



**City of Bellingham**  
**City Council Regular Meeting Agenda**  
December 6, 2021, 7:00 PM

Mayor Seth Fleetwood  
Council Members Hannah Stone, Gene Knutson, Daniel Hammill,  
Pinky Vargas, Lisa Anderson, Michael Lilliquist and  
Hollie Huthman  
Deputy City Clerk Elisabeth Oakes

Contact: (360) 778-8200, [ccmail@cob.org](mailto:ccmail@cob.org)

[www.cob.org/council](http://www.cob.org/council)

All meetings are held in the City Hall Council Chambers at  
210 Lottie Street, Bellingham, WA, unless otherwise noted.  
Please note the doors to City Hall unlock at 6:30 PM.

Council members will participate in this meeting remotely through an online web-based meeting platform. Per Washington State Proclamation 20-28, in-person attendance at meetings is not required at this time.

Council meetings are streamed live via the City's website at [meetings.cob.org](http://meetings.cob.org) and on the City's YouTube channel. Meetings are also broadcast in high definition on BTV on Comcast channel 321, and in standard definition on Comcast channel 10. Members of the public who do not have cable or Internet access may listen to the meeting via telephone. Members of the public who would like to listen 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
- (929) 205-6099

Advance Public Hearing testimony, and general Public Comment, can always be presented to the Council:

- by mail (210 Lottie Street, Bellingham, WA 98225)
- online
  - for a public hearing: <https://cob.org/gov/public/public-hearing-testimony>
  - for general public comment:  
<https://engagebellingham.org/council-public-comment>
- by telephone (360-778-8200)

Members of the public are also invited to provide live testimony during any Public Hearing. Pre-registration through the sign-up link (<https://cob.org/ccsignup>) is encouraged but not required. To testify live during the meeting, speakers can join the remote meeting at the following link: <https://cob.org/cczoom>

Meeting ID: **941 9601 5179**

Meeting Password: **9**

**The following items are heard in the Regular Meeting only:**

## Call to Order

### Announcements & Upcoming Meetings:

Bellingham City Council meets all requirements of the State of Washington Open Meetings Act.

1. On December 13, 2021 at 7:00 PM there will be a Public Hearing on the consideration of an ordinance extending for six months the moratorium on redevelopment of any of the ten manufactured home parks in Bellingham
2. On December 13, 2021 at 7:00 PM there will be a Public Hearing to consider amendments to BMC 17.10 - Building Codes, modifying the recently adopted 2018 state energy code to require electrification of space and water heating, incremental improvements in energy efficiency, and solar installation or readiness measures in certain multi-family and commercial buildings
3. The next two City Council public comment sessions will be held at 7:00 PM on December 20 and December 27. Public comment sessions may be accessed via Zoom at: <https://cob.org/commentzoom> (Meeting ID: 923 0705 9297 Password: 018602)

## Roll Call

### Public Hearing

- |              |           |  |              |
|--------------|-----------|--|--------------|
| <b>23179</b> | <b>1.</b> | <b>Public Hearing on the Extension of the Franchise Agreement to Comcast Cable Communications Management, LLC</b>              | <b>p. 6</b>  |
| <b>23180</b> | <b>2.</b> | <b>Public Hearing to Consider an Ordinance Amending the Infill Housing Toolkit Provisions of the Bellingham Municipal Code</b> | <b>p. 75</b> |

### Mayor's Report

Standing time for briefings, updates and reports to Council by the Mayor, if needed. Information only.

- |              |           |   |               |
|--------------|-----------|---|---------------|
| <b>23181</b> | <b>1.</b> | <b>Mayor's Reappointment of Dima Hart to the Mayor's Neighborhood Advisory Commission (Information)</b> | <b>p. 246</b> |
|--------------|-----------|---|---------------|

### Public Comment Report

The following are heard in both Committee sessions and Regular Meeting in order below:

### 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:

## Public Works and Natural Resources 10:00 AM

Michael Lilliquist, Chair

Gene Knutson, Lisa Anderson

- 23182 1. Post Point Resource Recovery Project Update p. 247**

## Planning 1:00 PM

Lisa Anderson, Chair

Daniel Hammill, Hollie Huthman

- 23183 1. Consideration of a Draft Ordinance Amending Certain Sections of the BMC to Improve the City's Code Enforcement Procedures p. 300**

**Committee Of The Whole 1:30 PM**

## Hannah Stone, Chair

Gene Knutson, Daniel Hammill, Pinky Vargas, Lisa Anderson, Michael Lilliquist,  
Hollie Huthman

Please be advised that if the City Council is ahead of schedule, they may start with old/new business before the official Committee of the Whole meeting time.

- |       |    |   |        |
|-------|----|---|--------|
| 23184 | 1. | A Resolution Establishing Juneteenth as a City Holiday and Setting Forth the Revised City Holiday Schedule  | p. 309 |
| 23145 | 2. | An Ordinance Amending the 2021-2022 Biennial Budget, Providing for Adoption of the Mid-Biennium Adjustments to the Biennial Budget Pursuant to the Terms of RCW 35.34.130 | p. 313 |
| 23185 | 3. | Council 2022 Work Plan Priorities   | p. 321 |
|       | 4. | Approval of Minutes   |        |
|       | 5. | Old/New Business  |        |

## **Executive Session 2:30 PM**

Closed to the public. Report in the Regular Meeting only:

- 1. Potential Property Acquisition (Stamps, approx. 2 min)**
- 2. Potential Property Acquisition (Stamps, approx. 2 min)**
- 3. Potential Property Acquisition (Stamps, approx. 2 min)**
- 4. Potential Property Acquisition (Stamps, approx. 3 min)**
- 5. Potential Property Acquisition (Stamps, approx. 3 min)**
- 6. Potential Property Acquisition (Stamps, approx. 3 min)**
- 7. Litigation: Eldard v. City of Bellingham (Good, approx. 5 min)**

## **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.

- |              |           |  |               |
|--------------|-----------|--|---------------|
| <b>23186</b> | <b>1.</b> | <b>Authorization of A/P Transactions Issued November 05, 2021 through November 12, 2021</b>                | <b>p. 322</b> |
| <b>23187</b> | <b>2.</b> | <b>Authorization of A/P Transactions Issued November 13, 2021 through November 18, 2021</b>                | <b>p. 323</b> |
| <b>23188</b> | <b>3.</b> | <b>Authorization of A/P Transactions Issued November 19, 2021 through November 24, 2021</b>                | <b>p. 324</b> |
| <b>23189</b> | <b>4.</b> | <b>Authorization of Payroll Labor Cost Payments Dated November 01, 2021 to November 15, 2021</b>           | <b>p. 325</b> |
| <b>23190</b> | <b>5.</b> | <b>Resolution Authorizing Submittal of Four Brian Abbott Fish Barrier Removal Board Grant Applications</b> | <b>p. 326</b> |

## **Final Consideration of Ordinances**

- |              |           |   |               |
|--------------|-----------|---|---------------|
| <b>23170</b> | <b>1.</b> | <b>Consideration of an Ordinance Accepting the Donation of the Pier at Little Squalicum Park from Lehigh Northwest Cement Company</b> | <b>p. 381</b> |
| <b>23174</b> | <b>2.</b> | <b>An Ordinance Creating a Salary Commission</b>  | <b>p. 384</b> |

## **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://meetings.cob.org>. A hard copy of the agenda packet is available for review from the reference desk at the Central Library or the Finance office at City Hall.

