resources are used appropriately and to bank the property for future permanent affordable housing. A budget ordinance later this year will fund the purchase and any necessary infrastructure on the site. Funding for the current phase of the project has been divided proportionally between Greenways and General Fund based on the acreage anticipated for park and non-park uses respectively.

Recommendation  
Staff recommend Council approve the attached budget ordinance and support the evaluation and future development of this site for Swift Haven and Unity Village. The site is unencumbered, can be used in the future for permanent affordable housing, and ensures a stable location for both villages for as long as their use permits allow.
AN ORDINANCE CREATING A NEW FUND TO ACCOUNT FOR THE CONSTRUCTION OF THE WHAT-COMM EMERGENCY 911 FACILITY AND AMENDING THE 2023-2024 BIENNIAL BUDGET – AMENDMENT NO. 6

WHEREAS, the City has identified a budget adjustment that was not anticipated when the biennial budget was adopted; and

WHEREAS, these adjustments are necessary to improve City services and ensure a balanced budget; and

WHEREAS, to efficiently account for the construction of a new What-Comm emergency 911 communications facility, it is necessary to create a new fund.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. A new fund is hereby created to account for expenditures related to the construction of the What-Comm emergency 911 communications facility. This fund shall be known as the What-Comm Construction Fund, fund number 301.

Section 2. The Finance Director is delegated the authority to administratively change the name or number of the What-Comm Construction Fund created in Section 1 if necessary for best accounting practices so long as the purpose and the use of the funds does not change in any manner.

Section 3. The 2023-2024 Biennial Budget is hereby amended as follows:

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<th>Department</th>
<th>Revenue Amount</th>
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<td>173 - Greenways III</td>
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<td><strong>1,500,000</strong></td>
<td><strong>1,500,000</strong></td>
<td><strong>(750,000)</strong></td>
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PASSED by the Council this ______ day of ________________________, 2023.

__________________________________________________________________________

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270
Council President

APPROVED by me this _______ day of ____________________, 2023.

________________________________________
Mayor

ATTEST:

________________________________________
Finance Director

APPROVED AS TO FORM:

________________________________________
Office of the City Attorney

Published:

________________________________________
Request Title:
PW-096 - What-Comm Facility Design

Financial Impact

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Net Impact of Request: ($500,000)

1) Request Description

This change request provides funding for design of a new What-Comm 911 dispatch facility by transferring $1.5 million from the General Fund to a new construction fund created to account for this project. A state grant will reimburse $1 million. The remaining $500,000 will be repaid to the General Fund when bonds are issued for construction of the facility in late 2024 or early 2025. Total project cost is estimated to be $12 million.

2) How does this modification fit within existing workplans and the priorities? How does it further climate action goals?

The What-Comm facility was identified in the VFA facility condition report as one of the City’s most deteriorated assets. Further, the facility no longer meets space or use requirements of the growing needs of the growing needs of this county-wide 911 service.

The new facility will be fully electrified and have modern energy efficiency standards, reducing the climate footprint.

3) Expected Outcomes

A secure, efficient facility for a critical service.

4) Other implications of requested change

Although this is a county-wide program, the City bears approximately 40% of the expenses related to What-Comm as the largest user. The City’s user fees related to What-Comm will increase when the bonds are issued commensurate to the debt and city share.

Approved By: Forrest Longman
PA-063 - Meridian Parks Property Feasibility Study

Financial Impact

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Net Impact of Request: ($250,000)

1) Request Description

This change request provides funding to undertake feasibility and concept design for the recently purchased Park property on Meridian Street.

2) How does this modification fit within existing workplans and the priorities? How does it further climate action goals?

3) Expected Outcomes

4) Other implications of requested change

Requested By: Forrest Longman
Subject: Work Session to Consider an Ordinance Amending the Old Town Overlay District Development Regulations

Summary Statement: On June 26, 2023, City Council held a public hearing to consider proposed amendments to the Old Town Overlay District Development Regulations found in Bellingham Municipal Code 20.35.055-.085, which include, but are not limited to, the following: allowing additional interim light industrial uses; adjusting floor area bonuses and transfers between development sites; and eliminate parking requirements. Following the hearing, Council directed staff to bring the proposal to City Council Committee of the Whole for a work session and to provide information on initial questions asked by Council. This is being coordinated with concurrent consideration of a resolution authorizing a development agreement with an Old Town developer.


Fiscal Impact: Staff time to facilitate updates to land use regulations in the BMC to implement the goals and policies of the Comprehensive Plan is included in the PCDD budget.

Funding Source: General Fund

Attachments: 1. ATTACHMENT 1 - STAFF MEMO 6-29-2023
2. ATTACHMENT 2 - STAFF MEMO 6-14-2023
3. ATTACHMENT 3 - OLD TOWN DRAFT ORDINANCE
4. ATTACHMENT 4 - PC FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS 4-20-23
5. ATTACHMENT 5 - STAFF REPORT - 4-20-23
6. ATTACHMENT 6 - OLD TOWN VILLAGE LLC - LETTER OF INTENT
7. ATTACHMENT 7 - PARBERRY DEVELOPMENT AGREEMENT
8. ATTACHMENT 8 - PC MINUTES 4-20-23
9. ATTACHMENT 9 - FINAL DNS- SEP2023-0014
10. ATTACHMENT 10 - PUBLIC COMMENT
11. PUBIC COMMENT RECEIVED BY COUNCIL

Meeting Activity: Committee Briefing - Vote Requested
Meeting Date: 07/10/2023
Recommendation: Pass Ordinance
Presented By: Chris Koch, PCDD
Time: 10 minutes

Council Committee: Committee Of The Whole

Agenda Bill Contact: Chris Koch, Planning and Community Development

Reviewed By: Blake G. Lyon
Department: Planning & Community Development
Date: 06/30/2023

Council Action:
Matthew T. Stamps
Legal
07/03/2023
Seth M. Fleetwood
Executive
07/05/2023
City Council held a public hearing on June 26, 2023, to consider proposed amendments to the Old Town Overlay District development regulations found in Bellingham Municipal Code (BMC) 20.35.055-.085. Immediately following, City Council held a public hearing to consider a Development Agreement with Developers (Old Town Village, LLC and Capron, LLC) who have sought partnership with the City to develop several parcels of property within the Old Town Subarea. These two items are interrelated in that the proposed BMC amendments would adopt enabling language to implement provisions of the Development Agreement. Following the public hearings, City Council directed staff to bring both items to City Council Committee of the Whole for work sessions and to provide information on initial questions asked by Council. The following is a list of questions and comments from Council with staff responses.

Questions related to parking standards

1) Explore options for requiring affordable housing in exchange for reduced or eliminated parking standards.

Response: Reducing parking requirements and associated construction costs are intended to improve construction and operational feasibility for new development. Adding new requirements such as affordable housing will serve to negate the improved feasibility by negatively impacting long term operational costs and profitability. Given the unique set of challenges for successful development in Old Town, if there is no improvement in the feasibility of building here, the subarea may continue to languish and be a burden on city resources.

2) How are ADA parking and EV charging stations affected when parking requirements are eliminated?

Response: The number of ADA parking stalls and EV charging stations required for a development site is based on the occupancy classification(s) of the building, the number of parking stalls being
provided on site, and the quantity/type of EV stations (3 types) typically required of a site. If no on-site parking is required and no parking is provided, then no ADA stalls or EV stations are required. If no on-site parking is required but parking is being voluntarily provided, then requirements for ADA stalls and EV stations must first be satisfied before providing standard parking stalls.

Installation of curbside EV charging stations in city rights-of-way is possible. The City is in the process of installing 45 EV chargers at 26 sites throughout Bellingham between November 2022 and December 2023 as part of its Electrification of Transportation project (EF154). Examples include new installations in front of Taylor Dock and the Federal Building. Initial research show that communities generally don’t require developers to install EV charging infrastructure in public rights-of-way when no on-site parking is provided. The city owns and maintains all the EV charging stations within the city that are in public rights-of-way.

3) What rules determine the mix and distribution (ratio) of parking for mixed-use retail/residential projects?

Response: The City has adopted criteria for shared parking in BMC 20.12.010 (A)(6) that developers largely satisfy by contracting out to parking professionals to produce the required analysis which adds time, cost, and uncertainty to a project. Shared parking may be applied to a site when land uses have different peak parking demand patterns (i.e., residential and commercial) that vary by time of day and are able to use the same parking spaces/areas at different times throughout the day.

The original parking amendment proposal that would exempt the parking requirements for commercial uses in a residential/commercial mixed-use building is intended to primarily serve the local population and incentivize small scale pedestrian oriented commercial spaces that contribute to the walkability of the area with visual interest and activity. The proposed minimum 4:1 residential to commercial floor area ratio was set to ensure the parking demand for the commercial use would be proportionally minimal compared to that of the residential use. It is especially notable that the Baby Boomer generation continues to retire in greater numbers, and it is important to ensure that housing options with walkable destinations are being built for when driving is no longer a viable option due to age and health. Incentivizing street front uses that contribute to a visually attractive, active, and safe public realm are intended to produce urban environments that are more conducive to alternative transportation and less reliant on the automobile.

4) What costs does the City and/or residents incur when implementing and maintaining a residential parking zone?

Response: Staff is still gathering information and will be prepared to respond at the work session.

5) How do parking maximums work?

Response: Contrary to the common practice of establishing minimum parking requirements, “parking maximum” standards limit the construction of parking lots that are larger than necessary. They establish an upper bound for the number of spaces allowed for a specific use and are intended to limit parking for a variety of reasons such as controlling the amount of land and impervious surface associated with parking, and making parking efficiency strategies such as shared parking more attractive.
Bellingham does not currently have parking maximums and it would be a challenge developing a unique system applicable only to Old Town.

If City Council desires retaining parking minimums with added flexibility, staff recommends adoption of the original parking amendments considered by the Planning Commission and adding a new provision from BMC 20.37.540(C) which would essentially allow any parking facility to be a commercial lease lot. The practice is currently allowed in the Downtown, Waterfront, and Fairhaven Urban Villages and would increase flexibility and efficiency of providing parking.

6) Does the elimination of parking standards affect bicycle parking? How will the city assure that adequate and safe “public” bike parking will be provided?

Response: Specific bike parking standards should be adopted for Old Town consistent with what’s been adopted for all other urban villages such as BMC 20.37.540(G) for the Downtown District. This includes long-term parking which is typically secure on-site parking and short-term parking which is typically available to the public and may be located in the right-of-way. Old Town was the first urban village adopted and is the only urban village plan that has not included enhanced bike parking standards in the original adoption or been revisited to update the standards. Any proposal to reduce auto parking should be offset by adopting modern bike parking standards consistent with the City’s other urban villages.

7) Given multifamily units that rent at market rate, to what extent will decreasing projects costs with reduced parking requirements simply increase developer profits and not be passed on to tenants through lower rents?

Response: Given two apartment units being identical except that one has parking and the other does not, the unit with parking will lease for a higher rate than the unit without. Similarly, a unit with secure structured parking will lease for a higher rate than a unit with open surface parking that is exposed to the elements. Parking is a commodity for those who own, need, and/or place a high value on their cars and want dedicated parking. However, not everyone needs or wants to own a car. There is a segment of the community that wants to live a car-free or car-light lifestyle, and they do not want to subsidize those who own one or more cars. But little housing is being built to accommodate that lifestyle, especially when most municipal zoning laws stipulate that new housing can only legally be built if it includes parking. If minimum parking requirements are eliminated, the market will generally determine the need for parking for the specific housing type being built whether luxury, market rate, or affordable.

Other Questions

8) Regarding Park Impact Fee (PIF) credits, how would making improvements to the Old Town Village Trail work and is it equitable?

Response: Just to clarify the question regarding potential PIF credit for the Old Village Trail, per BMC and RCW, the required method to obtain a credit is to make an offer to construct a park facility or amenity, based on engineer’s estimate, of a listed capital facility plan item that is in proximity to serve the new residents that accompany a new development. The Parks Director reviews the offer and estimate for accuracy, and then would need to accept the offer, then the credit is applied to
active building permits by planners doing the review. Only the amount presented by stamped engineer’s estimate can be offered as credit.

9) What are some examples of public amenities that could be offered for the proposed “community benefit” FAR bonus other than daycare?

**Response:** This proposed provision is intended to be a blank slate to accommodate proposals for public benefit that may not be contemplated today but may arise in the future. That said, a few potential options without specific details may include:
- Building a dedicated, secure, public auto parking facility.
- Building a dedicated, secure, public bike parking facility with bike repair station. May include staff to provide dedicated bike repair and rental, including electric bike and scooter rental.
- Development of a tiny home village within Old Town for a period of five (5) years pursuant to BMC 20.15.060
- Development of unique “placemaking” streetscape improvements that would contribute to strengthening Old Town’s identity and sense of place.
- Installation of electric vehicle (EV) charging stations in the public right-of-way for public use.

A concern was expressed about what if the bonus is for a specific “use” and the use ceases to exist after a short amount of time after being established, and the bonus FAR that was built would presumably remain in perpetuity. What can be implemented to ensure long term viability of a public benefit FAR bonus, or replacement, or penalty if it ceases to exist? It is anticipated that any contract for such a bonus would be conditioned to include a penalty for noncompliance or other alternative remedy.

10) Where can floor area transfers go, and what limitations are there on how they can be exercised?

**Response:** Floor area transfers are only authorized within the Old Town Overlay District and may occur between any two properties within the district. The maximum floor area ratio (FAR) allowed on a site is 5.0.

If the Old Town Overlay District is amended as proposed, it will allow for an alternative process for transferring floor area between sites as long as the process is memorialized in a Development Agreement. Please see Section 6 of the Development Agreement. The submittal of designs for both the sending and receiving sites, as required by BMC 20.35.070(D)(3), shall not be required for the Developers’ Property provided the transfer shall be commemorated in the form of a restrictive covenant on the sending site and recorded with Whatcom County Auditor’s Office. The restrictive covenant on the sending site shall include the floor area square footage being sent and the site to which it is transferred. The Developers shall not be entitled to the transfer of floor area to the receiving site unless proof of the recorded document is provided.

The Developers could transfer floor area from a site that did not need the base FAR of 3.5 – one example is the one-story building on the 700 block of W Holly. The Developers could transfer floor area from that site to a receiving site that could use more than the base FAR 3.5.

11) Why not allow tiny home villages or other temporary/interim housing instead of boat storage?
Response: Tiny home villages, specifically temporary tiny house encampments, may be approved for a period of up to five (5) years pursuant to BMC 20.15.060. Increasing the time limit beyond five years would require a legislative code amendment.

12) What is the stipulated timeframe allowed for the interim uses (boat storage, etc.)

Response: As specified in the draft Development Agreement, Subsection 14, the Agreement would remain in effect for ten (10) years from date of adoption. It includes the following provision: “The Term of this Agreement shall be automatically extended by one year, for up to an additional five (5) years if construction of the City/Burlington Northern improvements have not been completed as required to commence the Waterfront Quiet Zone, which extends from Wharf Street to the corner of F Street and Roeder Avenue.” The use would not be allowed past the term, or past the extension if qualified.

13) How does permit prioritization work for development review?

Response: The Mayor will designate a staff person that will be a point of contact for the developers. They will not necessarily be doing permit work. Rather, their role would be to let reviewers know that the project is a priority and would keep track of progress. They would report to the Mayor, Development Agreement Project Manager and Department Heads if deadlines are being missed. They would keep the Developer informed of progress and if anything is causing delay on their end. If the Developers submit one (1) large project per year, we estimate this position may need to focus on this work anytime between 10-40 hours per year – dependent upon the quality and pace of work by both parties and the complexity of the project.

14) What are the typical block dimensions in Old Town and how do they relate when implementing the proposed allowance for shared parking facilities that may be up to 1,000 feet from a new use (parking generator)?

Response: The blocks located NW of Whatcom Creek are generally 200’ x 200’ (similar to Fairhaven) and separated by 60’ rights-of-way which translates to a proposed shared parking facility being approximately up to 4 blocks away from a new use (parking generator) that requests shared parking. The blocks on the SE side of Whatcom Creek are irregularly shaped and larger, but have access to public and private shared parking facilities in the downtown. By way of example, the Mt. Baker Apartments owned by Catholic Housing Services at 308 W. Champion has 85 units of affordable housing and 4 street front businesses with no parking on site, and it is approximately 730’ door-to-door from the City’s Parkade on Commercial Street.

15) Regarding the City leasing/selling the air rights above the Maritime Heritage Park parking lot, could the development agreement be conditioned to require installation of a green roof?

Response: Given that the existing parking lot is an existing paved impervious surface, it would be prudent to consider doubling or tripling its parking capacity if it can be done within the existing footprint, making more efficient use of the land. It will result in added mass and bulk which could be mitigated with architectural design, green walls, landscaping, and other methods. Adding a green roof would be an added benefit, but with considerable expense given it will need to support a large load with structure, soil, and vegetation. As such, and without upfront detailed cost analysis, it should be a consideration but not a condition. An additional consideration would be whether a
landscaped lid, if designed to be open for public use, could be considered an expansion of usable recreational open space eligible for park impact fee credit.

**Staff Recommendation**

Staff recommends City Council approve the Planning Commission’s proposed amendments to the Old Town Overlay District development regulations in BMC 20.35.055-.085 with the following exceptions:

- Regarding FAR bonuses, retain the existing “public plazas and open space” FAR bonus provision.
- Adopting new minimum bike parking standards as outlined in #6 above, consistent with all other adopted urban villages.

Alternatively, if City Council elects to retain minimum auto parking requirements as detailed in the original proposal considered by the Planning Commission, staff recommends:

- Regarding FAR bonuses, retain the existing “public plazas and open space” FAR bonus provision.
- Adopting new minimum bike parking standards as outlined in #6 above, consistent with all other adopted urban villages.
- Adoption of a new provision outlined in #5 above which would allow any parking facility to be a commercial lease lot.

**Staff will amend the attached draft ordinance to reflect the final direction from City Council.**
MEMORANDUM

TO: CITY COUNCIL
FROM: PLANNING AND COMMUNITY DEVELOPMENT STAFF
SUBJECT: CONSIDERATION OF THE PLANNING COMMISSION’S RECOMMENDED REVISIONS TO OLD TOWN OVERLAY DISTRICT DEVELOPMENT REGULATIONS FOUND IN BELLINGHAM MUNICIPAL CODE 20.35.055-.085.
DATE: JUNE 14, 2023

PROCESS SUMMARY

The Planning Commission held a public hearing on April 20, 2023 where they adopted a series of recommended changes to current Old Town Overlay District (Old Town) regulations as detailed in the Commission’s findings, conclusions and recommendations. These recommendations now become the purview of the City Council.

These recommendations are being coordinated with consideration of a resolution authorizing the Mayor to enter into a Development Agreement (hereafter Agreement) with Old Town Village, LLC and Capron, LLC (hereafter Developers) whom have purchased or have contracts to purchase several parcels of real property within Old Town. See accompanying resolution under separate City Council agenda bill for details. The resolution is not within the legislative purview of the Planning Commission.

PLANNING COMMISSION RECOMMENDATIONS

1. The Planning Commission agreed with staff and recommended expanding the allowance of boat sales and repair, and additionally boat storage, as interim light industrial uses throughout the Old Town subarea. Currently boat sales and repair are allowed in Old Town but limited to properties southwest of Holly Street. The proposal would allow these uses, and additionally boat storage, elsewhere in Old Town “as an interim use for a period of time specified in a Development Agreement with the City”, with the express purpose of providing some form of economic vitality to the subarea while the development of adjacent properties is occurring.

Floor Area Bonuses:
2. The Planning Commission agreed with staff and recommended allowing City Council the discretion to approve an alternative process for commemorating floor area ratio (FAR) transfers between sites via a development agreement. Currently, FAR transfers between development sites are allowed on the condition that 1) the designs for the sending and receiving properties are reviewed at the same time, and 2) covenants documenting the transfer are recorded on the sending and receiving properties.

3. The Planning Commission agreed with staff and recommended increasing the FAR bonus for affordable housing to the maximum allowed 1.5 (currently limited to 0.5).

4. The Planning Commission recommended (7-0) an additional code amendment to strike the current FAR bonus for Public Plazas and Open Space in BMC 20.35.070(D)(4)(c)(i) and replace it with a provision allowing the Planning Director discretion to allot up to the maximum allowed 1.5 FAR for developer generated proposals that would provide public benefit. The Commission’s rational for the amendment was that Old Town already has an abundance of public spaces such that the bonus should be used for other currently unforeseen needs that may be seen as critical for the betterment of the City and neighborhood. The Commission directed staff to draft language that would implement the intent of their recommendation.

Staff do not recommend eliminating the Public Plazas and Open Space bonus. Specifically, proposed public spaces identified in the Old Town Subarea Plan such as adjacent to the Whatcom Territorial Courthouse and Great Northern Railroad Passenger Plaza are reliant on the subject bonus provision (see Chapter 5). Staff finds that the Commission’s general concept has merit and could be realized by creating an additional FAR bonus provision. Accordingly, staff provides the following amendment to BMC 20.35.070(D)(4)(c) for City Council’s consideration:

   c. Bonus Options.
      i.-iv. [No changes]
      v. Public Benefit. The planning director may administratively approve up to a maximum 1.5 bonus FAR for developer generated proposals that would provide a public need, service, or amenity that is determined by the director to be essential for the betterment of the City and neighborhood. The developer must demonstrate, to the satisfaction of the director, how the proposal will be adequate and proportionate to the requested increase in FAR, and consistent with the Bellingham Comprehensive Plan and Old Town Subarea Plan.

Parking:

5. The Planning Commission recommended (4-3) to eliminate minimum parking requirements in Old Town in lieu of proposed amendments to reduce parking, thereby allowing the market to determine the parking needed to serve the project. The Commission rationalized that with the exempt parking district in the abutting Downtown District Urban Village Commercial Core, Old Town would be a logical extension of the exempt parking district. And in the event parking congestion becomes an issue in the adjacent residential zoned areas, the City could expand its already established Residential Parking Zone (RPZ) program to those areas to help address the issue.
Furthermore, the subject area is within direct proximity to the Whatcom Transit Authority’s green GoLine, which severs as a high frequency transit option. Staff’s proposed amendments would otherwise:

- Align the Old Town parking standards with those of the Downtown District Urban Village.
- Allow new development in Old Town to use parking garages or shared parking facilities located within 1,000 feet of its location to count toward on-site parking requirements.
- Waive parking requirements in Old Town for commercial uses when part of a residential/commercial mixed-use building.

Many jurisdictions are reducing and/or eliminating parking minimums in an effort to help with affordability, encourage mode shift, and reduce greenhouse gas emissions and pollution from autos. With the potential for large single or limited ownership for Old Town properties and its ripeness for redevelopment, the unique area could be a good location to explore market driven parking requirements. Staff has no objection to the Commission’s recommendation to eliminate parking requirements throughout Old Town and allow the market to determine the appropriate parking on a per project basis. The proposal would reduce barriers to new development and increase predictability for developers by eliminating the uncertainty of obtaining a discretionary permit for reduced parking. Tracts A and B within Old Town shown on BMC Figure 20.35.075 are currently exempt from parking requirements similar to the abutting Commercial Core zone of the Downtown District Urban Village.

![BMC Figure 20.35.075](image)

Land to the west of the BNSF railway and Roeder Avenue in the Waterfront District Urban Village is predominantly industrial and unlikely to be impacted by overflow parking. Land generally NE of Bancroft Street located within the high-density Residential Transition zone of the Downtown District Urban Village has reduced parking requirements. Land generally NW of G Street is zoned for high-density multifamily and offices and has standard parking requirements applicable outside of urban villages. Old
Town and the surrounding areas are well served by transit with Whatcom Transit Authority bus routes on Holly, Dupont (GoLine) and Girard Streets. There is an abundance of residential, commercial, service, recreation, employment, and multimodal transportation opportunities adjacent to and planned within Old Town which makes it conducive to residents and businesses that want to own or rely on fewer or no vehicles.

Overall the Planning Commission recommended (4-3) approval of the package of amendments outlined above.

Other Matters

Finally, though not within their legislative purview, the Planning Commission had a discussion about affordable housing and the number of years indicated in the Parberry Development Agreement (Attachment 5, page 5, paragraph C), that must lapse before the City has the opportunity to purchase a parcel if that housing has not been created. The Planning Commission recommended (4-3) approval to strike out “9 years” from the applicable section of the Letter of Intent proposed for the development agreement allowing the city to purchase the site at any time.

CONCLUSION

Staff agree with the Commission’s recommendations on the proposed code amendments above and ask for Council’s direction on making changes to the attached draft ordinance to incorporate the Commission’s recommended change to eliminate parking requirements in Old Town as detailed in #5 above.

AGENDA BILL ATTACHMENTS

1. Staff Memo to City Council
2. Ordinance (DRAFT)
   A. Exhibit A - Planning Commission Findings of Fact, Conclusions and Recommendations
3. 4/20/2023 Planning Commission Staff Report
4. Old Town Village LLC - Letter of Intent - 2023
5. Parberry - Development Agreement - 2020
6. 4/20/2023 Planning Commission Minutes
7. Old Town Final SEPA DNS
8. Public Comment
AN ORDINANCE RELATING TO LAND USE PLANNING, AMENDING CHAPTER 20.35, ARTICLE II, OF THE BELLINGHAM MUNICIPAL CODE (BMC) REGARDING THE OLD TOWN OVERLAY DISTRICT.

WHEREAS, in 2008, the City adopted an amendment (Ordinance No. 2008-03-022) to its Comprehensive Plan for the Old Town Subarea (also known as the “Old Town Plan”) and an attendant amendment to its Land Use Development Code codified at BMC Chapter 20.35 (the “Old Town Overlay District”); and

WHEREAS, in 2016, the City adopted the 2016 Bellingham Comprehensive Plan (Comprehensive Plan) via Ordinance 2016-11-037 which includes as a key infill growth strategy a system of urban villages and transit corridors that would accommodate a significant share of the City's future growth, while preserving established, stable neighborhoods; and

WHEREAS, Old Town is one of six urban villages that have been adopted with master plans, development regulations and design standards; and

WHEREAS, the Comprehensive Plan directs the following:

- To achieve a healthy mix of housing that is affordable to a wide range of incomes, implement and seek new, innovative tools, including, but not limited to: Density bonuses; ... Purchase and transfer of development rights (TDR) programs; and Public-private partnerships for shared parking facilities, wetland mitigation, and regional stormwater management (Policy LU-10).
- Continue effective incentives and develop new incentives where needed for the planned urban villages (Policy LU-15);
- In instances where a proponent controls multiple properties within an existing urban village and seeks to address the coordinated provision of infrastructure, cooperatively develop plans, approaches and agreements, including development agreements (Policy LU-17);
- The City provide builders, developers and architects with a set of clear objectives and performance goals which promote the highest attainable standard of quality consistent with economic feasibility for new development (Policy CD-14); and
- The City limit urban sprawl by linking land use and transportation planning (Goal T-1), reduce dependence on single-occupancy vehicles (Goal T-4), and review parking standards to reduce the impacts of parking on urban form, pedestrian mobility, and the natural environment (LU-71); and

WHEREAS, Old Town has seen very limited private development since adoption of the Subarea Plan; and

WHEREAS, it is recognized that development in Old Town is challenging and has increased risk for many reasons, including, but not limited to the following: 1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site, which restricts property use and construction methods; 2) the adjacency of a soon to be built 300-bed homeless shelter; 3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; 4) the proximity of passive railroad crossings and the attendant loud noise from train horns; 5) the location a portion of the Property on former tidelands and landfill material which adds...
to development expense; 6) the complete transformation of an industrial use area to a commercial and residential one; and 7) the high cost of financing due to increasing interest rates.; and

WHEREAS, a Development Agreement between the City and Parberry’s, a significant property owner and former operator of Northwest Recycling, dated February 10, 2019, was amended and restated in 2020 and recorded under AF# 2021-0102090 in Whatcom County “2020 Parberry Development Agreement” which outlined specific capital investments the City would undertake adjacent to Parberry-owned property; and

WHEREAS, Parberry discontinued its operation known as Northwest Recycling located in the Old Town Subarea, a non-conforming use pursuant to the City’s Comprehensive Plan, and is in the process of selling the property on which it was located; and

WHEREAS, the elimination of the impacts to the neighborhood of the light industrial non-conforming use by the closure of operations of Northwest Recycling at its current site is critical to the creation of an urban village in the Old Town Subarea; and

WHEREAS, the Parberry’s have met every milestone outlined in the Development Agreement, which includes the discontinuation and/or relocation of non-conforming uses and renovation of 700 W Holly; and

WHEREAS, developers, referred to as the Old Town Village, LLC, and Capron, LLC, (collectively, “Developers”) have purchased parcels from Parberry and are considering the purchase of additional parcels within the Old Town Subarea, which is envisioned by the City to be an urban village with a range of residential and commercial uses, and have become successors in interest to the 2020 Parberry Development Agreement; and

WHEREAS, Developers and the City are negotiating a new Development Agreement, which will be considered by the City Council at the same time as this Ordinance; and

WHEREAS, given the risk associated with redevelopment in Old Town, Developers are seeking greater flexibility provided by the proposed revisions to the Old Town Overlay District; and

WHEREAS, the proposed text amendments to Title 20 BMC were processed consistent with the applicable amendment procedures in Chapter 20.22 BMC; and

WHEREAS, on March 30, 2023, the City of Bellingham as lead agency under the procedures of the State Environmental Policy Act issued a Determination of Non-Significance; and

WHEREAS, in accordance with the Growth Management Act, the State of Washington Department of Commerce was notified on March 30, 2023 of the City’s intent to adopt the amendments to the City’s environment and land use regulations; and

WHEREAS, the Bellingham Planning Commission held a public hearing on April 20, 2023 on the amendments, 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

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

WHEREAS, on DATE, the City of Bellingham as lead agency under the procedures of the State Environmental Policy Act issued a Final Determination of Non-Significance; and

WHEREAS, the Bellingham City Council held a public hearing on DATE on the amendments, 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 20.35.065(B) regarding Old Town Overlay District - Permitted Uses, is amended as follows:

B. Uses Permitted with Conditions. The following uses are allowed provided they are established and operated in accordance to the applicable conditions:

1. Boat sales; limited to properties southwest of Holly Street, unless allowed as an interim use for a period of time specified in a Development Agreement with the City.

2. Boat repair and storage; complete minor boat and engine repair is permitted; however, hull work is prohibited. Boats must be operational or being actively repaired. Limited to properties southwest of Holly Street, unless allowed as an interim use for a period of time specified in a Development Agreement with the City.

3. [NO CHANGES BEYOND THIS POINT]

Section 2. BMC 20.35.070(D) regarding Old Town Overlay District - Development Regulations, is amended as follows:

D. Floor Area Ratio (FAR).

1. Purpose. The maximum floor area ratio (FAR) standards are intended to accomplish several purposes of the old town subarea plan. Combined with the established height limits herein, the FAR allows for greater modulation in individual buildings and the greater urban fabric. They also provide architects greater flexibility in how to mass buildings on sites and relate projects to unique on- and off-site features.

2. Floor Area Ratio (FAR) Standard. The maximum FAR for all sites in the old town overlay district is 3.5, or 5.0 with use of floor area transfers and bonuses as outlined in subsections D(3) and (4) of this section.
3. **Transfer of Floor Area.** Transfer of FAR among properties that are part of a single development plan is allowed when approved by the planning director, provided:

   a. The designs for the sending and receiving properties are reviewed at the same time, unless an acceptable alternative process is commemorated in a Development Agreement with the City.

   b. The property owner(s) executes a covenant with the city that is attached to and recorded with the deed of both the site transferring and the site receiving the floor area reflecting the respective increase and decrease of potential floor area.

4. **Floor Area Bonus Options.** Floor area bonus options are offered as incentives to encourage facilities and amenities that implement the old town subarea plan.

   a. Projects may use more than one bonus option unless specifically stated otherwise; bonus floor area amounts are additive.

   b. The maximum floor area ratio increase that may be earned through the bonus options is 1.5 for a maximum FAR on site of 5.0.

   c. **Bonus Options.**

      i. [NO CHANGES]

      ii. **Affordable Housing.** Housing for low and middle income residents receives bonus floor area when approved by the planning director. For each square foot of floor area certified by the director as affordable housing, four square feet of bonus floor area is earned up to a maximum of 0.5 - 1.5 FAR. When commemorated in a Development Agreement with the City, an alternative floor area bonus option may be granted when a parcel is sold to or committed to a developer that agrees to construct and lease or sell 100% of the housing units to low or middle income households. The project must have controls in place, subject to approval by the director to ensure that the project’s residences remain permanently affordable in accordance with subsections (D)(4)(c)(ii)(A) and (B) of this section. Purchasers of affordable homes constructed under this chapter shall meet the following requirements:

         (A) **Annual Income.** All purchasers or tenants shall be from a household whose annual income, at the household’s initial occupancy of the single-family residence, is 80 percent or less of the median income (determined by Housing and Urban Development) as adjusted by family size of the Bellingham Standard Metropolitan Statistical Area (SMSA), specifically defined as Whatcom County; and

         (B) **Housing Expenses.** The monthly expenditure by a purchaser, as described in subsection (D)(4)(c)(ii)(A) of this section, for housing including rent or 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 rent or mortgage repayment 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.

iii. [NO CHANGES BEYOND THIS POINT]

Section 3. BMC 20.35.075 regarding Old Town Overlay District Development - Parking, is amended as follows:

A. Uses on Tracts A and B as shown on Figure 20.35.075 are exempt from parking requirements, except for hotels and motels, which shall provide the number of spaces required in BMC 20.12.010(B).

Figure 20.35.075 Parking Tracts

B. Uses on Tract C as shown on Figure 20.35.075 shall provide parking as follows:

1. Residential. Minimum parking requirements: of one parking space per studio, one-bedroom or two-bedroom dwelling unit. An additional one-half parking space per unit shall be provided for each bedroom over two per unit.

   0.5 space for each studio unit.
   0.75 space for each 1-bedroom unit.
   1.00 space for each 2- and 3-bedroom unit.
   0.5 additional space for each bedroom over 3 per unit.
2. **Commercial.** Minimum one space per 700 square feet of gross floor area, including office, retail, service, eating and drinking establishments, entertainment, and uses similar to those previously mentioned.

3. If a use is not readily classified within the residential and commercial classifications, then the planning director shall determine the standards which shall be applied.

4. Buildings existing as of (date of adoption of this chapter) are exempt from the requirement to provide additional parking due to a use change.

5. The planning director may exempt existing buildings listed on the local, state or federal register of historic places from required parking for a one-time floor area expansion, provided (a) the floor area expansion is limited to an area equal to 10 percent of the area of the existing building and (b) existing conforming parking on site shall not be displaced except as otherwise may be allowed. If the listed historic building provides 10 percent or less of the on-site parking that would be required for an equivalent new building, the planning director may allow displacement of some or all of the on-site parking.

6. Parking garages or shared parking facilities located within 1,000 feet of the uses they serve may be counted toward the on-site parking requirements for the use, provided an off-site or shared parking agreement is approved for use of the facility.

C. **Shared Parking.**

1. **Purpose.** To efficiently utilize parking resources where the potential for shared parking provisions with adjacent land uses has been analyzed and found to be appropriate.

2. The amount of off-street parking required by this chapter may be reduced by an amount determined by the planning director when shared parking facilities for two or more uses are proposed; provided, that the requirements stated in BMC 20.12.010(A)(6) are met.

3. Alternatively, in residential-commercial mixed-use buildings, no commercial parking is required when the residential floor area exceeds that of the commercial use(s) by a ratio of at least 4:1.

D. **[NO CHANGES BEYOND THIS POINT]**

**Section 4.** The Council agrees with, and hereby adopts the DATE Findings of Fact, Conclusions and Recommendations of the Planning Commission, attached as Exhibit A.

PASSED by the Council this _______ day of ______________, 2023

__________________________________
Council President
Attachment 4

BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

APRIL 20, 2023

SUMMARY
Following the public hearing and deliberation on the proposed amendments to the Old Town Overlay District development regulations found in Bellingham Municipal Code (BMC) 20.35.055-.085, 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:
The proposal is for consideration of proposed text amendments to the Old Town Overlay District development regulations found in Bellingham Municipal Code (BMC) 20.35.055-.085. The proposed amendments include, but not limited to:
   1) Allowing additional interim light industrial uses,
   2) Adjusting floor area bonuses and transfers between development sites, and
   3) Aligning parking standards with those of the Downtown District Urban Village.

The proposal before the Planning Commission is a legislative development code amendment requiring a Type VI process pursuant to BMC 21.10.040(l)(2). The Commission must hold a public hearing and issue findings of fact and conclusions along with a recommendation to the City Council. The Commission should adopt or modify the draft findings as needed to support the ultimate recommendations.