### **Live Broadcast Information:**

The Bellingham City Council Committee Meetings are broadcast live on BTV Bellingham at the times listed on the Agenda. Committee session start times between 9:00 AM and 5:00 PM are estimated. A specific Committee may start later than the time published but will not begin earlier than its published time.

BTV can be found on cable systems as follows: Comcast channels 10 (standard) and 321 (high definition), and CenturyLink channels 40 (standard) and 1040 (high definition).

The meetings are also [streamed live](#) on the internet as they occur. Online viewers will see exactly what cable customers would see.

The Bellingham Public Library also has DVD's available for checkout. Video and audio files are available on the Internet at <https://meetings.cob.org> within 5 business days following each meeting.

### **BTV Council Meeting Rebroadcast Schedule:**

Tues. 12 PM: Repeat broadcast of Monday afternoon Committee meetings  
Tues. 7 PM: Repeat broadcast of Monday night regular meeting  
Wed. 8 AM: Repeat broadcast of Monday night regular meeting  
Sat. 12 PM: Repeat broadcast of Monday afternoon Committee meetings  
Sat. 7 PM: Repeat broadcast of Monday night regular meeting

### **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 Meeting  
Monday, December 13, 2021**

**Deadline to submit material for any public hearing for inclusion in the published agenda packet is 8:00 a.m. on Wednesday prior to the meeting.**



# City Council Agenda Bill

23179

Bill Number

**Subject: Public Hearing on the Extension of the Franchise Agreement to Comcast Cable Communications Management, LLC**

**Summary Statement:** In 2011, City Council entered into a 10-year Cable television franchise agreement with Comcast. That ten-year franchise term expires this year. Comcast officials have requested an extension of the franchise term, pursuant to Section 2.3 of the Franchise Agreement. The City and Comcast have reached a tentative agreement to extend the franchise with the same terms and conditions as the 2011 Franchise Agreement for five (5) additional years.

**Previous Council Action:** Council adopted Ordinance No. 2011-10-059 on October 26, 2011 granting a non-exclusive cable franchise to Comcast

**Fiscal Impact:** Continue to receive Comcast cable franchise fee revenue and PEG fee revenue for capital equipment purchases

**Funding Source:** Franchise fee revenue - General Fund; PEG fee revenue - specially designated fund

**Attachments:**

1. COMCAST FRANCHISE ORDINANCE
2. EXHIBIT 1 - 2011 COMCAST ORDINANCE AND FRANCHISE AGREEMENT
3. COMCAST RENEWAL NOTICE LETTER - APRIL 1, 2019
4. PUBLIC HEARING NOTICE

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Public Hearing - Vote Requested	12/06/2021	Vote to Approve	Sarah Chaplin, Sr. Assistant City Attorney	10 minutes

**Recommended Motion:**

**Council Committee:**

**Agenda Bill Contact:**

Sarah Chaplin, Sr. Assistant City Attorney, 360-778-8270

**Council Action:**

Reviewed By	Department	Date
<i>Alan A. Marriner</i>	Legal	11/30/2021
<i>Sarah W. Chaplin</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE EXTENDING A FRANCHISE TO COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BELLINGHAM; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; AND PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM.**

**WHEREAS**, the City of Bellingham ("the City") entered into a non-exclusive cable television franchise agreement ("Franchise Agreement") with Comcast Cable Communications Management, LLC ("Comcast"), formerly known as Comcast of Washington IV, Inc. as authorized by Ordinance No. 2011-10-059 on Oct 26, 2011; and

**WHEREAS**, pursuant to section 2.3 of the above referred to agreement, that agreement is ten (10) years in duration but may be extended by mutual written consent; and

**WHEREAS**, the City and Comcast Cable Communications Management, LLC have reached a tentative agreement to amend the non-exclusive cable television franchise agreement and extend with the same terms and conditions for five (5) additional years; and

**WHEREAS**, pursuant to Bellingham Municipal Code 6.17.070, a public hearing was held on the 6<sup>th</sup> day of December, 2021;

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** The Franchise Agreement with Comcast Cable Communications Management, LLC referred to in Ordinance No. 2011-10-059 shall be extended for a period of five (5) years, expiring five (5) years from the effective date of this ordinance.

**Section 2.** The Franchise Agreement, attached hereto and incorporated by reference as Exhibit "1," shall be extended for a period of five (5) years with the same terms and conditions as the Franchise Agreement referred to in Ordinance No. 2011-10-059 except for the effective date and termination dates, which shall be as set forth in this ordinance.

**Section 3.** If any provision of this ordinance and/or the attached Exhibit "1" is determined to be invalid or unenforceable for any reason by federal, state, or local law, the remaining provisions of this ordinance and/or the provisions set forth in the attached Exhibit "1" will remain in force and effect.

**Section 4.** Upon the approval of the City Attorney, the City Clerk is authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

**Section 5.** Neither party waives any rights which it enjoys under law as a result of agreeing to this extension.

**Section 6.** This ordinance shall take effect fifteen (15) days from date of final passage by City Council; provided, however, that Comcast shall have 60 days from the date this ordinance was passed by Council to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the City's discretion if Comcast fails to accept within 60 days.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor

**ATTEST:** \_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Office of the City Attorney

Published:  
  
\_\_\_\_\_

**FRANCHISE ACCEPTANCE**

This acceptance of the Franchise is made unconditionally and without reservation. Grantee (Comcast Cable Communications Management, LLC) accepts all the rights and privileges of the Franchise subject to all the terms, conditions, duties, and obligations of the Franchise.

ACCEPTED DATE: \_\_\_\_\_

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

## EXHIBIT 1



**City of Bellingham, Washington, and  
Comcast of Washington IV, Inc.**

## **Cable Television Franchise**

**ORDINANCE NO. 2011-10-059**

**AN ORDINANCE RENEWING THE GRANT OF A FRANCHISE TO COMCAST OF WASHINGTON IV, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF BELLINGHAM; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM; AND TERMINATING ORDINANCE NO. 10709.**

**WHEREAS**, Comcast of Washington IV, Inc., ("Grantee") desires to continue operation of a Cable System in the rights-of-way of the City of Bellingham under the authority of Chapter 6.17 of the Bellingham Municipal Code; and

**WHEREAS**, negotiations between Grantee and the City have been completed and the franchise renewal process followed in accordance with the guidelines established by the City Code and the federal Cable Act (47 U.S.C. 546); and

**WHEREAS**, the City Council has reviewed the qualifications of Grantee and the adequacy of its provision of services in the City of Bellingham; and

**WHEREAS**, the franchise granted by Ordinance No. 10709 shall be terminated and be replaced by this Franchise; and

**WHEREAS**, pursuant to Section 11.08 of the City Charter, this Franchise was filed with the Finance Director and published once a week for four successive weeks in the City official newspaper; and

**WHEREAS**, pursuant to Bellingham Municipal Code 6.17.070, a hearing was held on the 26th day of September, 2011;

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN** that a franchise is hereby granted to Comcast of Washington IV, Inc. to operate and maintain a Cable System in the City of Bellingham upon the following terms and conditions:

# City of Bellingham

## Comcast Cable Television Franchise Agreement

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## **SECTION 1. DEFINITIONS**

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in the Franchise is not defined in this section and there is a definition for the term in the Cable Act, the Cable Act definition shall apply. Other terms in the Franchise which are not defined in this section shall be given their common and ordinary meaning.