The proposed text amendments to the Land Use Development Ordinance, Title 20 BMC, are being processed consistent with the applicable amendment procedures in Chapter 20.22 BMC. Consistent with BMC 20.22.010, the amendments were initiated by the City at the request of Old Town Village LLC pursuant to a 2023 Letter of Intent jointly signed by both parties.

2. Background Information & Procedural History:
   2008: BMC 20.35.055-.085 Old Town Overlay District was adopted.
   March 17, 2023: A notice of Planning Commission public hearing was issued.
   March 30, 2023: A non-project SEPA Determination of Nonsignificance was issued.

The City adopted the Old Town Subarea Plan and supporting development regulations in early 2008. Redevelopment opportunities for Old Town have been the subject of several community planning efforts including the American Institute of Architects Regional Urban Design Assistance Team (R/UDAT), Whatcom Creek Waterfront Action Program, the City Center Master Plan, and the Community Forum on Growth Management.
The Old Town Plan is oriented toward encouraging and guiding thoughtful redevelopment consistent with the vision for Old Town by way of the following guiding principles:

- Provide a policy framework unique to Old Town,
- Encourage a healthy mix of diverse and eclectic residential and commercial uses,
- Guide development to encourage a safe, convenient and attractive pedestrian experience,
- Ensure new development responds to view corridors and landmark buildings,
- Provide a level of predictability for stakeholders within and outside Old Town, and
- Encourage redevelopment to occur in Old Town.

**Figure: Old Town Subarea Boundaries**

Old Town (boundaries shown above) has seen very limited private development since the 2008 adoption of the Subarea Plan other than remodeling existing buildings and changes in use. Notable new developments include the following with locations shown on the figure above:

1. **1200 C Street:** (2011) Rebuild of West Coast Marine with a 2-story building after fire destroyed the original building.

2. **1600 C Street:** (2012) Replacement of the old hatchery building and associated storage building within Maritime Heritage Park with a new 2-story Environmental Fisheries Building. The building is owned by Bellingham Technical College and the land is leased by BTC from the City.

3. **1000 Astor Street:** (2018) Redevelopment of the former Hempler's site with 30 multifamily dwelling units in a new mixed-use, 4-story building with surface and structured parking.
4. **910 W. Holly Street:** (2023 – Building permits currently under review) Construction of a new interim housing facility for the Lighthouse Mission consisting of a 5-story building with three entrepreneur commercial spaces fronting W Holly St, seven basement parking stalls, and agreement for lease of nearby off-site parking.

A Development Agreement between the City and Parberry’s, a significant property owner and former operator of Northwest Recycling, dated February 10, 2019 was amended and restated in 2020 (2020 Development Agreement) which outlined specific capital investments the City would undertake adjacent to Parberry-owned property. Parberry discontinued its operation known as Northwest Recycling located in the Old Town Subarea, a non-conforming use pursuant to the City’s Comprehensive Plan, and is in the process of selling the property on which it was located. The Parberry’s have met every milestone outlined in the 2020 Development Agreement, which includes the discontinuation and/or relocation of non-conforming uses and renovation of 700 W Holly.

Developers, referred to as the Old Town Village LLC, have purchased parcels from Parberry and are considering the purchase of additional parcels within the Old Town Subarea, which is envisioned by the City to be an urban village with a range of residential and commercial uses, and have become successors of the 2020 Development Agreement.

It is recognized that development in Old Town is challenging and has increased risk for many reasons, including, but not limited to the following: 1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site which restricts property use and construction methods; 2) the adjacency of a soon to be built 300-bed homeless shelter; 3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; 4) the proximity of passive railroad crossings and the attendant loud noise from train horns; 5) the location a portion of the Property on former tidelands and landfill material which adds to development expense; 6) the complete transformation of an industrial use area to a commercial and residential one; and 7) the high cost of financing due to increasing interest rates.

Given the risk associated with redevelopment in Old Town, Old Town Village LLC, is seeking greater flexibility provided by the proposed code amendments outlined in the staff report. Old Town Village LLC and the City administration are negotiating a new Development Agreement, which will be considered by the City Council at the same time as these code amendments. Old Town Village LLC and the City jointly signed a Letter of Intent (Letter of Intent) in 2023 which is a preliminary non-binding agreement regarding the parties’ interests in executing a development agreement which will help to promote implementation of the Old Town Subarea Plan by setting the stage for redevelopment of Parberry-owned and other adjacent properties. The Letter of Intent includes terms and conditions contemplated to be included in the development agreement, include a range of proposed code amendments. Though the proposed amendments are being requested by Old Town Village LLC, the amendments would generally be eligible for use throughout the Old Town subarea.

The proposed text amendments to the Land Use Development Ordinance, Title 20 BMC, are being processed consistent with the applicable amendment procedures in Chapter 20.22 BMC. They were initiated by the City at the request of Old Town Village LLC pursuant to the 2023 Letter of Intent, consistent with BMC 20.22.010. BMC 20.22.030 specifies: “After holding a public hearing to consider the findings and recommendations of the planning commission, the city council shall have the authority to confirm, alter, or modify any of the planning commission’s recommendations.” The Washington State Growth Management Act (RCW 36.70A.040)
requires development regulations to be "consistent with and implement the comprehensive plan."

Given the risk associated with redevelopment in Old Town, Old Town Village LLC is seeking greater flexibility provided by the proposed code amendments which include the following:

1. **Allow additional interim light industrial uses limited to boat sales and storage** (technically, boat sales is a commercial use). Currently boat sales and storage are allowed in Old Town but limited to properties southwest of Holly Street. The proposal would allow these uses elsewhere in Old Town "as an interim use for a period of time specified in a Development Agreement with the City." See Section 1 of the draft ordinance. Allowing boat sales and storage as an interim use is reasonable given the close proximity to the waterfront, they will serve to offset holding costs as individual lots are built out at greater intensity, and will reduce the number of empty lots which have the potential to create pocket areas for crime, blighted conditions, and/or other counterproductive experiences.

2. **Adjust floor area bonuses and transfers between development sites.** See Section 2 of the draft ordinance. Floor area bonuses and transfers between development sites are currently allowed in Old Town but the proposed amendments would provide more flexibility in how they occur as follows:

   - Currently, floor area transfers between development sites are allowed on the condition that 1) the designs for the sending and receiving properties are reviewed at the same time, and 2) covenants documenting the transfer are recorded on the sending and receiving properties. The proposed amendment would allow City Council the discretion to approve an alternative process for commemorating floor area transfers. The proposal is reasonable given that developers often do not have the resources or foresight to design two projects at the same time.

   - Currently, floor are bonuses are allowed for developer's provision of various facilities and amenities outlined in the table below. The maximum floor area ratio (FAR) for all sites in the Old Town Overlay District is 3.5, or 5.0 with use of floor area transfers and bonuses. The maximum FAR increase that may be earned through the bonus options is 1.5 for a maximum FAR on site of 5.0. Currently, only the public plaza and open space option allows the full 1.5 FAR bonus; all others are limited to 0.5 FAR. The proposal would increase the bonus for affordable housing to the full 1.5 FAR bonus.

The intent of limiting bonuses was to encourage new development to utilize multiple bonuses with multiple benefits provided. The proposal is reasonable given the current affordable housing shortage and high priority on increasing its supply.

<table>
<thead>
<tr>
<th>Amenity or Facility</th>
<th>Maximum Allowed FAR Bonus</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Existing</td>
</tr>
<tr>
<td>Public Plazas and Open Spaces</td>
<td>1.5</td>
</tr>
<tr>
<td>Affordable Housing</td>
<td>0.5</td>
</tr>
<tr>
<td>Leadership Through Energy and Environmental Design™ (LEED)</td>
<td>0.5</td>
</tr>
<tr>
<td>Financial contribution to Lake Whatcom Watershed Property Acquisition Program</td>
<td>0.5</td>
</tr>
</tbody>
</table>
3. **Aligning parking standards with those of the Downtown District Urban Village.** See Section 3(B)(1 and 2) of the draft ordinance. The proposed amendments would generally decrease parking requirements for residential development as shown in Tables 2 below with the decrease varying depending on the unit size. The decrease would be greatest at 50% for studio units while there would be no change for 2-bedroom units and units with more than 3 bedrooms.

<table>
<thead>
<tr>
<th>Residential Unit Type</th>
<th>Required Minimum Parking Stalls</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Existing</td>
<td>Proposed</td>
</tr>
<tr>
<td>Studio</td>
<td>1.0</td>
<td>0.5</td>
</tr>
<tr>
<td>1-Bedroom</td>
<td>1.0</td>
<td>0.75</td>
</tr>
<tr>
<td>2-Bedroom</td>
<td>1.0</td>
<td>1.0</td>
</tr>
<tr>
<td>3-Bedroom</td>
<td>1.5</td>
<td>1.0</td>
</tr>
<tr>
<td>Additional for each bedroom over 3</td>
<td>0.5</td>
<td>0.5</td>
</tr>
</tbody>
</table>

Creating parity in residential parking standards between adjacent urban villages makes sense, especially given the walkability of Old Town’s existing grided street network and proximity to transit, job, service, and recreational opportunities. Consistency in code also decreases confusion for property owners and developers, and eases administration by city staff.

The proposal should result in negligible parking impacts to adjacent uses outside of Old Town. The majority of Old Town abuts the Downtown District and Waterfront District Urban Villages which have parking requirements that essentially mirror those being proposed for Old Town. The northwest extent of Old Town interfaces with five blocks in the Lettered Streets which are zoned Residential Multi, Multiple, High Density. This interface is characterized by a walkable grided street network that is well served by high frequency transit service on Dupont Street and additional transit routes on Holly and Girard Streets.

4. **Allow new development to use parking garages or shared parking facilities located within 1,000 feet of its location to counted toward on-site parking requirements.** See Section 3(B)(6) of the draft ordinance. This is added as a shared parking proposal consistent with (2)(A)(d) in the 2023 Letter of Intent. It is copied from the Waterfront District in BMC 20.37.450(B)(7). It is more specific than other shared parking provisions in the code in that it allows parking to be provided in a common location that may be used by multiple users. The proposal will be beneficial to the Old Town Subarea in that a common shared facility(s) will allow for more efficient use of parking.

5. **Waive parking requirements for commercial uses when part of a residential/commercial mixed-use building.** See Section 3(C)(3) of the draft ordinance. This proposal will largely be limited to small scale commercial uses typical of what’s been developed in residential/commercial mixed-use buildings in the city’s urban villages in recent years. The ground floor commercial is generally intended to serve the residents of the building and immediate area with customers from further afar utilizing available street parking. Waiving parking requirements for small scale
commercial uses when part of residential/commercial mixed-use buildings will simplify permit application and project review, and reduce project cost. This change is intended to incentivize implementation of livelier pedestrian oriented streetscapes that are walkable destinations for local residents and employees. The prescribed streetscape designs adopted in the Old Town Subarea Plan maximize creation of curbside public street parking which essentially is a pool of shared parking for streetside uses. Accordingly, the potential for increased street parking congestion as a result of this proposal is negligible and would be offset by the creation of walkable small scale commercial and service destinations for local residents. The proposal is consistent with Comprehensive policies encouraging land uses and project designs that are more pedestrian friendly and transit supportive.

**Additional Planning Commission Recommendations**

During the Planning Commission’s review and deliberations, the Commission made the following additional amendment recommendations:

1. **FAR Bonus:** The Planning Commission recommended (7-0) to strike the current FAR bonus for Public Plazas and Open Space in BMC 20.35.070(D)(4)(c)(i) and replace it with a provision allowing the Planning Director discretion to allot up to the maximum allowed 1.5 FAR for developer generated proposals that would provide public benefit. The Commission’s rationale for the amendment was that Old Town already has an abundance of public spaces such that the bonus should be used for other currently unforeseen needs that may be seen as critical for the betterment of the City and neighborhood. The Commission directed staff to draft language that would implement the intent of its recommendation.

2. **Parking:** The Planning Commission recommended (4-3) to eliminate parking requirements in Old Town in lieu of the proposed amendments to reduce parking in #s 3-5 above. The Commission rationalized that with the exempt parking district in the abutting Downtown District Urban Village Commercial Core, Old Town would be a logical extension of the exempt parking district. And in the event parking congestion becomes an issue in the adjacent residential zoned areas, the City could expand its already established Residential Parking Zone program to those areas to help address the issue.

It is recognized that development in Old Town is challenging and has increased risk for many reasons as detailed in **Section III** of the staff report. Given the risk associated with redevelopment in Old Town, Old Town Village LLC, is seeking greater flexibility provided by the proposed code amendments outlined in the staff report. With Parberry’s discontinuation of Northwest Recycling in Old Town, and the City’s commitment to certain public infrastructure improvements as detailed in the 2020 Development Agreement, the proposed code amendments, as amended by the Planning Commission, are intended to serve as a catalyst to kickstart a more robust and sustainable redevelopment cycle for Old Town.

3. **Public Comment:**

Notice of the Planning Commission public hearing was mailed to neighborhood representatives, neighborhood associations, and other parties with an interest in this topic. Notice was also published in the Bellingham Herald 30 days prior to the hearing.
Public comments were submitted prior to the public hearing and public testimony was taken at the Planning Commission hearing and the Commissioners duly considered it.

4. State Environmental Policy Act (SEPA) Determination:

A non-project SEPA Determination of Non-Significance (DNS) was issued on March 30, 2023. Notice was mailed to the appropriate agencies, parties of record and published in the Bellingham Herald and on the City’s website. The SEPA review process evaluated the potential impacts from the preliminary recommended changes to current Old Town regulations. No public comment was submitted on the DNS prior to publication of the meeting packet.

5. Consistency with the Bellingham Comprehensive Plan:

Zoning and development regulations should be reviewed and amended periodically to address changing circumstances and to implement the goals and policies of the comprehensive plan. The Old Town development regulations in the BMC were originally adopted in 2008, prior to the approval of the 2016 version of the Bellingham Comprehensive Plan. The proposed amendments, and those additional amendments proposed by the Planning Commission, are intended to address the comprehensive plan goals and policies that encourage utilizing existing developable land more efficiently, implementing a system of urban villages, incentivizing creation of affordable housing, linking land use and transportation planning, and reducing dependance on single-occupancy vehicles as established in the following goals and policies.

GOAL H-1  Ensure that Bellingham has a sufficient quantity and variety of housing types and densities to accommodate projected growth and promote other community goals.

Policy H-1  Support high-density and mixed commercial/residential development in the City’s urban villages, high-capacity transit corridors connecting the villages and other appropriate areas that allow people to work, shop and recreate near where they live.

Policy H-14  Actively coordinate with public and private partners in efforts to meet regional housing needs.

GOAL H-2  Foster housing that is safe, healthy, livable, and affordable for all income levels in all neighborhoods.

Policy H-19  Continue providing incentives to support housing affordability (e.g. density bonuses, expedited permitting, multi-family tax exemption program and fee reductions) and consider including workforce housing as part of certain incentives programs.

Policy H-24  Continue streamlining the regulatory review and building permit process and reviewing the cost of infrastructure improvements and their impact on housing costs.

GOAL LU-1  Support sense of place in neighborhoods.
Policy LU-4  Protect the unique character and qualities of existing neighborhoods, while identifying opportunities for improved livability, safety, and housing affordability and diversity.

The Comprehensive Plan includes as a key infill growth strategy a system of urban villages and transit corridors that would accommodate a significant share of the City's future growth, while preserving established, stable neighborhoods. This approach promotes the development of mixed-use activity centers along key transportation corridors, with sufficient densities and amenities to support transit and other alternative modes of transportation. Since the adoption of the 2006 Comprehensive Plan, urban village plans have been approved for the following six areas - the Downtown, Fairhaven, Waterfront, Old Town, Samish, and Fountain Districts .... (2016 Bellingham Comprehensive Plan, Introduction, P.10)

GOAL LU-2  Foster vibrant urban villages.

Policy LU-12  The Urban Village designation encourages the creation of intensely developed mixed-use areas where infrastructure, transit, and other public facilities and services are available or can easily be provided. Urban villages should provide significant job opportunities and a substantial amount of new housing, allowing people to work, shop and recreate near where they live. The ultimate mix of land uses, densities, infrastructure requirements and other typical zoning, design, and development standards should be established in a master plan.

Policy LU-13  Promote and facilitate continued development of the City's seven existing urban villages - Downtown, Waterfront, Fairhaven, Fountain, Samish Way, Old Town and Barkley. These areas are expected to accommodate significant residential and mixed-use development over the 20-year planning period (see urban village master plans, design standards, and regulations).

Policy LU-14  Ensure that Bellingham's City Center (i.e. Downtown, Waterfront and Old Town Districts) retains its role as the dominant cultural, civic, financial and service center for the community and region. This area should be unique, attractive, and reflect Bellingham's history and natural setting (see Downtown Bellingham Plan, Waterfront Master Plan, Old Town Subarea Plan, City Center Neighborhood Plan and City Center Implementation Strategy).

Policy LU-15  Continue effective incentives and develop new incentives where needed for the planned urban villages. These incentives should be targeted to areas where they have proven to be successful and/or where the greatest need has been identified. Incentives should be flexible to respond to opportunities and changing markets.

Policy LU-17  In instances where a proponent controls multiple properties within an existing urban village and seeks to address the coordinated provision of infrastructure, cooperatively develop plans, approaches and agreements, including development agreements.
Policy LU-18 Develop new plans and update existing plans as needed to reflect
the unique nature of each urban village. The plans should
consider the elements identified in Policy LU-11, as well as the
following:
- Land uses and adaptive performance-based development
  standards to encourage compatible new development and
  greater flexibility in design, particularly when the development
  context is well defined;
- An appropriate mix of commercial, office and residential uses;
- Parking requirements, including the potential for parking
  maximums and/or reduced parking requirements, and design
  standards that support multi-modal transportation options; and
- Sustainable development practices and the use of the
  Leadership in Energy and Environmental Design for
  Neighborhood Development (LEED-ND) rating system, or
  similar system, to measure the potential sustainability
  outcomes of the proposed plans.

GOAL LU-5 Support the Growth Management Act's goal to encourage growth in urban
areas.

Policy LU-44 Focus higher-intensity land uses in mixed-use urban villages and
transit corridors, thereby maximizing use of existing infrastructure
and services (See GOAL LU-2).

Policy LU-60 Encourage the assembly and redevelopment of key under-
developed parcels through incentives and public/private
partnerships.

GOAL CD-1 Promote streetscapes that enhance the economic vitality and overall visual
quality of the City, support the circulation network, and support pedestrian-
scale streets and patterns of activity.

Policy CD-2 Ensure that land use, fire, and street standards are coordinated to
provide greater pedestrian comfort and safety and more attractive
alternative modes of transportation. Implementation strategies
include:

- Orient new development to streets, and effectively frame in the
  streetscape.
- Encourage commercial activities such as sidewalk retail and
  outdoor dining.

- Consider allowing on-street parking to count toward off-street
  requirements in selected mixed-use areas to encourage
  compact, pedestrian-oriented development and to lessen the
  size and impacts of large parking lots.

- Prioritize implementation of the above in designated urban
  villages as outlined in the Land Use Chapter.
GOAL CD-2  Express the City’s distinct community identity and sense of place through improvements to the appearance of new development, commercial centers, urban villages, transit corridors and streetscapes.

Policy CD-12 Periodically review and update the City’s zoning regulations, design standards and design review process to ensure they promote quality development and result in projects that consider and complement existing neighborhoods. Specific recommendations include:

• Review auto parking standards to reduce the impacts of parking on urban form, adjacent uses, housing affordability, pedestrian mobility, and the natural environment. Continue to pursue parking management best practices.

Policy CD-14 Provide builders, developers and architects with a set of clear objectives and performance goals which promote the highest attainable standard of quality consistent with economic feasibility for new development.

GOAL T-1  Limit urban sprawl by linking land use and transportation planning.

Policy T-1 Continue to develop and implement plans, programs, and regulations that incentivize infill and emphasize multimodal transportation in urban villages.

Policy T-16 Employ Transportation Demand Management (TDM) and Transportation System Management (TSM) strategies, including, but not limited to, those listed below to increase the safety, efficiency, and long-term sustainability of the Citywide multimodal transportation system. TDM Actions:

• Implement urban village plans and Multifamily Design Review Guidelines to encourage development to be transit supportive, pedestrian oriented, and bicycle friendly;
• Encourage compact land use patterns that reduce vehicle trips and vehicle miles traveled;

• Review parking standards to reduce the impacts of parking lots on urban form, pedestrian mobility, and the natural environment. Continue to pursue parking management best practices.

OLD TOWN SUBAREA PLAN POLICIES

Urban village plans have been approved for the Downtown, Fairhaven, Waterfront, Old Town, Samish, and Fountain Districts and are incorporated by reference into the Comprehensive Plan.
The proposed amendments are consistent with the following policies from the Old Town Subarea Plan.

2.1. Framework Policies

- Encourage a healthy mix of diverse and eclectic residential and commercial uses,
- Guide development to engage the pedestrian by providing active streetscape uses, and a safe, convenient, and interesting network of walkable streets,
- Ensure new development responds to view corridors, landmark buildings, and the natural environment,
- Provide a level of predictability for stakeholders within and outside Old Town, and
- Encourage redevelopment to occur in Old Town.

3.1.1 Land Use Policies

1. Allow a mix of residential and commercial uses in Old Town to make the district a desirable place to live, work and play.

3.2. Development Character Implementation Strategies

1. Develop a Floor Area Ratio (FAR) system with maximum height limits.
2. Incorporate a FAR bonus system to allow increases in FAR in exchange for the creation or preservation of public amenities such as affordable housing, and construction of LEEDTM/Built Green certified buildings.
   ....
6. Adopt development regulations and design standards that are consistent with and implement the policy recommendations of this sub-area plan.

4. Circulation, Streetscape and Parking

The existing street grid layout with small blocks and multi-modal connections provides excellent networks for access and circulation. Old Town's proximity to downtown, waterfront and Lettered Streets and Columbia Neighborhoods, as well as public transportation service along Holly, Champion and Dupont streets, keeps Old Town well connected to other parts of the City.

As Old Town becomes more walkable, adequate parking needs to be provided in a manner that does not detract from the desire to create a pedestrian-oriented streetscape. A high priority should be placed on creating shared parking facilities since they have a greater capacity than single use reserved parking. Striking a balance between wider sidewalks for the pedestrian and on street parking is critical.

4.1.3 Parking Policies

1. Reduce existing parking requirements to a standard that is appropriate for an urban village.
2. Create on-street parking for visitors and customers, and discourage on-site surface parking lots.
3. Consider establishing a Residential Parking Zone in adjacent neighborhoods if the spillover from Old Town to nearby residential areas becomes problematic.
4. When feasible, use shared parking facilities to promote and encourage the
development of commercial/office uses.

5. Consider public/private partnership opportunities for shared parking structures.

The proposed code amendments, as amended by the Planning Commission, are consistent with
the Housing, Land Use, Community Design, Transportation, and Old Town Subarea Plan goals
and policies referenced.

II. CONCLUSIONS

Based on the staff report and the information presented at the public hearing, the Bellingham
Planning Commission concludes that the proposed BMC amendments, as amended by the
Planning Commission, will:

1. Increase flexibility and feasibility for redevelopment in an area of the city that has
numerous development challenges.

2. Increase opportunities to provide affordable housing.

3. Increase options in how parking requirements may be satisfied and be provided more
efficiently.

4. Incentivize creation of streetscapes that enhance the economic vitality and overall visual
quality of Old Town.

5. Help achieve many of the land use, housing, transportation, and community design
related goals and policies in the Comprehensive Plan and the Old Town Subarea Plan.

III. RECOMMENDATIONS

After careful consideration of all public comments, the staff report, other meeting materials, and
the Findings and Conclusions, the Planning Commission recommends, with a 4-3 vote, that the
City Council approve the proposed amendments to the Bellingham Municipal Code as
summarized in the series of recommended amendments below:

1. Allow additional interim light industrial uses limited to boat sales and storage as shown in
Section 1 of the draft ordinance.

2. Adjust floor area bonuses and transfers between development sites as shown in Section
2 of the draft ordinance.

3. Strike the current FAR bonus for Public Plazas and Open Space in BMC
20.35.070(D)(4)(c)(i) and replace it with a provision allowing the Planning Director
discretion to allot up to the maximum allowed 1.5 FAR bonus for developer generated
proposals that would provide public benefit, with specific language to be determined by
staff.

4. Eliminate parking requirements in Old Town in lieu of the original proposed amendments
to reduce parking.

Old Town Code Amendments
ADOPTED this 26th day of April, 2023.

[Signature]
Planning Commission Chairperson

[Signature]
Recording Secretary

APPROVED AS TO FORM:

[Signature]
City Attorney
I. SUMMARY OF PROPOSAL

Consideration of proposed text amendments to the Old Town Overlay District development regulations found in Bellingham Municipal Code (BMC) 20.35.055-.085. The proposed amendments include, but not limited to:

1) Allowing additional interim light industrial uses,
2) Adjusting floor area bonuses and transfers between development sites, and
3) Aligning parking standards with those of the Downtown District Urban Village.

(Attachment 1 – Draft Ordinance)

II. PLANNING COMMISSION ROLE

The proposal before the Planning Commission is a legislative development code amendment requiring a Type VI review process. The Commission must hold a public hearing and issue findings of fact and conclusions along with a recommendation to the City Council. Draft findings and conclusions are included in this staff report (Attachment 1, Exhibit A). The Commission should adopt or modify the findings as needed to support the Commission’s final recommendation.

The Commission should evaluate the proposed amendments against the goals and policies in the City’s 2016 Comprehensive Plan as listed in Section VI of this report.

III. BACKGROUND INFORMATION & PROCEDURAL HISTORY

2008: BMC 20.35.055-.085 Old Town Overlay District was adopted.
March 17, 2023: A notice of Planning Commission public hearing was issued.
March 30, 2023: A non-project SEPA Determination of Nonsignificance was issued.

The City adopted the Old Town Subarea Plan and supporting development regulations in early 2008. Redevelopment opportunities for Old Town have been the subject of several community planning efforts including the American Institute of Architects Regional Urban Design Assistance Team (R/UDAT), Whatcom Creek Waterfront Action Program, the City Center Master Plan, and the Community Forum on Growth Management.

The Old Town Plan is oriented toward encouraging and guiding thoughtful redevelopment consistent with the vision for Old Town by way of the following guiding principles:
- Provide a policy framework unique to Old Town,
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- Guide development to encourage a safe, convenient and attractive pedestrian experience,
- Ensure new development responds to view corridors and landmark buildings,
- Provide a level of predictability for stakeholders within and outside Old Town, and
- Encourage redevelopment to occur in Old Town.

Figure: Old Town Subarea Boundaries

Old Town (boundaries shown above) has seen very limited private development since the 2008 adoption of the Subarea Plan other than remodeling existing buildings and changes in use. Notable new developments include the following with locations shown on the figure above:

1. **1200 C Street**: (2011) Rebuild of West Coast Marine with a 2-story building after fire destroyed the original building.

2. **1600 C Street**: (2012) Replacement of the old hatchery building and associated storage building within Maritime Heritage Park with a new 2-story Environmental Fisheries Building. The building is owned by Bellingham Technical College and the land is leased by BTC from the City.

3. **1000 Astor Street**: (2018) Redevelopment of the former Hempler’s site with 30 multifamily dwelling units in a new mixed-use, 4-story building with surface and structured parking.

4. **910 W. Holly Street**: (2023 – Building permits currently under review) Construction of a new interim housing facility for the Lighthouse Mission consisting of a 5-story building with three entrepreneur commercial spaces fronting W Holly St, seven basement parking stalls, and agreement for lease of nearby off-site parking.
A Development Agreement between the City and Parberry’s, a significant property owner and former operator of Northwest Recycling, dated February 10, 2019 was amended and restated in 2020 (Attachment 2) which outlined specific capital investments the City would undertake adjacent to Parberry-owned property. Parberry discontinued its operation known as Northwest Recycling located in the Old Town Subarea, a non-conforming use pursuant to the City’s Comprehensive Plan, and is in the process of selling the property on which it was located. The Parberry’s have met every milestone outlined in the Development Agreement, which includes the discontinuation and/or relocation of non-conforming uses and renovation of 700 W Holly.

Developers, referred to as the Old Town Village LLC, have purchased parcels from Parberry and are considering the purchase of additional parcels within the Old Town Subarea, which is envisioned by the City to be an urban village with a range of residential and commercial uses, and have become successors of the 2020 Parberry Development Agreement.

It is recognized that development in Old Town is challenging and has increased risk for many reasons, including, but not limited to the following: 1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site which restricts property use and construction methods; 2) the adjacency of a soon to be built 300-bed homeless shelter; 3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; 4) the proximity of passive railroad crossings and the attendant loud noise from train horns; 5) the location a portion of the Property on former tidelands and landfill material which adds to development expense; 6) the complete transformation of an industrial use area to a commercial and residential one; and 7) the high cost of financing due to increasing interest rates.

Given the risk associated with redevelopment in Old Town, Old Town Village LLC, is seeking greater flexibility provided by the proposed code amendments outlined in this staff report. Old Town Village LLC and the City administration are negotiating a new Development Agreement, which will be considered by the City Council at the same time as these code amendments. Old Town Village LLC and the City jointly signed a Letter of Intent (LOI - Attachment 3) which is a preliminary non-binding agreement regarding the parties’ interests in executing a development agreement which will help to promote implementation of the Old Town Subarea Plan by setting the stage for redevelopment of Parberry-owned and other adjacent properties. The LOI includes terms and conditions contemplated to be included in the development agreement, include a range of proposed code amendments. Though the proposed amendments are being requested by Old Town Village LLC, the amendments would generally be eligible for use throughout the Old Town subarea.

The proposed text amendments to the Land Use Development Ordinance, Title 20 BMC, are being processed consistent with the applicable amendment procedures in Chapter 20.22 BMC. They were initiated by the City at the request of Old Town Village LLC pursuant to the Letter of Intent (Attachment 3), consistent with BMC 20.22.010. BMC 20.22.030 specifies: “After holding a public hearing to consider the findings and recommendations of the planning commission, the city council shall have the authority to confirm, alter, or modify any of the planning commission’s recommendations.” The Washington State Growth Management Act (RCW 36.70A.040) requires development regulations to be "consistent with and implement the comprehensive plan.”
IV. PROPOSAL AND ANALYSIS

Given the risk associated with redevelopment in Old Town, Old Town Village LLC is seeking greater flexibility provided by the proposed code amendments which include the following:

1. **Allow additional interim light industrial uses limited to boat sales and storage**
   (technically, boat sales is a commercial use). Currently boat sales and storage are allowed in Old Town but limited to properties southwest of Holly Street. The proposal would allow these uses elsewhere in Old Town “as an interim use for a period of time specified in a Development Agreement with the City.” See Section 1 of the draft ordinance in Attachment 1. Staff finds that allowing boat sales and storage as an interim use is reasonable given the close proximity to the waterfront, they will serve to offset holding costs as individual lots are built out at greater intensity, and will reduce the number of empty lots which have the potential to create pocket areas for crime, blighted conditions, and/or other counterproductive experiences.

2. **Adjusting floor area bonuses and transfers between development sites.** See Section 2 of the draft ordinance in Attachment 1. Floor area bonuses and transfers between development sites are currently allowed in Old Town but the proposed amendments would provide more flexibility in how they occur as follows:
   - Currently, floor area transfers between development sites are allowed on the condition that 1) the designs for the sending and receiving properties are reviewed at the same time, and 2) covenants documenting the transfer are recorded on the sending and receiving properties. The proposed amendment would allow City Council the discretion to approve an alternative process for commemorating floor area transfers. Staff finds that the proposal is reasonable given that developers often do not have the resources or foresight to design two projects at the same time.
   - Currently, floor are bonuses are allowed for developer’s provision of various facilities and amenities outlined in the table below. The maximum floor area ratio (FAR) for all sites in the Old Town Overlay District is 3.5, or 5.0 with use of floor area transfers and bonuses. The maximum FAR increase that may be earned through the bonus options is 1.5 for a maximum FAR on site of 5.0. Currently, only the public plaza and open space option allows the full 1.5 FAR bonus; all others are limited to 0.5 FAR. The proposal would increase the bonus for affordable housing to the full 1.5 FAR bonus.

   The intent of limiting bonuses was to encourage new development to utilize multiple bonuses with multiple benefits provided. Staff finds that the proposal is reasonable given the current affordable housing shortage and high priority on increasing its supply.

<table>
<thead>
<tr>
<th>Table 1: Floor Area Ratio (FAR) Bonuses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Amenity or Facility</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Public Plazas and Open Spaces</td>
</tr>
<tr>
<td>Affordable Housing</td>
</tr>
<tr>
<td>Leadership Through Energy and Environmental Design(^{TM}) (LEED)</td>
</tr>
<tr>
<td>Financial contribution to Lake Whatcom Watershed Property Acquisition Program</td>
</tr>
</tbody>
</table>
3. **Aligning parking standards with those of the Downtown District Urban Village.** See Section 3(B)(1 and 2) of the draft ordinance in **Attachment 1**. The proposed amendments would generally decrease parking requirements for residential development as shown in Tables 2 below with the decrease varying depending on the unit size. The decrease would be greatest at 50% for studio units while there would be no change for 2-bedroom units and units with more than 3 bedrooms.

<table>
<thead>
<tr>
<th>Residential Unit Type</th>
<th>Required Minimum Parking Stalls</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Existing</strong></td>
<td><strong>Proposed</strong></td>
</tr>
<tr>
<td>Studio</td>
<td>1.0</td>
<td>0.5</td>
</tr>
<tr>
<td>1-Bedroom</td>
<td>1.0</td>
<td>0.75</td>
</tr>
<tr>
<td>2-Bedroom</td>
<td>1.0</td>
<td>1.0</td>
</tr>
<tr>
<td>3-Bedroom</td>
<td>1.5</td>
<td>1.0</td>
</tr>
<tr>
<td>Additional for each bedroom over 3</td>
<td>0.5</td>
<td>0.5</td>
</tr>
</tbody>
</table>

Staff finds that creating parity in residential parking standards between adjacent urban villages makes sense, especially given the walkability of Old Town’s existing gridded street network and proximity to transit, job, service, and recreational opportunities. Consistency in code also decreases confusion for property owners and developers, and eases administration by city staff.

The proposal should result in negligible parking impacts to adjacent uses outside of Old Town. The majority of Old Town abuts the Downtown District and Waterfront District Urban Villages which have parking requirements that essentially mirror those being proposed for Old Town. The northwest extent of Old Town interfaces with five blocks in the Lettered Streets which are zoned Residential Multi, Multiple, High Density. This interface is characterized by a walkable gridded street network that is well served by high frequency transit service on Dupont Street and additional transit routes on Holly and Girard Streets.

4. **Allow new development to use parking garages or shared parking facilities located within 1,000 feet of its location to counted toward on-site parking requirements.** See Section 3(B)(6) of the draft ordinance in **Attachment 1**. This is added as a shared parking proposal consistent with (2)(A)(d) in the Letter of Intent (**Attachment 3**). It is copied from the Waterfront District in BMC 20.37.450(B)(7). It is more specific than other shared parking provisions in the code in that it allows parking to be provided in a common location that may be used by multiple users. Staff finds the proposal will be beneficial to the Old Town Subarea in that a common shared facility(s) will allow for more efficient use of parking.

5. **Waive parking requirements for commercial uses when part of a residential/commercial mixed-use building.** See Section 3(C)(3) of the draft ordinance in **Attachment 1**. This proposal will largely be limited to small scale commercial uses typical of what’s been developed in residential/commercial mixed-use buildings in the city’s urban villages in recent years. The ground floor commercial is generally intended to serve the residents of the building and immediate area with customers from further afar utilizing available street parking. Waiving parking requirements for small scale commercial uses when part of residential/commercial mixed-use buildings will simplify permit application and project review, and reduce project cost. This change is intended to incentivize
implementation of livelier pedestrian oriented streetscapes that are walkable destinations for local residents and employees. The prescribed streetscape designs adopted in the Old Town Subarea Plan maximize creation of curbside public street parking which essentially is a pool of shared parking for streetside uses. Accordingly, staff believes that the potential for increased street parking congestion as a result of this proposal is negligible and would be offset by the creation of walkable small scale commercial and service destinations for local residents. The proposal is consistent with Comprehensive policies encouraging land uses and project designs that are more pedestrian friendly and transit supportive.

V. ISSUES AND OPPORTUNITIES

It is recognized that development in Old Town is challenging and has increased risk for many reasons as detailed in Section III of this staff report. Given the risk associated with redevelopment in Old Town, Old Town Village LLC, is seeking greater flexibility provided by the proposed code amendments outlined in this staff report. With Parberry’s discontinuation of Northwest Recycling in the Old Town, and the City’s commitment to certain public infrastructure improvements in Old Town as detailed in Attachment 3, the proposed code amendments are intended to serve as a catalyst to kickstart a more robust and sustainable redevelopment cycle for Old Town.