### **1.1 "Access," "PEG Access," or "PEG Use"**

refers to the availability, for non-commercial purposes, of a channel, or channels, on the Cable System for Public, Education or Government programming by various agencies, institutions, organizations, groups, and individuals, including the City.

#### **(a) "Public Access" or "Public Use"**

means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

#### **(b) "Education Access" or "Education Use"**

means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

#### **(c) "Government Access" or "Government Use"**

means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

### **1.2 "Access Channel"**

means any channel or portion of a PEG channel utilized for Video Services, whether by Grantee or in cooperation with, by or through the City, where any resident of the City or any non-commercial organization whose members reside in the City may be a programmer, either without charge or in a non-profit manner, on a non-discriminatory basis.

### **1.3 "Access Facilities"**

means a facilities designated for PEG Use, and equipment, including, but not limited to, modulators, demodulators and transmitters, as well as production facilities and equipment for PEG Use of PEG Channels.

#### **1.4 "Access Provider"**

means an entity designated by the City to provide PEG programming and the provision of any facilities, equipment or other services for the purpose of facilitating such programming.

#### **1.5 "Applicable Law"**

means any federal, State or local statute, law, regulation, or other final legal authority governing any of the matters addressed in this Franchise.

#### **1.6 "Basic or Basic Service"**

means a service tier that includes, at a minimum, all signals of domestic television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Cable System) any public, educational, and governmental programming required by this Franchise to be carried on the Basic tier, and any additional video programming signals or service added to the Basic tier by the Grantee.

#### **1.7 "BTV10"**

Means, the City's PEG channel in existence on the Effective Date of this Franchise, and identified as a government and education access channel.

#### **1.8 "Cable Service"**

means:

- (a) The one-way transmission to Subscribers of (1) video programming, or (2) other programming services; and
- (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

#### **1.9 "Cable Act"**

means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

#### **1.10 "Cable System"**

means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of

section 541(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand service; (D) an open video system that complies with Section 573 of the Cable Act; or (E) any facilities of an electric utility used solely for operating its electric system. For the purposes of this Franchise, Cable System means Grantee's system serving the City.

**1.11 "Channel"**

means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation).

**1.12 "City"**

means the City of Bellingham of the State of Washington and all the territory within its present and future boundaries.

**1.13 "City Code"**

means the Municipal Code of the City of Bellingham, Washington, as may be amended from time to time.

**1.14 "Grantee"**

means Comcast of Washington IV, Inc., a Washington Corporation and permitted successors and assigns.

**1.15 "Day"**

unless otherwise specified shall mean a calendar day.

**1.16 "Demarcation Point"**

means the physical point at which the Cable System enters a subscriber's home or building.

**1.17 "Digital Services"**

means services offered over the Cable system including the transmission of audio and video by discrete (digital) signals including standard definition and high definition signals consistent with the standards developed by the Advanced Television Systems Committee for digital television transmission over terrestrial, cable, and satellite networks.

**1.18 "Effective Date"**

means this Franchise granted by this Ordinance shall be effective 15 days from date of final passage by City Council; provided, however, that Grantee shall have 60 days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the City's discretion if Grantee fails to accept within 60 days.

### **1.19 "Expanded Basic Service"**

Refers to the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

### **1.20 "Franchise"**

means this Ordinance and conditioned as set forth herein.

### **1.21 "Franchise Fee"**

means the fee the City may assess in accordance with Section 622 (g) of the Cable Act (47 U.S.C. 542(g)).

### **1.22 "Gross Revenues"**

means all revenue derived by Grantee, or any affiliate of Grantee or any other person who would constitute a cable operator of the Cable System under the Cable Act, from the operation of the Cable System to provide Cable Service in the City. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any tier of Cable Services including Basic Service, optional Premium Service or Digital Services; pay-per-view services; installation, disconnection, reconnection and change-in-service fees, Leased Access channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenues from home shopping and other revenue-sharing arrangements.

Gross revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a Subscriber or user by a city, county, State or other governmental unit, and collected by Grantee for such entity. The Franchise fee is not such a tax. Gross revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in gross revenues for the period in which they are collected. Gross revenues shall not include payments received by the Grantee from the City in payment for construction of fiber for City PEG use.

Gross Revenues shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees, however, amounts included in gross revenues shall not be counted more than once; therefore, amounts included once in Grantee's gross revenues shall not be added to gross revenues again if they are received by an affiliate of Grantee in payment for programming or other goods or services supplied to Grantee.

### **1.23 "Headend"**

means the control center of the Cable System where incoming signals are amplified, converted, processed, and combined for transmission to the Subscriber.

**1.24 "Indefeasible Right of Use"**

means the exclusive, irrevocable right to use specified fiber subject to the terms and conditions of this Franchise, and any extensions or renewals thereof.

**1.25 "Institutional Facilities"**

means libraries, police stations (not including incarceration facilities) and fire stations but shall not include buildings or sites owned by City such as storage facilities or other facilities not used for administrative purposes, or those buildings owned by the City but leased to third parties at which government administrative employees are not regularly stationed.

**1.26 "Leased Access"**

means Channel capacity designated for commercial use by Persons unaffiliated with Grantee, in accordance with section 612 of the Cable Act.

**1.27 "Municipal buildings"**

means those buildings owned or leased and occupied by the City for government administrative purposes

**1.28 "MVPD"**

means "multichannel video programming distributor." As used in this Franchise MVPD means a cable operator or a multichannel multipoint distribution service, that makes available for purchase, by Subscribers, multiple Channels of video programming.

**1.29 "Normal Business Office Hours"**

means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

**1.30 "Normal Operating Conditions"**

means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

**1.31 "Premium Service"**

means a Cable Service (such as movie channels or pay-per-view programs) offered to Subscribers on a per-channel, per-program, or per-event basis.

**1.32 "PEG"**

means public, educational and governmental.

**1.33 "Person"**

means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

**1.34 "Subscriber"**

means any person who legally receives Grantee's Cable Services over the Cable System.

**1.35 "State"**

means The State of Washington

**1.36 "Street"**

means the surface of and the space above and below the right of way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within all incorporated areas of the City.

**1.37 "Transfer"**

means any transaction in which:

- (a) All or a portion of the Cable System is sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the Streets);
- (b) There is any change, acquisition, or direct or indirect transfer of control of the Grantee;
- (c) The rights and/or obligations held by the Grantee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party; or
- (d) The transfer of stock in a corporation so as to create a new controlling interest constitutes a "transfer." The term "controlling interest" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

**1.38 "Video Services"**

means programming provided by, or generally considered comparable to programming provided by a cable operator as the term "cable operator" is defined in the Cable Act.

## **SECTION 2. FRANCHISE**

### **2.1 Grant of Franchise**

The City hereby authorizes Grantee to occupy or use the City's Streets subject to (A) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and (B) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from providing services other than Cable Services to the extent not prohibited by Applicable Law. The City hereby reserves all of its rights to regulate such other services to the extent consistent with Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

### **2.2 Police Powers**

The Grantee, through this Franchise, is granted the right to operate its Cable System using the Streets within the Franchise Area in compliance with the City Code, as may be amended periodically. The Grantee specifically agrees to comply with the lawful provisions of the City Code and lawful applicable regulations of the City, and subject to the police power exception below, in the event of a conflict between the lawful provisions of the City Code or lawful applicable regulations of the City and this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and State preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendment to the City Code or any regulation of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its generally applicable regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications. Grantee reserves all rights it may have to challenge such lawful modifications whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law.