VI. COMPREHENSIVE PLAN GOALS AND POLICIES

Zoning and development regulations should be reviewed and amended periodically to address changing circumstances and to implement the goals and policies of the comprehensive plan. The Old Town development regulations in the BMC were originally adopted in 2008, prior to the approval of the 2016 version of the Bellingham Comprehensive Plan. The proposed amendments are intended to address the comprehensive plan goals and policies that encourage utilizing existing developable land more efficiently, implementing a system of urban villages, incentivizing creation of affordable housing, linking land use and transportation planning, and reducing dependence on single-occupancy vehicles as established in the following goals and policies.

GOAL H-1  Ensure that Bellingham has a sufficient quantity and variety of housing types and densities to accommodate projected growth and promote other community goals.

Policy H-1  Support high-density and mixed commercial/residential development in the City’s urban villages, high-capacity transit corridors connecting the villages and other appropriate areas that allow people to work, shop and recreate near where they live.

Policy H-14  Actively coordinate with public and private partners in efforts to meet regional housing needs.

GOAL H-2  Foster housing that is safe, healthy, livable, and affordable for all income levels in all neighborhoods.

Policy H-19  Continue providing incentives to support housing affordability (e.g. density bonuses, expedited permitting, multi-family tax exemption...
program and fee reductions) and consider including workforce housing as part of certain incentives programs.

Policy H-24 Continue streamlining the regulatory review and building permit process and reviewing the cost of infrastructure improvements and their impact on housing costs.

GOAL LU-1 Support sense of place in neighborhoods.

Policy LU-4 Protect the unique character and qualities of existing neighborhoods, while identifying opportunities for improved livability, safety, and housing affordability and diversity.

The Comprehensive Plan includes as a key infill growth strategy a system of urban villages and transit corridors that would accommodate a significant share of the City's future growth, while preserving established, stable neighborhoods. This approach promotes the development of mixed-use activity centers along key transportation corridors, with sufficient densities and amenities to support transit and other alternative modes of transportation. Since the adoption of the 2006 Comprehensive Plan, urban village plans have been approved for the following six areas: the Downtown, Fairhaven, Waterfront, Old Town, Samish, and Fountain Districts. (2016 Bellingham Comprehensive Plan, Introduction, P.10)

GOAL LU-2 Foster vibrant urban villages.

Policy LU-12 The Urban Village designation encourages the creation of intensely developed mixed-use areas where infrastructure, transit, and other public facilities and services are available or can easily be provided. Urban villages should provide significant job opportunities and a substantial amount of new housing, allowing people to work, shop and recreate near where they live. The ultimate mix of land uses, densities, infrastructure requirements and other typical zoning, design, and development standards should be established in a master plan.

Policy LU-13 Promote and facilitate continued development of the City's seven existing urban villages: Downtown, Waterfront, Fairhaven, Fountain, Samish Way, Old Town, and Barkley. These areas are expected to accommodate significant residential and mixed-use development over the 20-year planning period (see urban village master plans, design standards, and regulations).

Policy LU-14 Ensure that Bellingham's City Center (i.e. Downtown, Waterfront and Old Town Districts) retains its role as the dominant cultural, civic, financial and service center for the community and region. This area should be unique, attractive, and reflect Bellingham's history and natural setting (see Downtown Bellingham Plan, Waterfront Master Plan, Old Town Subarea Plan, City Center Neighborhood Plan and City Center Implementation Strategy).

Policy LU-15 Continue effective incentives and develop new incentives where needed for the planned urban villages. These incentives should be
targeted to areas where they have proven to be successful and/or where the greatest need has been identified. Incentives should be flexible to respond to opportunities and changing markets.

Policy LU-17 In instances where a proponent controls multiple properties within an existing urban village and seeks to address the coordinated provision of infrastructure, cooperatively develop plans, approaches and agreements, including development agreements.

Policy LU-18 Develop new plans and update existing plans as needed to reflect the unique nature of each urban village. The plans should consider the elements identified in Policy LU-11, as well as the following:
- Land uses and adaptive performance-based development standards to encourage compatible new development and greater flexibility in design, particularly when the development context is well defined;
- An appropriate mix of commercial, office and residential uses;
- Parking requirements, including the potential for parking maximums and/or reduced parking requirements, and design standards that support multi-modal transportation options; and
- Sustainable development practices and the use of the Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND) rating system, or similar system, to measure the potential sustainability outcomes of the proposed plans.

GOAL LU-5 Support the Growth Management Act’s goal to encourage growth in urban areas.

Policy LU-44 Focus higher-intensity land uses in mixed-use urban villages and transit corridors, thereby maximizing use of existing infrastructure and services (See GOAL LU-2).

Policy LU-60 Encourage the assembly and redevelopment of key underdeveloped parcels through incentives and public/private partnerships.

GOAL CD-1 Promote streetscapes that enhance the economic vitality and overall visual quality of the City, support the circulation network, and support pedestrian-scale streets and patterns of activity.

Policy CD-2 Ensure that land use, fire, and street standards are coordinated to provide greater pedestrian comfort and safety and more attractive alternative modes of transportation. Implementation strategies include:
- Orient new development to streets, and effectively frame in the streetscape.
• Encourage commercial activities such as sidewalk retail and outdoor dining.

• Consider allowing on-street parking to count toward off-street requirements in selected mixed-use areas to encourage compact, pedestrian-oriented development and to lessen the size and impacts of large parking lots.

• Prioritize implementation of the above in designated urban villages as outlined in the Land Use Chapter.

GOAL CD-2 Express the City’s distinct community identity and sense of place through improvements to the appearance of new development, commercial centers, urban villages, transit corridors and streetscapes.

Policy CD-12 Periodically review and update the City’s zoning regulations, design standards and design review process to ensure they promote quality development and result in projects that consider and complement existing neighborhoods. Specific recommendations include:

• Review auto parking standards to reduce the impacts of parking on urban form, adjacent uses, housing affordability, pedestrian mobility, and the natural environment. Continue to pursue parking management best practices.

Policy CD-14 Provide builders, developers and architects with a set of clear objectives and performance goals which promote the highest attainable standard of quality consistent with economic feasibility for new development.

GOAL T-1 Limit urban sprawl by linking land use and transportation planning.

Policy T-1 Continue to develop and implement plans, programs, and regulations that incentivize infill and emphasize multimodal transportation in urban villages.

Policy T-16 Employ Transportation Demand Management (TDM) and Transportation System Management (TSM) strategies, including, but not limited to, those listed below to increase the safety, efficiency, and long-term sustainability of the Citywide multimodal transportation system. TDM Actions:

• Implement urban village plans and Multifamily Design Review Guidelines to encourage development to be transit supportive, pedestrian oriented, and bicycle friendly;

• Encourage compact land use patterns that reduce vehicle trips and vehicle miles traveled;
• Review parking standards to reduce the impacts of parking lots on urban form, pedestrian mobility, and the natural environment. Continue to pursue parking management best practices.

OLD TOWN SUBAREA PLAN POLICIES

Urban village plans have been approved for the Downtown, Fairhaven, Waterfront, Old Town, Samish, and Fountain Districts and are incorporated by reference into the Comprehensive Plan. The proposed amendments are consistent with the following policies from the Old Town Subarea Plan.

2.1. Framework Policies

• Encourage a healthy mix of diverse and eclectic residential and commercial uses,
• Guide development to engage the pedestrian by providing active streetscape uses, and a safe, convenient, and interesting network of walkable streets,
• Ensure new development responds to view corridors, landmark buildings, and the natural environment,
• Provide a level of predictability for stakeholders within and outside Old Town, and
• Encourage redevelopment to occur in Old Town.

3.1.1 Land Use Policies

1. Allow a mix of residential and commercial uses in Old Town to make the district a desirable place to live, work and play.

3.2. Development Character Implementation Strategies

1. Develop a Floor Area Ratio (FAR) system with maximum height limits.
2. Incorporate a FAR bonus system to allow increases in FAR in exchange for the creation or preservation of public amenities such as affordable housing, and construction of LEEDTM/Built Green certified buildings.

6. Adopt development regulations and design standards that are consistent with and implement the policy recommendations of this sub-area plan.

4. Circulation, Streetscape and Parking

The existing street grid layout with small blocks and multi-modal connections provides excellent networks for access and circulation. Old Town's proximity to downtown, waterfront and Lettered Streets and Columbia Neighborhoods, as well as public transportation service along Holly, Champion and Dupont streets, keeps Old Town well connected to other parts of the City.

As Old Town becomes more walkable, adequate parking needs to be provided in a manner that does not detract from the desire to create a pedestrian-oriented streetscape. A high priority should be placed on creating shared parking facilities since they have a greater capacity than single use reserved parking. Striking a balance between wider sidewalks for the pedestrian and on street parking is critical.
4.1.3 Parking Policies

1. Reduce existing parking requirements to a standard that is appropriate for an urban village.

2. Create on-street parking for visitors and customers, and discourage on-site surface parking lots.

3. Consider establishing a Residential Parking Zone in adjacent neighborhoods if the spillover from Old Town to nearby residential areas becomes problematic.

4. When feasible, use shared parking facilities to promote and encourage the development of commercial/office uses.

5. Consider public/private partnership opportunities for shared parking structures.

VII. PUBLIC COMMENT

Notice of the Planning Commission hearing was mailed pursuant to BMC 21.10.150(D) and published in the Bellingham Herald on March 21, 2023.

Public comments received to date are included, see Attachment C.

VIII. STATE ENVIRONMENTAL POLICY ACT (SEPA)

A non-project State Environmental Policy Act Determination of Non-Significance was issued on March 30, 2023. (Attachment 5) No public comments have been received regarding this determination as of publication of this staff report.

IX. STAFF RECOMMENDATION

Staff believes the proposed code amendments in the Draft Ordinance are consistent with and will implement the goals and policies of the Bellingham Comprehensive Plan and the Old Town Subarea Plan. The proposed changes will increase options and improve feasibility for redevelopment in the Old Town Subarea, promote infill in a manner that uses the city’s developable land more efficiently, and incentivize active street-front uses that are transit supportive. The changes establish codes that are predictable for developers and staff. Staff recommends the Planning Commission adopt the draft findings and conclusions and forward a recommendation of approval to the City Council.
X. LIST OF ATTACHMENTS

1. Draft Ordinance
   - Exhibit A - Draft Findings of Fact, Conclusions and Recommendations
3. Letter of Intent – Old Town Village LLC (2023)
4. Public comment
5. SEPA Non-project Threshold Determination of Non-Significance
Attachment 6

LETTER OF INTENT

By and Between

the

City of Bellingham

and

Old Town Village, LLC

This Letter of Intent ("LOI") is a preliminary non-binding agreement regarding the parties’ interests in executing a development agreement which will help to promote implementation of the Old Town Subarea Plan (the “Plan”) by setting the stage for redevelopment of Parberry-owned and other adjacent properties (the “Development Agreement”). The Development Agreement and related documents, if and when fully executed, shall signify the complete agreement of the parties as the below terms are not meant to be all inclusive. Below is a summary of the terms and conditions contemplated to be included in the Development Agreement, which would be executed by the City of Bellingham ("City") and Old Town Village, LLC ("Developers"). The Development Agreement is subject to City Council approval. The City and the parties to this LOI will be the parties (the “Parties”) to the Development Agreement, should it be executed.

Background and Intent: Parberry discontinued its operation known as Northwest Recycling located in the Old Town Subarea, a non-conforming use pursuant to the City’s Comprehensive Plan, and is in the process of selling the property on which it was located. The Developers are considering the purchase of several parcels within the Old Town Subarea, which is envisioned by the City to be an urban village with a range of residential and commercial uses. Future development in the Old Town Subarea must comply with the Plan and other applicable City regulations. This LOI recognizes that redevelopment of this area, for various reasons, poses increased risk to Developers. The Parties require additional information and analysis prior to committing to the terms of the Development Agreement. There is an existing development agreement between the City and Parberry, including Parberry’s successors (the “Parberry Development Agreement”) which shall remain in force according to its terms.

Notwithstanding the existence of the Parberry Development Agreement and its potential benefit to Developers, the Parties contemplate entering into a new development agreement between the City and Developers, as defined above. The purpose of such agreement is to catalyze the creation of a thriving mixed income neighborhood with a range of housing types that supports the revitalization of the Old Town Subarea while reducing the number of empty lots which have the potential to create pocket areas for crime, blighted conditions, an/or other counterproductive experiences.

The Parties recognize that development of the property is challenging and has increased risk for many reasons, including, but not limited to the following: 1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site which restricts property use and construction methods; 2) the adjacency of a soon to be built 300-bed homeless shelter; 3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; 4) the
proximity of passive railroad crossings and the attendant loud noise from train horns; 5) the location of a portion of the property on former tidelands and landfill material which adds to development expense; 6) the complete transformation of an industrial use area to a commercial and residential one; and 7) the high cost of financing due to increasing interest rates.

1. GENERAL TERMS

A. LOI Duration: The Parties will negotiate the Development Agreement with the goal of completing negotiation within one hundred twenty (120) days of executing this LOI (“LOI Term”). Following negotiation, the process for executing the Development Agreement, including City Council approval, will begin.

B. 2020 Parberry Development Agreement: The Development Agreement between the City and Parberry dated February 10, 2019 was amended and restated in 2020 and recorded under number 2021-0102090 in Whatcom County “2020 Parberry Development Agreement” outlined specific capital investments the City would undertake adjacent to Parberry-owned property. By executing this LOI, neither the City nor Developers intend to alter the obligations of the 2020 Parberry Development Agreement. The terms below are in addition to the commitments made in the 2020 Parberry Development Agreement.

C. Term of New Agreement: The Development Agreement shall continue for a maximum term of ten (10) years from the date of adoption by the City Council. It may contain provisions for early termination or other consequences in the event that one or both parties do not complete its respective milestones as agreed.

The term of the Development Agreement will automatically extend by one year, for up to an additional 5 years if construction of City/BNSF improvements have not been completed as required to commence the Waterfront Quiet Zone (Wharf to F/Roeder).

D. Milestones: The administration will request the Development Agreement allows the City’s project manager to extend each milestone by six (6) months if reasonable efforts have been made by the Developers.

a. Milestone #1: The Developers purchased 5 of 9 Parberry-owned properties between January 2023 and April 1, 2023.

b. Milestone #2: Developers shall submit a Vision Plan for properties Developers purchased or plan to purchase at a future date no later than September 1, 2023.

c. Milestone #3: Developers purchase a sixth Parberry-owned property no later than September 1, 2023.

d. Milestone #4: Developers shall satisfy Milestone #6 in the 2020 Parberry Development Agreement: Submit a complete building permit application for the renovation of 701 W Holly, or block 8, no later than June 30, 2023. This development is referred to as Project #1.
e. Milestone #5: Submit a complete building permit application before the end of August 2024 for a new multi-family development that shall be fifty (50) units or more. This development is referred to as Project #2.

f. Milestone #6: Submit a complete building permit application before August 30, 2026 for a development that shall be defined as having a value of at least $10,000,000. This development is referred to as Project #3.

2. REGULATORY TERMS

A. CHANGES TO BMC 20.35 “DEVELOPMENT REGULATIONS”: See Exhibit “A” for a summary of proposed revisions to the Development Regulations. Changes to the development regulations require review by Planning Commission and adoption by the City Council. The resolution adopting the Development Agreement and attendant public hearing would be scheduled at the same time as the City Council considers changes to the development regulations.

a. Uses: Considering the short supply of industrial space in Bellingham and that it will take a number of years to redevelop Old Town, the City administration will propose a change to BMC 20.35.065 to allow more interim light industrial uses for a period of time as specified in the Development Agreement. See Exhibit A for the draft code change. The Old Town Subarea Plan includes the following land use policy “Allow for small handicraft, marine, and manufacturing uses, but discourage large industrial uses that are incompatible with residential and pedestrian dominated environments.”

b. Transfer of Floor Area: Recognizing the large number of parcels subject to this Development Agreement, and that the intensity may vary from block to block, the City administration will propose a revision to BMC 20.35.070 to allow for a transfer of floor area utilizing an alternative process memorialized in the Development Agreement. See Exhibit A. The process for transfer, tracking and covenant recording will be outlined in the Development Agreement.

c. Parking: Recognizing that Old Town is immediately adjacent to the Downtown, the City administration will propose a revision to BMC 20.35.075 to allow the same parking requirements in Downtown that fall outside of the exempt parking zone. See Exhibit A.

d. Shared Parking. The City’s Planning & Community Development Director, or his designee, will develop a code revision that can be applied city-wide to provide greater flexibility for shared parking solutions, including parking districts. If a city-wide solution has not been developed by the time the Development Agreement goes before City Council the Director will propose a solution for Old Town.

e. Bonus System. For each square foot of land area certified by the director as set aside for permanently affordable housing, four (4) square feet of bonus floor area is earned. This bonus shall not be granted until a covenant, consistent with definitions outlined in BMC 20.35.070 D.4.c.ii, is recorded on the land and construction has commenced.
f. Area-wide SEPA/Design Guidance Meeting. The City’s Planning and Community Development Director, or his designee, will work with Developer to explore Design Review and SEPA alternatives, including a phased approach, prior to finalizing the Development Agreement.

B. Permitting: Given the risk associated with development in Old Town, the City will prioritize development permits, including but not limited to, land-use permits/design review, building permits, and public facility permits. The City will designate a development project manager to serve as the City’s permitting representative. This representative will ensure Developers’ permits are prioritized in Planning, Building, Public Works, Fire and Parks. The City representative will report any delays in review to the City’s Planning & Community Development Director for immediate attention.

C. Vesting:
   a. Old Town Overlay District. BMC 20.35.010 through 20.35.085.
   b. Urban Village Design Review. BMC 20.25. The City expects Developers will prefer the new process over the one the Parberry’s and their successors are currently vested to. The City will grant a vested right to develop the Parberry-owned property in accordance with the new standards/guidelines and process including any revisions to the development regulations, as summarized in Exhibit A.
   c. MFTE. (add BMC) Recognizing that Old Town has experienced very little infill compared to other urban villages and that incentives are still needed in Old Town, the City will maintain the 8-year and 12-year exemptions, unless required otherwise by state of federal law.

D. Park Impact Fees: Improvement of Old Village Trail which will connect Elizabeth Park to Maritime Heritage Park, is identified in the Old Town Subarea Plan. The City will include the Old Village Trail in the next update to the City’s Capital Facilities Plan scheduled for 2023 so that improvement to the Old Village Trail is eligible to receive park impact fee credit. Once the facility is included, Park Impact Fee Credit can be provided to Developers for this or another park improvement in the vicinity, provided it is listed in the City’s Capital Facilities Plan. Developers may elect to construct the improvements themselves.

3. FINANCIAL TERMS

A. Developer Costs: Developers shall bear all cost of land acquisition, site improvements, compliance requirements, facility construction, equipment purchase and all other similar costs.

B. Infrastructure Investment: The City is supportive of exploring additional commitments to infrastructure:
   a. In cooperation with Developers, the City will pursue applying for a Whatcom County EDI grant leveraging the City’s estimated $2,400,000 investment in infrastructure commitments in the 2020 Parberry Development Agreement in order to expand the street improvements to include curb-to-curb for all street improvements outlined in Exhibit B and undergrounding utilities as outlined in b. below.
b. The City will commission a study to assess the feasibility of undergrounding utilities. Developer believes the undergrounding of utilities sets the tone and potential quality of Old Town development experience, i.e. if utility lines remain above ground, development will maintain a more industrial feel in nature versus undergrounding the utilities, which would enhance the street scape that supports/induces higher quality development. A Developer only investment in undergrounding utilities would be cost prohibitive and would naturally scale development effort to the existing less desirable environment.

C. Affordable Housing: The Developers agree to sell a 20,000 square foot parcel, as described in Exhibit "C", to an Affordable Housing developer, at Developers discretion, for purposes of affordable housing development. Affordable Housing developer shall mean a developer that builds housing consistent with definitions outlined in BMC 20.35.070 D.4.c.ii, and is recorded on the land and construction has commenced. The option to purchase the parcel shall run through the term of the Development Agreement. The purchase price shall be the price that the Developer purchased the property for, plus holding costs, not to exceed 4% per year so long as the total price is at or less than FMV at the time of purchase. Holding costs shall not be accrued for any periods of the time that the property is being used for any commercial purposes. If the Developers have not sold the property to an Affordable Housing developer within the first nine (9) years of the Development Agreement term, the City, at its sole discretion, may elect to purchase the property from the Developers for a future Affordable Housing development. The Development Agreement will outline the purchase right, including assignment of the right and not-to-exceed purchase price.

D. Utility Capacity / Maintenance: For clarification purposes, the 2020 Parberry Development Agreement states that the City shall be responsible for providing city owned sewer, water, and storm systems capable of supporting maximum development permitted in Old town. The City has determined that the existing water and sewer systems are capable of supporting the maximum development as allowed by BMC 20.35 and that it will maintain those systems. And, that the existing stormwater conveyance system can accept treated storm water. Further, it is standard business for the City to maintain all public utility main lines (water/sewer/storm) in the right-of-way. The City maintains all water lines from the mainline to the meter. All existing water, sewer and storm systems owned by the City will continue to be maintained by the City as public infrastructure.

E. Quiet Railroad Crossings: Old Town is included in the proposed Waterfront Quiet Zone that extends from the Pine/Wharf Street at-grade crossing to the F Street at-grade crossing. As of the date of this LOI, the Laurel Street and C Street crossings have been improved to quiet zone standards and F Street is scheduled for construction to meet quiet zone standards in 2023. Central Avenue, Cornwall Avenue and Pine/Wharf Street crossings will need to be upgraded prior to submittal of the notice of quiet one establishment as all crossings within the designated area must be brought up to standards before the quiet zone can be established. The City is committed to establishment of the Waterfront quiet zone and committed to funding the necessary improvements through the budget process as well as annually through the Six-Year Transportation Improvement Program. Other than traffic impact fees collected from the
Developers as projects progress, the City will not require any contributions from the Developers for design/construction of these crossings.

F. **Lighthouse Mission Shelter(s) and the Shelter Protection Zone:** The Lighthouse Mission Ministries ("LMM") is constructing a facility in Old Town to relocate the Low-Barrier Shelter (Base Camp) currently located at 1530 Cornwall Avenue. The City Council created a Shelter Protection Zone for the Old Town area, which covers all the properties Developers anticipate purchasing. Further, the Hearing Examiner issued a Conditional Use Permit – USE2021-0035 ("Permit") with condition #3 focused on the enforcement of a Shelter Protection Zone. There are several conditions which relate to enforcement and the City’s authority to request modifications to operations and/or revoke the permit, including Condition #1, #14, #15, #27.

For the term of the Development Agreement, the City agrees to the following measures to mitigate the impacts of a 300-bed shelter:

- The City agrees to keep the Shelter Protection Zone in place unless required to remove it due to a legal reason.
- The City will provide LMM $50,000 per year for neighborhood cleanup. If LMM does not continue its neighborhood cleanup program and the City can’t find another operator, the City will contract with the Developers for cleanup of publicly-owned properties (rights-of-way and parks) for no more than five thousand dollars ($5,000) per month.
- Unless the City discontinues its contract for private security in Downtown, the existing contract will be modified to include patrols around LMM’s shelter facility, once relocated.

G. **Maritime Heritage Park Parking Lot:** Pursuant to Developer’s request, the City will work with Developers to further refine the concept of leasing/selling the air-rights above the parking lot at the end of C Street adjacent to the Perry Center to Developers for purposes of constructing structured shared parking and/or residential use. Bellingham Technical College holds a land lease on the parking lot and the adjacent hatchery facility. It is contemplated that shared parking means the ground level be retained for City use and any parking created is for Developer. The City received a capital grant from the National Park Service through the State Recreation & Conservation Office (RCO) to construct Maritime Heritage Park. The City needs to determine whether it can sell or lease air rights over the parking lot and still be in compliance with that grant. The City agrees to explore the viability to obtaining the air rights, if the Developers wish to pursue this activity. If viable, the Parties agree to execute a first right of refusal to Developer for purchase/lease of air rights.

The City and Developers expect that the terms herein shall be refined and modified as negotiated by the Parties.
Pete Dawson  
Date  
3/10/23  
On behalf of all partners in Old Town Village LLC
EXHIBIT A
DEVELOPMENT REGULATIONS

The proposed code revisions will not be in the final draft Development Agreement. Rather, the administration plans to advance the revisions concurrent with the City Council's consideration of the draft Development Agreement.

20.35.065 B. Uses Permitted with Conditions. The following uses are allowed provided they are established and operated in accordance to the applicable conditions:

1. Boat sales; limited to properties southwest of Holly Street, unless allowed as an interim use for a period of time specified in a Development Agreement with the City.

2. Boat repair and storage; complete minor boat and engine repair is permitted; however, hull work is prohibited. Boats must be operational or being actively repaired. Limited to properties southwest of Holly Street, unless allowed as an interim use for a period of time specified in a Development Agreement with the City.

The code revision below responds to #1. Development Regulations. C. FAR .iii. request transfer of floor area without requiring concurrent project review.

20.35.070 D. Floor Area Ratio (FAR).

1. Purpose. The maximum floor area ratio (FAR) standards are intended to accomplish several purposes of the old town subarea plan. Combined with the established height limits herein, the FAR allows for greater modulation in individual buildings and the greater urban fabric. They also provide architects greater flexibility in how to mass buildings on sites and relate projects to unique on- and off-site features.

2. Floor Area Ratio (FAR) Standard. The maximum FAR for all sites in the old town overlay district is 3.5, or 5.0 with use of floor area transfers and bonuses as outlined in subsections [D][3] and [4] of this section.

3. Transfer of Floor Area. Transfer of FAR among properties that are part of a single development plan is allowed when approved by the planning director, provided:

a. The designs for the sending and receiving properties are reviewed at the same time, unless an acceptable alternative process is commemorated in a Development Agreement with the City.

b. The property owner(s) executes a covenant with the city that is attached to and recorded with the deed of both the site transferring and the site receiving the floor area reflecting the respective increase and decrease of potential floor area.

20.35.070 D. Floor Area Ratio (FAR). 4. Floor Area Bonus Options. Floor area bonus options are offered as incentives to encourage facilities and amenities that implement the old town subarea plan.
ii. **Affordable Housing.** Housing for low and middle income residents receives bonus floor area when approved by the planning director. For each square foot of floor area certified by the director as affordable housing, four square feet of bonus floor area is earned up to a maximum of 1.5 FAR. When commemorated in a Development Agreement, an alternative floor area bonus option may be granted when a parcel is sold to or committed to a developer that agrees to construct and lease or sale 100% of the housing units to low or middle income households. The project must have controls in place, subject to approval by the director to ensure that the project’s residences remain permanently affordable in accordance with subsections [D][4][c][ii][A] and [B] of this section. Purchasers of affordable homes constructed under this chapter shall meet the following requirements:

(A) **Annual Income.** All purchasers or tenants shall be from a household whose annual income, at the household’s initial occupancy of the single-family residence, is 80 percent or less of the median income (determined by Housing and Urban Development) as adjusted by family size of the Bellingham Standard Metropolitan Statistical Area (SMSA), specifically defined as Whatcom County; and

(B) **Housing Expenses.** The monthly expenditure by a purchaser, as described in subsection [D][4][c][ii][A] of this section, for housing including rent or 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 rent or mortgage repayment 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.

**20.35.075 B.** Uses on Tract C as shown on Figure 20.35.075 shall provide parking as follows:

1. **Residential.** Minimum of one .5 parking space per studio, .75 per one-bedroom or 1 per two-bedroom dwelling unit. An additional one-half parking space per unit shall be provided for each bedroom over two per unit.

2. **Commercial.** Minimum one space per 700 square feet of gross floor area, including office, retail, service, eating and drinking establishments, entertainment, and uses similar to those previously mentioned.
EXHIBIT C
AFFORDABLE HOUSING PARCEL

Key:
- Affordable Housing Parcel

January 2023
Attachment 7

Contract Coversheet

Contract: C2000929
Amendment: N/A

Supplier: Parberry Enviro Solutions Inc
Department: Planning-Communi
Originator: Heather Aven

Classification: Misc General
Project Name: Parberry, Inc Development Agreement - 1st Amended
Project Manager: Tara Sundin

Original Amount: $0.00
Maximum Amount: 
Total Agreement Change: 
Current Amendment Amount: 

Type: NF - Non-Financial
Structure: ST - Standard
Agreement Type: NONFIN - Non-Financial Contract

Termination Date: 6/30/2029
Amended Termination Date: 
Compliance Type: 

Retainage %: 
Retainage Comments: 

Renewal Date: 
Renewal Notes: 

Legacy Contract
2019-0116

Additional Contract Notes:
First Amended Development Agreement - Parberry, Inc.

Contacts:
Tara Sundin - tsundin@cob.org

Printed: 10/9/2020
FIRST AMENDED AND RESTATED
DEVELOPMENT AGREEMENT BETWEEN
PARBERRY AND THE CITY OF BELLINGHAM

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Grantee:</td>
<td>City of Bellingham</td>
</tr>
<tr>
<td>Legal Description (abbreviated):</td>
<td>LOTS 7, 8, 9 AND 10, BLOCK 3, PLAT OF THE TOWN OF NEW WHATCOM SUPPLEMENTAL AS THE SAME IS SHOWN AT PAGE 42, BOOK 1 OF PLATS, OFFICIAL RECORDS OF WHATCOM COUNTY AUDITOR</td>
</tr>
<tr>
<td>Additional legal description for this parcel and full legal descriptions for additional parcels in Exhibit 1 attached hereto</td>
<td></td>
</tr>
<tr>
<td>Assessor's Tax Parcel ID #:</td>
<td>3803300373390000, 3803300443110000, 3803300313070000 and 3803300383200000</td>
</tr>
</tbody>
</table>

Reference Nos. of Documents Released or Assigned:

This FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") between PARBERRY'S INC., a Washington corporation, NORTHWEST RECYCLING, INC., a Washington corporation, and PARBERRY FAMILY LIMITED PARTNERSHIP, a Washington limited corporation (collectively, "Parberry") and the CITY OF BELLINGHAM (the "City"), a municipal corporation, is entered into as of the last date of signature below, and effective upon the date of execution by the City of Bellingham (the "First Amended and Restated Development Agreement") and replaces that certain Development Agreement Between Parberry and the City entered into between Parberry and the City on February 21, 2019 (the "Original Agreement.")

RECITALS

A. Parberry owns approximately five (5) acres of real property within an area of Bellingham designated as the "Old Town Subarea" by the Bellingham Comprehensive Plan. Property within the Old Town Subarea owned by Parberry is referenced herein as the "Parberry Property," and more particularly described in Exhibit 1 attached and incorporated herein by this reference, and illustrated in Exhibit 2 attached.

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B. Historically, the Parberry Property was zoned for commercial and some industrial uses, and was principally utilized as a recycling facility, including recycling operations, warehousing, outdoor storage, and administrative offices ("Northwest Recycling").

C. In __________, 20__, the City adopted an amendment to its Comprehensive Plan for the Old Town Subarea (also known as the Old Town Overlay District”) and an attendant amendment to its Land Use Development Code codified at BMC Chapter 20.35 (the “Old Town Plan”). The Old Town Subarea is now designated and zoned as Commercial. The Old Town Subarea is envisioned by the City to be an urban village with mixed residential and commercial uses.

D. Pursuant to the Old Town Subarea Plan, Northwest Recycling at the Parberry Property is a nonconforming use. Redevelopment of the Parberry Property into a mixed-use urban village is appropriate and consistent with the Old Town Plan. Future development in the Old Town Subarea must comply with the Old Town Subarea Plan and other applicable City regulations.

E. The elimination of the impacts to the neighborhood of the light industrial non-conforming use by the closure of operations of Northwest Recycling at its current site is critical to the creation of an urban village in the Old Town Subarea.

F. The City supports a healthy mix of housing in the Old Town Subarea that is affordable to a wide range of incomes levels. Parberry and the City will give strong consideration to public/private partnerships which encourage qualified below-market rate development projects. Further, the City will give strong consideration to such qualified projects by utilizing the Bellingham Home Fund and/or other resources to support those projects.

G. This Agreement implements part of the Old Town Plan by: (1) kick starting development in a significant portion of the Old Town Subarea; (2) implementing one or more of the Capital Facilities Improvements, which commits the City to certain infrastructure obligations and specific expenditures for street improvements; and (3) committing Parberry, its successors and assigns, and subsequent owners of the Parberry Property to dedication of the historic Courthouse Plaza envisioned by the Old Town Plan.

H. The Original Agreement is a development agreement under RCW 36.70B.170 through 36.70B.210 and contains vesting, use and mitigation provisions in keeping with the statute. Pursuant to RCW 36.70B.200, a public hearing was held on January 28, 2019 and a resolution approving the Agreement was adopted on February 11, 2019 (the “Original Agreement Resolution”).

I. This Agreement is a development agreement under RCW 36.70B.170 through 36.70B.210 and contains vesting, use and mitigation provisions in keeping with the statute. Pursuant to RCW 36.70B.200, a public hearing was held on __________ and a resolution approving the Agreement was adopted on __________ and updates the Original Agreement to reflect extensions to Milestones provided administratively due to the time necessary for the City’s process to clarify zoning related to recycling as well as to changes to Parberry’s business plans.

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J. The Original Agreement included options to purchase two properties owned by the City and surplus to its needs which are located in the Old Town Subarea, the sale of which would allow for a comprehensive redevelopment plan which is critical to creating a vibrant mixed-use neighborhood.

K. On January 17, 2019 the City sold one of the properties, known as 707 Astor Street, to Parberry via that certain Quit Claim Deed recorded in Whatcom County under Auditor File Number 2020-0102019.

L. City Council’s process above satisfies the requirements of BMC 4.84 as it relates to Parberry’s options to purchase the City-owned properties.

M. A portion of the funding used to purchase the 600 W. Holly St. property was from the City’s federally funded Community Development Block Grant (CDBG) program. Applicable federal regulations governing the disposition of real property purchased with these funds requires that the City hold a public hearing on any proposed sale and comply with those regulations regarding repayment of CDBG funds, if necessary. A public hearing was held on January 28, 2019 fulfilling this federal requirement.

AGREEMENT

1. Parberry Obligations to Meet Milestones

Parberry hereby agrees to attain the following Milestones, which may be extended by written mutual consent of the Project Managers, so long as the term of this Agreement is not extended:

Milestone 1 Milestone 1 of the Original Agreement required Parberry to submit a written Redevelopment Strategy within six (6) months of the execution of the Original Agreement. The Redevelopment Strategy included Parberry’s approach to (i) Parberry’s role, if any, in redevelopment of the Parberry Property and preparing the Parberry Property for redevelopment (i.e. whether Parberry will redevelop the Parberry Property itself or sell to one or more developers), (ii) Parberry’s strategy for marketing the Parberry Property to prospective developers, and (iii) the overall approach to redevelopment of the Parberry Property (redeveloped incrementally or as a master plan). The Redevelopment Strategy is not binding on Parberry and redevelopment of the Parberry Property need not adhere to the Redevelopment Strategy. Parberry may change the Redevelopment Strategy at any time and from time to time, at its own discretion, but shall communicate changes to the Redevelopment Strategy to the City’s Project Manager. Parberry has satisfied Milestone 1 as of the date of execution of this Agreement.
Milestone 2  Either the scapyard or residential recycling facility (to be chosen at Parberry’s discretion) shall cease to operate in Old Town no later than February 21, 2022. In the event Parberry enters into an agreement with a third party to lease, operate, manage or similarly control the non-conforming uses/operations on either the scapyard or residential facility, Parberry agrees to include a termination date of such agreement no later than February 21, 2022. See Exhibit 3 for the location of the scap yard and residential recycling facility.

Milestone 3  A complete Project Permit application for redevelopment of the Parberry Property (the “First Project”) is submitted no later than February 21, 2021, and construction commences on the First Project no later than ninety (90) days after the City issues all required permits. The term “Project Permit” shall have the meaning set forth in BMC 21.10.020 and shall specifically include a “Major Renovation Project” meaning construction of improvements to a building existing as of the date of this Agreement of at least 10,000 total square feet and two stories in height where the cost of construction is reasonably anticipated to exceed fifty percent of the assessed value of the existing building.

Milestone 4  Parberry agrees to cease all operations of all non-conforming uses remaining after the satisfaction of Milestone 2 on the Parberry Property no later than February 21, 2023. In the event Parberry enters into an agreement with a third party to lease, operate, manage or similarly control the remaining non-conforming uses/operations on any or all of the Parberry Property, Parberry agrees to include a termination date of such agreement no later than February 21, 2023.

Milestone 5  The First Project has received a Temporary Occupancy Permit from the City of Bellingham by February 21, 2023.

Milestone 6  A second complete Project Permit application (the “Second Project”) is submitted no later than February 21, 2024. Construction shall commence on the Second Project no later than ninety (90) days after the City issues all required permits.

The Milestones set forth herein are based on Parberry’s and the City’s best estimate of a redevelopment schedule for the Parberry Property based on current market conditions. If any delay is anticipated by Parberry, such anticipated delay shall be communicated to the City Project Manager in writing when known by Parberry along with a request for an extension of the applicable Milestone which extension shall not be unreasonably denied so long as diligent progress has been made in achieving the applicable Milestone. The City’s Project Manager, after consultation with Parberry’s Project Manager, may, in her sole discretion, extend the requirements of Section 1, for a period not to exceed six (6) months. The City Project Manager

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shall not unreasonably deny such requests for extensions. An extension for a period greater than six (6) months, or an additional extension for one that has been previously approved the City’s Project Manager, shall be submitted to City Council for review. An extension shall not unreasonably be denied by City Council so long as diligent progress has been made in achieving the applicable Milestone. City Council shall determine whether diligent progress has been made as part of its review. The City represents and Parberry acknowledges that timely redevelopment is a significant element of the City’s agreement to enter into this Agreement. Reasonable extensions due to the City’s failure to provide timely the public infrastructure improvements identified in Section C of this Agreement shall be granted. Failure by Parberry to complete the above Milestones, as may be extended from time-to-time, shall be considered a breach of this Agreement, and, if Parberry fails to cure such breach within thirty days of written notice from the City, the City shall be relieved of its obligation to provide the public infrastructure set forth in Section 2(a) and 2(b), hereof, but such breach shall not result in termination of this Agreement. Provided, however, that if Parberry completes Milestones 1 through 4, which includes full relocation of all non-conforming uses, the City shall remain obligated to design and construct Section 2(a) pursuant to the timing provisions of Section 2(c).

2. City Obligation to Provide Public Infrastructure

The parties acknowledge that redeveloping the Parberry Property in conformance with the Old Town Plan will require infrastructure improvements for, among other things, streets and utilities. To facilitate the relocation of Northwest Recycling and the redevelopment of the Old Town Subarea, a benefit to the community at large, the City agrees to fund and construct certain public infrastructure improvements as set forth in this section. Nothing in this Agreement shall preclude the City from constructing the public infrastructure improvements prior to the schedule below.

a. C Street

The City shall design and construct, at its sole cost and expense, improvements to C Street from Holly Street to Maritime Heritage Park. Such development shall be “curb to curb” and shall specifically include street surfacing, curb and gutters and shall be done in accordance with the Old Town Subarea Plan. Notwithstanding Section 2(e) below, nothing in this Agreement is intended to make the City responsible for any costs associated with sidewalks or streetlights with the exception of traffic signals noted below. Under no circumstances shall Parberry, or any subsequent owner of the Parberry Property, be required to pay curb to curb street cost for C Street.

It is anticipated that as the development occurs in Downtown, the Waterfront District and Old Town, upgrades to traffic control devices at the intersection of C Street and Holly Street will be required to help manage traffic flow. At this time, this upgrade to traffic control devices is anticipated to be a traffic signal. Development projects on the Parberry Property will not be required to participate in the cost of the design and construction of upgrades to the new traffic signal at C Street and Holly Street. The City will design and construct the traffic signal when it meets warrants. Construction of traffic signals will include bringing the existing curb ramps up
to current ADA standards. Development projects on the Parberry Property will not be delayed by City permitting as a result of any delay associated with upgrades to the traffic control devices.

b. Additional Streets

The City shall design and construct, at its sole cost and expense, improvements to additional streets shown on Exhibit 4. Such development shall be “curb to curb” and shall specifically include street surfacing, curb and gutters and shall be done in accordance with the Old Town Subarea Plan and any other applicable regulation in effect at the time of the improvement. Nothing in this Agreement is intended to make the City responsible for any costs associated with sidewalks or streetlights.

However, in the event either Parberry or any subsequent owner of the Parberry Property, on the one hand, or the City, on the other hand, desires that alternative streets within the Parberry Property be improved, instead of the ones shown on Exhibit 4, the party desiring the change shall make such a request to the other party in writing. The recipient of such change of street improvement request shall respond in writing within 30 days of the date of the receipt of the request. Such response may be a preliminary response that the party is considering the request but has not yet reached a conclusion. In no event shall the transmittal of the final written decision be more than 120 days after the receipt of the initial request. Requests for change of street improvement sent to the City shall be sent to the Office of the City Attorney with a copy to the Director of Public Works. Requests for change of street improvement sent to Parberry shall be sent to Brad L. Parberry with a copy to the Parberry Chief Executive Officer.

Any improvements made to alternative streets other than the ones shown on Exhibit 4 shall be for the full length of the blocks designated. It is the intent of the parties that the City not be responsible for providing any more than 820 linear feet of street improvement (not including C Street, as described above, or Holly Street, as described below) unless the completion of the block requires additional length.

In the event both parties agree to the proposed change, a modification to this Agreement attaching a revised Exhibit 4 shall be executed by both parties. In the event the party receiving the request does not agree to the proposed change, Exhibit 4 shall remain in effect.

c. Timing of Street Improvements

The City shall commence its street improvement process upon written notice from Parberry. Parberry may elect to provide notice for street improvement in complete block sections or for all blocks of a particular street at one time. In order to improve a street, the City must have adequate time to budget and plan appropriately, and therefore specific written notice must be provided to the City no later than April 30 for street improvements to be performed in the following calendar year. After receiving notice from Parberry consistent with the requirements of this Section (c), the City shall schedule the construction at a time during the following calendar year chosen by the City in its sole discretion, provided the City may delay commencement of construction of street improvements until a building permit is submitted to the City by Parberry, or a subsequent owner of the Parberry Property, for construction of a Major
Construction Project or Major Renovation Project on the property abutting the street that will be improved.

The City shall complete the street improvements identified in this Agreement as development progresses on the Parberry Property (as further described below), provided, that prior to the City commencing construction of an improvement on a street, Northwest Recycling shall vacate both sides of a block and non-conforming uses on that block shall have been discontinued. Further, prior to the City budgeting and planning for the street improvements, complete land use permit applications for redevelopment of the property located adjacent to the street that will be improved shall have been submitted to the City of Bellingham. If street improvements are necessary for the First Major Construction Project or First Major Renovation Project, as determined by the City of Bellingham in the permitting process, the City will waive the requirement for Northwest Recycling to vacate both sides of a block and discontinue non-conforming uses on that block.

As of the date hereof, Parberry has selected 700 W. Holly Street as its First Major Renovation Project. The construction of street improvements that would typically be required of Parberry pursuant to BMC 20.35, 13.04 and 13.08 and any other applicable code provision, shall not be required along C Street as part of the development of 700 W. Holly Street. However, Parberry shall be responsible for the costs associated with the curb to property line street improvements designed and constructed by the City adjacent to 700 W. Holly, which shall extend to the Astor and C Street intersection (the “C Street Curb to Property Improvements”). When the City commences design and construction of C Street from curb to curb, it shall also design and construct the C Street Curb to Property Improvements (the “Combined C Street Improvement Project”). Costs associated with the C Street Curb to Property Improvements shall be accounted for separately in the Combined C Street Improvement Project. Parberry’s responsibility for the costs of design and construction shall be based on an engineer’s estimate developed by the City which shall be based on the cost of design and construction to a private developer, not to a public entity (the “Engineer’s Estimate”). Final invoicing will reflect actual construction costs as would be paid by a private developer, not a public entity. Parberry shall have thirty (30) days from the date of receipt of the Engineer’s Estimate to notify the City in writing of its approval or disapproval. If Parberry disapproves of the engineer’s estimate, it may: (1) notify the City in writing of its disapproval and submit its own engineer’s estimate within 30 days of receipt of the City’s Engineer’s Estimate, which the City shall either accept or reject in its sole discretion; or (2) design and construct the C Street Curb to Property Improvements adjacent to 700 W. Holly and extending to the intersection of C street and Astor, which construction shall be completed within one hundred and twenty (120) days of the City’s physical completion (“Physical Completion” as defined in the Standard Specifications for Road, Bridge, and Municipal Construction (2020 edition) (the “Standard Specifications”)) of the curb to curb street improvements. Parberry shall not begin construction of the C Street Curb to Property Improvements prior to the Physical Completion of the City’s curb to curb street improvements. In the event the City rejects Parberry’s engineer’s estimate, Parberry shall complete construction of the C Street Curb to Property Improvements within one hundred and twenty (120) days of the City’s Physical Completion of the curb to curb improvements. Parberry shall not begin construction of the C Street Curb to Property Improvements prior to the Physical Completion of the City’s curb to curb street improvements. The City shall invoice Parberry for the costs.
associated with the design of the C Street Curb to Property Improvements within sixty (60) days of project advertisement and for costs associated with construction within sixty (60) days of project Substantial Completion, as defined in the Standard Specifications. Parberry shall reimburse the City within thirty (30) days of receipt of such invoice and any delinquent amount shall bear interest at the 12% per year or the maximum allowed by law. Non-payment of such invoices shall be a default under this Agreement and if not cured within thirty (30) days of such breach after notice from the City in writing shall result in termination of this Agreement. If this Agreement terminates or the City is no longer obligated to construct the infrastructure herein, prior to the City completing the Combined C Street Improvement Project, the City shall not be required to complete the C Street Curb to Property Improvements and these improvements may be required as part of the redevelopment of other Parberry Properties.

d. Holly Street

Provided the development of the Parberry Property is in accordance with the maximum build-out and development permitted under the Old Town Plan, Parberry, or any subsequent owner or developer of the Parberry Property, shall not be required to perform any curb-to-curb improvements to Holly Street, or pay any mitigation or other fees in lieu of such improvements. Nothing in this Agreement shall prohibit the City, as a permitting agency, from placing requirements on permits for the development of 700 W. Holly Street, including those related to accessibility to the building.

e. Traffic Concurrency

Pursuant to Bellingham’s development regulations, redevelopment of the Parberry Property will require evaluation for transportation impacts and potential mitigation based on the specific land uses proposed for redevelopment of the property.

i. Pursuant to BMC 13.70, evaluation for Multimodal Transportation Concurrency is required prior to submittal of a land use application for redevelopment.

ii. Depending on the scope and scale of redevelopment, a project-specific Transportation Impact Analysis (TIA) may be required to identify transportation impacts to nearby streets and intersections, as well as potential mitigating measures, if necessary. Provided, in the event the TIA identifies as potential mitigation a road improvement the City is obligated to perform under this Agreement, such TIA shall not obviate the City’s obligation to perform such improvement.

iii. Pursuant to BMC 19.06, assessment of Transportation Impact Fees (TIF) is required based on the TIF rate in effect at the time of building permit application. A pre-application estimate of the TIF is made on the application for Multimodal Transportation Concurrency (BMC 13.70).
f. Water and Sewer

The City shall be responsible for maintaining City-owned water lines capable of supporting maximum development permitted for the Parberry Property under the Old Town Plan. Parberry, or subsequent owners of the Parberry Property, shall be responsible for costs associated with water service, including, but not limited to, costs for permits, connection fees and demand charges.

The City shall be responsible for maintaining City-owned sewer system capable of supporting maximum development permitted for the Parberry Property under the Old Town Plan. Parberry, or subsequent owners of the Parberry Property, shall be responsible for costs associated with sewer service, including, but not limited to, costs for permits, connection fees and demand charges.

The City shall be wholly responsible for, and hereby guarantees the adequacy of the availability of, water and sewer, consistent with the City’s Water System Plan and/or the City’s Comprehensive Sewer Plan, so long as the development of the Parberry Property is in accordance with the maximum build-out and development permitted under the Old Town Subarea Plan dated March 2008. Any development in excess of that contemplated under the Old Town Subarea Plan, whether as a result of a change in regulations or any other reason, is beyond the scope of this guarantee.

g. Stormwater

The City shall be responsible for installing a stormwater drainage and collection system to convey stormwater runoff from the Parberry Property and all public roads, sidewalks, and any other public areas abutting the Parberry Property.

The City shall not be responsible for on-site stormwater management associated with private development on or within the Parberry Property. Parberry, or any subsequent owner of the Parberry Property, shall be responsible for the design and construction of stormwater systems for managing stormwater onto and off any given development, and for compliance with applicable local, state and federal regulations applicable at the time of complete application for any and all permits.

3. Redevelopment

a. Holly Street Landfill Covenant.

The City agrees to assist Parberry in its effort to amend the Restrictive Covenant recorded under Whatcom County Auditor file number 2050502787 (the “Restrictive Covenant”) to remove the ground-floor residential restriction contained in Section 1 of the Restrictive Covenant or allow for the mitigation of the health and safety concerns associated with the ground-floor residential restriction.
b. Shoreline Buffer.

The City acknowledges the existing foundation walls are located within the shoreline buffer on the property located at 600 W. Holly Street (the "Holly Street Property"). The City agrees the foundation walls are a nonconformance that can be continued and maintained pursuant to Section 22.05.040 of the Bellingham Municipal Code, and that fill may be placed on the landward side of the foundation walls in order to create a level grade across the Holly Street Property. Alternatively, the foundation walls can be removed prior to filling the Holly Street Property to create a level grade. Prior to removing the existing foundation walls, a geotechnical report shall be submitted to the City verifying the stability of the adjoining property will not be impacted as a result of the removal of the foundation wall. Grading within the shoreline buffer shall comply with the requirements of Section 22.08.160 of the Bellingham Municipal Code. In either case, further encroachment (waterward) into the required 50-foot buffer shall not occur. Future buildings shall not be constructed within the 50-foot buffer or the additional five (5) foot setback from the edge of said buffer.

4. Impact Fees and Credits

a. Plaza Credits

In the context of undertaking any future development of the Parberry Property under the Old Town Plan, Parberry, for itself and any subsequent owner of the Parberry Property, agrees to dedicate the Courthouse Plaza within 60 days of written request by the City. The location of the Courthouse Plaza is indicated on Exhibit 2. Parberry, or any subsequent owner of the Parberry Property, shall dedicate to the City its ownership interests in the portion of the Parberry Property where the Courthouse Plaza is located in accordance with the dimensions set forth below, and in the form of a quit claim deed. This is a material term of this Agreement and the City reserves its right to pursue specific performance among other remedies available at law or equity. Nothing herein limits the parties’ rights to remedies available at law or equity for breach of any other provision of this Agreement.

b. Plaza Dimensions

The Courthouse Plaza is not expected to exceed 7500 square feet and will be located on the northeasterly corner of E Street and Holly Street. The dimensions of the Parberry Property to be dedicated for the Courthouse Plaza shall be 75 feet, more or less, abutting E Street, by 100 feet, more or less, abutting Holly Street and shall in any event comprise the entirety of Tax Parcel No. 3803-3000-2339.

i. Timing for Dedication

The parties acknowledge that any benefit conferred upon Parberry and its successors under this Section b, as well as any obligation to dedicate the Parberry Property as a plaza, is contingent upon an amendment to the City’s Capital Facilities Plan allowing for a category of plaza development in the Old Town Subarea. The City agrees to make all good faith efforts to ensure that the necessary amendment is prepared and approved during the next revisions to the Capital Facilities Plan and, in any event, no later than December 31, 2021, and neither Parberry
nor its successors shall have any obligations under this Section unless and until such amendment is effective.

No sooner than six months following such amendment to the Capital Facilities Plan, either Parberry, or its successors, shall dedicate the Courthouse Plaza property upon one year's prior written notice by the City to Parberry, or the subsequent owner of the Parberry Property. In no event shall Parberry dedicate the Courthouse Plaza prior to the City's written request.

ii. Compensation for Dedicated Property

At the time of such dedication, Parberry, or the subsequent owner of the Parberry Property, may elect from the following options for compensation, at the property owner's sole discretion:

A) Dedicate a plaza area(s) in return for a transfer of the floor area, in accordance with BMC 20.35.070(D)(4)(c)(1) as effective at the date of this Agreement. This Agreement constitutes approval by the City for the transfer of the entirety of the floor area from the Courthouse Plaza property dedicated to the City to increase the allowed floor area of any receiving development site(s) or project(s) on or within the Parberry Property as determined in the sole discretion of Parberry, or the subsequent owner of the Parberry Property, so long as the development site(s) or project(s) adhere to height restrictions and floor area allowances provided for in BMC 20.35. Further approval by the Director for such transfer of floor area shall not be required notwithstanding BMC 20.35.070(D)(4)(c)(1); or

B) Dedicate a plaza area(s) in return for a credit against park impact fees, in accordance with BMC 19.04.140(A), provided that the credit is based on the fair market value of the dedicated land at the highest and best use that would be permitted by either 1) the Old Town Subarea Plan as it exists at the time of this Agreement, or 2) subsequent amendments to the Old Town Subarea Plan in effect at the time of development, whichever allows for the highest fair market value; and is established by private appraisers acceptable to the City and Parberry, or the subsequent owner of the Parberry Property, and provided further that the Adoption of the Development Agreement Resolution constitutes approval by the City to transfer freely park impact fee credits resulting from a dedication of a plaza area(s) located on the Parberry Property to any development or project on or within the Parberry Property in the sole discretion of Parberry, or the subsequent owner of the Parberry Property; or

C) Convey the plaza area(s) in return for payment by the City of an amount equal to the fair market value of the land at the highest and best use that would be permitted by either 1) the Old Town Subarea Plan as it exists at the time of this Agreement, or 2) subsequent amendments to the Old Town Subarea Plan in effect at the time of development, whichever allows for a higher fair market value; as established by private appraisers acceptable to the City and Parberry, or a subsequent owner of the Parberry Property.

c. Other Impact Fees

Other than the means by which this Agreement addresses plaza credits, Parberry for itself and any subsequent owner of the Parberry Property, acknowledges that development of the
Parberry Property may require impact fees for traffic, fire services, parks and open space and school facilities, as well as development charges for water, sewer and stormwater.

5. Resolution of Low-Barrier Shelter

The City and Lighthouse Mission Ministries ("LMM") have been working together to find a permanent location for a low-barrier shelter currently operating on the 1000 block of E. Holly Street (the "Low Barrier Shelter"). As of the date hereof, LMM and the City have not been successful in finding an acceptable location. Pursuant to RCW 35.21.915, City of Bellingham Emergency Ordinance Number 2018-04-007, City of Bellingham Resolution Number 2017-27, and Temporary Use Permit Number ADM2018-0019, as well as Director's Interpretation #ADM2018-0008, LMM is currently operating the temporary facility through May 22, 2022. During the Term of this Agreement, the City agrees not to lease 600 W. Holly Street to accommodate a permanent or temporary low-barrier homeless shelter.

6. Relocation Costs

Parberry shall bear all costs of relocating their operations from the Old Town area to another site, including the cost of land acquisition, site improvements, compliance requirements, facility construction, equipment purchase and all other similar costs. Further, Parberry shall bear all costs of site remediation to existing Parberry Property, if any.

7. Vesting

Under this Agreement, and during the term of this Agreement, Parberry and any subsequent owner of the Parberry Property shall have a vested right to develop the Parberry Property in accordance with, and to the extent permissible under Existing Land Use Regulations. The term "Existing Land Use Regulations" means any ordinance, code, rule or law of the City in effect at the time of the Adoption of the Development Agreement Resolution setting forth development regulations, building standards and project elements, including but not limited to those establishing permitted uses, densities, intensities, building height, building size, setbacks, parking, loading, landscaping, signage, fencing, screening, design specifications, and other similar development guidelines specifically including, but not limited to, the following sections of the Bellingham Municipal Code: Title 16 Environment, Title 17 Buildings and Construction, Title 18 Subdivisions, Title 20 Land Use Development, and Title 21 Administration of Development Regulations, provided that these code provisions were adopted as a matter of local discretion and are not implementing a State of Washington mandate. Development of the Parberry Property shall not be subject, during the Term of this Agreement, to any amendments to, or replacements of, the Existing Land Use Regulations. Nothing herein relieves Parberry of any obligation it may have during the Term to comply with state or federal laws or regulations of any kind, and as provided in RCW 36.70B.170(4), the proposed redevelopment of the Parberry Property shall not vest against new development regulations to the extent the new regulations are required by a serious threat to public health and safety.

Parberry, for itself and any subsequent owner of the Parberry Property, acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City under the public review and approval procedures required by the municipal code in First Amended and Restated Development Agreement – 09.28.2020
effect at the time of submittal for government approvals to develop the Parberry Property. Other than as specifically identified herein, nothing in this Agreement shall be construed to limit the authority or the obligations of the City to exercise that discretion.

8. **Option to Purchase.**

a. **600 W. Holly Street.** The City hereby grants Parberry an option through February 21, 2023 (the “600 W. Holly Option Period”) to purchase the property located at 600 and 612 W. Holly Street, Bellingham, Washington and legally described and illustrated on Exhibit 5 attached hereto (the “Holly Street Property”) at a purchase price determined that is equal to the fair market value of the property in its AS-IS condition (the “Fair Market Value”) as determined by MAI appraisal (the “Appraisal”), in accordance with BMC 4.84. The Appraisal shall be commenced within ninety (90) days of the effective date of this Agreement. The appraiser shall be selected jointly by the City and Parberry and Parberry shall pay the appraiser’s fee, provided, fifty percent (50%) of the cost of the appraisal shall be credited toward the purchase price at closing if Parberry purchases the Holly Street Property. If the City and Parberry cannot agree on an appraiser within fifteen (15) days after written notice from either party, then each party will select an appraiser, and the two appraisers shall try to reach agreement on Fair Market Value and if they do agree, the resulting amount will be the purchase price and each party will pay the cost of its appraiser. If the appraisers do not agree on Fair Market Value, the two appraisers will pick jointly a third appraiser and the third appraiser shall choose either the final value figure given by the City’s appraiser or the final value figure given by Parberry’s appraiser (i.e., no splitting the difference). The City and Parberry shall each pay half the cost of the third appraiser. Each appraiser must have MAI certification and must have at least ten (10) years’ experience appraising similar properties in Washington. The Fair Market Value shall automatically increase three percent (3%) per annum beginning on the one-year anniversary of the final date of the Appraisal and the purchase price shall be the Fair Market Value in effect on the date Parberry exercises its option.

i. The option shall be exercisable by written notice to the City, provided, Parberry shall not be entitled to exercise the option if Parberry is in default of this Agreement. If Parberry exercises the option, closing shall occur within one hundred twenty (120) days thereafter, with the purchase price paid in cash at closing, so long as the appraisal has been completed and an easement for the Whatcom Creek boardwalk has been recorded against the 600 W. Holly Street Property by the City. The City and Parberry shall each pay half of the escrow fee and any similar closing costs. Any transfer tax shall be paid by the City as seller, in accordance with the statute, unless, as currently, there is an applicable exemption. Title shall be conveyed by Quitclaim Deed free of any monetary liens and free of any encumbrances not on the title on the date of this Agreement. The City shall pay for a standard coverage title insurance policy for Parberry and Parberry shall pay the additional premium for extended coverage if requested by Parberry. The title insurance company shall be selected by Parberry and shall also provide escrow services on the transfer.

ii. By mutual agreement, the purchase price for the Holly Street Property will be paid according to one of the following: (1) Parberry may purchase the property

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for the appraised value as determined above; or (2) Parberry may trade the City a parcel owned by Parberry in the Old Town Subarea of equal value, simultaneous with the closing on the Holly Street Property. The appraisal selection and resolution provisions of the preceding section shall apply to this section as well.

iii. It is anticipated that the Fair Market Value of the Holly Street Property will increase as a result of the redevelopment of the Parberry Property, and that such increase might exceed the three percent per annum increases in Fair Market Value provided for in this Agreement. The City and Parberry intend that the benefit of the increased value of the Holly Street Property resulting from redevelopment of the Parberry Property inure to the benefit of Parberry, provided Parberry exercises its option to purchase the Holly Street Property. This allocation of increased value is part of the overall economics of this Agreement and is a material inducement for Parberry to relocate its Northwest Recycling operations and invest in redevelopment the Parberry Property, which redevelopment will result in overall value to the City and the citizens of Bellingham. Any increase in Fair Market Value of the Holly Street Property beyond the three percent per annum increases provided in this Agreement shall not give rise to or be the basis of any claim or request by the City to re-negotiate the terms of this Agreement or the purchase price of the Holly Street Property.

iv. In the event the City receives a bona fide offer (at a price acceptable to City staff) to purchase or lease the Holly Street Property from a third party in any written form during the Option Period, the City will notify Parberry of such offer and Parberry will have thirty (30) days to exercise its option or the City will be free to accept the third party offer or negotiate with the third party. If Parberry decides to exercise its option, it will have sixty (60) days to close its purchase of the Holly Street Property. Notwithstanding the foregoing, the City’s lease of the Holly Street Property shall not terminate Parberry’s option to purchase and Parberry shall continue to have the option to purchase the Holly Street Property subject to the lease.

v. Nothing in this Agreement or option to purchase shall alter the City’s responsibility related to contamination on the Holly Street Landfill site and, as between the City and Parberry, the City shall remain responsible for remediating any pre-existing hazardous substances located on the Holly Street Property.

vi. Section 8 of this Agreement and the option rights granted to Parberry herein shall be a covenant running with and affecting the Holly Street Property until such time as the 600 W. Holly Option Period expires, provided, if Parberry exercises its option to purchase, all of the terms, conditions and obligation of this Agreement shall continue in full force and effect with respect to the Holly Street Property.

b. 707 Astor Street. Parberry exercised its option to purchase 707 Astor Street legally described and illustrated on Exhibit 6 attached hereto (the “Astor Street Property”) in 2020.

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Page - 14
c. In the event Parberry purchases either the Holly Street Property or the Astor Street Property, neither shall be utilized for non-conforming uses.

d. **Buy-Back.** In the event Parberry is in default of its obligation to meet the Milestones set forth in Section 1 of this Agreement, and fails to cure such default within thirty (30) days after receipt of written notice from the City, and provided Parberry has not commenced construction of a new building with at least three stories or thirty-five (35) feet of height as defined in BMC 20.08.020 and fifty thousand (50,000) square feet, as also defined in BMC 20.08.020, on the Holly Street Property as of the date of such default, the City shall have the option to buy the Holly Street Property back from Parberry at the same purchase price paid by Parberry.

e. **Effect of Agreement.** Section 8 of this Agreement and the option rights granted to Parberry herein shall be a covenant running with and affecting the Holly Street Property and the Astor Street Property until such time as the 600 W. Holly Option Period and the 707 Astor Street Option Period, respectively, expire, provided, if Parberry exercises its option to purchase one or both of the properties, all of the terms, conditions and obligation of this Agreement shall continue in full force and effect with respect to such purchased property.

9. **Term**

This Agreement commenced on the date of the Adoption of the Development Agreement Resolution, February 11, 2019 and shall remain in effect until February 10, 2029 (the “Term”). Any action permitted or required under this Agreement such as permit submittal, road construction, or project development must commence during the term of this Agreement even though additional time may be needed for completion of such actions.

10. **Assignment**

Parberry desires assurances that it, its successors or assigns, and any subsequent owner of the Parberry Property may develop the Parberry Property, as well as the Holly Street Property and/or Astor Street Property, if purchased pursuant to Section 8 hereof, in accordance with the vested rights set forth in this Agreement. It is the intent of the parties that the benefits and burdens of this Agreement shall be enjoyed by Parberry, Parberry’s successors and assigns, and any subsequent owner of the Parberry Property who takes fee simple title or beneficial possession of all or any portion of the Parberry Property.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns, and all other persons acquiring the Parberry Property, or any portion thereof, or any interest therein.

11. **Project Managers**

For the City: Tara Sundin, Community and Economic Development Manager, 210 Lottie Street, Bellingham, WA 98225, (360) 778-8392.

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a. Legal Fees. In the event any legal action is taken by either Party against the other Party to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party to such action shall pay to the prevailing Party therein all court costs, reasonable attorneys' fees and expenses incurred by the prevailing Party.

b. Relationship of the Parties. The execution of this Agreement shall not create any agency, partnership, joint venture, association or any other relationship between the Parties other than as independent contracting parties. Neither Party shall act as an agent for the other party or shall have the authority to bind or make commitments on behalf of the other Party. This Agreement has been entered into solely for the benefit of the Parties hereto and does not create any interest in any third party.

c. Entire Waiver; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

d. Advice of Counsel. This Agreement was negotiated at arms-length with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against either of the Parties because of the identity of the drafter.

e. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

f. Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

g. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

Exhibit List:

Exhibit 1 – Legal Description of the Parberry Property
Exhibit 2 – Illustration of the Parberry Property
Exhibit 3 – Location of Scrapyard and Residential Recycling Facilities
Exhibit 4 – Street Improvements

First Amended and Restated Development Agreement – 09.28.2020
Page - 16
Exhibit 5 – Legal Description and Illustration of Holly Street Property
Exhibit 6 - Legal Description and Illustration of Astor Street Property

Executed this 13th day of October, 2020.

CITY OF BELLINGHAM

[Signatures]

Mayor

Department Head

[Signatures]

Attest:

Finance Director

[Signatures]

Approved as to Form

Office of the City Attorney
PARBERRY'S INC.

By: [Signature]
Name: Brad L. Panberry
Title: President

NORTHWEST RECYCLING, INC.

By: [Signature]
Name: Brad L. Panberry
Title: President

PARBERRY FAMILY LIMITED PARTNERSHIP

By: [Signature]
Name: Brad L. Panberry
Title: General Partner

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

On this day personally appeared before me SETH FLEETWOOD, to me known to be the Mayor of the City of Bellingham, the municipal corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 13 day of October, 2020.

Printed Name: S. Brooksana Raney
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham, WA
My Commission Expires 7/28/24

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STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

On this day personally appeared before me ____________________________, to me known to be the __________________________ of Parberry’s Inc., the corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this __________ day of __________, 2020.

Printed Name ____________________________
NOTARY PUBLIC in and for the State of Washington,
residing at ____________________________
My Commission Expires ____________________________

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

On this day personally appeared before me ____________________________, to me known to be the __________________________ of Northwest Recycling, Inc., the corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this __________ day of __________, 2020.

Printed Name ____________________________
NOTARY PUBLIC in and for the State of Washington,
residing at ____________________________
My Commission Expires ____________________________
STATE OF WASHINGTON )
 ) ss.
COUNTY OF WHATCOM )

On this day personally appeared before me ____________________________, to me known to be the __________________________ of Parberry Family Limited Partnership, the corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this ___ day of ___________, 2020.

See Attached Notary Acknowledgement Certificate

Printed Name __________________________
NOTARY PUBLIC in and for the State of Washington, residing at __________________________
My Commission Expires __________________________
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the
document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Mateo

On Sept. 30, 2020 before me, Marisol M. Moreno, Notary Public

personally appeared Brad L. Parberry

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws
of the State of California that the foregoing paragraph
is true and correct.

WITNESS my hand and official seal.

Signature

Place Notary Seal Above

Title or Type of Document: Real Estate Agreement Document Date: 2020

Capacity(ies) Claimed by Signer(s)
Signer's Name: Brad L. Parberry

☐ Corporate Officer — Title(s): president
☐ Partner — Limited General
☐ Individual ☐ Attorney In Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: Brad L. Parberry, INC

Signer is Representing: Parberry’s INC

Signer's Name: John Fleetwood

☐ Corporate Officer — Title(s):
☐ Partner — Limited General
☐ Individual ☐ Attorney In Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other:

Signer is Representing:

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Mateo

On Sept. 30, 2020 before me, Marisol M. Moreno, Notary Public, personally appeared Brad L. Parberry

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Optional

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Restated and Amended Partnership Agreement

Number of Pages: 10

Signer(s) Other Than Named Above: Seth Fleetwood

Capacity(ies) Claimed by Signer(s)

Signer's Name: Brad L. Parberry

☐ Corporate Officer — Title(s): President
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: Recycling Inc.

Signer Is Representing: Northwest Recycling Inc.

Signer's Name: none

☐ Corporate Officer — Title(s): 
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: 

Signer Is Representing:
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  )
County of __________ )
On ___________________ before me, ________________, Notary Public

Date

personally appeared ________________________________________

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ____________________________

Signature of Notary Public ____________________________

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: ________________
Document Date: ________________

Number of Pages: ____________ Signer(s) Other Than Named Above: ________________

Capacity(ies) Claimed by Signer(s)
Signer’s Name: ________________

☐ Corporate Officer — Title(s): ________________
☐ Partner — Limited General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: ________________

Signer Is Representing: ________________

Family Limited Partnership

Signer’s Name: ________________

☐ Corporate Officer — Title(s): ________________
☐ Partner — Limited General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: ________________

Signer Is Representing: ________________
# Exhibit 1
## Parberry Property

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<tr>
<th>Parcel Number &amp; Address</th>
<th>Legal Description &amp; Parcel Number</th>
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<td>1. 0 Astor Street</td>
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<td>5. 0 D Street</td>
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<td>3803300343390000</td>
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<td>Parcel Number &amp; Address</td>
<td>Legal Description &amp; Parcel Number</td>
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<td>6. 1315 D Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM LOTS 1 THRU 4-13 THRU 16 BLK 5-SUBJ TO R/W ESMT OVER S 10 FT OF LOTS 4-13 DESC AF 947914-TOG WI VAC CENTER ST ABTG AS VAC ORD 7280-SUBJ TO COVENANT TO BIND</td>
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<td>See full legal description attached as Exhibit 1.6 hereto.</td>
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<td>7. 1407 D Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM SW 1/2 OF LOT 4-ALL LOTS 5 THRU 8 BLK 6- TOG WI VAC 12 FT CENTER ST ABTG</td>
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<td>See full legal description attached as Exhibit 1.7 hereto.</td>
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<td>8. 1411 D Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM ALL LOT 3-NE 1/2 OF LOT 4 BLK 6- TOG WI VAC 12 FT CENTER ST ABTG</td>
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<td>See full legal description attached as Exhibit 1.8 hereto.</td>
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<td>9. 1415 D Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM LOTS 1-2 BLK 6-TOG WI VAC 12 FT CENTER ST ABTG</td>
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<td>See full legal description attached as Exhibit 1.9 hereto.</td>
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<td>10. 1401 E Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM LOTS 3-4 BLK 11</td>
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<td>See full legal description attached as Exhibit 1.10 hereto.</td>
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<td>11.1408 E Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM LOTS 9 THRU 16 BLK 6-TOG WI VAC 12 FT CENTER ST ABTG</td>
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<td>12.1411 E Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM LOT 2 BLK 11</td>
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<td>13.1413 E Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM LOT 1 BLK 11</td>
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<tr>
<td>14.0 W Holly Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM NWLY 50 FT OF LOTS 1 THRU 4 BLK 32</td>
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<tr>
<td>15.0 W Holly Street</td>
<td>SUPPLEMENTAL MAP OF WHATCOM LOTS 13 THRU 16 BLK 32-SUBJ TO ESMT TO CITY OF BELLINGHAM FOR SLOPE FILL</td>
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<td>NWLY 50 FT OF LOTS 1 THRU 4 BLK 32</td>
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<tr>
<td>16.700 W Holly</td>
<td>SUPPLEMENTAL MAP OF WHATCOM LOTS 3 THRU 16 BLK 4-SUBJ TO ESMT TO CITY OF BELLINGHAM FOR SLOPE FILL</td>
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<tr>
<td>Street</td>
<td>NWLY 50 FT OF LOTS 1 THRU 4 BLK 32</td>
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Exhibit 1, page 3 of 4

- 164 -
| 17.701 W Holly Street | SUPPLEMENTAL MAP OF WHATCOM
LOTS 1 THRU 4-13 THRU 16 BLK 31-SUBJ TO ESMT TO CITY OF
BELLINGHAM FOR SLOPE FILL ON LOT 1 DESC AF 733698
See full legal description attached as Exhibit 1.17 hereto.
3803300113080000 |
| 18.800 W Holly Street | SUPPLEMENTAL MAP OF WHATCOM
LOTS 9-10-11 BLK 5-TOG WI VAC PTN CENTER ST ABTG-SUBJ
TO ESMT TO CITY OF BELLINGHAM FOR SLOPE FILL DESC AF
735976
See full legal description attached as Exhibit 1.18 hereto.
3803300023390000 |
| 19.800 W Holly Street | SUPPLEMENTAL MAP OF WHATCOM
LOTS 5 THRU 8 BLK 5-TOG WI VAC PTN
CENTER ST ABTG-SUBJ TO R/W ESMT OVER N 10 FT OF LOT 5
DESC AF 947913
See full legal description attached as Exhibit 1.19 hereto.
3803300063360000 |
| 20.801 W Holly Street | SUPPLEMENTAL MAP OF WHATCOM
SE 30 FT OF LOTS 1 THRU 4 BLK 32-SUBJ TO ESMT TO CITY OF
BELLINGHAM FOR SLOPE FILL DESC AF 735975
See full legal description attached as Exhibit 1.20 hereto.
3802255513260000 |
| 21.900 W Holly Street | SUPPLEMENTAL MAP OF WHATCOM
LOTS 1 THRU 8 BLK 12-SUBJ TO ESMT TO
CITY OF BELLINGHAM FOR SLOPE FILL DESC AF 735978 ON
LOTS 5 THRU 8
See full legal description attached as Exhibit 1.21 hereto.
3802255533590000 |
EXHIBITS 1.1-1.21
PARBERRY PROPERTY

Exhibit 1.1
(0 Astor Street)
380330037390000

Lying in the vacated right-of-way of Division Street between Astor and Bancroft Streets, and lying across Block 3, Plat of the Town of New Whatcom Supplemental as the same is shown at Page 42, Book 1 of Plats, Official Records of the Whatcom County Auditor, adjacent to Lots 7 through 10 as shown on the map attached hereto, and situated in the county of Whatcom, state of Washington. (See Exhibit 1.1A attached hereto.)