### **2.3 Franchise Term**

The term of the Franchise shall be ten (10) years, unless extended by mutual written consent or terminated sooner in accordance with this Franchise.

### **2.4 Franchise Area**

The Franchise Area shall be that area within the present or future corporate limits of the City. Cable Service shall be provided to all Persons subject to the service and installation policy outlined in this Franchise Section 10.1.

### **2.5 Franchise Nonexclusive**

The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems

appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee. If any other wireline MVPD enters into any agreement with the City to provide Video Services to Subscribers in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide Video Services to Subscribers in the City under a substantively similar agreement as applicable to the new MVPD, if permissible under Applicable Law. Within one hundred and twenty (120) Days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the exact same terms and conditions as are applicable to the new wireline MVPD.

## **2.6 Competition from Wireline MVPD**

If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a wireline MVPD to provide Cable Service or Video Service to Subscribers in the City, or that otherwise changes the nature or extent of the obligations that the City may request from or impose on a wireline MVPD providing Cable Service or Video Service to subscribers in the City, the City agrees that if another wireline MVPD avails itself of such new law and provides Cable Service or Video Service in the City, upon Grantee's written request, the City shall permit the Grantee to terminate this Franchise and, subject to Applicable Law, provide Cable Service or Video Service to Subscribers in the City on substantively similar terms and conditions as are applicable to the other wireline MVPD under the changed law. The City and the Grantee shall implement the provisions of this Section within one hundred and twenty (120) Days after the Grantee submits a written request to the City. The City shall have the same right of termination of this Franchise should the changed law be more advantageous to the City, in the City's sole discretion.

## **2.7 Franchise Renewal or New Franchise**

The City may establish appropriate requirements for new franchises or franchise renewals consistent with Applicable Law.

## **2.8 Periodic Public Review of Franchise**

The City may, at approximately three-year intervals during the term of the Franchise, and at such other times as the City deems appropriate, conduct a public review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Franchise continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests, and other such factors. Both the City and Grantee agree to make a full and good faith effort to participate in the review in a manner that accomplishes this end. It is not intended that the Franchise be modified as a result of such review, except as a last resort for achieving the purpose of the review. The City shall establish a procedure for ensuring orderly review, full discussion of any proposed policy changes between the City and Grantee, and full public hearing regarding all matters discussed during the review.

Matters appropriate for discussion at the public reviews in accordance with this section include, without limitation:

- (a) Grantee's overall compliance with the Franchise;
- (b) Policies and practices necessary to ensure continued support for public, educational and government access at substantially the same level provided for in the Franchise;
- (c) System upgrade and rebuild requirements; and
- (d) The resolution of any evident patterns of existing customer service problems.

If so ordered by a resolution of the City Council, following public review under this Section 2.8 and after the Eighth (8th) year of the Effective Date of the Franchise, Grantee shall agree to meet to discuss and plan with the City a rebuild or upgrade of the system such that the system as upgraded or rebuilt shall represent the then-current, non-experimental state-of-the-art in system technical capacity and performance, as well as provide general parity of overall Cable Service with the most advanced Cable Service provided by Grantee and other operators in Washington and Oregon.

The periodic public reviews described in this section may be but need not be made coincident with public reviews involved in the consideration of Grantee requests for franchise renewal, franchise extension, or approval of transfer of system ownership.

## **2.9 Transfer or Change of Control**

Neither the Grantee nor any other Person may Transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. If Grantee submits an application for approval of any Transfer in accordance with federal regulations (47 C.F.R. Section 76.502) the City shall process said application in accordance with those regulations. Applications for approval of any Transfer shall also be filed, and the City shall process such applications, in accordance with procedures set out in the City Code so long as they are not in conflict with Applicable Law. A Transfer without the prior written approval of the City is a material violation of this Franchise and shall make the Franchise subject to termination by the City.

For the purposes of determining whether it shall consent to a Transfer, the City, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law. The Grantee and any prospective transferees shall

assist the City in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, the City shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential impact of the Transfer on Subscriber services; whether the Grantee is in compliance with its Franchise and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the City's interest under this Franchise, or other Applicable Law.

No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the Grantee under this Franchise for all purposes, including renewal, unless the City, in its sole discretion, expressly waives this requirement in whole or in part.

Approval by the City of a Transfer of a Franchise does not constitute a waiver or release of any of the rights of the City under this Franchise, whether arising before or after the date of the Transfer.

#### **2.10 Renewal**

This Franchise shall be renewed in accordance with 47 U.S.C. 546.

#### **2.11 Conditions of Sale**

The City may acquire the Cable System as provided 47 U.S.C. 547.

#### **2.12 Right to Require Removal of Property**

At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System from all streets and public ways within the Franchise area. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Grantee effective upon filing of the lien with the Whatcom County Auditor.

#### **2.13 Continuity of Service Mandatory**

Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted Cable Service so long as their financial obligations to Grantee are honored, In the event of purchase, lease-purchase, acquisition, sale, lease, or other transfer to any

other Person, including any other operator of a cable communications franchise. Grantee shall cooperate fully to operate the Cable System in accordance with the terms and conditions of this agreement through the transition, to maintain continuity of service to all Subscribers.

## **SECTION 3. CONSTRUCTION AND OPERATION IN STREETS AND RIGHTS-OF-WAY**

### **3.1 Use of Streets**

Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to Applicable Law.

### **3.2 Construction or Alteration**

Subject to Section 2.2 herein, in connection with the construction, operation or repair of the Cable System, Grantee shall, in all cases, comply with the City Code.

### **3.3 Non-Interference**

Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Streets. Grantee shall, where possible in the case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide at least seventy-two (72) hours advance notice of the same to such affected residents.

### **3.4 Consistency with Designated Use**

Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used under Applicable Laws.

### **3.5 Undergrounding**

Grantee shall place underground all of its transmission lines which are located or are to be located above the streets of the City in the following cases:

- (a) All other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
- (b) Grantee is unable to get pole clearance;
- (c) Underground easements are obtained from developers of new residential areas; or
- (d) Utilities are overhead but residents prefer underground service drops (underground service drops provided at cost).

If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires within such district if requested to do so and place facilities underground. If such undergrounding of Grantee facilities is part of such a project, the costs thereof shall be included in such local improvement district.

Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

### **3.6 Maintenance and Restoration**

#### **(a) Restoration to Prior Condition**

Consistent with Section 6.17.230 of the City Code, in case of any disturbance of any Street, pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, landscaping or surface, in as good condition as before said work was commenced and in accordance with standards for such work set by the City and the City Code.

#### **(b) Disputes**

In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City of Bellingham Department of Public Works subject to appeal by Grantee to Hearings Examiner consistent with Section 7.5 herein.

### **3.7 Tree Trimming**

Grantee shall have the authority, pursuant to Sections 6.17.230 and 13.40.060 of the City Code, to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

### **3.8 Relocation**

#### **(a) Relocation of Facilities**

In the event that at any time during the period of the franchise, the city, county or state shall lawfully elect to alter or change the grade of any street, alley, or other public ways, the Grantee, upon reasonable notice by the proper governmental entity, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures within the public right-of-way at its own expense.

**(b) Failure by Grantee to Remove or Relocate**

If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee.

**(c) Procedure for Removal of Cable**

Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. Subject to the City Code and other Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

**3.9 Movement of Buildings**

Grantee shall, upon request by any person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than 15 days' notice to the cable company to arrange for such temporary wire changes.