Exhibit 1.2
(0 C Street)
380330040337000

LOTS 7, 8, 9, and 10, Block 3, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884", now a part of the consolidated City of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 1 of Plats, page 42, in the Auditor's office of said county and state, TOGETHER WITH the vacated portion of Division Street abutting on said lots, which vacated portion is the southeasterly 20 feet of Division Street.

Exhibit 1.3
(0 C Street)
380330046834300

Lot 4, Block 3, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884, now a part of the consolidated City of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 1 of Plats, page 42, in the Auditor's office of said county and state, TOGETHER WITH the southeasterly 12 feet of vacated Division Street abutting.

Exhibit 1.1-1.21, page 1 of 6
Exhibit 1.4
(1419 C Street)
3803300403510000

Lots 1 through 3, inclusive, and Lots 5 and 6, TOGETHER WITH the Southerly 12 feet of vacated Division Street abutting, ALSO Lots 11 through 20, inclusive, TOGETHER, WITH the Northerly 12 feet of vacated Division Street abutting, ALL in Block 3, "Supplemental Map of the Town of Whatcom, County, W. T., 1887, " now a part of the consolidated City of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 1 of Plats, page 43, in the Auditor's office of said County and State.

Exhibit 1.5
(0 D Street)
3803300343390000

The Southeast one-third of Lots 11 and 12, and also the vacated 12 feet of the division street abutting, Block 3, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1887," now a part of the consolidated City of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 1 of Plats, page 43, in the Auditor's office of said County and State.

Exhibit 1.6
(1315 D Street)
3803300113480000

Lots 1, 2, 3, 4, 13, 14, 15 and 16, BLOCK 4, along with vacated Center Street abutting said Lots;

ALL of said lots and blocks being in "Supplemental Map of the Town of Whatcom, Whatcom County, W. T.," according to the Plat thereof, recorded in Volume 1 of Plats, Page 48., records of Whatcom County, Washington.

Exhibit 1.1-1.21, page 2 of 6
Exhibit 1.7
(1407 D Street)
3803300243540000

The Southwesterly half of lot 4 and all of lots 5, 6, 7 and
8, Block 5, Supplemental Map of the Town of Whatcom, W. T.,
as per the map thereof, recorded in Volume 1 of Plats,
page 42, records of Whatcom County, Washington. Together
with the vacated Southwesterly 12 feet abutting said lots.

Exhibit 1.8
(1411 D Street)
3803300293590000

Lot 3 and the Northwesterly one-half of Lot 4, Block 6, "Supplemental
Map of the Town of Whatcom", as per plat thereof recorded in
Volume 1 of Plats, Page 42, Records of Whatcom County, Washington.
Auditor.

Exhibit 1.9
(1415 D Street)
3803300323630000

Lots 1 and 2, Block 6, "SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM
COUNTY, W.T., 1884, " AS PER THE MAP THEREOF, RECORDED IN BOOK 1 OF PLATS,
PAGE 42, IN THE AUDITOR'S OFFICE OF SAID COUNTY AND STATE, TOGETHER WITH THE
VACATED SOUTHEASTERLY 12 FEET OF CENTER STREET ADJOINING.

Exhibit 1.10
(1401 E Street)
3803300053730000

Lots 3 and 4, Block 11, "Supplemental Map of the Town of Whatcom, Whatcom County,
W.T. 1884" now a part of the consolidated City of Bellingham, Whatcom County,
Washington, as per the map thereof, recorded in Book 1 of Plats, page 42, in the
Auditor's office of said county and state.

Exhibit 1.1-1.21, page 3 of 6
Exhibit 1.11
(1408 E Street)
3803300183640000

Lots 9 through 16, Block 6, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884, now a part of the Consolidated City of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 1 of Plats, Page 42, in the Auditor's Office of Said County and State. Together with that portion of vacated Center Street which has attached to said premises by operation of law.
Situates in Whatcom County, Washington.

Exhibit 1.12
(1411 E Street)
3803300093770000

Lot 2, Block 11, Supplemental Map of the Town of Whatcom, Whatcom County, W.T., according to the recorded Plat thereof recorded in Volume 1 of Plats, Page 42, records of Whatcom County, Washington.

Exhibit 1.13
(1413 E Street)
3803300123810000

Lot 1, Block 11, Supplemental Map of the Town of Whatcom, Whatcom County, W.T., according to the recorded Plat thereof recorded in Volume 1 of Plats, Page 42, records of Whatcom County, Washington.

Exhibit 1.14
(0 W Holly Street)
3802255523290000

[Text continues]
Exhibit 1.15
(0 W Holly Street)
3802255483330000

Lots 13, 14, 15 and 16, Block 32, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884," now a part of the consolidated City of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book I of Plats, page 42, in the Auditor's office of said county and state.

Exhibit 1.16
(700 W Holly Street)
3803300203260000

TRACT II. Lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, Block 41.
ALL of said lots and block being in "Supplemental Map of the Town of Whatcom, Whatcom County, W.T.," according to the Plat thereof, recorded in Volume 1 of Plats, Page 42, records of Whatcom County, Washington.

Exhibit 1.17
(701 W Holly Street)
3803300113080000

Lots 1, 2, 3, 4, 11, 14, 15 and 16, Block 11, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T.," according to the Plat thereof, recorded in Volume 1 of Plats, Page 42, records of Whatcom County, Washington.

Exhibit 1.18
(800 W Holly Street)
3803300023390000

Lots 9, 10 and 11, and also that portion of vacated Center Street abutting thereon, Block 5, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T.," according to the Plat thereof, recorded in Volume 1 of Plats, Page 42, records of Whatcom County, Washington.

Exhibit 1.1-1.21, page 5 of 6

-170-
Exhibit 1.19
(800 W Holly Street)
380330006360000

Lots 5, 6, 7 and 8 and that portion of vacated Center Street abutting thereon, Block 3, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T.," according to the plat thereof, recorded in Volume 1 of Plats, page 42, records of Whatcom County, Washington.

Exhibit 1.20
(801 W Holly Street)
380225551326000

The Southeast 50 feet of Lot 1 to 11, Block 32, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884," according to the plat thereof, recorded in Volume 1 of Plats, page 42, records of Whatcom County, Washington, subject to encumbrances of record.

Exhibit 1.21
(900 W Holly Street)
380225553359000

Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 12, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884," now a part of the consolidated City of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 1 of Plats, Page 42, in the Auditor's office of said county and state.

Exhibit 1.1-1.21, page 6 of 6
EXHIBIT 2: ILLUSTRATION OF PARBERRY PROPERTY

KEY:
- Old Town Sub-Area Boundary
- Parberry Property
- Plaza Location
EXHIBIT 3: LOCATION OF SCRAPYARD & RESIDENTIAL RECYCLING FACILITIES

R = Residential Recycling Facility
S = Scapyard
EXHIBIT 4: ADDITIONAL STREETS
EXHIBIT 5: LEGAL DESCRIPTION AND ILLUSTRATION OF HOLLY STREET PROPERTY

PARCELS 3803300443110000; 3803300583240000; 3803300663290000

LEGAL DESCRIPTION PER AUDITORS FILE #2011205310

Lots 1 through 16, Block 36, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884" according to the map thereof, recorded in Book 1 of Plats, Page 42, in the Auditor's Office of Whatcom County, Washington. Together with the Northeasternly one-half of Astor Street abutting Lots 8 and 9 as vacated by Ordinance No. 6414 (5/1946).

And

Lots 11 through 16, Block 37, "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884" according to the map thereof, recorded in Book 1 of Plats, Page 42, in the Auditor's Office of Whatcom County, Washington, together with the Southeasternly one-half of Astor Street abutting Lot 16 as vacated by Ordinance No. 6414.

Also

That portion of the Peabody Donation Claim in Section 30, Township 38 North, Range 3 East of the Willamette Meridian, described and defined as follows, to-wit:

Beginning at a point on the Southerly line of Astor Street (formerly Fourteenth Street) in the City of Bellingham, which point marks the Easterly corner of Lot 16, of Block 37, according to the "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884" filed for record December 3, 1886, Running thence in a Southeasternly direction a distance of 200 feet, more or less, to a point on the Northernly line of Holly Street (formerly Thirteenth Street) which point marks the Southernly corner of Lot 9, Block 37, of said Addition; thence in a Southeasternly direction along the Northernly line of Holly Street, a distance of 100 feet, more or less, to a point in the Northernly line of "B" Street, as now established; thence Northernly along the Northwesternly line of "B" Street, as now established, a distance of 200 feet, more or less, to a point on the Southernly line of Astor Street; thence in a Southeasternly direction a distance of 100 feet, more or less, to the point of beginning. Said property being also described as the Southeasternly half of Block 37, according to the "Supplemental Map of the Town of Whatcom, Whatcom County, W.T., 1884" (not subdivided) filed for record December 3, 1886, together with the Southeasternly one-half of Astor Street abutting Lot 16 as vacated by Ordinance No. 6414.

PARCEL 3803300313070000

LEGAL DESCRIPTION PER AUDITORS FILE #2040800060

Lots 9 and 10, Block 37, "Supplemental Map of the Town of Whatcom, Whatcom Co. W.T., 1884", now a part of the Consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof in Volume 1 of Plats, Page 42, in the Auditor's Office of said County and State. Situate in Whatcom county, state of Washington.
EXHIBIT 6: LEGAL DESCRIPTION AND ILLUSTRATION OF ASTOR STREET PROPERTY

PARCEL 3803300383200000 (707 ASTOR ST)
LEGAL DESCRIPTION PER AUDITORS FILE #2011205309

Lots 1 and 2, Block 4, "Supplemental map of the Town of Whatcom, Whatcom County, W.T. 1884," as shown on the map thereof, recorded in Book 1 of Plats, Page 42, in the Auditor's Office of Whatcom County, Washington, in the Auditor's Office of Whatcom County, Washington, now a part of the Consolidated City of Bellingham in said county and state.

Situate in County of Whatcom, State of Washington
Call to Order
The Planning Commission meeting was called to order by the Chair at 7:00 PM.

Roll Call
Present: Mike Estes (Chair), Jed Ballew, Scott Jones, Barbara Plaskett, Mike McAuley, Rose Lathrop, Russ Whidbee

Approval of Minutes
Minutes for March 2, 2023 approved by general consensus.

Public Comment Period
During this time, citizens may take up to three (3) minutes to address the members about any topic not on the agenda. Citizens wishing to speak during this time will be recognized by the Chair for comment.

No public testimony given.

Agenda Items

Public Hearing

1. Old Town Overlay District p. 2

Chris Behee introduced the topic and reviewed the legislative process.
Tara Sundin provided some background information related to Old Town and spoke to the existing development agreement, the reasons for the proposed amendments and mentioned that a new development agreement will be initiated.
Chris Koch spoke to the redevelopment projects that have occurred in Bellingham, as well as the upcoming development that will occur. He reviewed the proposed staff recommendations:

- Allow additional interim light industrial uses (with Development Agreement)
- Adjusting floor area bonuses and transfers between development sites
- Aligning parking standards with those of the Downtown District Urban Village
- Allow new development to use parking garages or shared parking facilities located within 1,000 feet of its location to count toward on-site parking requirements
- Waive parking requirements for commercial uses when part of a residential/commercial mixed-use building

Chris also spoke to the Comprehensive Plan Goals and Polices that will be met by these proposed amendments. He stated that staff recommends the Planning Commission adopt the draft findings of fact, conclusions and recommendations and forward a recommendation of approval to the City Council.
PUBLIC COMMENT

Jay M. expressed his support for the overlay plan and requested that the parking minimums for residential areas be removed completely. He spoke to the reasons he feels this is justified, including climate concerns, old regulations, and the future look of Old Town. He mentioned this is a trend that many cities are implementing. He suggested the minimum parking requirements be removed, but maximum parking requirements be installed.

Ali Taysi shared that he was working with the developers. He spoke in support of the proposed amendments and stated it would be a step forward in removing barriers, encourage redevelopment and spur investment for this area. He shared that incentivizing development in urban villages should be considered with every update to help meet the goals and policies found in the City’s Comprehensive Plan.

Kurt O’Conner spoke to some of the ideas that he and Pete Dawson have for this area. He spoke to the challenges of the site and requested that the Commission recommend approval so that redevelopment can occur.

Edradine Hovde shared her concern about development blocking the view of the Picket House, a National Historic Building and the oldest building in the City of Bellingham. She encouraged the Commission to consider the protection of this building.

COMMISSION DISCUSSION

There was a discussion about what would happen if the changes proposed are adopted, but the development still doesn’t occur. Staff explained that although there is no guarantee that development will occur, the incentives being proposed could encourage other development even if this current Development Agreement expires.

There was a brief conversation about why boat storage versus another use was being recommended. Staff shared that given the proximity to the waterfront, and the fact that it will take some time to redevelop the area, this was one activity that can occur on the vacant land to off-set some of the cost. Tara mentioned that there is community interest in more boat storage, and she shared that staff believes the property owners are interested in repurposing the buildings that currently exist on that site.

There was a discussion on the terms of the development agreement. Tara mentioned that it is proposed to be 10 years and will include several milestones. She stated that as long as the milestones are being met, the development agreement would continue, but not longer than 10 years.

There was a discussion about the Floor Area Ration (FAR) bonuses. Staff explained what the development may look like related to height and mass if the bonuses were used to the maximum of 5.0. A brief conversation related to FAR transfers, and how they work was held.

A conversation about how the challenges will be addressed by the proposed amendments. Staff explained that it provides flexibility and the opportunity for the property owners to continue to develop what the market demands over time.
The Commission pointed out that if parking is drastically reduced, there needs to be some assurances that ADA accessible parking stalls will still be provided. There was a brief discussion about what it could look like if there were no parking requirements. Staff shared some of the things they considered before making the proposal before the Commission. The Commission shared some thoughts about how parking could look in this area.

There was a discussion about affordable housing and the number of years indicated in the development agreement (page 79, paragraph C), that must lapse before the City has the opportunity to purchase a parcel if that housing has not been created.

**MOTION:** MIKE MCAULEY / SCOTT JONES MOVED TO REQUEST STAFF CONSIDER STRIKING OUT “9 YEARS” FROM THE APPLICABLE SECTION OF THE LETTER OF INTENT PROPOSED FOR THE DEVELOPMENT AGREEMENT (PAGE 79 IN PACKET, SECTION C) ALLOWING THE CITY TO PURCHASE THE SITE AT ANYTIME.

It was pointed out that this is a Planning Commission recommendation to the City administration to consider outside the legislative purview of the code amendments under consideration.

There was concern expressed that this would remove some of the predictability that the development agreement is supposed to provide. The point was made that just because the City purchases the site, does not mean that affordable housing will be provided any faster than if the developer retained ownership.

**VOTE:** 4-3 (Lathrop, Estes, Ballew opposed)

There was a conversation about the opportunity for flexible FAR bonuses that would provide discretion on addressing an immediate community need. It was suggested that there be a 1.5 FAR bonus that could be used to address a community need.

**MOTION:** ROSE LATHROP / MIKE MCAULEY MOVED TO STRIKE “FAR BONUS FOR PUBLIC PLAZA AND OPEN SPACE” AND REPLACE WITH COMMUNITY BENEFIT AS DETERMINED BY THE PLANNING AND COMMUNITY DEVELOPMENT DIRECTOR.

**AMENDMENT:** JED BALLEW / MIKE MCAULEY MOVED TO STRIKE THE SAME LANGUAGE, BUT INSTEAD REPLACE WITH “BONUS FLOOR AREA MAY BE AWARDED AT THE DISCRETION OF THE PLANNING DIRECTOR TO FULFILL A SPECIFIC NEED THAT IS SEEN AS CRITICAL TO THE BETTERMENT OF THE CITY AND NEIGHBORHOOD.

**VOTE:** ALL AYES

**VOTE:** 7-0 (ALL AYES)

**MOTION:** ROSE LATHROP / MIKE ESTES MOVED TO REMOVE THE MINIMUM PARKING REQUIREMENTS.

There was concern expressed that this would impact the existing parking of surrounding neighborhoods. It was pointed out that if we don’t require it now, we will not be able to require it later if we find that it was a mistake. An example was provided from another area where the parking was market driven and the result was several lots were created to ensure there was enough parking to attract tenants. It was also pointed out that
the future creation of a parking district is being considered for that area, so if spillover starts to happen in the surrounding neighborhoods, the City has an established program already being used in other areas of the city to help address the issue.

**VOTE: 4-3 (WHIDBEE, PLASKETT, JONES Opposed)**

**MOTION:** JED BALLEW / ROSE LATHROP MOVED TO ACCEPT THE FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS, INCLUDING THE CHANGES PROPOSED, AND FORWARD A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL.

**VOTE: 4-3 (WHIDBEE, PLASKETT, JONES Opposed)**

Presentation

1. Comprehensive Plan Periodic Update  
   p. 89

Chris Behee and Elizabeth Erickson provided an overview of the Comprehensive Plan and provided information on the periodic updates the Commission could expect. They shared some of the recent updates and anticipated themes that the Comprehensive Plan will include, as well as the tentative schedule the update will follow.

**Other Business**

1. Director's Report

Blake Lyon provided the Commission with a legislative update. He shared information on the following bills that could impact the City:
   - HB1337 – ADU provisions.
   - HB1110 – 4-6 units in the single-family units (given units 5 and 6 are affordable housing)
   - SB5290 – Permit Review process
   - SB5412 – Design Review process
   - HB1181 – Add climate section to Comp Plan
   - SB5258 – Condo laws

He shared that conversations about inclusionary zoning and rental protections are items that may be coming through the Commission.

2. Nominations/Election of Officers

NOMINATION FOR CHAIR: Mike Estes nominated – accepted. VOTE: ALL AYES

NOMINATION FOR VICE CHAIR: Jed Ballew nominated – accepted. Barbara Plaskett nominated – accepted. Barbara stated she would be fine with Jed continuing as Vice-Chair. VOTE: ALL AYES

SHORELINE MEMBERS APPOINTED: Mike Estes, Scott Jones and Barbara Plaskett. CHAIR: Scott Jones
Adjournment

Minutes prepared by:

Heather Aven
Heather Aven, Recording Secretary

Minutes edited by both staff and Planning Commission members.
**Final Determination of Non-Significance (DNS)**

**SEP2023-0014**

**Date of Issuance of Original Threshold Determination:** 4/3/2023

**Date of this notice:** 6/15/2023

**Project Name:** Old Town Overlay District Text Amendments

**Project Description:** Non-project SEPA review of proposed text amendments to the Old Town Overlay District development regulations found in Bellingham Municipal Code (BMC) 20.35.055-085. The proposed amendments include, but not limited to:

1) Allowing additional interim light industrial uses,

2) Adjusting floor area bonuses and transfers between development sites, and

3) Aligning parking standards with those of the Downtown District Urban Village.

A Development Agreement between the City and a significant property owner of Old Town was amended and restated in 2020 and recorded under AF# 2021-0102090 in Whatcom County. The “2020 Parberry Development Agreement” outlined specific capital investments the City would undertake adjacent to Parberry-owned property. Parberry discontinued its operation and is in the process of selling the property.

Developers, referred to as the Old Town Village LLC, have purchased parcels from Parberry and are considering the purchase of additional parcels within the Old Town Subarea, which is envisioned by the City to be an urban village with a range of residential and commercial uses, and have become successors of the 2020 Parberry Development Agreement. Amendments to the 2020 Agreement and/or the creation of a new agreement may be necessary and is included in this non-project SEPA review.

The SEPA process requires that the Responsible Official review and consider all timely public comments. The environmental record has been updated and the environmental checklist has been supplemented to reflect additional changes from the original proposal recommended by the Planning Commission which consist of: 1) replacing the floor area ratio (FAR) bonus for Public Plazas and Open Space in BMC 20.35.070(D)(4)(c)(i) with a provision allowing the Planning Director discretion to allot up to the maximum allowed 1.5 FAR for developer generated proposals that would provide public benefit, and 2) eliminate parking minimum requirements in Old Town in lieu of the original proposed amendments which would have reduced parking requirements. This includes a subsequent amendment proposed by staff to simply add a FAR bonus for public benefit with no omissions (**Exhibits A & B**). This review includes consideration of additional public comment received through the close of the public written record (April 20, 2023) before the Planning Commission.

On April 20, 2023, the Planning Commission adopted recommendations for changes to the existing Old Town Overlay District development regulations. All changes recommended by the
Commission are within the thresholds contemplated and evaluated by the 3/27/2023 Checklist, the 4/3/2023 SEPA DNS and this document.

Based on analysis by city staff of the environmental record herein, and per WAC 197-11-340(2)(f), the SEPA Official RETAINS the threshold determination of non-significance issued for the project.

Project Location: The proposed code changes will affect the entire Old Town Overlay District, which is generally bordered by G St to the west, Dupont St to the north, Prospect and Bay Streets to the east and Roeder Ave to the south. The proposal includes multiple subareas in the Lettered Streets Neighborhood as well as Area 5 of the City Center Neighborhood. Zoning includes Urban Village, Residential Multi, Commercial and Public.

Proponent: Tara Sundin, Community and Economic Development Manager, City of Bellingham, 210 Lottie St, Bellingham, WA 98225. (360) 778-8392

Lead Agency: City of Bellingham, Planning and Community Development Department (PCDD)


The lead agency for this proposal has determined that the project does not have a probable adverse impact on the environment. An environmental impact statement is not required under RCW 43.21.C.030(2)(c). This decision was made after review of a completed environmental checklist on file with the lead agency. This information is available to the public upon request.

☒ There is no comment period for this notice of retention. The required public comment period was conducted from March 21, 2023 – April 20, 2023.

Appeal Rights: Pursuant to BMC 16.20.210(D), there is no administrative appeal of this environmental determination. An appeal to the Growth Management Hearings Board shall be of the government action together with its accompanying environmental determination as required by RCW 43.21C.075(2) and RCW 36.70A.280(1)(a).

Relationship to other Review Processes: The environmental review process in SEPA is designed to work with other regulations to provide a comprehensive review of a proposal. Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable impacts to all elements of the environment. Issuance of a SEPA Threshold Determination does not constitute an approval or denial of a proposal. Subsequent review processes retain the ability to approve, approve with conditions or deny an application based on adopted code criteria.

Staff Contact: Chris Koch, Planner
Planning and Community Development Department
210 Lottie Street - Bellingham, WA 98225
Email / Phone: ckoch@cob.org, (360) 778-8349
Responsible Official: Kurt Nabefeld, Development Services Manager
Planning and Community Development Department
210 Lottie Street, Bellingham, WA 98225

Signature

- 184 -
Public Comment
Please forward to the Planning Commission. For clarification, Bellingham Osteopathic Center is located at 1712 D Street, Bellingham, WA 98225.

Christopher Koch, Planner II
COB - Planning & CD Dept
210 Lottie Street, Bellingham, WA 98225

----Original Message-----
From: Sharon Stanley <sharondo@indra.com>
Sent: Friday, March 31, 2023 5:15 PM
To: Koch, Christopher J. <ckoch@cob.org>
Cc: info@bellinghamdo.com
Subject: Public Hearing April 20, 2023

Dear Chris,
We are writing regarding the urban changes planned in our area. I believe we have had conversations in the past regarding parking for our patients, as so many of them are elderly, injured or disabled, and need close access to Bellingham Osteopathic Center for care and treatment. Currently, there is parallel parking with a two hour limit for daylight hours. It has been helpful, and enforcement has improved with current parking enforcement. We are just concerned that it could change with the planning department. Ideally, if the parking on that side could be more perpendicular, even at an angle, there could be room for more spaces, but they need to remain two hour parking. And if it is feasible, the perpendicular space closest to our handicapped entrance could be designated handicapped. This may not be feasible, as Ellsworth is very narrow along the stretch of road near our office.
In addition, if the postal workers could be required to park in their designated lot, and somehow be compensated for any cost, so much parking could be opened up for residences, apartments and businesses.
Please contact us with any questions, and thank you for your time and support.
Sincerely,
Bellingham Osteopathic Center
Sharon Ann Stanley, DO
Aubrey Gibbs, office manager

Sent from my iPad
Dear Chris Koch,

The Lummi Nation has received the SEPA distribution (SEP2023-0014) for the proposed Old Town Overlay Text Amendments and is responding as an affected tribe. The Lummi Nation Tribal Historic Preservation Office (LNTHPO) has facilitated a review of the SEPA distribution as well as records on file at our office.

Based on this review, the LNTHPO does not wish to comment on this non project action at this time. We would like to be consulted with on a project by project basis.

These comments are based on the information available at the time of the review. The LNTHPO should review any changes related to the proposed project. Should you have any questions or concerns, please do not hesitate to contact me at 360-927-2944 or via email at tamelas@lummi-nsn.gov.

Sincerely,

Tamela S. Smart, M.A.
Deputy THPO/Compliance Officer
Culture Department, Lummi Nation
2665 Kwina Road, Bellingham, WA 98226
Cell: 360-927-2944
Email: TamelaS@lummi-nsn.gov

Lummi Nation recently held tribal elections and the LIBC has new leadership. Please update your contact list, our new Chairman is Anthony Hillaire. His preference is to receive official correspondence via email (AnthonyH@lummi-nsn.gov).

Date of Issuance of Threshold Determination: 4/3/2023
Project Name: Old Town Overlay District Text Amendments
**Project Description:** The Proposal includes consideration of text amendments to the Old Town Overlay District development regulations found in Bellingham Municipal Code (BMC) 20.35.055-.085. The proposed amendments include, but not limited to:

1) Allowing additional interim light industrial uses,
2) Adjusting floor area bonuses and transfers between development sites, and
3) Aligning parking standards with those of the Downtown District Urban Village.

A Development Agreement between the City and a significant property owner of Old Town was amended and restated in 2020 and recorded under AF# 2021-0102090 in Whatcom County. The “2020 Parberry Development Agreement” outlined specific capital investments the City would undertake adjacent to Parberry-owned property. Parberry discontinued its operation and is in the process of selling the property.

Developers, referred to as the Old Town Village LLC, have purchased parcels from Parberry and are considering the purchase of additional parcels within the Old Town Subarea, which is envisioned by the City to be an urban village with a range of residential and commercial uses, and have become successors of the 2020 Parberry Development Agreement. Amendments to the 2020 Agreement and/or the creation of a new agreement may be necessary and is included in this non-project SEPA review.

**Project Location:** The proposed code changes will affect the entire Old Town Overlay District, which is generally bordered by G St to the west, Dupont St to the north, Prospect and Bay Streets to the east and Roeder Ave to the south. The proposal includes multiple subareas in the Lettered Streets Neighborhood as well as Area 5 of the City Center Neighborhood. Zoning includes Urban Village, Residential Multi, Commercial and Public.

**Proponent:** Tara Sundin, Community and Economic Development Manager, City of Bellingham, 210 Lottie St, Bellingham, WA 98225. (360) 778-8392

**Lead Agency:** City of Bellingham, Planning and Community Development Department (PCDD)

**Staff Contact:** Chris Koch, Planner
Planning and Community Development Department
210 Lottie Street - Bellingham, WA 98225
Email / Phone: ckoch@cob.org, (360) 778-8349

Fiona Starr, Office Assistant
Planning & Community Development, City of Bellingham
210 Lottie Street, Bellingham WA 98225
360-778-8300 (main) 360-778-8357 (direct) 711 (Washington State Relay)
fstarr@cob.org

My incoming and outgoing e-mail messages are subject to public disclosure Requirements per RCW 42.56

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CAUTION: This email has been received from outside the Lummi Indian Business Council – Think before clicking on links, opening attachments, or responding.
Dear Planning Commission (& planners),

RE: April 20 hearing on Old Town Overlay District development regulations

As a property owner in the Old Town District for 34 years, I endorse the proposed revisions to the development regulations, and appendices, with one specific exception:

This is the suggestion to situate a parking structure within Maritime Heritage Park (as called out on page 6 of the 3.8.23 Old Town Village LLC Letter of Intent, p. 79 of the agenda packet, attachment 3). Situating a parking structure adjacent to a tidal estuary is inappropriate and would set an unwelcome precedent, in my opinion. The “air rights” are not inconsequential, they are exactly what parks and open spaces (especially near critical shoreline corridors) are intended to preserve.

Otherwise, good to see some long-awaited interest in redevelopment. Three closing comments. To facilitate Old Town redevelopment, the powers that be should also push forward on re-connecting Old Town to the central waterfront—this will do more than anything else to bring the district back to life so these plans can pencil out. For starters:

1) Re-install the (promised for 32 years) visitor moorage in Whatcom Waterway, bringing transient yacht traffic and working vessels back into the heart of downtown. The visitor moorage was removed by the City -- enlist the Port to help bring it back.

2) Signalize the Central Ave (as long promised) and C St intersections with Roeder.

3) Re-route the (noncompliant) sewer line across Whatcom Creek, allowing small craft back into the estuary as far as the hatchery. This would pay off many times over in adding value to the proposed Old Town Urban Village--and Maritime Heritage Park.

Thank you for your efforts!

George Dyson
435 W Holly St.
Bellingham WA 98225
Dear Planning Commissioners-

I read through the packet on Old Town. I am really disappointed. I can't believe that there is a proposal to reduce parking minimums, without any requirement for affordable housing to be tied to it. What a missed opportunity from City Staff. If it isn't clear, housing affordability in Bellingham is a primary concern of the citizens. Developer profit, not so much.

Speaking of developer profit... I am confused why the City is considering the changing of the Development code and requirements (which will benefit the developer by externalizing cost of parking onto the commons and other ways), when the property under consideration is actively listed for sale:

https://www.loopnet.com/Listing/600-W-Holly-St-Bellingham-WA/25620206/
https://www.loopnet.com/Listing/700-W-Holly-St-Bellingham-WA/25620037/
https://www.loopnet.com/Listing/1407-D-St-Bellingham-WA/25619647/

Hasn't the City of Bellingham already given enough by transferring the property at 600 W Holly to the Parberry's for what appears to be no cost?
https://property.whatcomcounty.us/propertyaccess/Property.aspx?cid=0&year=2022&prop_id=74272
Tsunami vs. Interest Rates

Regardless of developer give-aways by the City, I am horrified to see that there was NO CONSIDERATION OF THE TSUNAMI THREAT IN OLD TOWN by COB Staff. City Staff found the ability to mention the impact of rising interest rates, but not to address the known tsunami hazard...WOW!!

(Aside: How is the impact of rising interest rates of any consideration for the City of Bellingham? I sincerely question the inclusion of developer financial issues in a resolution to change development requirements.)

I don't think that in good faith you can or should accept any of the information in this packet, because COB staff didn't include ANY reference to tsunami hazards, but they did care about developer profits and financing. I question the priorities of the City Planning Department.

Please search the packet and try to find the word tsunami. I couldn't. It isn't even listed in the explicit hazards on page 3 lines 15-24.

Since the City abdicated its responsibility to take into account a KNOWN HAZARD, I guess I will give you some basic info. I won't go into depth; I will just show you where to find the info and give you a couple of pictures.

There are multiple maps of the hazards located on the Department of Natural Resources Website. The most recent are the 2021 maps listed below:

Webpage: 
https://www.dnr.wa.gov/programs-and-services/geology/geologic-hazards/Tsunamis#tsunami-hazard-maps

Zip File: (Bellingham Maps in zip file are maps 1 and 9) 
https://fortress.wa.gov/dnr/geologydata/tsunami_hazard_maps/ger_ms2021-01_tsunami_hazard_puget_sound.zip

This is a conglomeration picture I made from the DNR 2021 map, focused on Old Town:
What should be noticed in the 2021 maps above, is the increased amplitude of the wave and the increased inundation as compared to the older 2018 DNR maps that were instructive in the Building Codes:

2018 Website:
https://www.dnr.wa.gov/wa-tdz

2018 DNR zipfile: (B’ham maps are sheets 1,3,5)
https://www.dnr.wa.gov/publications/ger_ms2018-02_tsunami_hazard_anacortes_bellingham.zip

2018 Map highlighting Old Town:

Unfortunately, I won’t be able to testify at this Planning Commission meeting. I will be on-shift as a firefighter, hoping that we don’t get an earthquake and resulting tsunami, because I know that we aren’t prepared for it, at all. Not one firefighter in the City of Bellingham has any collapsed structure training or rescue capability.

Sent as a private citizen on a matter of public concern,

Todd Lagestee
Koch, Christopher J.

From: Aven, Heather M.
Sent: Friday, April 21, 2023 9:06 AM
To: Behee, Chris J.; Koch, Christopher J.; Nabbefeld, Kurt D.
Subject: FW: Old Town Overlay Parking Comments

Follow Up Flag: Follow up
Flag Status: Flagged

For city council packet

Heather Aven
City of Bellingham - 360-778-8345 - haven@cob.org
All incoming and outgoing email messages are subject to public disclosure requirements per RCW 42.56.

From: Scott Pelton <ScottP@sustainableconnections.org>
Sent: Thursday, April 20, 2023 6:46 PM
To: Grp.PL.Planning And Development Commission <planningcommission@cob.org>
Subject: Old Town Overlay Parking Comments

Planning commission, my name is Scott Pelton and I am the Manager of the Whatcom Housing Alliance.

Thank you so much for grappling with the very important issue of parking mandates in Old Town. We need to be sure that the conversation about parking is framed through the lens of our city’s dire affordable housing crisis.

Home prices continue to skyrocket and are even reversing recent downward trends, to begin the steady climb up, as interest rates fall. With that in mind, as I review the proposed parking minimums for Studios, 1-Bedrooms, 2-Bedrooms, 3-Bedrooms and more I want us to examine the efficacy of these proposed parking minimums.

Why are these parking minimums? Why not make these parking maximums? These mandates fly in the face of a brutal housing crisis and for every parking spot that we require, we’re taking up valuable building space for affordable housing AND then asking our already burdened citizens to subsidize their building.

The WHA completed a white paper in 2022 that found surface parking lots add at least $20,000 per parking spot and at least $40,000 for structure parking lots. We continue to make policy in favor of housing cars, rather than housing people. This is an absurd tragedy on its face and an even greater tragedy considering our housing crisis.

We need to ease building restrictions so we can continue to make substantive strides towards more affordable housing in Bellingham.

Pulling on the few levers that we have at our disposal is hard enough, but when, at this moment, we can eliminate all parking mandates, we seem to be on the verge of going in the wrong direction. Parking mandates are one of the variables that makes housing unaffordable, but we have control over it and can act now.

Also, oddly, as our city densifies, parking mandates are still a style when we know that as our city densifies, we continue to use fewer car trips. This reality could be no more apparent than in the consideration of Old Town that is surrounded
by innumerable services, restaurants and has a functioning Go Line route with at least 15 stops in Old Town. We need to be ahead of the curve as our city densifies and prepare for a growing population and planning an intelligent city.

Thank you,

**Scott Pelton (he/him/his)**  
Program Manager, Housing & Smart Growth

1701 Ellis St, Ste 221  
Bellingham, WA 98225  
c: [360-303-1430](tel:360-303-1430)  
(\text {text welcome})
Council Members,

I’m writing in support of removing parking minimums, which I believe you are considering at an upcoming meeting.

My priority list includes (in no particular ordering):

- Denser housing -- multi-story apartments/condos.
  --- Bellingham should aim to be a city.
- More walk-able and bicycle-friendly space downtown.
  --- this includes things like secure bicycle storage rooms as a requirement for new buildings to provide to tenants
  --- this includes public bathrooms
  --- this includes bike/pedestrian-only routes
  --- this includes closing-off some streets -- certain blocks along railroad -- in favor of walkable-city amenities -- vendors, eateries and other community-enriching activity.
- Prohibition on non-commuter vehicles (pick-up trucks / large cargo vehicles) using commuter parking.
- More covered bus stops
- Phase-out single-story surface parking entirely (soon, not someday)
- Roughly 2/3rds of WWU’s ~15k Students are from the Seattle area, if I recall correctly. The overwhelming majority, on a survey years ago, said they had a car only because they wanted to be able to visit home; but otherwise didn’t need it for their day-to-day in Bellingham. I ask you to study this again, and come up with a responsive Bellingham-to-Seattle transportation plan -- which may include working with the state to improve the 80x / 90x county connectors; improve Flix-bus locations; longer-term encouraging the light-link-rail to extend North of Everett / all the way to Bellingham; developing long-term car-storage options in Bellingham (not surface parking), and other creative ideas.

Further consideration: when people choose to take-up shared space in the community -- there is a vast difference between car-size space and the streets they require, their environmental impact and their associated construction and maintenance expenses versus bicycle or pedestrian-size space which is vanishingly small by comparison. It is fair to charge gas-tax / vehicle taxes generally to cover pedestrian / bicycle / bussing initiatives. For one thing, every bicycle / pedestrian commuter is roughly equivalent to one less car on the road, as most car-commuters are SOV’s. Clogged as rush-hour traffic can be, car-commuters actually benefit from the effort pedestrians / cyclists make in this regard. For another thing, it’s not a partisan consideration, disgruntled as opponents to this endeavor may be, for those who have a choice on how much space they take -- it’s a question of comfort, perhaps status/identity, but not necessity. There will be those lower on the income scale who have to live further from work/shopping/services and may have to drive for lack of alternatives -- we should care about this demographic -- and we ought to work to be aware of their needs and ways we can accommodate them. For those higher on the income scale, and for anyone who has access to walking / cycling / bussing, there really is no community obligation to accommodate -- they’re used to the privilege of being prioritized because we’ve always done it, but why? In my mind, if you choose to stay in a luxury hotel, you expect to pay luxury hotel prices -- and we need to start thinking that way about our transportation choices.

Thank you,
-david crook
Columbia Neighborhood
Dear city council members,

On June 26th, City Council is reviewing the Old Town zoning overlay proposal, which the Planning Commission recommended include the elimination of parking minimums. This “no parking minimum” approach is nothing radical - its the same zoning currently used in the Downtown overlay.

Aligning parking minimums with Downtown will make development less expensive and increase the amount of buildable land as builders replace existing empty lots with homes. We need your support for homes for people, not homes for cars.

Removing parking minimums does not mean there will be no parking. Instead, it means builders can build the right amount of parking for the area and the demand, not an arbitrary amount of spaces determined by city code written in the 1960s.

We need homes for people, not cars, in the areas of the city we’ve already identified as our “dense urban villages” like Old Town.

Thanks,
Jamin Agosti
Sunnyland
Dear City Council,

I'm writing to support the change to parking minimums in favor of making way for more housing density in Bellingham. Please vote to change the parking requirements for downtown to support our urgent need for more housing and density.

Sincerely,

Karin Jones
Sunnyland Neighborhood
Dear City Council members,

I am reaching out to express my support for the proposed zoning changes that would eliminate parking minimums in the Old Town urban village.

First, eliminating parking minimums is good policy because it allows development to focus on people instead of cars. I support safe, comfortable, equitable, & healthy streets – connecting us to the places we want to go – whether we walk, pedal a bike, push a stroller, or move by wheelchair. Thankfully, city code currently excludes Downtown from parking minimums, so the Old Town proposal would just conform zoning requirements in Old Town with the current requirements in the adjacent Downtown zone.

Second, we urgently need more homes in Bellingham. Space dedicated to parking dramatically increases construction costs and parking reform is a proven method to help reduce this burden.

Third, in addition to making progress on housing, parking reform in Old Town would support the goals of the 2019 Bellingham Climate Action Task Force Report (Measures T13 and T14) and the 2021 Whatcom County Climate Action Plan (Transportation Strategy 1 and Natural Environment Strategy 9). Bellingham's designated urban villages, such as Old Town, are the best places to allow for people-focused sustainable development, as envisioned in the Old Town sub-area plan drafted over 15 years ago.

Please support the proposed zoning changes in Old Town, including the elimination of parking minimums.

Thank you,
Katie Harris
Dear City Council members,

I am reaching out to ask you to support the proposed zoning changes that would eliminate parking minimums in the Old Town urban village.

First, eliminating parking minimums is good policy because it allows development to focus on people instead of cars. As a member of Walk and Roll Bellingham, I support safe, comfortable, equitable, & healthy streets – connecting us to the places we want to go – whether we walk, pedal a bike, push a stroller, or move by wheelchair. Currently, city code requires that homeowners, developers, and business owners in most areas of Bellingham build and maintain an arbitrary amount of parking, regardless of whether a property owner or business ever uses it, wants it, or needs it. This leads to an oversupply of parking, reduced safety for pedestrians and bikers, worse equity and accessibility outcomes, and an ugly cityscape. Thankfully, city code currently excludes Downtown from parking minimums, so the Old Town proposal would just conform zoning requirements in Old Town with the current requirements in the adjacent Downtown zone.

Second, we urgently need more homes in Bellingham. As you know, Cascadia Daily News reported recently that homelessness is at an all-time high in Whatcom County the National Alliance to End Homelessness has conducted research that indicates that housing affordability is a leading cause. Space dedicated to parking dramatically increases construction costs and parking reform is a proven method to help reduce this burden.

Third, in addition to making progress on housing, parking reform in Old Town would support the goals of the 2019 Bellingham Climate Action Task Force Report (Measures T13 and T14) and the 2021 Whatcom County Climate Action Plan (Transportation Strategy 1 and Natural Environment Strategy 9).

Bellingham's designated urban villages, such as Old Town, are the best places to allow for people-focused sustainable development, as envisioned in the Old Town sub-area plan drafted over 15 years ago. Please support the proposed zoning changes in Old Town, including the elimination of parking minimums.

Thanks,
Ean McCrystal
Dear City Council members, I am reaching out to ask you to support the proposed zoning changes that would eliminate parking minimums in the Old Town urban village. First, eliminating parking minimums is good policy because it allows development to focus on people instead of cars. As a member of Walk and Roll Bellingham, I support safe, comfortable, equitable, & healthy streets – connecting us to the places we want to go – whether we walk, pedal a bike, push a stroller, or move by wheelchair. Currently, city code requires that homeowners, developers, and business owners in most areas of Bellingham build and maintain an arbitrary amount of parking, regardless of whether a property owner or business ever uses it, wants it, or needs it. This leads to an oversupply of parking, reduced safety for pedestrians and bikers, worse equity and accessibility outcomes, and an ugly cityscape. Thankfully, city code currently excludes Downtown from parking minimums, so the Old Town proposal would just conform zoning requirements in Old Town with the current requirements in the adjacent Downtown zone. Second, we urgently need more homes in Bellingham. As you know, Cascadia Daily News reported recently that homelessness is at an all-time high in Whatcom County the National Alliance to End Homelessness has conducted research that indicates that housing affordability is a leading cause. Space dedicated to parking dramatically increases construction costs and parking reform is a proven method to help reduce this burden. Third, in addition to making progress on housing, parking reform in Old Town would support the goals of the 2019 Bellingham Climate Action Task Force Report (Measures T13 and T14) and the 2021 Whatcom County Climate Action Plan (Transportation Strategy 1 and Natural Environment Strategy 9). Bellingham's designated urban villages, such as Old Town, are the best places to allow for people-focused sustainable development, as envisioned in the Old Town sub-area plan drafted over 15 years ago. Please support the proposed zoning changes in Old Town, including the elimination of parking minimums. Thanks, [Analeise]
Lassiter, Jackie A.

From: CC - Shared Department (ccmail@cob.org)
Sent: Wednesday, June 21, 2023 9:12 AM
To: G.CC (City Council)
Subject: FW: June 26 Meeting - Support Parking Reform in Old Town

-----Original Message-----
From: Janis Olson <olsonjanis1@gmail.com>
Sent: Tuesday, June 20, 2023 12:47 PM
To: CC - Shared Department (ccmail@cob.org) <ccmail@cob.org>
Subject: June 26 Meeting - Support Parking Reform in Old Town

[You don't often get email from olsonjanis1@gmail.com. Learn why this is important at https://aka.ms/LearnAboutSenderIdentification ]

Dear City Council members,

I am reaching out to ask you to support the proposed zoning changes that would eliminate parking minimums in the Old Town urban village.

First, eliminating parking minimums is good policy because it allows development to focus on people instead of cars. As a member of Walk and Roll Bellingham, I support safe, comfortable, equitable, & healthy streets – connecting us to the places we want to go – whether we walk, pedal a bike, push a stroller, or move by wheelchair. Currently, city code requires that homeowners, developers, and business owners in most areas of Bellingham build and maintain an arbitrary amount of parking, regardless of whether a property owner or business ever uses it, wants it, or needs it. This leads to an oversupply of parking, reduced safety for pedestrians and bikers, worse equity and accessibility outcomes, and an ugly cityscape. Thankfully, city code currently excludes Downtown from parking minimums, so the Old Town proposal would just conform zoning requirements in Old Town with the current requirements in the adjacent Downtown zone.

Second, we urgently need more homes in Bellingham. As you know, Cascadia Daily News reported recently that homelessness is at an all-time high in Whatcom County the National Alliance to End Homelessness has conducted research that indicates that housing affordability is a leading cause. Space dedicated to parking dramatically increases construction costs and parking reform is a proven method to help reduce this burden.

Third, in addition to making progress on housing, parking reform in Old Town would support the goals of the 2019 Bellingham Climate Action Task Force Report (Measures T13 and T14) and the 2021 Whatcom County Climate Action Plan (Transportation Strategy 1 and Natural Environment Strategy 9).

Bellingham's designated urban villages, such as Old Town, are the best places to allow for people-focused sustainable development, as envisioned in the Old Town sub-area plan drafted over 15 years ago. Please support the proposed zoning changes in Old Town, including the elimination of parking minimums.

Thanks,
Janis Olson

Sent from my iPad
Public Comment

Name
Whatcom Transportation Authority

Choose Topic
City Council - Public Hearing Testimony (topic specific per the agenda)

Meeting Date
6/26/2023

Public Hearings
6/26/2023- A public hearing to consider proposed amendments to the Old Town Overlay District development regulations found in Bellingham Municipal Code 20.35.055-.085.

Comment or Testimony
Whatcom Transportation Authority respectively submits the attached testimony on the Old Town Overlay District development regulations hearing in support of a broad, holistic approach to reducing overparking and encouraging non-single occupant vehicle transportation.

Files
Old Town District Code Changes - WTA Comments.pdf

Email
timw@ridewta.com

Date
6/21/2023
June 21, 2023

City Council Members,

Thank you for the opportunity to speak on the proposal before you to modify Code requirements in the Old Town Overlay District. While WTA does not have a position on whether eliminating (as proposed by the Planning Commission) or reducing parking minimums (as recommended by City staff) is more appropriate in this specific case, we would like to take the opportunity to share our views on how reducing parking requirements, in conjunction with other steps, can be designed to encourage non-single occupant vehicle trips through a holistic approach that expands non-driving options and limits overparking.

We acknowledge that the primary purpose of this proposal is land use specific: to reduce barriers and lessen the cost of multifamily housing development in the Old Town District. Rather than speak to this particular aim, we use a transportation lens to explain how reduced parking can further the City's comprehensive plan goal to "Reduce dependence on single-occupancy vehicles".

Broadly speaking, to enable residents to live with fewer vehicles, a robust transportation ecosystem needs to be in place, enabling a variety of accessible modes throughout the city. While not comprehensive, key strategies to reach the City goal include:

- A robust network of transit service, including high frequency rapid bus lines. An effort is underway to provide even higher frequency and shorter runtimes on several of our Go-Lines. This will require support from the City to build transit infrastructure (queue jumps, lanes, etc.) streets for efficient flow of buses.
- A better bicycling and walking environment. While still a work in progress, we applaud the great strides the City has made on biking and walking infrastructure and look forward to working with the City to expand these elements of the transportation ecosystem.
- Transportation Demand Management strategies to educate and develop options to driving. Together with WCOG, WTA was recently successful in securing over $800,000 in additional funds for the SmartTrips program.
- On-site or area car share so that residents do not have to own a car but have access to one when needed for special trips. The City provides trip reduction credits for developments offering car share memberships or on-site vehicles but more can be done to enable this strategy.
- Continued support for transit oriented development in Urban Villages, along with Code support and incentives for transit supportive development along high frequency transit corridors, as provided in several Comprehensive Plan policies.
- Pedestrian/transit friendly building and site design along transit corridors including orienting buildings to the street, convenient pedestrian connections to buildings, eliminate parking minimums and instituting parking maximums especially for
commercial and office uses, redevelopment of strip commercial centers, restrictions on
non-active land uses such as storage units, and other elements.

We value our ongoing partnership with the City of Bellingham. We believe working together on a holistic
approach to set the conditions for a strong transportation ecosystem will improve our community’s
sense of place, accessibility and equity, and environmental stewardship. Thank you for the opportunity
to speak to this issue, and we look forward to continuing to work with City staff around our shared goals
for land use and transportation.

Tim Wilder
Planning Director
Whatcom Transportation Authority
Dear City Council members,

I am writing in support of the elimination of parking minimums for the Old Town urban village.

I encourage you to make the zoning changes that will allow for a more people centric, less car centric, development of Old Town. Eliminating parking minimums will allow for the construction of additional desperately needed housing adjacent to the most dense and walkable part of our city. By reducing car infrastructure and focusing on people infrastructure, Bellingham can make a significant shift towards safer, healthier, more equitable streets, and put us in a better place to meet our climate goals.

Regards,
Andrew Hansen
Dear City Council members,

I am reaching out to ask you to support the proposed zoning changes that would eliminate parking minimums in the Old Town urban village.

First, eliminating parking minimums is a sound policy because it allows development to focus on people instead of cars. As a member of Walk and Roll Bellingham, I support safe, comfortable, equitable, & healthy streets – connecting us to the places we want to go – whether we walk, pedal a bike, longboard, push a stroller, or move by wheelchair. Currently, city code requires that homeowners, developers, and business owners in most areas of Bellingham build and maintain an arbitrary number of parking spots, regardless of whether a property owner or business ever uses it, wants it, or needs it. This leads to an oversupply of parking, reduced safety for pedestrians and cyclists, worse equity and accessibility outcomes, and an ugly cityscape. Thankfully, city code currently excludes Downtown from parking minimums, so the Old Town proposal would just conform zoning requirements in Old Town with the current requirements in the adjacent Downtown zone.

Second, we urgently need more homes in Bellingham. As you know, Cascadia Daily News reported recently that homelessness is at an all-time high in Whatcom County. The National Alliance to End Homelessness has conducted research that indicates that housing affordability is a leading cause. Space dedicated to parking dramatically increases construction costs and parking reform is a proven method to help reduce this burden.

Third, in addition to making progress on housing, parking reform in Old Town would support the goals of the 2019 Bellingham Climate Action Task Force Report (Measures T13 and T14) and the 2021 Whatcom County Climate Action Plan (Transportation Strategy 1 and Natural Environment Strategy 9).

Bellingham's designated urban villages, such as Old Town, are the best places to allow for people-focused sustainable development, as envisioned in the Old Town sub-area plan drafted over 15 years ago. Please support the proposed
zoning changes in Old Town, including the elimination of parking minimums.

Thanks,
Janet Higbee-Robinson
Subject: Work Session to Consider a Resolution Authorizing the Mayor to Enter Into a Development Agreement Regarding the Redevelopment Located in the Old Town Subarea

Summary Statement: On June 26, 2023, City Council held a public hearing to consider a Development Agreement with Developers (Old Town Village, LLC and Capron, LLC) who have sought partnership with the City to develop several parcels of property within the Old Town Subarea. This Agreement would create greater predictability and flexibility for the Developers to offset some of the known risks associated with redevelopment of the Old Town Subarea. City Council directed staff to bring the proposal to Committee of the Whole for a work session and to provide answers to questions asked by Council. The questions and answers are included in the agenda item amending the Old Town Overlay District, which is accompanying this proposal.

Previous Council Action: Adopted Old Town Subarea Plan (Ord. 2008-03-022); Authorized Development Agreement with Parberry Family entities (AF# 2021-0102090); Public hearing on proposed development agreement on 6/26/2023.

Fiscal Impact: $50,000 Annual Shelter Protection Zone and $4.3M Infrastructure and Quiet Zones Approved in 2023-2024 Budget.

Funding Source: Various City Funds

Attachments: 1. ATTACHEMENT 1 - STAFF MEMO
              2. ATTACHMENT 2 - RESOLUTION
              3. ATTACHMENT 3 - DEVELOPMENT AGREEMENT
              4. ATTACHMENT 4 - PUBLIC HEARING NOTICE

Meeting Activity | Meeting Date | Recommendation | Presented By | Time
--- | --- | --- | --- | ---
Committee Briefing - Vote Requested | 07/10/2023 | Vote to Approve | Tara Sundin, PCDD | 10 minutes

Recommended Motion:

Council Committee: Committee Of The Whole

Agenda Bill Contact: Tara Sundin, Planning and Community Development

Reviewed By
Blake G. Lyon

Department
Planning & Community Development

Date
06/30/2023

Council Action:
Matthew T. Stamps
Legal
07/03/2023

Seth M. Fleetwood
Executive
07/05/2023
Pete Dawson, Curt O’Conner and Fredrick Hines (Old Town Village, LLC and Capron, LLC), also referred to as Developers, have purchased or have contracts to purchase several parcels of real property within an area of Bellingham designated as the “Old Town Subarea” by the Bellingham Comprehensive Plan. Please refer to Exhibit 2 of the Development Agreement for an illustration of these properties. Developers purchased blocks 1, 3, 4, 7 and 8 from the Parberry family entities between January 2023 and April 1, 2023, and have block 5 is under contract and Developers are negotiating to purchase block 2 and 6. Should purchases occur by Developers, they shall also benefit from this Agreement.

Historically, the Developers’ Property was zoned for commercial and some industrial uses, and was principally utilized as a recycling facility, including recycling operations, warehousing, outdoor storage, and administrative offices owned and operated by several entities comprised of the Parberry family. The City adopted an urban village plan for Old Town in 2008. The Old Town Subarea is envisioned by the City to be an urban village with mixed residential and commercial uses.

The City supports a healthy mix of housing in the Old Town Subarea that is affordable to a wide range of incomes levels. Developers and the City will give strong consideration to public/private partnerships which encourage qualified below-market rate development projects. Further, the City will give strong consideration to such qualified projects by utilizing the Bellingham Home Fund and/or other resources to support those projects.

The redevelopment of the Old Town Subarea poses increased risk to developers and investors due to: (1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site, which restricts property use and construction methods; (2) the adjacency of a 300-bed homeless shelter currently under construction; (3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; (4) the proximity of passive railroad crossings and the attendant loud noise from train horns; (5) the location of a portion of the property on former tidelands and landfill material which adds to development costs; (6) the complete transformation of an industrial use area to a commercial and residential one; and (7) the high cost of financing due to increasing interest rates.
In addition to this Agreement, Developers are the successor in interest to that certain Amended and Restated Development Agreement entered into by and among Northwest Recycling Limited Partnership, Parberry’s Inc. and Parberry Family Limited Partnership) City contract number C2000929 Whatcom County Recording Number 2021-0102090 (the “Parberry Development Agreement”). Neither the City nor Developers intend to alter the obligations of the Parberry Development Agreement. The terms herein are in addition to the those contained in the Parberry Development Agreement.

This Agreement creates both predictability and flexibility in several ways for the Developers, including not limited to, vesting the property to certain local land use regulations and clarifying the city’s commitment to the redevelopment of Old Town, which creates predictability for the Developers and allowing certain light industrial interim uses and the transfer of floor area, which creates the flexibility to redevelop a large land holding.

Fiscal Impact Summary:

**Infrastructure:** In addition to this Agreement, Developers are the successor in interest to the Amended and Restated Development Agreement entered into by Parberry entities and the City. Neither the City nor Developers intend to alter the obligations of the Parberry Development Agreement, which commits the City to certain infrastructure improvements estimated at $2.8 million. This Agreement commits the City to apply for Whatcom County EDI funds to leverage the City’s previous commitment but does increase the City’s financial commitment.

**Quiet Railroad Crossings:** The Old Town Subarea is included in the proposed Waterfront Quiet Zone that extends from the Pine/Wharf Street at-grade crossing to the F Street at-grade crossing. This Agreement commits the City to pursue, not require given timing is contingent upon BNSF approval, the completion of this Zone during the term of the Agreement. Further, other than traffic impact fees collected from Developers as individual projects progress, the City shall not require any financial contribution from Developers for the design or construction of the future crossings. F Street crossing is underway and there are three more crossings yet to be completed. Each crossing is estimated at $1.5M. The City had planned to upgrade the crossings without this Agreement.

**Shelter Protection Zone:** The City shall provide LMM $50,000 per year for neighborhood cleanup once the new shelter is operating. If LMM does not continue its neighborhood cleanup program and the City is unable to find another operator, the City shall contract with Developers for cleanup of publicly-owned properties (rights-of-way and parks) for no more than five thousand dollars ($5,000) per month. This is an existing city budgeted item.

**Affordable Housing Parcel:** The City has the right but is not required to purchase a parcel that is being set aside for affordable housing. The right to purchase is in the 9th and final year of this Agreement and only if the Developers have failed to develop the parcel as Affordable Housing or sell the parcel to an Affordable Housing developer. The price the Developers paid for the parcel is $935,000.

I look forward to presenting this Agreement to you on June 26. Please reach out to me (x8392) or me with any questions.
RESOLUTION NO. _______________

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO DEVELOPMENT AGREEMENT WITH OLD TOWN VILLAGE, LLC AND CAPRON, LLC REGARDING THE REDEVELOPMENT OF PROPERTY LOCATED IN THE OLD TOWN SUBAREA, CONSISTENT WITH THE OLD TOWN URBAN VILLAGE PLAN.

WHEREAS, Developers have purchased or have contracts to purchase several parcels of real property within an area of Bellingham designated as the “Old Town Subarea” by the Bellingham Comprehensive Plan.

WHEREAS, historically, the Developers’ Property was zoned for commercial and some industrial uses, and was principally utilized as a recycling facility, including recycling operations, warehousing, outdoor storage, and administrative offices owned and operated by several entities comprised of the Parberry family.

WHEREAS, the City adopted an amendment (Ordinance No. 2008-03-022) to its Comprehensive Plan for the Old Town Subarea Plan (also known as the Old Town Plan”) and an attendant amendment to its Land Use Development Code codified at BMC Chapter 20.35 (the “Old Town Overlay District”). The Old Town Subarea is now designated and zoned as Commercial. The Old Town Subarea is envisioned by the City to be an urban village with mixed residential and commercial uses.

WHEREAS, redevelopment of the Developers’ Property into a mixed-use urban village is appropriate and consistent with the Old Town Plan. Future development in the Old Town Subarea must comply with the Old Town Subarea Plan and other applicable City regulations.

WHEREAS, the elimination of the impacts to the neighborhood of the light industrial non-conforming use by the closure of operations of Northwest Recycling at its current site is critical to the creation of an urban village in the Old Town Subarea.

WHEREAS, the City supports a healthy mix of housing in the Old Town Subarea that is affordable to a wide range of incomes levels. Developers and the City will give strong consideration to public/private partnerships which encourage qualified below-market rate development projects. Further, the City will give strong consideration to such qualified projects by utilizing the Bellingham Home Fund and/or other resources to support those projects.

WHEREAS, this Agreement implements part of the Old Town Plan by kick starting development in a significant portion of the Old Town Subarea.

WHEREAS, the redevelopment of the Old Town Subarea poses increased risk to developers and investors due to: (1) its location in a historically contaminated landfill area.

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270
WHEREAS, in addition to this Agreement, Developers are the successor in interest to that certain Amended and Restated Development Agreement entered into by and among Northwest Recycling Limited Partnership, Parberry’s Inc. and Parberry Family Limited Partnership) City contract number C2000929 Whatcom County Recording Number 2021-0102090 (the “Parberry Development Agreement”). Neither the City nor Developers intend to alter the obligations of the Parberry Development Agreement. The terms herein are in addition to the those contained in the Parberry Development Agreement.

WHEREAS, this Agreement is a development agreement under RCW 36.70B.170 through 36.70B.210 and contains vesting, use and mitigation provisions in keeping with the statute. Pursuant to RCW 36.70B.200, a public hearing was held on June 26, 2023.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM THAT:

The Mayor of Bellingham is authorized to enter into a Development Agreement with Old Town Village, LLC and Capron, LLC in substantially the same form as Exhibit A attached hereto and incorporated herein by this reference.
PASSED by the Council this _____ day of ________________, 2023.

__________________________________________
Council President

APPROVED by me this ____ day of ______, 2023.

__________________________________________
Mayor

ATTEST:
____________________________
Finance Director

APPROVED AS TO FORM:

__________________________________________
Office of the City Attorney
DEVELOPMENT AGREEMENT BETWEEN OLD TOWN VILLAGE, LLC, CAPRON, LLC AND THE CITY OF BELLINGHAM

<table>
<thead>
<tr>
<th>Grantor:</th>
<th>OLD TOWN VILLAGE, LLC and CAPRON, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grantee:</td>
<td>City of Bellingham</td>
</tr>
<tr>
<td>Legal Description (abbreviated):</td>
<td>LOTS _________ PLAT OF THE TOWN OF NEW WHATCOM SUPPLEMENTAL AS THE SAME IS SHOWN AT PAGE 42, BOOK 1 OF PLATS, OFFICIAL RECORDS OF WHATCOM COUNTY AUDITOR</td>
</tr>
<tr>
<td></td>
<td>Additional legal description for this parcel and full legal descriptions for additional parcels in Exhibit 1 attached hereto</td>
</tr>
<tr>
<td>Assessor’s Tax Parcel ID #:</td>
<td>additional Tax Parcel ID numbers in Exhibit 1 attached hereto</td>
</tr>
<tr>
<td>Reference Nos. of Documents Released or Assigned:</td>
<td></td>
</tr>
</tbody>
</table>

This DEVELOPMENT AGREEMENT ("Agreement") between OLD TOWN VILLAGE, LLC, a Washington business entity, CAPRON, LLC (collectively, "Developers") and the CITY OF BELLINGHAM (the "City"), a municipal corporation, is entered into as of the last date of signature below, and effective upon the date of execution by the City of Bellingham (the "Agreement").

RECATALS

A. Developers have purchased or have contracts to purchase several parcels of real property within an area of Bellingham designated as the "Old Town Subarea" by the Bellingham Comprehensive Plan. Property within the Old Town Subarea owned by Developers is referenced herein as the "Developers’ Property," and more particularly described in Exhibit 1 attached and incorporated herein by this reference and illustrated in Exhibit 2 attached. Developers purchased blocks 1, 3, 4, 7 and 8 from the Parberry family entities between January 2023 and April 1, 2023, and have block 5 is under contract and Developers are negotiating to purchase block 2 and 6. Should purchases occur by Developers, they shall also benefit from this Agreement.
B. Historically, the Developers’ Property was zoned for commercial and some industrial uses, and was principally utilized as a recycling facility, including recycling operations, warehousing, outdoor storage, and administrative offices owned and operated by several entities comprised of the Parberry family.

C. The City adopted an amendment (Ordinance No. 2008-03-022) to its Comprehensive Plan for the Old Town Subarea Plan (also known as the Old Town Plan”) and an attendant amendment to its Land Use Development Code codified at BMC Chapter 20.35 (the “Old Town Overlay District”). The Old Town Subarea is now designated and zoned as Commercial. The Old Town Subarea is envisioned by the City to be an urban village with mixed residential and commercial uses.

D. Redevelopment of the Developers’ Property into a mixed-use urban village is appropriate and consistent with the Old Town Plan. Future development in the Old Town Subarea must comply with the Old Town Subarea Plan and other applicable City regulations.

E. The elimination of the impacts to the neighborhood of the light industrial non-conforming use by the closure of operations of Northwest Recycling at its current site is critical to the creation of an urban village in the Old Town Subarea.

F. The City supports a healthy mix of housing in the Old Town Subarea that is affordable to a wide range of income levels. Developers and the City will give strong consideration to public/private partnerships which encourage qualified below-market rate development projects. Further, the City will give strong consideration to such qualified projects by utilizing the Bellingham Home Fund and/or other resources to support those projects.

G. This Agreement implements part of the Old Town Plan by kick starting development in a significant portion of the Old Town Subarea.

H. The redevelopment of the Old Town Subarea poses increased risk to developers and investors due to: (1) its location in a historically contaminated landfill area known as the Holly Street Landfill Site, which restricts property use and construction methods; (2) the adjacency of a 300-bed homeless shelter currently under construction; (3) the scale of the envisioned development, which necessitates a long time horizon with attendant unknown future risks; (4) the proximity of passive railroad crossings and the attendant loud noise from train horns; (5) the location of a portion of the property on former tidelands and landfill material which adds to development costs; (6) the complete transformation of an industrial use area to a commercial and residential one; and (7) the high cost of financing due to increasing interest rates.

I. In addition to this Agreement, Developers are the successor in interest to that certain Amended and Restated Development Agreement entered into by and among Northwest Recycling Limited Partnership, Parberry’s Inc. and Parberry Family Limited Partnership) City contract number C2000929 Whatcom County Recording Number 2021-0102090 (the “Parberry Development Agreement”). Neither the City nor Developers intend to alter the obligations of the Parberry Development Agreement. The terms herein are in addition to the those contained in the Parberry Development Agreement.
J. This Agreement is a development agreement under RCW 36.70B.170 through 36.70B.210 and contains vesting, use and mitigation provisions in keeping with the statute. Pursuant to RCW 36.70B.200, a public hearing was held on June 26, 2023 and a resolution approving the Agreement was adopted on ________.

AGREEMENT

1. Developers Obligations to Meet Milestones

Developers hereby agrees to attain the following Milestones, which may be extended by six months with written mutual consent of the Project Managers, so long as the term of this Agreement is not extended:

Milestone 1 Developers shall submit a Vision Plan for properties purchased or planned to be purchased at a future date, no later than December 31, 2023

Milestone 2 Developers shall purchase a sixth Parberry-owned property no later than December 31, 2023

Milestone 3 Developers shall satisfy Milestone #6 of the Parberry Development Agreement, which is to submit a complete building permit for the renovation of 701 W. Holly St., or block 8, as depicted on Exhibit 3, no later than February 21, 2024 (“Project #1).

Milestone 4 Developers shall submit a complete building permit application before the end of December 31, 2024 for a new multi-family development that shall be fifty (50) units or more (“Project #2).

Milestone 5 Developers shall submit a complete building permit application before December 31, 2026 for a development valued at a minimum of Ten Million Dollars ($10,000,000) (“Project #3).

The Milestones set forth herein are based on Developers’ and the City’s best estimate of a redevelopment schedule for the Developers Property based on current market conditions. If any delay is anticipated by Developers, such anticipated delay shall be communicated to the City Project Manager in writing when known by Developers along with a request for an extension of the applicable Milestone which extension shall not be unreasonably denied so long as diligent progress has been made in achieving the applicable Milestone. The City’s Project Manager, after consultation with Developers’ Project Manager, may, in her sole discretion, extend the requirements of Section 1. An extension shall not unreasonably be denied by the City’s Project Manager so long as diligent progress has been made in achieving the applicable Milestone. The City represents and Developers acknowledge that timely redevelopment is a significant element Development Agreement – 05.17.2023 T Sundin
of the City’s agreement to enter into this Agreement. Reasonable extensions due to the City’s failure to provide timely the public infrastructure improvements identified in Section C of this Agreement shall be granted. Failure by Developers to complete the above Milestones, as may be extended from time-to-time, shall be considered a breach of this Agreement, and, if Developers fail to cure such breach within thirty days (30) of written notice from the City, the City shall be relieved of its obligation herein and this Agreement shall terminate. However, the City’s right to exercise its option to purchase the Affordable Housing Parcel, defined in Section 12 hereof, survives for one year from the date of notice of breach.

2. Utility Capacity/Maintenance

   For clarification purposes, the 2020 Parberry Development Agreement states that the City shall be responsible for providing City-owned sewer, water, and storm systems capable of supporting maximum development permitted in the Old Town Subarea. The City has determined that the existing water and sewer systems are capable of supporting the maximum development as allowed by BMC 20.35(Article II) and that it will maintain those systems. In addition, the City has determined that the existing stormwater conveyance system can accept treated storm water. Further, it is standard business for the City to maintain all public utility main lines (water/sewer/storm) in the right-of-way. The City maintains all water lines from the mainline to the meter. All existing water, sewer and storm systems owned by the City will continue to be maintained by the City as public infrastructure.

3. Infrastructure

   a. In cooperation with Developers, the City will pursue applying for a Whatcom County Economic Development Investment (“EDI”) grant leveraging the City’s estimated $2,800,000 investment in infrastructure commitments memorialized the Parberry Development Agreement in order to add curb-to-curb infrastructure to all street improvements listed on Exhibit 3.

   b. The City shall commission a study to assess the feasibility of undergrounding utilities to enhance the tone and quality of the redevelopment.

4. Old Village Trail

   The City shall include the Old Village Trail in the next update to the City’s Capital Facilities Plan (2023) so that improvements to that trail are eligible to receive park impact fee credit. Developers may elect to construct the improvements themselves and receive park impact fee credit in lieu of paying park impact fees.

5. Interim Uses

   Considering the short supply of industrial space in Bellingham and that it will take a number of years to redevelop Old Town, the following interim uses shall be allowed on Developers’ properties for the Term of this Agreement:
Boat sales; as defined in BMC 20.35.065(B)(1), and

Boat repair and storage; complete minor boat and engine repair pursuant to BMC 20.25.065(B)(2); however, hull work is prohibited. Boats must be operational or being actively repaired as defined in BMC 20.35.065(B).

6. **Transfer of Floor Area Tracking Method**

The BMC has been amended, concurrently with the adoption of this Agreement, to allow for an alternative process for transferring floor area between sites as long as the process is memorialized in a Development Agreement. The submittal of designs for both the sending and receiving sites, as required by BMC 20.35.070(D)(3), shall not be required for the Developers’ Property provided the transfer shall be commemorated in the form of a restrictive covenant on the sending site and recorded with Whatcom County Auditor’s Office. The restrictive covenant on the sending site shall include the floor area square footage being sent and the site to which it is transferred. The Developers shall not be entitled to the transfer of floor area to the receiving site unless proof of the recorded document is provided.

7. **Permitting**

Given the risk associated with development in the Old Town Subarea, the City shall prioritize Developers’ development permit applications, including but not limited to, land-use permits/design review, building permits and public facility permits. The City shall designate a development project manager to serve as the City’s permitting representative (“Permitting Representative”). This representative will ensure Developers’ permits are prioritized in the Planning and Community Development, Public Works, Fire and Parks departments. The Permitting Representative will report any delays in review to the City’s Planning and Community Development Director for immediate attention.

8. **Vesting**

Developers shall vest to the following BMC provisions for the duration of this Agreement:

   a. 20.35.010 through 20.35.085, as amended concurrently with the adoption of this Agreement; and

   b. BMC 20.25; and

   c. BMC 17.82.

9. **Quiet Railroad Crossings**

   The Old Town Subarea is included in the proposed Waterfront Quiet Zone that extends from the Pine/Wharf Street at-grade crossing to the F Street at-grade crossing. As of the date of the Development Agreement – 05.17.2023 T Sundin

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this Agreement, the Laurel Street and C Street crossings have been improved to quiet zone standards and F Street is scheduled for construction to meet quiet zone standards in 2023. Central Avenue, Cornwall Avenue and Pine/Wharf Street crossings will need to be upgraded so the quiet zone can be established. The City is committed to the establishment of the Waterfront Quiet Zone and funds the necessary improvements through the budget process as well as annually through the 6-year Transportation Improvement Program. Other than traffic impact fees collected from Developers as individual projects progress, the City shall not require any financial contribution from Developers for the design or construction of the future crossings.

10. Lighthouse Mission Ministries (“LMM”) Shelter and Shelter Protection Zone

LMM is constructing a facility in the Old Town Subarea in order to relocate the Low-Barrier Shelter currently located at 1530 Cornwall Avenue (“Base Camp”). The City Council created a Shelter Protection Zone for the Old Town Subarea, which covers all the properties Developers anticipate purchasing. Further, the Hearing Examiner issued a Conditional Use Permit – USE2021-0035, which includes, among other provisions, a focus on the enforcement of a Shelter Protection Zone. For the term of the this Agreement, the City agrees to the following measures to mitigate the impacts of a 300-bed shelter:

a. The City agrees to keep the Shelter Protection Zone in place unless required to remove it pursuant to local, state or federal law;

b. The City shall provide LMM $50,000 per year for neighborhood cleanup. If LMM does not continue its neighborhood cleanup program and the City is unable to find another operator, the City shall contract with Developers for cleanup of publicly-owned properties (rights-of-way and parks) for no more than five thousand dollars ($5,000) per month; and

c. Unless the City discontinues its contract for private security in the downtown area, the existing contract shall be modified to include patrols around LMM’s shelter facilities, once relocated, supporting the enforcement of the Shelter Protection Zone.