## **SECTION 4. CABLE SYSTEM CAPACITY AND COMPLIMENTARY SERVICE**

### **4.1 Cable System Capacity**

During the term of this Franchise the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming to its customers in the Franchise Area, including Basic Cable.

### **4.2 Complimentary Cable Service in City**

As a voluntary initiative, the Grantee shall continue to provide free of charge to the City and schools, Cable Service (consisting of the 2011 Basic Service tier and the 2011 Expanded Basic Service tier, or their reasonable functional equivalent) to each Municipal Building, Institutional Facility and each State accredited public and private K-12 school, not including "home schools," or incarceration facilities, located in the Franchise Area. This service is offered throughout the term of the Franchise by Grantee at its sole discretion.

#### **(a) City or school responsibilities**

In instances wherein the City or school is leasing and occupying the building, the City or school shall be responsible for acquiring any necessary right of entry agreement and paying any associated fees that may be required by the building's owner. The Cable Service provided shall not be used for commercial purposes.

#### **(b) New Installations**

For new installations or relocation of installations, if the drop line to such building exceeds a Standard Installation drop of one hundred twenty-five (125) feet, the Grantee will accommodate the drop up to two hundred fifty (250) feet if the City or other agency provides the necessary attachment point for aerial service or conduit pathway for underground service. If the necessary pathway is not provided the City or other agency agrees to pay the incremental cost of such drop in excess of one hundred twenty-five (125) feet or the necessary distribution line extension of the Cable System, including the cost of such excess labor and materials.

#### **(c) Alternate Wireline Service Provider**

In the event that there is another wireline service provider (or providers) providing Cable Service within the City, the decision of which service provider will provide the complimentary service shall be decided on a case by case basis, in City's sole discretion, in an effort to maintain equitable burdens on each provider.

#### **4.3 Equal and Uniform Service**

Grantee shall provide access to equal and uniform Cable Service throughout the franchise area.

#### **4.4 Cable System Specifications**

##### **(a) Cable System Maintenance**

In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise agreement.

##### **(b) Emergency Alert Capability**

Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable Federal law and regulations including 47 C.F.R., Part 11, and any Washington State Emergency Alert System.

##### **(c) Standby Power**

Grantee shall provide standby power generating capacity at the Cable System control center and at all hubs. Grantee shall maintain standby power supplies, rated at least at two hours' duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours. This outage plan and evidence of requisite implementation resources shall be presented to the City upon request.

#### **4.5 Technical Standards**

The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), as now or hereafter constituted, shall apply. The City may establish reasonable technical standards for the performance of the Cable System if permitted to do so under Applicable law.

#### **4.6 Performance Testing**

Grantee shall perform all Cable System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. Written records of all Cable System test results performed by or for Grantee shall be maintained and available for City inspection upon request.

The tests may be witnessed by representatives of the City, and Grantee shall inform the City of the time and place of each test no less than three weeks prior to the scheduled compliance test. Written test reports of compliance testing shall be submitted to the City. If more than one of the locations tested fail to meet the performance standards, Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated at the locations which failed. If a second test results in failure of one or more sites, then the City may seek remedies in accordance with sections 7.5 and 7.6 unless the circumstances of the failure are caused by conditions which are beyond Grantee's control, as determined, acknowledged and verified by the City.

## **SECTION 5. PROGRAMMING AND SERVICES**

### **5.1 Categories of Programming Service**

Grantee shall provide video programming services in at least the following broad categories:

- News and Information
- Sports
- General Entertainment
- Arts/Performance/Humanities
- Science/Technology
- Children/Family/Seniors
- Foreign Language/Ethnic Programming
- Public, Educational and Governmental Access Programming

### **5.2 Changes in Programming Services**

Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without notifying the City. Further, Grantee shall provide at least thirty (30) days' prior written notice to Subscribers and to the City of Grantee's intent to effectively delete any broad category of programming or any channel within its control, including all proposed changes in channel allocation, including any new equipment requirements that may occur as a result of these changes.

Subscribers will be notified by Grantee of any changes in programming services or channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. The Grantee shall also give 30 days' written notice to both Subscribers and the City before implementing any service change. When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain day-parts.

### **5.3 Basis for Programming Decisions**

Upon request, Grantee shall meet with the City to discuss all documents and records pertaining to the basis for programming decisions, including, but not limited to, all customer surveys and survey results, individual requests, inquiries and complaints regarding program changes and types of programming. An explanation of local programming policies guiding Grantee's programming decisions shall be provided as a part of each year's annual report. Upon request, Grantee shall provide a copy of any survey results requested by the City.

### **5.4 Obscenity**

Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States; provided, however,

Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational and governmental access programming.

#### **5.5 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device that will enable the Subscriber to block all access to any and all channels without affecting those not blocked. Grantee shall inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

#### **5.6 Closed Captioning**

Grantee shall at all times comply with the requirements of 47 C.F.R. § 79.1 by providing services for the disabled, including, but not limited to, passing through closed captioning for local programming if provided by City or Access Provider.

## **SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

### **6.1 Access Channels**

Grantee shall make available for City's use up to three (3) Channels on the Cable System for PEG access purposes. Upon the Effective date, Grantee shall provide one (1) Channel to the City for PEG uses as determined in City's sole discretion. Either of the additional two (2) PEG channels shall be added to the Cable System by Grantee upon ninety (90) days advance written notice from the City. The additional PEG channels may be programmed by the City in City's sole discretion.

### **6.2 Control and Administration**

The control and administration of the PEG access Channels shall rest with the City and the City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion.

### **6.3 Cable Guide for PEG**

Grantee agrees that if it utilizes a cable guide under its control on its Cable System for all Channels, the PEG Channels shall be treated in a non-discriminatory fashion consistent with Applicable Law so that Subscribers will have ready access to PEG Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation.

### **6.4 Noncommercial Use of PEG**

PEG Channels are for noncommercial programming to be promoted and administered by the City as allowed under Applicable Law. Permitted noncommercial uses of the PEG Channels shall include by way of example and not limitation: (A) the identification of financial supporters similar to what is provided on public broadcasting stations; or (B) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (C) programming offered by accredited, non-profit, educational institutions which may offer telecourses over a PEG Channel.

### **6.5 Indemnification**

The City shall require, through the mutually agreed upon use requirements related to the protection of copyrighted material, that all public access users indemnify and hold the Grantee and the City harmless from all liability of any kind whatsoever, including the costs of legal defense arising from the use of facilities, channel(s) or access time by the user. To the extent allowed by law, the City agrees to indemnify, save and hold harmless the

Grantee from and against any and all liability resulting from the City's use of the PEG Channels required herein.

#### **6.6 PEG Channel Location**

Upon the Effective Date of this Franchise, the initial PEG access channel required in Section 6.1 shall be located on Channel 10 on Grantee's Cable System until such time as a move is mandated by Federal law or this Franchise.

Any additional PEG Channels required by the City shall be located by Grantee in channel locations consistent with the regional channel lineup in existence upon the Effective Date of this Franchise.

The PEG Channels will be located reasonably close in proximity to other broadcast Channels and/or other commercial video Channels, excluding pay-per-view programming offered by Grantee in the City.

In conjunction with any occurrence of PEG Channel(s) relocation, Grantee shall provide a minimum of \$9,000 of in-kind air time on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's (or City's designee's) pre-produced 30-second announcement explaining the change in location.

Grantee will give City at least 90 day notice prior to changing any PEG channel location or number.