11. Maritime Heritage Park Parking Lot

The City shall work with Developers to further refine the concept of leasing/selling the air-rights above the parking lot at the end of C Street adjacent to the Perry Center to Developers for purposes of constructing structured shared parking and/or residential use. Bellingham Technical College holds a land lease on the parking lot and the adjacent hatchery facility. It is contemplated that shared parking means the ground level be retained for City use and any parking created is for Developers. The City received a capital grant from the National Park Service through the State Recreation and Conservation Office (RCO) to construct Maritime Heritage Park. The City needs to determine whether it can sell or lease air rights over the parking lot and still be in compliance with that grant. The City agrees to explore the viability of obtaining the air rights if Developers wish to pursue this activity. If viable, the Parties agree to execute an
option agreement with a first right of refusal in favor of Developers for purchase/lease of air rights.

12. Affordable Housing Parcel

Developers agree to develop or sell a 20,000 square foot parcel, as described in Exhibit 4, to a developer of its choice that builds housing consistent with BMC 20.35.070(D)(4)(c)(ii) ("Affordable Housing"). Developers further agree to record a restrictive covenant substantially in the form of Exhibit 5 on such parcel within thirty days of the execution of this Agreement. Such covenant shall allow Developers to use the parcel for construction staging associated with any development project or Interim Use (pursuant to Section 5) within the Old Town Subarea during the term of this Agreement. The purchase price shall be the price for which the Developers purchased the property, plus holding costs, not to exceed four percent (4%) per year, so long as the total price is at or less than Fair Market Value at the time of purchase. Holding costs shall not accrue for any periods of time that the property is being used for any of the allowed uses stated above. It is the responsibility of the Developers to track and provide back-up documentation related to holding costs. If construction has not commenced on the property for purposes of Affordable Housing within the first nine (9) years of the Development Agreement term, or, if this Agreement has been terminated due to the Developers’ uncured breach of its obligations herein, the City, at its sole discretion, upon ninety (90) days written notice, may elect to purchase the property from the Developers for a future Affordable Housing development utilizing the same purchase price formula as outlined above. In the event of termination due to an uncured breach of this Agreement, the City’s right to exercise its option to purchase the Affordable Housing Parcel survives for one (1) year from the date of notice of breach. Nothing in this Agreement prohibits Developers from selling the property at less than Fair Market Value.

13. Alternative Floor Area Bonus for Land Area Dedicated for Affordable Housing

The BMC has been amended concurrently with the adoption of this Agreement to allow for an alternative process for establishing a floor area bonus for Affordable Housing. For each square foot of Developers’ Property land area certified by the director of Planning and Community Development as set aside by the Developers for permanently affordable housing pursuant to Section 12 herein, four (4) square feet of bonus floor area is earned which can be transferred to other properties that are subject to this Agreement. This is an additive bonus, the transfer of which does not diminish the base 3.5 floor area ratio (FAR) allowed on the affordable housing site, and development on the affordable housing site may use FAR bonus options as detailed in BMC 20.35.070(D). This additive bonus shall not be granted until a covenant, consistent with the provisions outlined in BMC 20.35.070(D)(4)(c)(ii), is recorded on the Developers’ Property and construction of an Affordable Housing development has been completed. Completion shall be defined as receiving final occupancy approval and be a minimum of 40 residential units. The Planning and Community Development Director shall provide the Developers with a letter including the total square footage available for transfer. The Developers may use that square footage provided building permits are submitted and deemed complete for the receiving Developers’ Property site(s) within the term of this Agreement.
14. Term

This Agreement commenced on the date of the Adoption of the Development Agreement Resolution, [Date], and shall remain in effect until ten years from this date (the “Term”). Any action permitted or required under this Agreement such as permit submittal, road construction, or project development must commence during the term of this Agreement even though additional time may be needed for completion of such actions.

The Term of this Agreement shall be automatically extended by one year, for up to an additional five (5) years if construction of the City/Burlington Northern improvements have not been completed as required to commence the Waterfront Quiet Zone, which extends from Wharf Street to the corner of F Street and Roeder Avenue.

15. Assignment

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns, and all other persons acquiring the Developers Property, or any portion thereof, or any interest therein.

16. Project Managers

For the City: Tara Sundin, Community and Economic Development Manager, 210 Lottie Street, Bellingham, WA 98225, (360) 778-8392.

For Developers: Curt O’Connor

17. General Provisions

a. Legal Fees. In the event any legal action is taken by either Party against the other Party to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful Party to such action shall pay to the prevailing Party therein all court costs, reasonable attorneys’ fees and expenses incurred by the prevailing Party.

b. Relationship of the Parties. The execution of this Agreement shall not create any agency, partnership, joint venture, association or any other relationship between the Parties other than as independent contracting parties. Neither Party shall act as an agent for the other party or shall have the authority to bind or make commitments on behalf of the other Party. This Agreement has been entered into solely for the benefit of the Parties hereto and does not create any interest in any third party.

c. Entire Waiver; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.
d. **Advice of Counsel.** This Agreement was negotiated at arms-length with each Party receiving advice from independent legal counsel. It is the intent of the Parties that no part of this Agreement be construed against either of the Parties because of the identity of the drafter.

e. **Headings.** The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

f. **Construction.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

g. **Governing Law.** This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.

Exhibit List:

- Exhibit 1 – Legal Description of the Developers Property
- Exhibit 2 – Illustration of the Developers Property
- Exhibit 3 – Infrastructure
- Exhibit 4 - Affordable Housing Parcel
- Exhibit 5 – Restrictive Covenant

Executed this _______________ day of ___________________, 2023.
CITY OF BELLINGHAM

Mayor

Attest:

Finance Director

Department Head

Approved as to Form

Office of the City Attorney

STATE OF WASHINGTON )
COUNTY OF WHATCOM ) ss.

On this day personally appeared before me SETH FLEETWOOD, to me known to be the Mayor of the City of Bellingham, the municipal corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that she was duly authorized to execute such instrument.

Given Under My Hand and Official Seal this ___ day of ___________, 2023.

Printed Name

Notary Public in and for the State of Washington, residing at

My Commission Expires
OLD TOWN VILLAGE, LLC

By: ________________________________
Name: ______________________________
Title: ______________________________

STATE OF WASHINGTON )
_________________________ ) ss.
COUNTY OF WHATCOM )

On this day personally appeared before me _____________________________, to me known to be the __________________ of Developers, LLC., the business entity that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such business entity, for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

Given Under My Hand and Official Seal this ___ day of ___________, 2023.

Printed Name

Notary Public in and for the State of Washington, residing at

My Commission Expires
CAPRON, LLC

By: _____________________________
Name: ___________________________
Title: ___________________________
EXHIBIT 1
LEGAL DESCRIPTION OF DEVELOPERS’ PROPERTY

1401, 1411, AND 1413 E STREET – BLOCK 1

PARCEL A:
LOT 1, BLOCK 11, SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:
LOT 2, BLOCK 11, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL C:
LOTS 3 AND 4, BLOCK 11, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

900 W HOLLY – BLOCK 4

LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 12, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.
801 W HOLLY – BLOCK 7

PARCEL A:

LOTS 13 THROUGH 16, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THE SOUTHEASTERLY 20 FEET OF E STREET ABUTTING SAID LOTS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 8900.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

THE NORTHWESTERLY HALF OF LOTS 1 THROUGH 4, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL C:

THE SOUTHEASTERLY HALF OF LOTS 1 THROUGH 4, INCLUSIVE, BLOCK 32, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

701/703/705 W HOLLY; 1280 D STREET – BLOCK 8

LOTS 1 THROUGH 4, INCLUSIVE, AND LOTS 13 THROUGH 16, INCLUSIVE, ALL IN BLOCK 31, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON.

SITUATE IN WHATCOM COUNTY, WASHINGTON.
1419 C STREET – BLOCK 3

PARCEL A:

ALL OF LOTS 1, 2, 3, 5 AND 6, AND LOTS 13 THROUGH 20, INCLUSIVE, AND THE NORTHWesterly TWO-THirdS OF LOTS 11 AND 12, ALL IN BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

LOT 4, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL C:

LOTS 7 THROUGH 10, INCLUSIVE, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 33, AND CITY OF BELLINGHAM ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL D:


SITUATE IN WHATCOM COUNTY, WASHINGTON.
1419 C STREET – BLOCK 3 (CONTINUED)

PARCEL E:

THE SOUTHEASTERLY ONE-THIRD OF LOTS 11 AND 12, BLOCK 3, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF DIVISION STREET AS VACATED BY CITY OF WHATCOM (NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM) ORDINANCE NO. 33, AND CITY OF BELLINGHAM ORDINANCE NO. 9083 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

1315 D STREET; 800 W HOLLY – BLOCK 5

PARCEL A:

LOTS 1 THROUGH 4, INCLUSIVE, AND LOTS 13 THROUGH 16, INCLUSIVE, ALL IN BLOCK 5, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF CENTER STREET AS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 7280 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PARCEL B:

LOTS 5 THROUGH 8, INCLUSIVE, BLOCK 5, PLAT OF SUPPLEMENTAL MAP OF THE TOWN OF WHATCOM, WHATCOM COUNTY, W.T. 1884, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 42, RECORDS OF WHATCOM COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF CENTER STREET AS VACATED BY CITY OF BELLINGHAM ORDINANCE NO. 7280 WHICH HAS ATTACHED TO SAID PREMISES BY OPERATION OF LAW, IF ANY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.
EXHIBIT 3
INFRASTRUCTURE

Key:
- Existing Commitment in 2020 Development Agreement
- Expanded Scope, if EDI support
EXHIBIT 5

RESTRICTIVE COVENANT
Notice is hereby given that the Bellingham City Council will hold a Public Hearing on June 26, 2023 at 7:00 P.M., or as soon thereafter as possible, during their Regular City Council meeting, which will take place in a hybrid format, to take public comment on the following:

A PUBLIC HEARING TO CONSIDER A DEVELOPMENT AGREEMENT BETWEEN OLD TOWN VILLAGE, LLC AND CAPRON, LLC, AND THE CITY OF BELLINGHAM REGARDING THE REDEVELOPMENT OF PROPERTY LOCATED IN THE OLD TOWN SUBAREA, CONSISTENT WITH THE OLD TOWN URBAN VILLAGE PLAN

Detailed information can be found at: meetings.cob.org five days prior to the public hearing.

Staff Contact: Tara Sundin, Community & Economic Development Manager, tsundin@cob.org

Anyone wishing to comment on this item is invited to do so. Advanced testimony is encouraged and can be presented to the Council online (https://cob.org/ccsignup), by telephone (360-778-8200), or by mail (210 Lottie Street, Bellingham, WA 98225). Comment received five days prior to each hearing, will be included in the agenda packet. Comment received after that will be distributed to Council but not included in the published packet. Anyone wishing to testify live during the public hearing can do so by registering at the following link: https://cob.org/ccsignup. Pre-registration is encouraged. Anyone wishing to join the public hearing on June 26, 2023 may do so via the following link: https://cob.org/cczoom or by appearing in person at Council Chambers located on the second floor of City Hall, 210 Lottie Street, Bellingham, WA 98225.

Those who would like to listen in by phone can do so using any of the following phone numbers:

- (253) 215 8782
- (346) 248-7799
- (669) 900-6833
- (301) 715-8592
- (312) 626-6799

Meeting ID: 839 2153 4374
Password: 9

Publication date: June 12, 2023
Subject: Discussion of Initiative No. 2023-1 to Raise the Minimum Wage

Summary Statement: The County Auditor has reviewed the initiative petition entitled "Initiative No. 2023-01 Raise the Minimum Wage" and verified that the petitioners collected signatures equal to not less than 10% of the total number of votes cast for the Office of Mayor at the last preceding municipal general election, i.e., 3,093. In this work session, Council will discuss how to respond to the initiative, as required by the Charter and the Municipal Code. Council may enact the initiative, defer it to the voters, or reject the measure and propose an alternative measure that would appear on the ballot along with the initiative. Council action must be taken by July 24, 2023. If Council fails to take timely action, then the initiative bill shall be submitted by the finance director to the County Auditor’s office for submission to the qualified electors for approval or rejection at the next general election.

Previous Council Action: N/A

Fiscal Impact: Proportionate share of the costs of holding the special election for the initiative to be determined by the Whatcom County Auditor.

Funding Source: General Fund

Attachments: 1. ORDINANCE 2. BALLOT TITLE 3. CERTIFICATE OF SUFFICIENCY
AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING MINIMUM WAGE FOR EMPLOYEES

WHEREAS, the statewide minimum wage is not sufficient to afford rising rents and costs of living in the City of Bellingham. According to the National Low-Income Housing Alliance’s 2022 Out Of Reach report, a minimum wage worker in the Bellingham Metropolitan Area would have to work 1.4 full-time jobs to afford an average 2-bedroom fair market rental;

WHEREAS, when workers earn insufficient income, they struggle to afford the high costs of housing, childcare, food, and other basic necessities;

WHEREAS, living wages stimulate local consumer demand and support both the resilience of our local economy and long-term community well-being; and

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Definitions.

“Adverse action” means any of the following: denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee’s status to nonemployee, decreasing or declining to provide additional work hours when they otherwise would have been offered, scheduling an employee for hours outside of their availability, or otherwise discriminating against any person for any reason prohibited by this chapter. “Adverse action” for an employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and conditions of employment.

“City” means the City of Bellingham, Washington.

“City minimum wage” is to be interpreted according to its ordinary meaning, applying to all hours worked by employees within the geographic boundaries of the City of Bellingham.

“Employee” has the same meaning as in RCW 49.46.010(3)

“Employer” has the same meaning as in RCW 49.46.010(4)

“Wage” has the same meaning as in RCW 49.46.010(7)

Section 2. City Minimum Wage.

A. On May 1st 2024, the City minimum wage shall be set at $1 above the applicable
Washington State Minimum Wage set under RCW 49.46.

B. On May 1st 2025, the City minimum wage shall be set at $2 above the applicable Washington State Minimum Wage set under RCW 49.46.

C. Thereafter, each year the City minimum wage shall be adjusted to $2 dollar above the applicable Washington State minimum wage set under RCW 49.46, effective January 1st each year.

D. Within 90 days of the passage of this measure, the City shall establish and publish the City Minimum Wage. Thereafter, within two weeks of the Washington State Department of Labor and Industries publishing the annual cost-of-living adjustment to the state minimum wage for the following year, the City shall establish and publish the applicable City minimum wage rates for the following year.

Section 3. Retaliation Prohibited.

A. No employer or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter. No employer or any other person shall take any adverse action against any person because the person has exercised in good faith the rights under this chapter, including but not limited to:

1. the right to make inquiries about protections under this chapter;

2. the right to inform others about their rights under this chapter;

3. the right to inform the person’s employer, union, or similar organization about an alleged violation of this chapter;

4. the right to inform the person’s legal counsel or any other person about an alleged violation of this chapter;

5. the right to bring a civil action for an alleged violation of this chapter;

6. the right to testify in a proceeding under or related to this chapter;

7. the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and

8. the right to oppose any policy, practice, or act that is unlawful under this chapter.

B. No employer or any other person shall communicate to a person exercising rights protected under this chapter, directly or indirectly, the willingness to inform a
government employee that the person is not lawfully in the United States, or to report, or
to make an implied or express assertion of a willingness to report, suspected citizenship
or immigration status of the person or a family member of the person to a federal, state,
or local agency because the person has exercised a right under this chapter.

C. It shall be a rebuttable presumption of retaliation if an employer or any other person
takes an adverse action against a person within 90 days of the person’s exercise of any
right protected in this chapter. However, in the case of seasonal work that ended before
the close of the 90-day period, the presumption also applies if the employer fails to
rehire a former employee at the next opportunity for work in the same position. The
employer may rebut the presumption with clear and convincing evidence that the
adverse action was taken for a permissible purpose.

D. Proof of retaliation under this chapter shall be sufficient upon a showing that an
employer or any other person has taken an adverse action against a person and the
person’s exercise of rights protected in this chapter was a motivating factor in the
adverse action, unless the employer can prove that the action would have been taken in
the absence of such protected activity.

E. The protections afforded under this section shall apply to any person who mistakenly
but in good faith alleges violations of this chapter.

Section 4: Enforcement.

A. Any person or class of persons that suffers financial injury as a result of a violation of
this chapter or is the subject of prohibited retaliation under this chapter, or any other
individual or entity acting on their behalf, may bring a civil action in a court of competent
jurisdiction against the employer or other person violating this chapter and, upon
prevailing, shall be awarded reasonable attorney fees and costs and such legal or
equitable relief as may be appropriate to remedy the violation including, without
limitation, the payment of any unpaid wages plus interest due to the person and liquidated
damages in an additional amount of up to twice the unpaid wages; compensatory
damages; and a penalty payable to any aggrieved party of up to $5,000 if the aggrieved
party was subject to prohibited retaliation. For the purposes of this section, an aggrieved
party means an employee or other person who suffers tangible or intangible harm due to
an employer or other person’s violation of this chapter. Interest shall accrue from the date
the unpaid wages were first due at the higher of twelve percent per annum or the
maximum rate permitted under RCW 19.52.020.

B. For purposes of determining membership within a class of persons entitled to bring an
action under this section, two or more employees are similarly situated if they:
1. Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period;
2. Allege one or more violations that raise similar questions as to liability; and
3. Seek similar forms of relief.
4. Employees shall not be considered dissimilar solely because their claims seek damages that differ in amount, or their job titles or other means of classifying employees differ in ways that are unrelated to their claims.

C. An employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged employer.

D. Each employer shall retain records as required by RCW 49.46.070, as well as such information as the City may require to confirm compliance with this chapter. If an employer fails to retain such records, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this chapter for the periods and for each employee for whom records were not retained.

E. Employers shall permit authorized City representatives access to work sites and relevant records for the purpose of monitoring compliance with the chapter and investigating complaints of noncompliance, including production for inspection and copying of employment records. The City may designate representatives, including city contractors and representatives of unions or worker advocacy organizations, to access the worksite and relevant records.

F. Complaints that any provision of this chapter has been violated may also be presented to the City Attorney, who is hereby authorized to investigate and, if they deem appropriate, initiate legal or other action to remedy any violation of this chapter.

G. The City has the authority to issue administrative citations, notices of civil infraction, and to order injunctive relief including reinstatement, restitution, payment of back wages, or other forms of relief.

H. In addition to any other remedy provided by this Ordinance or allowed by law, any employer or their agent violating the requirement under this chapter to pay at least the City minimum wage to its employees shall have committed a civil infraction subject to the following penalties not to exceed the following amounts:

1. For the first offense, a fine of not more than $500.00 per underpaid employee per pay period;
2. For the second offense, a fine of not more than $750.00 per underpaid
employee per pay period; and
3. For the third and subsequent offenses, a fine of not more than $1,000.00 per underpaid employee per pay period.

I. When determining the penalty amount for the civil infraction, the City shall take into account the specific details of the violation, such as the amount of underpaid wages, the duration of the underpayment, the number of employees affected, the presence of any retaliation or adverse action, and whether financial injuries have yet been remedied.

J. The City may, in the exercise of its authority and performance of its functions and services, agree by contract or otherwise to participate jointly or in cooperation with Washington State, Whatcom County, or any city, town, or other incorporated place, or subdivision thereof, or engage outside counsel, to enforce this chapter.

K. The remedies and penalties provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies or penalties, including existing remedies for enforcement of Bellingham Municipal Code chapters.

L. The statute of limitations for any enforcement action shall be five (5) years.

Section 5. Exemption for City Employees.

Pursuant to City of Bellingham Charter Title 10.0, requiring that initiatives shall not be initiated fixing the salaries or wages of officers or employees, the City of Bellingham shall be encouraged, but not required to pay the minimum wage established under this Ordinance.


Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter.

Section 7. Minimum Standards Supplementary To Other Laws—More Favorable Standards Unaffected.

This chapter establishes minimum standards for wages of all employees in the City, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or chapter, or any rule or regulation issued thereunder. Any standards relating to wages or
other working conditions established by any applicable federal, state, county, or local law or chapter, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

Section 8: Severability.

The provisions of this section are severable. If any provision of this Ordinance or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Section 9: Codification.

Sections 1 through 8 of this Act constitute a new chapter in Title 6 of the Bellingham Municipal Code.

Section 10: Effective Date.

The effective date of this ordinance shall be 60 days after passage.
City of Bellingham Initiative No. 2023-01 concerns establishing a City minimum wage above the State minimum wage.

This measure would establish a City minimum wage that is $1.00 above the State minimum wage on May 1, 2024, increasing to $2.00 above the State minimum wage on May 1, 2025. The measure prohibits retaliation by employers against employees; establishes a private right of action for employees; gives the City access to work sites and records; and allows the City to issue civil infractions and order injunctive relief including reinstatement, restitution, and payment of back wages.

Should this measure be enacted into law?

Yes?

No?
CERTIFICATE OF SUFFICIENCY

I hereby certify that I and members of the Auditor’s Office staff have reviewed the initiative petitions submitted to this office by Andrew Asbjornsen, Finance Director, entitled Initiative No. 2023-01 Raise the Minimum Wage.

The formula utilized in determining the number of signatures necessary is as follows:

☒ City of Bellingham: 10% of votes cast for mayor in last mayoral election
3,093 - Required

☐ Other Cities: 15% of registered voters in city on the day of last city general election
_____ # Required

☐ County: 8% of votes cast in county in last general election
_____ # Required

The authority used for counting was:

☐ RCW 29A.70
☒ RCW 35A – Cities & Towns
☒ Bellingham Charter

We have verified 3,100 signatures as required, therefore, a sufficiency of signatures is established.

Diana Bradrick
County Auditor

6/23/23

Date
Subject: Discussion of Initiative No. 2023-02 Regarding Economic Displacement Assistance

Summary Statement: The Whatcom County Auditor has reviewed the initiative petition entitled "Initiative No. 2023-02 Economic Displacement Assistance" and verified that the principal petitioners collected signatures equal to, not less than 10% of the total number of votes cast for the Office of Mayor at the last preceding municipal general election, i.e., 3,093. In this work session, Council will discuss how to respond to the initiative, as required by the Charter and the Bellingham Municipal Code (BMC). Council may enact the initiative, defer it to the voters, or reject the measure and propose an alternative measure that would appear on the ballot along with the initiative. Council action must be taken by July 24, 2023. If Council fails to take timely action, then the initiative bill shall be submitted by the finance director to the County Auditor's office for submission to the qualified electors for approval or rejection at the next general election.

Previous Council Action: N/A

Fiscal Impact: Proportionate share of the cost to hold the special election for the initiative.

Funding Source: General Fund

Attachments:
1. ORDINANCE
2. BALLOT TITLE
3. CERTIFICATE OF SUFFICIENCY

Meeting Activity  Meeting Date  Recommendation  Presented By  Time
Committee Briefing - Direction Requested  07/10/2023  Provide Direction  James Erb, Deputy City Attorney  5 minutes

Recommended Motion:

Council Committee: Committee Of The Whole

Agenda Bill Contact: James Erb, Legal

Reviewed By  Department  Date
Alan A. Marriner  Legal  06/30/2023
Matthew T. Stamps  Legal  07/03/2023
Seth M. Fleetwood  Executive  07/05/2023

Council Action:
AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING THE ADOPTION OF AN ECONOMIC DISPLACEMENT ASSISTANCE MANDATE IN LANDLORD-TENANT RELATIONS.

WHEREAS, housing rental prices continue to grow in Bellingham. According to data produced by Zillow rental manager, the price of the median two-bedroom rental in Bellingham increased from $1,625 in December 2021 to $2,000 in December 2022;

WHEREAS, wages have not kept pace with housing costs. The Housing FAQ on the City of Bellingham’s website identifies a gap between average incomes and housing prices, noting, “From 2000 to 2020, the median family income in Bellingham increased by 20% while the median home value increased by nearly 80”; 

WHEREAS, the resulting gap between wages and housing prices has created a large number of cost-burdened households. According to the American Community Survey, 57% of renting households in Bellingham are cost-burdened (spending more than 30% of household income on housing) with 30% being severely cost-burdened (spending more than 50% of household income on housing);

WHEREAS, low-income households bear the brunt of high housing costs; of those households making 50% or less of the median income in Whatcom County, 81% are either cost burdened or severely cost burdened;

WHEREAS, renters disproportionately bear the burden of low incomes and high housing costs. Almost 55% of rental households are cost-burdened or severely cost-burdened, as compared to 28% of homeowners. A third of Bellingham renters are severely cost-burdened;

WHEREAS, the current rental vacancy rate in Bellingham is among the lowest in the nation. Estimates for the vacancy rate in Fall 2020 varied from .2% to just over 2%, both of which are far below the 5-7% vacancy rate that the City of Bellingham defines as healthy;

WHEREAS, chronically low vacancy rates make it difficult for renters to find decent, safe, affordable housing;

WHEREAS, moving among rentals often requires large sums of money, including first and last month's rent, deposits, moving expenses, and utility deposits for a new residence;

WHEREAS, in 2020 the Federal Government Office of Accountability found a $100 increase in median rental price was associated with about a 9 percent increase in the estimated homelessness rate. Forced relocation from large rent increases is not merely expensive, it puts renters under economic stress that increases their risk of becoming homeless; and

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:
Section 1. Definitions.

Definitions for this Ordinance shall be the same as BMC 6.12.010, in addition to the following definitions:

“City” means the City of Bellingham, Washington.

“Increase notice” is a written notice from the landlord declaring the amount by which the landlord is increasing the rent or associated housing costs.

“Relocation assistance” means assistance in the form of a monetary payment to a tenant who is relocating after receiving a rent increase notice of 8% or more of the previous 12-month period that would otherwise cause a financial burden unto the tenant to aid in costs of relocation (moving costs, utilities deposits, security deposits, first/last month's rent, and any applicable pet fees).

“Relocation period” is the 5 months following the receipt of relocation assistance.

"Rent” shall have a meaning pursuant to RCW 59.18.030 (29).

“Request for Relocation Assistance” is a written notice from the tenant to the landlord requesting relocation assistance in response to an increase notice.

“Transitional housing” means housing units owned, operated, or managed by a nonprofit organization or governmental entity in which supportive services are provided to individuals and families that were formerly homeless, with the intent for them to move to permanent housing.

Section 2. Notice of Rental Increase and Right to Economic Displacement Relocation Assistance.

A. As allowed by the Ordinance, if a landlord increases a tenant's rent or associated housing costs by 8 percent or more over a rolling 12-month period, the landlord shall deliver an increase notice in a manner consistent with RCW 59.12.040 to each affected tenant:

1. at least 120 days prior to the effective date of the rent increase; or

2. the time period designated in the rental agreement, whichever is longer.

B. The increase notice must specify:

1. the amount of the increase;
2. the total amount of the new rent or associated housing costs;
3. the date when the increase becomes effective;
4. a rationale for the rent increase;
5. the total amount of relocation assistance available under this Ordinance to tenants of the unit upon displacement; and
6. the rights of tenants under this ordinance including:
a. a statement of the right of the tenant to request economic displacement relocation assistance within 45 days of receipt of the increase notice;

b. a statement that if the tenant receives timely relocation assistance as provided for under this Ordinance, the tenant shall have a relocation period of 5 months from the date of the receipt of the relocation assistance; and

c. a statement that at the conclusion of this relocation period, if the tenant remains in the dwelling unit, the tenant shall be obligated to pay the increased rent in accordance with the increase notice for the duration of the tenant’s occupancy of the dwelling unit and to repay the relocation assistance.

C. If, within 45 calendar days after each tenant receives an increase notice indicating a rent increase of 8 percent or more within a rolling 12-month period, the tenant may provide a request for relocation assistance to the landlord.

1. Within 31 calendar days of receiving the request for relocation assistance, the landlord shall pay to the tenants relocation assistance equivalent to:

   a. Either a sum equalling three times the current fair market monthly rent for Bellingham, WA as defined by HUD Office of Policy Development and Research for an apartment of the same size; or

   b. three times the tenant’s existing monthly rent, whichever is larger.

2. The requirements of this Subsection apply per dwelling unit, not per individual tenant.

Section 3. Return of Relocation Assistance.

A. If the tenant receives timely relocation assistance as provided for under this Ordinance, the tenant shall have a relocation period of 5 months from the date of the receipt of the relocation assistance.

B. At the conclusion of this relocation period, if the tenant remains in the dwelling unit, the tenant shall be obligated to pay the increased rent in accordance with the increase notice for the duration of the tenant’s occupancy of the dwelling unit and to repay the relocation assistance.

Section 4. Notice to the City.

A landlord shall provide notice to the City of Bellingham of:

A. All requests for relocation assistance, within 30 days of receipt of such notices; and
B. All payments of relocation assistance within 30 days of making such payments.

Section 5. Enforcement.

A. In the event of a landlord’s failure to comply with any section or subsection of this Ordinance, a tenant shall have a cause of action in any court of competent jurisdiction for such payments and damages listed herein and other remedies as may be appropriate.
   1. A landlord that fails to comply with any of the requirements set forth in this Ordinance shall be liable to the tenant for an amount equal to double the amount of relocation assistance specified herein, actual damages, and reasonable attorney fees and costs.
   2. In addition to any other legal defense a tenant may have, it is an additional affirmative defense against eviction that the landlord is in violation of this Ordinance.

B. Complaints that any provision of this chapter has been violated may also be presented to the City Attorney, who is hereby authorized to investigate and, if they deem appropriate, initiate legal or other action to remedy any violation of this chapter.

C. The City has the authority to issue notices of civil infraction and to order injunctive relief including payment of unpaid relocation assistance and other forms of relief.

D. In addition to any other remedy provided by this Ordinance or allowed by law, any landlord violating any of the provisions or failing to comply with any of the requirements of this chapter shall have committed a civil infraction and shall be punished by a fine not to exceed the following amounts:
   1. First offense – $500.00.
   2. Second offense – $750.00.
   3. Third offense – $1,000.

Section 6. Exceptions.

The Economic Displacement Relocation Assistance provisions of this Ordinance do not apply to any of the following:

A. A landlord and tenant living on the same site if the site has four or fewer dwelling units;
B. Tenants who have lived in the dwelling unit for less than six months;
C. Transitional housing.

Section 7. Severability

The provisions of this section are severable. If any provision of this Ordinance or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given
effect without the invalid provision or application.

Section 8. Codification.

Sections 1 through 7 of this Act constitute a new chapter in Title 6 of the Bellingham Municipal Code.

Section 9. Effective Date.

The effective date of this ordinance shall be 60 days after passage.
City of Bellingham Initiative No. 2023-02 concerns the adoption of a rental relocation assistance program for tenants.

This measure would require landlords to provide written notice 120 days before increasing rent by more than 8% in a rolling 12-month period; require landlords to pay relocation assistance equal to three times the current fair market monthly rent for Bellingham or three times the tenant’s existing monthly rate, whichever is higher, when increasing rent more than 8%, with limited exceptions; provide tenants receiving assistance a relocation period of 5 months; and authorize private actions and city enforcement.

Should this measure be enacted into law?

Yes?.................................

No?.................................
CERTIFICATE OF SUFFICIENCY

I hereby certify that I and members of the Auditor’s Office staff have reviewed the initiative petitions submitted to this office by Andrew Asbjornsen, Finance Director, entitled Initiative No. 2023-02 Economic Displacement Assistance.

The formula utilized in determining the number of signatures necessary is as follows:

☒ City of Bellingham: 10% of votes cast for mayor in last mayoral election
3,093 - Required

☐ Other Cities: 15% of registered voters in city on the day of last city general election
_____ # Required

☐ County: 8% of votes cast in county in last general election
_____ # Required

The authority used for counting was:

☐ RCW 29A.70
☐ RCW 35A – Cities & Towns
☒ Bellingham Charter

We have verified 3,100 signatures as required, therefore, a sufficiency of signatures is established.

Diana Bradrick
County Auditor

[Signature]

Date: June 27, 2023
Subject: A Resolution Affirming that Affordable Housing and Homelessness are a Public Health Crisis

Summary Statement: On June 26, 2023, Councilmember Kristina Michele Martens circulated a draft resolution affirming that affordable housing and homelessness are a public health crisis during a meeting of the Committee of the Whole. Council moved to direct the administration to review the draft resolution and bring it back for discussion by the Council at its next regularly scheduled meeting on July 10, 2023. Staff have reviewed the draft resolution, as directed, made recommended edits to the draft resolution, and prepared a memo for Council's review.

Previous Council Action: Motion directing staff to review draft resolution.

Fiscal Impact: N/A

Funding Source: N/A

Attachments: 1. STAFF MEMO  
2. REVISED DRAFT RESOLUTION  
3. DRAFT RESOLUTION

Meeting Activity | Meeting Date | Recommendation | Presented By | Time |
--- | --- | --- | --- | --- |
Committee Briefing - Direction Requested | 07/10/2023 | Provide Direction | James Erb, Deputy City Attorney | 5 minutes |

Recommended Motion:

Council Committee: Committee Of The Whole

Agenda Bill Contact: James Erb, Legal

Reviewed By | Department | Date |
--- | --- | --- |
Alan A. Marriner | Legal | 06/30/2023 |
Matthew T. Stamps | Legal | 07/03/2023 |
Seth M. Fleetwood | Executive | 07/05/2023 |
Councilmember Kristina Michele Martens introduced a draft resolution during the meeting of the Committee of the Whole on June 26, 2023, regarding affordable housing and homelessness. Councilmember Martens said that her draft resolution affirms that housing affordability and homelessness are a public health crisis. Her goal, she said, in circulating the draft resolution at that time was to provide the administration an opportunity to review it before bringing it back for Council discussion on July 10, 2023. Council then moved for the administration to review the draft resolution affirming that housing affordability and homelessness are a public health crisis.

City staff have reviewed the draft resolution, as directed by Council. The draft resolution is titled: “A RESOLUTION AFFIRMING THAT AFFORDABLE HOUSING AND HOMELESSNESS ARE A PUBLIC HEALTH CRISIS.” The draft resolution includes a series of whereas clauses that provide background and factual support for the resolution and the substantive portion of the resolution. The Charter, Article III, states in pertinent part:

The title of every ordinance and resolution which shall comprehensively set forth the subject matter of the legislation shall be read in full at a council meeting before a final vote is taken thereon, and upon every such vote the ayes and nays shall be called and recorded.

The substantive portion of the draft resolution does not affirm that affordable housing and homelessness constitute a public health crisis. Instead, the resolution directs the administration to implement an indefinite eviction moratorium across the City. This policy proposal raises significant legal questions and, if adopted, could lead to litigation against the City. Therefore, our office has edited the draft resolution so that the subject matter of the resolution is consistent with its title and the direction given by Council to staff at its June 26 meeting and avoids directing the administration to take action that could result in significant legal liability for the City.

1 Please note that staff did not conduct a review of the statements in the whereas clauses. We made no edits to this section of the draft resolution other than correcting a few typos.
Finally, we recommend that Council request a briefing from the City Attorney’s Office in executive session about the legal issues related to adopting an eviction moratorium before Council discusses or votes on that policy proposal.
RESOLUTION NO. ______________

A RESOLUTION AFFIRMING THAT AFFORDABLE HOUSING AND HOMELESSNESS ARE A PUBLIC HEALTH CRISIS

WHEREAS, the City of Bellingham cites the number one top factor leading to local homelessness is loss of housing; and

WHEREAS, according to the 2023 Point in Time Count Report, there was a roughly 27% increase in people counted, from 832 people counted in 2022 to 1,059 counted in 2023; and

WHEREAS, since 2019 the Whatcom County data has shown a 141% increase in people over 60 experiencing homelessness (68 in 2019 to 164 in 2023); and

WHEREAS, Whatcom County’s data shows persistently elevated rates of homeless families with children. Over the last three years (2021-2023), the number of homeless families counted has averaged 88 households. In the previous three years (2018-2020) the average was 68. Persons under the age of 18 accounted for 15% of all persons identified in 2023. The youngest person counted was an infant less than a year old; and

WHEREAS, the housing program supervisor at Whatcom County Health and Community Services, Chris D’Onofrio states “People are becoming homeless faster than we can get them back into housing. We’re working hard to prevent and resolve homelessness for many households, but these growing numbers show the gap between what we’re able to do and where we need to be in terms of services and affordable units”; and

WHEREAS, studies show that every $100 in median rent increases leads to a 9% increase in homelessness; and

WHEREAS, Bellingham City has seen a 41% rent increase over the past 5 years with 15% from 2022 to 2023 alone; and

WHEREAS, 56% of Bellingham rental households are cost burdened with 22% being severely cost burdened; and

WHEREAS, A new 2023 survey by the Puget Sound Regional Council and the Washington Department of Commerce found housing costs and homelessness are state residents’ top two issues. Seventy-seven percent of people said rent is too high, 75% said it costs too much to buy a home and 64% said government agencies should do more to provide housing not being built by the market; and

WHEREAS, in 2022, median-priced homes in Bellingham have reached $640,391 requiring a median income of $176,092, however the average annual household income in Bellingham is $80,709, while the median household income sits at $59,163 per year has made private

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

Resolution Affirming Housing Affordability
and Homelessness are a Public Health Crisis (1)
WHEREAS, City of Bellingham passed a resolution affirming That Racism Is A Public Health Crisis in 2021 and the Whatcom County Point in Time Count 2023 found that “14% of people surveyed identified as Hispanic, while only 10% of county residents identify as Hispanic, according to census data. People identifying as Black, African American, or African accounted for 4% of people counted as experiencing homelessness, but only 1% of the county’s population according to census data. 10% of people surveyed identified as Native American/Alaska Native, while people who identify as Native American/Alaska Native represent only about 3% of the total Whatcom County population.” Which highlights the fact that people of color in Whatcom County are disproportionately impacted the current lack of enforceable tenant protections and the rapid increase in rental rates; and

WHEREAS, climate change is increasing the regularity of wildfires, heat, and smoke events, and "As the climate gets worse and being exposed to the elements becomes a more and more serious proposition -- [housing is] not just health care, it's life saving," said Dave Giffen, the executive director of the homelessness advocacy group Coalition for the Homeless.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM:

This Council will call upon the City of Bellingham to implement, with intent and fidelity, a stay of eviction for any cost burdened or severely cost burdened Bellingham tenant, to be
enforceable until the date that Bellingham City Planning Department has identified and activated all potential and necessary tenant protections and the mechanisms for enforcement are in place.