#### **6.7 PEG Fees**

##### **(a) PEG Fee Amounts**

Grantee shall collect fees to support PEG obligations on a per subscriber per month basis.

Upon the Effective Date of this Franchise, Grantee shall collect on behalf of City a per Subscriber fee of fifty cents (\$.50) per month ("PEG Fee").

Subject to the preceding requirements of this Section 6.7(a), the City may, at any time over the term of this Franchise, provide Grantee ninety (90) days advance written notice and increase or decrease the PEG Fee as determined in City's sole discretion. In no event may any PEG Fee exceed fifty cents (\$.50)/Subscriber/month.

Any PEG fees collected and shown on Subscriber bills shall appear in a single line on the bill.

**(b) City's use of PEG Fees**

In no event shall the City use any portion of the PEG Fee in a manner inconsistent with 47 U.S.C. § 542(g)(2)(C) or any other applicable provisions of the Cable Act and FCC regulations.

The City and Grantee agree that the PEG Fee is in addition to the Franchise Fee, and falls within one or more of the exceptions in 47 U.S.C. § 542. Such costs may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Law.

**(c) Grantee payment of PEG Fees**

Grantee shall pay the PEG Fee to the City monthly at the same time as the payment of franchise fees under Section 11.1 of this Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise fees required as a result of its obligation to remit the PEG Funds or the PEG Fee.

Should Grantee continue to provide Cable Service after the scheduled expiration of this Franchise, until and unless this Franchise is superseded by a renewed franchise in accordance with Applicable Law, Grantee shall continue to make monthly PEG Fee payments for, and in support of PEG Channels as specified hereinabove.

Any PEG Access capital support amounts owing pursuant to this Franchise which remain unpaid more than thirty (30) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve (12) percent per annum or the prime lending rate published by the Wall Street Journal plus two percent on the day the payment was due, whichever is greater.

**6.8 Transition to HD Format for BTV10**

At such time as Grantee no longer provides Basic Service in an analog format, the City may, upon ninety (90) days advance written notice to Grantee, require that Grantee transmit BTV10 (the government access channel), in high definition (HD) format so long as City provides an HD signal to Grantee. City acknowledges that upon Grantees provision of an HD channel the City programming will no longer be carried in standard format and that only those customers with an HD converter and HD capable television, who pay Grantee's regular and customary charges associated with HD services, will be able to view the City programming via Grantees Cable system.

Upon request, Grantee shall provide information to the City regarding the subscriber trends in HD viewing capability.

Grantee shall also retain full discretion to locate BTV10 in an HD channel location consistent with channel location objectives described in Section 6.6.among its HD tier of services.

#### **6.9 Fiber Return Lines**

Grantee shall maintain free of charge to the City throughout the life of this Franchise the existing fiber return line at the Bellingham Municipal Court building in order to enable the distribution of PEG access programming to Grantee's residential Subscribers.

Grantee shall ensure that the Cable System is capable of transporting PEG programming (i.e. program origination capability) from the Bellingham Municipal Court building.

#### **6.10 Construction of New Fiber Return Lines.**

The City may direct Grantee to construct new fiber return lines to facilitate transport of PEG origination programming ("Origination Fiber") to specified termination locations within the City at any time over the term of the Franchise ("Fiber Construction").

After receiving a request for Fiber Construction, Grantee will promptly and in no event longer than forty-five (45) days, provide the City with a written estimate of the costs, calculated on a time and material basis with no cost mark up added by the Grantee ("Direct Costs"), associated with the proposed Fiber Construction. In preparing the written estimate of costs, the Grantee will identify the closest technically feasible point on Grantee's Cable System where a fiber connection (via a fiber termination panel) can be made so as to minimize the Direct Costs to be incurred by the City.

If the City then directs Grantee to perform the work, Grantee will perform it. Any such work shall be performed and completed within One Hundred and Twenty (120) Days after the City directs that the work be performed, unless the Parties agree to a different completion date.

Grantee will transport PEG programming from the current City Access programming origination site to the Grantee's head end free of charge.

#### **6.11 Continued Use of Network.**

The Grantee shall maintain ownership of the PEG Fiber despite the fact that City will pay all Direct Costs. Therefore, the Grantee grants the City an Indefeasible Right of Use for all PEG Fiber which the City has paid for under Section.

#### **6.12 PEG Signals and Equipment**

All PEG Channels shall be provided as part of Basic Service in accordance with applicable law. All PEG Channels may be delivered by the City to Grantee in standard digital format (or in an HD format for BTV10 in accordance with Section 6.8 herein).

Any and all costs associated with any modification of the PEG Channels or signals after the PEG Channels/signals leave the Access Provider's side of fiber termination panel, or any designated playback center authorized by the City, shall be borne entirely by Grantee and provided free of charge to the City and its designees.

Grantee shall not cause any programming to override PEG programming on any PEG Channel, except by oral or written permission from the City, with the exception of emergency alert system signals.

### **6.13 Technical Quality of PEG Channel Signals**

#### **(a) PEG channel signals**

PEG channel signals will not be intentionally degraded in any way that would reduce signal quality of the signals delivered by the City or the Access Providers to the Grantee. Grantee shall be responsible for all equipment, including head end equipment, on Grantee's side of fiber termination panel. Grantee shall not impose any additional charges on City or any Access Providers after the signal is handed off to Grantee.

Grantee shall maintain its Cable System in accordance with FCC Technical Standards so that PEG Channels and return lines are at the same level of technical quality and reliability as other commercial signals carried by Grantee, so long as the signal comes to Grantee at that level of quality.

Grantee agrees not to encrypt the PEG Channels any differently than other commercial Channels available on the Cable System. There shall be no significant deterioration in signal from the point of origination to the customer premise equipment on the Cable System. All processing equipment used by Grantee for processing PEG signals will be of similar quality to the processing equipment used for other commercial Channels.

The City shall ensure PEG Channels and signals leaving the City's playback facilities, or the playback facilities of the Access Providers, are in compliance with applicable FCC technical standards.

Grantee will transport PEG programming from the City's playback facilities, or the playback facilities of the Access Providers, to the Grantee's headend free of charge.

#### **(b) PEG Signal – Technical support from Grantee**

Within 24 hours of a call from City to the Grantee identifying a technical problem and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause,

then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

**6.14 Change in Technology**

In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change, Grantee shall, reimburse the City for such equipment as may be necessary.

**6.15 Relocation of Grantee's Headend**

In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated connection at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards without additional costs to the City.

## **SECTION 7. REGULATORY PROVISIONS**

### **7.1 Intent**

In accordance with the provisions of Chapter 6.17 BMC, the City retains the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

### **7.2 Delegation of Authority to Regulate**

The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the Whatcom County region.

### **7.3 Areas of Administrative Authority**

In addition to any other regulatory authority granted to the City by law or franchise, the City shall have administrative authority in the following areas:

- (a) Administering and enforcing the provisions of this Franchise agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- (b) Coordinating the operation of PEG Channel programming.
- (c) Planning expansion and growth of public access programming.
- (d) Formulating and recommending long-range cable communications policy for the Franchise area.
- (e) Disbursing and utilizing Franchise revenues paid to the City.

Grantee shall cooperate fully in facilitating the City's discharge of its administrative authority.

### **7.4 Regulation of Rates and Charges**

- (a) **Right to Regulate.** The City reserves the right to regulate rates and charges for any Cable Service within the limits of Applicable Law.
- (b) **Notice of Change in Rates and Charges.** Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City of Bellingham at least thirty (30) days' notice of any intended change to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers.
- (c) **Rate Discrimination Prohibited.** Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any Cable Service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual

preference, or neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations.

- (d) **Low Income Senior/Disabled Discount Program.** As a voluntary initiative Grantee agrees to provide throughout the term of this Franchise a discount of 30% from its published rate card to Basic Service Subscribers who are:

low income, and aged 65 years or older or disabled provided that such individual(s) are the legal owner or lessee/tenant of their dwelling unit and that their combined disposable income from all sources meets Grantee then-applicable income standards for participant.

Grantee shall administer the discount program. City shall refer potential qualifying customers to Grantee.

Upon request, Grantee shall provide City with the number of Subscribers participating in the discount program.

## **7.5 Franchise Violations, Remedies, and Revocation**

### **(a) Remedies**

The City shall have the right to assert the remedies set out below in the event Grantee violates any provision of this Franchise. These remedies are intended to embody the City's and/or the public's rights under City Charter Article 11.04 to the extent permitted by Applicable Law.

- (1) To the extent the City deems necessary to remedy the default, proceeding against all or any part of any security provided under the City Code or this Franchise, including, without limitation, any bonds, security funds, or other surety, Grantee shall be responsible for all direct and actual costs related to the enforcement action including, but not limited to, legal and administrative costs;
- (2) Impose liquidated damages as set forth in Section 7.6, but only after the due process provisions outlined herein have been completed;
- (3) Commencing an action at law for monetary damages or seeking equitable relief, including specific performance; or
- (4) In the case of a Grantee's default as to a material provision of the Franchise, undertake the proceeding to revoke the Franchise.

In determining which remedy or remedies for Grantee's violation are appropriate, the City shall take into consideration the nature and extent of the violation, the

remedy needed to prevent such violations in the future, whether Grantee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

**(b) Revocation**

The City has the right to revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

- (1) Grantee is in violation of any material provision of the Franchise agreement or has demonstrated a pattern of Franchise violations and fails to correct the violation(s) after written notice of the violation(s) and proposed forfeiture and a reasonable opportunity thereafter to correct the violation(s) as noted in section 7.5 (c); or
- (2) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, to the extent permitted by Applicable Law; or
- (3) Grantee is found to have engaged in any or attempted fraud or deceit upon the City, Persons, or Subscribers; or
- (4) Grantee fails to post a performance bond as required under the terms of this Franchise.

**(c) Enforcement Procedures**

- (1) Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise or has demonstrated a pattern of Franchise violations, it shall first make contact with Grantee to informally discuss the issue. This informal discussion may be via telephone, email or other electronic means and is intended as a courtesy to Grantee prior to issuing a notice of violation. Thereafter the City shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default ("Violation Notice").
- (2) Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from the receipt of the Violation Notice to: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. The City shall not unreasonably refuse to accept the Grantee's proposed cure date but such decision shall be the City's alone to make.

- (3) Contested Hearings. In the event the Grantee fails to respond to the Violation Notice or in the event that the alleged default is not remedied as required under this Section 7.5 (c), the City may refer the matter to the City's hearing examiner in accordance with Section 2.56 of the City Code. The Grantee will be provided an opportunity to present evidence to contest the alleged violation. City shall notify Grantee of the hearing in writing. The determination as to whether Grantee is in default of this Franchise shall be determined by the hearing examiner, but any such written decision shall be subject to appeal to a court of competent jurisdiction. Such appeal to the appropriate Court shall be filed within thirty (30) Days of the issuance of the written decision of the hearing examiner. City shall receive notice from Grantee of any appeal concurrent with any filing to a court of competent jurisdiction.
- (4) In the event the hearing examiner determines that Grantee is in non-compliance with any provision of the Franchise, the City may impose any of the remedies set out in section 7.

#### **7.6 Liquidated Damages**

- (a) Because Grantee's failure to comply with the provisions of this Franchise will result in damage to the City and because it will be impractical to determine the actual amount of such damages, the City and Grantee hereby agree upon and specify certain amounts set forth hereafter in this section which represent both parties' best estimate of the damages.
- (b) The City shall specify any damages subject to this section and shall include such information in the Violation Notice sent to Grantee required under Section 7.5(c)(1). Such Violation Notice may provide for damages sustained prior to the Violation Notice where so provided, and subsequent thereto pending compliance by Grantee.
- (c) To the extent that the City elects to assess liquidated damages as provided in this section and such liquidated damages have been paid, the parties agree that the assessment of liquidated damages does not constitute a waiver by the City of any other right or remedy it may have under the Franchise or Applicable Law.
- (d) Unless otherwise provided, liquidated damages shall accrue once the thirty (30) day cure period has expired following Grantee's receipt of the Violation Notice, unless the City has agreed to extend the thirty (30) day cure period. If Grantee fails to cure within the thirty (30) days, then the liquidated damages accrue from the date of the Violation Notice for a maximum of one hundred-twenty (120)

days, whereupon the City shall pursue alternate remedies as provided herein. Nothing in this section prevents the parties from settling any dispute relating to liquidated damages by mutual stipulation.

- (e) Grantee may cure the breach or violation within the time specified in Section 7.5(c)(2) to the City's satisfaction, whereupon no liquidated damages are assessed.
- (f) Schedule of Liquidated Damages. Nothing requires the City to assess liquidated damages, acting in its sole discretion, but such non-assessment does not operate as waiver or estoppel upon the City. Liquidated damages are set as follows.
  - 1. For failure to provide data, documents, reports and information as required by this Franchise or to cooperate with the City during a system review, One Hundred Fifty and No/100 Dollars (\$150) per day, or part thereof, per each separate violation.
  - 2. For failure to provide the services required by this Franchise, including, but not limited to, the implementation and utilization of the PEG Channels, performance of required tests, and compliance with customer service standards, Two Hundred Fifty and No/100 Dollars (\$250) per day for each day, or part thereof, such failure occurs or continues.
  - 3. For failure to comply with any of the material provisions of the Franchise, for which a liquidated damage is not otherwise specified, the liquidated damages shall be Two Hundred and No/100 (\$200) per day for each day, or part thereof, such failure occurs or continues.

#### **7.7 Removal of Cable Following Termination of Franchise**

Any order by the City to remove cable or conduit shall be mailed to Grantee not later than thirty (30) calendar days following the final determination of revocation of Grantee's right to occupy public right of way. Grantee shall file written notice with the City not later than 30 calendar days following the date of termination of the Franchise of its intention to remove cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed no later than 12 months following the date of expiration of the Franchise.

#### **7.8 Failure to Enforce**

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

## **7.9 Alternative Remedies**

- (a) As an alternative to the remedy set forth herein, the parties may mutually agree to submit any alleged violation of the provisions of this franchise to arbitration. The matter shall be determined by a board of three arbitrators, all of whom shall be citizens and taxpayers of the State of Washington, and shall be selected as follows: one by the City Council, one by the Grantee, and one by the two so appointed. Should the two arbitrators be unable to name a third, such third arbitrator shall be named by a judge of the Superior Court for Whatcom County. Said board shall make its decision in writing and file its decision with the parties within 60 days from the date of the appointment of the final arbitrator. The decision of the board shall be by a majority vote and signed by at least two arbitrators. The written decision shall be final and binding upon the parties.
- (b) No provision of this Franchise shall be deemed to bar the right of the parties to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in the Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the parties to recover monetary damages (except where liquidated damages are otherwise prescribed) for such violation by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

## **7.10 Compliance with the Laws; Eminent Domain**

Grantee shall comply with all applicable federal and State laws and regulations, including regulations of any administrative agency thereof, as well as all generally applicable ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the term, of this Franchise. Nothing in the Franchise shall expand or limit the City's right of eminent domain under State law. Nothing in the Franchise shall be deemed to waive the requirements of any lawful code, ordinance or resolution of the City requiring permits, fees to be paid, or regulation of construction.