The City of Bellingham declares that housing affordability and homelessness constitute a public health crisis in our community.

The City is committed to partnering with other local jurisdictions, the State of Washington, the federal government, non-profit organizations, stakeholder groups, and community members, to identify and implement policy solutions to address this crisis including, but not limited to, additional protections for tenants in order to reduce the number of tenants evicted from their homes.

We will continue to work together to take meaningful steps to reduce the number of individuals experiencing homelessness in our community.

PASSED by the Council this _____ day of ____________________, 2023.

_____________________________________
Council President

APPROVED by me this _____ day of ____________________, 2023.

_____________________________________
Mayor

ATTEST: _____________________________
Finance Director

APPROVED AS TO FORM:

_____________________________________
Office of the City Attorney
A RESOLUTION AFFIRMING THAT AFFORDABLE HOUSING AND HOMELESSNESS ARE A
PUBLIC HEALTH CRISIS

WHEREAS, The City of Bellingham sites the number one top factor leading to local
homelessness is loss of housing; and

WHEREAS, according to the 2023 Point in Time Count Report, there was a roughly 27% increase in
people counted, from 832 people counted in 2022 to 1,059 counted in 2023; and

WHEREAS, since 2019 the Whatcom County data has shown a 141% increase in people over 60
experiencing homelessness (68 in 2019 to 164 in 2023); and

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children. Over the last three years (2021-2023), the number of homeless families counted has
averaged 88 households. In the previous three years (2018-2020) the average was 68. Persons
under the age of 18 accounted for 15% of all persons identified in 2023. The youngest person
counted was an infant less than a year old; and

WHEREAS, the housing program supervisor at Whatcom County Health and Community Services,
Chris D’Onofrio states “People are becoming homeless faster than we can get them back into
housing. We’re working hard to prevent and resolve homelessness for many households, but these
growing numbers show the gap between what we’re able to do and where we need to be in terms of
services and affordable units”; and

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homelessness; and

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2022 to 2023 alone; and

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issues. Seventy-seven percent of people said rent is too high, 75% said it costs too much to buy a
home and 64% said government agencies should do more to provide housing not being built by the
market; and

WHEREAS, in 2022, median-priced homes in Bellingham have reached $640,391 requiring a
median income of $176,092, however the average annual household income in Bellingham is
$80,709, while the median household income sits at $59,163 per year has made private
homeownership predominantly unattainable putting more pressure on an already fragile rental
market and aggressively forcing record numbers of people into homelessness; and
WHEREAS, on January 9th of 2023 Bellingham City Council gave direction to the Planning Department to bring forward options for renter protections to be discussed and approximately 6 months later (June 26th 2023) there has been no concrete scheduling of when Planning Department will return with their findings and recommendations. Once Planning Department has returned with its findings that will only be the beginning of the conversation and Bellingham City could still be many months off from bringing forward true renter/tenant protections; and

WHEREAS, Bellingham City’s planning department estimates that 1,304 senior renter households alone in Low-Income Housing Tax Credit units are severely cost-burdened but will need months to gather all relevant data to make recommendations to Bellingham City Council; and

WHEREAS, during that time dozens more of our most vulnerable community members may become unhoused before there are viable solutions available; and

WHEREAS, even with Bellingham passing a 120 notice on rent increases in 2023, some landlords found a loophole by giving tenants a 60-day notice to vacate then offering to let the tenant stay if they agreed to a rent hike showing how aggressive and predatory some landlords and property management companies can be; and

WHEREAS, City of Bellingham passed a resolution affirming That Racism Is A Public Health Crisis in 2021 and the Whatcom County Point In Time Count 2023 found that “14% of people surveyed identified as Hispanic, while only 10% of county residents identify as Hispanic, according to census data. People identifying as Black, African American, or African accounted for 4% of people counted as experiencing homelessness, but only 1% of the county’s population according to census data. 10% of people surveyed identified as Native American/Alaska Native, while people who identify as Native American/Alaska Native represent only about 3% of the total Whatcom County population.” Which highlights the fact that people of color in Whatcom County are disproportionately impacted the current lack of enforceable tenant protections and the rapid increase in rental rates; and

WHEREAS, climate change is increasing the regularity of wildfires, heat, and smoke events, and "As the climate gets worse and being exposed to the elements becomes a more and more serious proposition -- [housing is] not just health care, it's life saving," said Dave Giffen, the executive director of the homelessness advocacy group Coalition for the Homeless.

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Controls on rent for residential structures—Prohibited—Exceptions.

The imposition of controls on rent is of statewide significance and is preempted by the state. No city or town of any class may enact, maintain, or enforce ordinances or other provisions which regulate the amount of rent to be charged for single-family or multiple-unit residential rental structures or sites other than properties in public ownership, under public management, or properties providing low-income rental housing under joint public-private agreements for the financing or provision of such low-income rental housing. This section shall not be construed as prohibiting any city or town from entering into agreements with private persons which regulate or control the amount of rent to be charged for rental properties.

[ 1981 c 75 § 1.]

NOTES:

Applicability to floating home moorage sites—1981 c 75: "Nothing in this act shall be construed to preempt local ordinances that relate to the control of rents or other relationships at floating home moorage sites." [ 1981 c 75 § 3.]

Severability—1981 c 75: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1981 c 75 § 4.]
HIGH INCOMES ARE NEEDED TO AFFORD HOMES IN MANY METROS

Bellingham, Washington
Income Required to purchase median home price: $176,092
Median-Priced Home: $640,391
Estimated Mortgage Payment: $3,311
Estimated Total Payment: $4,549

Annual Income Required to Afford the Median-Priced Home
- Up to $50,000
- $50,000 to $80,000
- $80,000 to $100,000
- $100,000 to $200,000
- More than $200,000
Incomes are not stretching as far

- Incomes are not keeping up with housing costs or inflation in general.

- Partners that provide basic needs are seeing increased demand for help with food, hygiene, and transportation.
Cost Burden

- A household is considered "cost burdened" if they are spending more than 30% of their income for housing.

- A household is "severely cost burdened" if they are spending more than 50% of their income on housing.

- 56% of our rental community are burdened
Analysis

- $34,377 \div 20 \text{ yrs} = 1,719$ units per year countywide.

- Between 2016-2021 the County averaged approx. 1,332 units per year. During that same period Bellingham produced an average of 644 units per year, which equates to approximately 48%.

- $34,377 \times 48\% = \text{Bellingham's share is } 16,501$ new units, or approximately 825 units per year.

- Current housing supply 41,873 units. 16,501 units represents approximately 39\% increase over existing
How many homeowners and renters are there in Bellingham?

- **People above poverty level**
  - 68.7%
  - 16.6%
  - 5.3%
  - 9.7%
  - Y-o-Y change

- **People below poverty level**
  - Median Household Income
  - Average Household Income

The average annual household income in Bellingham is $80,709, while the median household income is at $59,163 per year. Residents aged 25 to 44 earn $66,653, while those between 45 and 64 years old have a median wage of $81,811. In contrast, people younger than 25 and those older than 65 earn less. At $3,489 and $5,488, respectively.
Michael,

Thank you for your inquiry.

The Opportunity Council has been administering federal rental assistance dollars that were made available to aid in Covid recovery. I have gathered some facts on the situation as it applies to Eleanor — some facts below are based upon 2022 #’s given that is the latest data we have.

- 11 of the 80 (ish) residents have benefited from this program.
- 1 of the residents received an amount equal to 100% of their rent for 5 months (in this case $4100). This resident has had the ability to save $4100 over the past 5 months.
- 10 of the residents received an amount equal to 100% of their rent for 4 months (total varies from $1926 to $3250). These residents have saved between $1926 and $3250.
- One of the 11 that sought funding from the OC is paying 34% of his income on rent – this individual still received $3250 in federal funding.
- Of the top 25 rent burdened households, 8 received OC funding.
- All other residents have been paying rent.
- 17 of the top 25 cost burdened residents are paying $497 or less in rent (this is 2022 data). I think this is important for you to know – this is a VERY low rent. The issue is these residents are living on very low social security benefits (assuming this as the most likely source). Many only receiving $700-$800 per month. They are benefiting from the subsidized units and Mercy (and others at different properties) did not turn them away because they only had $800 in income.
- 16 Eleanor residents are severely cost-burdened.
- Of the 25 lowest cost-burdened, 19 have vouchers. This seems to be what is needed for our lowest-income households – a subsidized LIHTC unit paired with more subsidy in the form of a voucher.

I think you have assumed that the OC’s program has been paying just a portion of their rent and that perhaps more people were seeking these funds – more like a voucher program. This is not the case – those residents paid $0 to Mercy and the OC (federal govt) paid or will pay 100%. Assuming these residents have saved the rent money, this probably does buy us the few weeks that my team needs to complete the analysis that we had committed to undertaking.

I am hoping to confirm with Mercy that there are currently no residents in the arrears other than those that have agreements with the OC. And, that there are no evictions close or in process. Based on the information we have now from Mercy, we do not believe there is imminent risk of eviction.

My team is going through all 1500 (LIHTC funded) units that the City has loaned funding to. We are looking at cost-burden in all projects. When our analysis is complete (4-6 weeks from now), we will return to City Council and share the results with you. You would then be able to have an informed discussion when considering budget/policy decisions. We would like to ensure that if the City develops a program, that it is equitable. For example, we estimate that 1304 senior renter households are severely cost-burdened in Bellingham. This number grows to around 2000 (just renters!) if you look at cost-burden as paying above 30% of their income on rent. We do not yet know how many of the residents in our 1500 units are cost burdened. At Eleanor, 11 are severely cost-burdened (keep in mind this is 2022 data I have – it might
Subject: Approval of the 6/26/2023 City Council Committee and Regular Meeting Minutes

Summary Statement: Approval of the 6/26/2023 City Council Committee and Regular Meeting Minutes.

Previous Council Action: Approval of the 6/5/2023 City Council Committee and Regular Meeting Minutes.

Fiscal Impact: N/A

Funding Source: N/A

Attachments: 1. 6/26/2023 DRAFT CITY COUNCIL MEETING MINUTES

Meeting Activity | Meeting Date | Recommendation | Presented By | Time
--- | --- | --- | --- | ---
Committee Briefing - Vote Requested | 07/10/2023 | Vote to Approve | Michael Lilliquist, Council President | 2 minutes

Recommended Motion:

**Council Committee:**
Committee Of The Whole

**Agenda Bill Contact:**
Jacqueline Lassiter, Council Staff

**Reviewed By** | **Department** | **Date**
--- | --- | ---
Jackie A. Lassiter | Council Administration | 07/03/2023
Matthew T. Stamps | Legal | 07/03/2023
Seth M. Fleetwood | Executive | 07/05/2023
City of Bellingham
Public Works and Natural Resources Committee Minutes
June 26, 2023, 1:00 PM

Mayor: Seth Fleetwood
Council Members: Hannah Stone, Chair
Lisa Anderson, Kristina Michele Martens
Contact: (360) 778-8100, mayorsoffice@cob.org
Contact: (360) 778-8200, ccmail@cob.org
https://cob.org/council

Call to Order
Council President Pro Tem Dan Hammill called the meeting to order at 1pm.

Roll Call

Present:
Committee Chair Hannah Stone, First Ward
Committee Member Lisa Anderson, Fifth Ward
Committee Member Kristina Michele Martens, At Large

Council Standing Committee Meeting
Open to the public to attend. Note: there is generally no public comment period for Committee sessions. Standing Committee Members receive reports and information, ask questions and, when appropriate, vote on a recommended action for consideration by the full Council at the Regular Meeting. The notice of Committee Meetings identified below also serves as notice of Special Meetings of the City Council at the times identified as Council Members who are not members of the committee routinely attend and participate in the Committee Meetings. Committee Chairs give a report of the Committee Meeting at the Regular Meeting in the evening prior to deliberation and formal vote.

23754  1.  Bid Award for Old City Hall Exterior Repairs Bid #44B-2023  p. 3

Mike Olinger, Assistant Director of Public Works, and Carol Rofkar, Superintendent of Communications, Facilities, and Fleet, introduced the bid award for Old City Hall. The Old City Hall repair project includes cleaning and repair of the existing brick and sandstone masonry, restoration and structural improvements of the cast iron columns, replacement of wood windows, and roof repairs. Bear Wood Windows was the responsible bidder who submitted the lowest responsive bid of $1,263,168.00 including any applicable Washington State Sales or Use Tax.

Council Members discussed and asked questions. The committee delayed the vote on Bid #44B-2023 until there is clarification about the vendor's participation in apprenticeship programs.

Adjournment
There being no further business, the meeting adjourned at 1:06pm.
Call to Order
Council President Pro Tem Dan Hammill called the meeting to order at 1:10 pm.

Roll Call

Present:
Committee Chair Edwin H. "Skip" Williams, Fourth Ward
Committee Member Hollie Huthman, Second Ward
Committee Member Lisa Anderson, Fifth Ward

Council Standing Committee Meetings:
Open to the public to attend. Note: there is generally no public comment period for Committee sessions. Standing Committee Members receive reports and information, ask questions and, when appropriate, vote on a recommended action for consideration by the full Council at the Regular Meeting. The notice of Committee Meetings identified below also serves as notice of Special Meetings of the City Council at the times identified as Council Members who are not members of the committee routinely attend and participate in the Committee Meetings. Committee Chairs give a report of the Committee Meeting at the Regular Meeting in the evening prior to deliberation and formal vote.

23755 1. Resolution Designating July 2023 Parks and Recreation Month p. 3

Nicole Oliver, Parks Recreation Director introduced the resolution to celebrate July as Parks and Recreation Month. The U.S. House of Representatives designated July as Parks & Recreation Month and the City of Bellingham recognizes the environmental, economic, ecological, and educational value of our extraordinary Parks & Recreation system.

Edwin H. "Skip" Williams moved to recommend approval of the resolution designating July 2023 as Parks and Recreation Month.

MOTION CARRIED 3-0.

23756 2. Resolution Establishing Facility Reinvestment and Water Conservation Surcharge at Lake Padden Golf Course p. 6

Steve Janiszewski, Parks Operations Manager, and Mike Fosnick, Director of Operations at Troon/Premier Golf, introduced the resolution to set improvements for the Lake Padden Golf Course by raising rates on the Facility Reinvestment/Water Conservation fee by $4 per round to the current golf rate and $2 per round of disc golf.
Lisa Anderson moved to recommend approval of the resolution establishing facility reinvestment and water conservation fees for the use of the City Parks and Recreation golf course.

MOTION CARRIED 3-0.

23757  3. Introduction of a Resolution to Submit to the Voters a Property Tax Levy to Acquire, Improve, Develop and Maintain Greenways, Open Space, Wildlife Habitat and Corridors, Urban Trees, Parks, Park Facilities and Trails (Greenways V)

Mayor Fleetwood, Nicole Oliver, Parks and Recreation Director, and Peter Gil, Park Planning and Development Coordinator, Neil Schaner, Greenways Advisory and Greenways V Levy Committees, introduced the resolution for the Greenways V levy. In 1990, Bellingham initiated a Greenway Program that levied additional property taxes to raise funds to “acquire, develop and maintain greenways, open space sites, parks, park facilities and trails.” Three subsequent levies were approved by voters in 1997, 2006 and 2016, and the proposed resolution is for a fifth levy to continue the program for another ten years at a levy rate of $.41/$1,000 of assessed value. By the end of 2023, the program will have brought in over $102 million, with 3,200 acres purchased, plus 2,400 acres of recreational trails on Galbraith Mountain, 87 trail miles and multiple park and trail development projects.

Council Members discussed and asked questions. The Council discussed whether to host a public hearing on the Greenways V Levy.

Lisa Anderson moved to hold a public hearing at the Regular City Council meeting on July 10, 2023 on the Greenways V Levy.

MOTION CARRIED 3-0.

Adjournment
There being no further business, the meeting adjourned at 2:22pm.
City of Bellingham
Committee Of The Whole Minutes
June 26, 2023, 2:00 PM

Mayor: Seth Fleetwood

Contact: (360) 778-8100, mayorsoffice@cob.org
Contact: (360) 778-8200, ccmail@cob.org
https://cob.org/council

Call to Order
Council President Pro Tem Dan Hammill called the meeting to order at 2:26pm.

Roll Call

Present:
- Council Member Hannah Stone, First Ward
- Council Member Hollie Huthman, Second Ward
- Council Member Daniel Hammill, Third Ward
- Council Member Edwin H. "Skip" Williams, Fourth Ward
- Council Member Lisa Anderson, Fifth Ward
- Council Member Kristina Michele Martens, At Large

Excused:
- Council President Michael Lilliquist, Sixth Ward

Council Standing Committee Meetings:
Open to the public to attend. Note: there is generally no public comment period for Committee sessions. Standing Committee Members receive reports and information, ask questions and, when appropriate, vote on a recommended action for consideration by the full Council at the Regular Meeting. The notice of Committee Meetings identified below also serves as notice of Special Meetings of the City Council at the times identified as Council Members who are not members of the committee routinely attend and participate in the Committee Meetings. Committee Chairs give a report of the Committee Meeting at the Regular Meeting in the evening prior to deliberation and formal vote.

23758 1. A Resolution Agreeing to a Schedule for Joint County and City Review of Urban Growth Areas p. 3

Chris Behee, Long Range Planning Manager, introduced the resolution to establish a draft schedule for coordination of the Urban Growth Areas review. The Growth Management Act (GMA) indicates that county and city comprehensive plans must be coordinated and consistent (RCW 36.70A.100). The GMA also requires that Whatcom County, in conjunction with the cities, complete the urban growth area (UGA) review by June 2025 (RCW 36.70A.130).

Hollie Huthman / Edwin H. "Skip" Williams moved to recommend approval of resolution agreeing to a schedule for Joint County and City Review of Urban Growth Areas.

MOTION CARRIED 6-0.
2. **A Resolution Affirming the City of Bellingham Values with Regard to the Proposed Ballot Measure for the Purpose of Providing Funds for Costs of Public Health, Safety and Justice Facilities and Services, Including Behavioral Health, Housing, Public Safety, and Criminal Justice Facilities and Programs**

_Mayor Fleetwood_ spoke in support of a resolution affirming the City's values as they relate to the County's ongoing efforts to plan for and construct new correctional and behavioral health facilities, and to expand behavioral health services and related programs, and a letter addressed to the Whatcom County Council and Whatcom County Executive thanking them for improvements to the Justice Project Implementation Plan based upon the City's June 9, 2023 letter.

Hollie Huthman / Edwin H. "Skip" Williams moved to recommend approval of a resolution affirming the City of Bellingham values with regard to the proposed ballot measure for the purpose of providing funds for costs of public health, safety and justice facilities and services, including behavioral health, housing, public safety, and criminal justice facilities and programs.

**MOTION CARRIED 6-0.**

Hollie Huthman / Edwin H. "Skip" Williams moved to recommend approval of the letter to the Whatcom County Council and Whatcom County Executive from the City Council President Pro Tem and Mayor Fleetwood expressing gratitude for improvements to the Justice Project Implementation Plan.

**MOTION CARRIED 6-0.**

3. **Presentation on Washington State's New Drug Laws**

_Ryan Anderson_, City's Lead Prosecutor, presented on the Washington State Legislature's long-term replacement for the laws addressing drug possession and use (the “Blake” fix). Provisions of the new laws take effect July 1, 2023. The new laws make knowing possession and use of prohibited substances in a public place gross misdemeanors. Bellingham Municipal Court has jurisdiction over misdemeanor and gross misdemeanor offenses occurring within the City limits of Bellingham. In order to enforce and prosecute these offenses in Bellingham Municipal Court, the new laws must be adopted by reference into the Bellingham Municipal Code. The City must decide if violations of these laws will be enforced and processed in the City of Bellingham Municipal Court System.

_Mayor Fleetwood, Chief Mertzig_, and the City Attorney’s Office recommend adopting by reference the relevant state drug laws which make knowing drug possession and use in public gross misdemeanor offenses and provides for both pre and post charging diversion options. Council requested the administration return for additional discussion of State Senate Bill 5536 at the next Committee of the Whole work session for consideration to adopt the state legislation and repeal BMC 10.08.110.
Lisa Anderson / Edwin H. "Skip" Williams moved to request staff to bring forward the State Senate Bill 5536 at the next Committee of the Whole work session for consideration to adopt the state legislation and repeal BMC 10.08.110.

MOTION CARRIED 6-0.

**23770 4. Approval of the 6/5/2023 City Council Committee and Regular Meeting Minutes**

Lisa Anderson / Edwin H. "Skip" Williams moved to recommend approval of the June 5, 2023 meeting minutes.

MOTION CARRIED 6-0.

**5. Old/New Business**

*Council Member Martens* requested the administration to review a draft resolution on affordable housing for discussion at the next meeting.

Kristina Michele Martens / Edwin H. "Skip" Williams moved to request the administration to review a draft resolution affirming that affordable housing is a public health crisis for discussion at the July 10, 2023 meeting.

MOTION CARRIED 6-0.

*Mayor Fleetwood* introduced *Chief Hewitt* who had attended the memorial of *Fire Chief Gary Hedberg*. *Chief Hedberg* was recognized for his notable contributions to the Fire and EMS programs in Bellingham and Whatcom County. *Council* extended their condolences to the Hedberg family.

*Council President Pro Tem Member Hammill* thanked *Chief Mertzig* for including him in a recent tour of the Snohomish County Diversion Center and Carnegie Resource Center - Pioneer Human Services. *Council Member Williams* expressed support for the tour and work to find resources for those facing addiction.

**Adjournment**

There being no further business, the meeting adjourned at 3:44pm.
Call to Order
The City Council Regular meeting was called to order by Council President Lilliquist at 7:00pm.

Announcements & Upcoming Meetings:
Bellingham City Council meets all requirements of the State of Washington Open Public Meetings Act.

1. The Council will hold a Public Hearing on Monday, July 10, 2023 at 7:00 PM regarding a resolution to submit to the voters a property tax levy to acquire, improve, develop and maintain greenways, open space, wildlife habitat and corridors, urban trees, parks, park facilities and trails (Greenways V).

Roll Call

Present:
- Council Member Hannah Stone, First Ward
- Council Member Hollie Huthman, Second Ward
- Council Member Daniel Hammill, Third Ward
- Council Member Edwin H. "Skip" Williams, Fourth Ward
- Council Member Lisa Anderson, Fifth Ward
- Council Member Kristina Michele Martens, At Large

Excused
- Council President Michael Lilliquist, Sixth Ward

Public Hearing

23750 1. Public Hearing to Consider an Ordinance Amending the Old Town Overlay District Development Regulations in Bellingham Municipal Code Sections 20.35.065, 20.35.070, and 20.35.075

Tara Sundin, Economic and Development Director, and Chris Koch, Planner II, introduced proposed amendments to the Old Town Overlay District development regulations found in Bellingham Municipal Code 20.35.065-.075 including, allowing additional interim light industrial uses, adjusting floor area bonuses and transfers between development sites, and eliminating parking requirements.

Council Members discussed the amendments and asked questions.
Council President Pro Tem Hammill opened the public hearing.

Eight individuals provided testimony.

Council President Pro Tem Hammill closed the public hearing.

MOTION CARRIED 6-0.

Hollie Huthman / Edwin H. "Skip" Williams moved to refer this agenda bill to the Committee of the Whole meeting for further discussion.

23751 2. A Public Hearing to Consider a Development Agreement Regarding the Redevelopment of Property Located in the Old Town Subarea, Consistent with the Old Town Urban Village Plan

Tara Sundin, Economic and Development Director, and Curt O’Conner spoke to the Development Agreement with Old Town Village, LLC and Capron LLC who have purchased or have contracts to purchase several land parcels within the Old Town Subarea of Bellingham. Council Members discussed the agreement and asked questions.

Council President Pro Tem Hammill opened the public hearing.

Four individuals provided testimony.

Council President Pro Tem Hammill closed the public hearing.

MOTION CARRIED 6-0.

Hollie Huthman / Lisa Anderson moved to refer this agenda bill to the Committee of the Whole meeting for further discussion.

Mayor’s Report
Standing time for briefings, updates and reports to Council by the Mayor, if needed. Information only.

23752 1. Mayor’s Appointment to the Bellingham-Whatcom Public Facilities District (Approval)

Mayor Fleetwood appointed Loraine Boland to her first term on the Bellingham-Whatcom Public Facilities District that will expire on June 26, 2027, at which time she may be reappointed.

Hollie Huthman / Lisa Anderson moved to recommend approval of Loraine Boland to the Bellingham-Whatcom Public Facilities District.

MOTION CARRIED 6-0.
Mayor Fleetwood highlighted upcoming celebrations in the area including,

- Independence Day celebration at Zuanich Point Park from 2pm-11pm with fireworks beginning at 10:30pm. The City of Bellingham does not allow consumer use of fireworks.
- July 8th and 9th are Bellingham Pride events. Learn more at, Pride In Bellingham.
- The City is sponsoring the All Hand Whatcom Opioid Summit on June 27th and 28th. More information can be found, All Hands Whatcom Opioid Summit — Chuckanut Health Foundation.

Mayor Fleetwood shared that downtown Bellingham Police Department patrols have begun for the summer and Public Works recently completed a beautification project downtown, cleaning every street and sidewalk, including deep cleaning alleyways.

Presentation

23753 1. Legislative Update from State Representatives Alex Ramel and Joe Timmons  p. 159

State Representatives Alex Ramel, 40th Legislative District, and Joe Timmons, 42nd Legislative District, summarized activity from the 2023 State Legislative Session related to housing, behavioral health, drug possession (Blake fix), law enforcement training, education, taxation, transportation, and climate change.

Council Members thanked the members for attending and asked questions.

Regular Meeting and Committee Sessions
The following are heard in both Committee sessions and Regular Meeting in order below:

Council Standing Committee Meetings:

Public Works and Natural Resources 1:00 PM
Hannah Stone, Chair
Lisa Anderson, Kristina Michele Martens

23754 1. Bid Award for Old City Hall Exterior Repairs Bid #44B-2023  p. 160

Mike Olinger, Assistant Director of Public Works, and Carol Rofkar, Superintendent of Communications, Facilities, and Fleet, introduced the bid award for Old City Hall. The Old City Hall repair project includes cleaning and repair of the existing brick and sandstone masonry, restoration and structural improvements of the cast iron columns, replacement of wood windows, and roof repairs. Bear Wood Windows was the responsible bidder who submitted the lowest responsive bid of $1,263,168.00 including any applicable Washington State Sales or Use Tax.

Council Members discussed and asked questions. The committee delayed the vote on Bid #44B-2023 until there is clarification about the vendor's participation in apprenticeship programs.
1. Resolution Designating July 2023 Parks and Recreation Month  p. 165

Nicole Oliver, Parks Recreation Director introduced the resolution to celebrate July as Parks and Recreation Month. The U.S. House of Representatives designated July as Parks & Recreation Month and the City of Bellingham recognizes the environmental, economic, ecological, and educational value of our extraordinary Parks & Recreation system. Council Member Stone discussed an alternative of indefinitely establishing July as Parks and Recreation month.

Edwin H. "Skip" Williams / Hollie Huthman moved final approval of Resolution #2023-11.

MOTION CARRIED 6-0.

2. Resolution Establishing Facility Reinvestment and Water Conservation Surcharge at Lake Padden Golf Course  p. 168

Steve Janiszewski, Parks Operations Manager, and Mike Fosnick, Director of Operations at Troon/Premier Golf, introduced the resolution to set improvements for the Lake Padden Golf Course by raising rates on the Facility Reinvestment/Water Conservation fee by $4 per round to the current golf rate and $2 per round of disc golf.

Edwin H. "Skip" Williams / Lisa Anderson moved final approval of Resolution #2023-12.

MOTION CARRIED 5-1.
Opposed: Hannah Stone

3. Introduction of a Resolution to Submit to the Voters a Property Tax Levy to Acquire, Improve, Develop and Maintain Greenways, Open Space, Wildlife Habitat and Corridors, Urban Trees, Parks, Park Facilities and Trails (Greenways V)  p. 191

Mayor Fleetwood, Nicole Oliver, Parks and Recreation Director, and Peter Gil, Park Planning and Development Coordinator, Neil Schaner, Greenways Advisory and Greenways V Levy Committees, introduced the resolution for the Greenways V levy. In 1990, Bellingham initiated a Greenway Program that levied additional property taxes to raise funds to “acquire, develop and maintain greenways, open space sites, parks, park facilities and trails.” Three subsequent levies were approved by voters in 1997, 2006 and 2016, and the proposed resolution is for a fifth levy to continue the program for another ten years at a levy rate of $.41/$1,000 of assessed value. By the end of 2023, the program will have brought in over $102 million, with 3,200 acres purchased, plus 2,400 acres of recreational trails on Galbraith Mountain, 87 trail miles and multiple park and trail development projects.

Council Members discussed and asked questions. The Council discussed whether to host a public hearing on the Greenways V Levy.
Edwin H. "Skip" Williams / Kristina Michele Martens moved to hold a public hearing at the Regular City Council meeting on July 10, 2023 on the Greenways V Levy.

MOTION CARRIED 6-0.

**Committee Of The Whole 2:00 PM**

Michael Lilliquist Chair
Hannah Stone, Hollie Huthman, Daniel Hammill, Edwin H. "Skip" Williams, Lisa Anderson, Kristina Michele Martens

**23758** 1. **A Resolution Agreeing to a Schedule for Joint County and City Review of Urban Growth Areas**  

*Chris Behee*, Long Range Planning Manager, introduced the resolution to establish a draft schedule for coordination of the Urban Growth Areas review. The Growth Management Act (GMA) indicates that county and city comprehensive plans must be coordinated and consistent (RCW 36.70A.100). The GMA also requires that Whatcom County, in conjunction with the cities, complete the urban growth area (UGA) review by June 2025 (RCW 36.70A.130).

Daniel Hammill / Hollie Huthman moved final approval of Resolution #2023-13.

MOTION CARRIED 6-0.

**23739** 2. **A Resolution Affirming the City of Bellingham Values with Regard to the Proposed Ballot Measure for the Purpose of Providing Funds for Costs of Public Health, Safety and Justice Facilities and Services, Including Behavioral Health, Housing, Public Safety, and Criminal Justice Facilities and Programs**

*Mayor Fleetwood* spoke in support of a resolution affirming the City's values as they relate to the County's ongoing efforts to plan for and construct new correctional and behavioral health facilities, and to expand behavioral health services and related programs, and a letter addressed to the Whatcom County Council and Whatcom County Executive thanking them for improvements to the Justice Project Implementation Plan based upon the City's June 9, 2023 letter.

Daniel Hammill / Lisa Anderson moved final approval of Resolution #2023-14.

MOTION CARRIED 6-0.

Daniel Hammill / Edwin H. "Skip" Williams moved to recommend approval of the letter to the Whatcom County Council and Whatcom County Executive from the City Council President Pro Tem and Mayor Fleetwood expressing gratitude for improvements to the Justice Project Implementation Plan.

MOTION CARRIED 6-0.
3. **Presentation on Washington State's New Drug Laws**

*Ryan Anderson*, City's Lead Prosecutor, presented on the Washington State Legislature's long-term replacement for the laws addressing drug possession and use (the “Blake” fix). Provisions of the new laws take effect July 1, 2023. The new laws make knowing possession and use of prohibited substances in a public place gross misdemeanors. Bellingham Municipal Court has jurisdiction over misdemeanor and gross misdemeanor offenses occurring within the City limits of Bellingham. In order to enforce and prosecute these offenses in Bellingham Municipal Court, the new laws must be adopted by reference into the Bellingham Municipal Code. The City must decide if violations of these laws will be enforced and processed in the City of Bellingham Municipal Court System.

*Mayor Fleetwood, Chief Mertzig*, and the *City Attorney's Office* recommend adopting by reference the relevant state drug laws which make knowing drug possession and use in public gross misdemeanor offenses and provides for both pre and post charging diversion options. Council requested the administration return for additional discussion of State Senate Bill 5536 at the next Committee of the Whole work session for consideration to adopt the state legislation and repeal BMC 10.08.110.

4. **Approval of the 6/5/2023 City Council Committee and Regular Meeting Minutes**

Lisa Anderson / Hollie Huthman moved approval of the June 5, 2023 minutes of the regular City Council meeting as submitted.

MOTION CARRIED 6-0.

5. **Old/New Business**

*Council Member Stone* sought feedback from the Council regarding community petitions including recognizing natural rights of orcas, supporting the Lummi Nation in opposing the marine terminal at the Port of Vancouver, and the reestablishment of longhouses along the Salish Sea. Council expressed support for outreach with the Lummi Nation as a first step in supporting future Council resolutions.

**Consent Agenda**

All matters listed on the Consent Agenda are considered routine and/or non-controversial items and may be approved in a single motion. A member of the Council may ask that an item be removed from the Consent Agenda and considered separately.
6. Inter-Agency Agreement to Provide Grant for Protection Order System Improvement  
   Planning  
   p. 334

7. An Inter-Agency Agreement with the Department of Ecology for Grant Funding to  
   Study and Define the Most Effective Operations and Maintenance Practices for  
   Stormwater Facilities in the Lake Whatcom Watershed  
   p. 355

8. Interlocal Agreement with Whatcom Council of Governments  
   p. 400

9. An Inter-Agency Agreement with the Department of Ecology for Grant Funding for  
   Stormwater Water Quality Treatment Facilities in the Lake Whatcom Watershed  
   p. 409

10. An Inter-Agency Agreement with the Department of Ecology for Grant Funding for  
    Stormwater Water Quality Treatment Facilities in the Birchwood Neighborhood  
    p. 459

Hollie Huthman / Edwin H. "Skip" Williams moved approval of the Consent Agenda in its entirety.

MOTION CARRIED 6-0.

Final Consideration of Ordinances

1. An Ordinance Extending a Moratorium on Development Applications and Permits for  
   Multi-Family Zoned Properties in the Silver Beach Area for an Additional 6 Months to  
   Allow the City to Review Development Options and Existing Regulations to Ensure  
   they are Consistent with Adopted Goals and Policies  
   p. 509

Hollie Huthman / Edwin H. "Skip" Williams moved approval for third and final reading. Upon  
motion, said bill was placed on final passage and approved by the following roll call vote:

AYES: Stone, Huthman, Hammill, Williams, Anderson, Martens  
NAYS: (None)  
EXCUSED: Lilliquist

MOTION CARRIED 6-0 and was thereafter named Ordinance #2023-06-017.

2. An Ordinance Amending the 2023-2024 Biennial Budget – Amendment No. 5  
   p. 516

Hollie Huthman / Lisa Anderson moved approval for third and final reading. Upon motion, said bill  
was placed on final passage and approved by the following roll call vote:

AYES: Stone, Huthman, Hammill, Williams, Anderson, Martens  
NAYS: (None)  
EXCUSED: Lilliquist

MOTION CARRIED 6-0 and was thereafter named Ordinance #2023-06-018.
MOTION CARRIED 6-0.

Public Comment Period

City Council heard public comment from five individuals.

To access the recording, visit https://cob.org/gov/council/public-hearings-and-public-comment-period-recordings.

Adjournment

There being no further business, the meeting adjourned at 10:21pm.

Daniel Hammill, Council President Pro Tem

ATTEST: Kelley Goetz, Deputy City Clerk
APPROVED: 7/10/2023