## **SECTION 8. REPORTING REQUIREMENTS**

### **8.1 Monthly Revenue Report**

Grantee shall submit to the City along with its franchise fee payment a report showing the basis for computation of such fees showing the basis for the computation of the franchise fees and PEG fees paid during that period in a form and substance substantially equivalent to Exhibit A attached hereto. This report shall separately indicate revenues received by Grantee within the City including, but not limited to such items as listed in the definition of "Gross Revenues" at Section 1.22 of this Franchise.

### **8.2 Quarterly Trouble Call Report**

Grantee shall, consistent with the current practice on the effective date of this franchise, maintain a log of all Subscriber trouble calls and make this log available for City inspection. The log shall include the street name portion of the address, city, zip, job type, trouble call reason, drop type, date entered, time entered, schedule date, customer request yes-no, date completed, time completed, resolution.

The log shall be submitted on a quarterly basis to the City or person or agency designated by the City. The City may request the log more frequently if it is deemed necessary.

Upon request, Grantee agrees to provide the Trouble Call report in a .pdf format rather than in a paper format.

### **8.3 Quarterly Report**

Grantee shall, provide City with information which shall describe in detail Grantee's compliance with customer service standards.

### **8.4 Annual Report**

On or before May 31<sup>st</sup> of each year during the term of this Franchise, Grantee shall present a written report to the City which shall include:

- (a) A summary of gross revenue and franchise fee calculations for the previous year.
- (b) An unaudited financial statement for Comcast of Washington IV, Inc. The City shall have the right one (1) time during the Term of this Franchise to require that the Grantee provide the City with an audited financial statement for any one fiscal year of the Grantee.
- (c) A summary of the previous year's activities for the Franchise area served by Grantee including, but not limited to, the total number of Subscribers for each category of service, the number of homes passed, miles of overhead and underground cable plant.
- (d) A description of all significant changes and modifications to the system or services that have been implemented in the previous year.

## **8.5 Ascertainment Process**

Grantee shall:

- (a) Every third year, beginning in 2014, using a methodology approved by the City, provide a systematic ascertainment of the community's views regarding the nature and adequacy of Grantee's services, and of the cable related needs and interests of the community and the preferences of customers in the City of Bellingham.
- (b) At least sixty (60) days prior to beginning ascertainment survey, Grantee and City shall meet to discuss proposed survey questions and Grantee shall provide City with a draft copy of the proposed survey questions. The City shall have the right to add up to 10 questions to the survey or refine questions based on Grantee's draft survey to address issues related to Cable Services or PEG channel viewing in the City. The parties agree to collaborate so that survey can be conducted in timely manner.

## **8.6 Monitoring and Compliance Reports**

Upon request, but no more than once a year, Grantee shall provide FCC proof of performance test results. Upon request, Grantee shall make available for City's review, any other technical testing results related to the system serving the City.

## **8.7 Additional Reports and Information**

Grantee shall prepare and the City may review, at the times and in the form prepared by Grantee in its normal course of business, such additional reports with respect to its operation, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise.

Upon request, Grantee will provide updated route map to City. City shall have right to inspect detailed system maps at Grantee's local office.

## **8.8 Grantee Report of Communications with State Regulatory Bodies or Committees**

Grantee shall notify the City whenever the Grantee names the City in any filings which Grantee may submit to the State of Washington that bear relevance on the terms of this Franchise. Upon request, copies of responses from the State of Washington related to Grantees submittal pertaining to the Cable System serving the City shall likewise be filed.

In addition, Grantee shall within 10 days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the City's administration of this Franchise, provide the City a copy of the communication.

## **SECTION 9. CUSTOMER SERVICE POLICIES**

### **9.1 Response to Customers and Cooperation with City**

Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

### **9.2 Definition of "Complaint"**

For the purposes of section 9, with the exception of Subsection 9.3, a "complaint" shall mean any communication to Grantee or to the City by a Subscriber or a Person who has requested cable service, and is expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise and has not found resolution through normal Grantee processes.

### **9.3 Customer Service Agreement**

Grantee shall provide to Subscribers a comprehensive service agreement and a customer packet for use in establishing Subscriber service. This packet shall, at a minimum, contain the following information:

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Liability specifications.
- (f) Converter/Subscriber equipment policy.
- (g) Breach of Agreement specification.
- (h) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (i) The name and address, of the City identified as the local franchising authority This information shall be contained in the packet A copy of the customer service agreement shall be provided to each Subscriber at the time of initial connection and any subsequent reconnection. Thereafter, if the packet is modified to reflect material changes in policy an updated copy of the packet shall be sent to all Subscribers within 30 days of such modification.

## **9.4 Customer Service**

### **(a) Customer Service Location**

Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

### **(b) Customer Service Standards**

The City hereby adopts the customer service standards set forth in §76.309 of the FCC's rules and regulations, as included in Exhibit B.

### **(c) Customer Service procedures regarding television signal quality**

Consistent with §76.1602 of the FCC's rules and regulations, Grantee will provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:

- (1) Products and Services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and
- (6) Billing and complaint procedures, including the address and telephone number of the City's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City.

### **(d) Customer Service Rate and Service Changes**

Consistent with §76.1603 of the FCC's rules and regulations, subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee.

Grantee shall give 30 days' written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change

involves the addition or deletion of channels, each channel added or deleted must be separately identified.

**(e) Information on Subscriber Bills**

Consistent with §76.1619 of the FCC's rules and regulations,

- (1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (2) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

**(f) Refund Policy**

If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) days.

**(g) Late Fees**

Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill.

**(h) Disputes**

In the event a subscriber has a complaint related to Grantee's service or performance and Grantee has failed to resolve the issue Subscribers may then direct complaints, regarding Grantee's service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or commission of the City.

**9.5 Customer Bills**

Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

**9.6 Notification of Complaint Procedure**

Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in section 9.3, the 24-hour Grantee phone number for Subscriber inquiries.

### **9.7 Grantee Identification**

Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

## **SECTION 10. LINE EXTENSION POLICY**

### **10.1 Service and Installation**

Grantee shall make service available at standard installation and service rates, for every potential subscriber, pursuant to the following requirements:

- (a) In newly developing underground service areas, where a shared trench is provided, Grantee shall extend and make cable television service available to every dwelling unit in areas having at least thirty-two (32) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.
- (b) In any area served by overhead facilities Grantee shall extend and make cable television service available to every dwelling unit in areas having at least thirty-two (32) dwelling units per strand mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.
- (c) In any area served by underground facilities that has existing homes that are not served by Grantee, Grantee shall extend and make cable television service available to every dwelling unit in areas having at least one-hundred twenty (120) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system.
- (d) Grantee must extend and make cable television service available to any resident requesting connection at the standard connection charge if the connection to the resident would require no more than a standard 125' aerial drop line.
- (e) With respect to requests for connection requiring an aerial drop line in excess of 125', the Grantee must extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by the company for the distance exceeding 125'.
- (f) The Grantee, in its application, may propose a line extension policy which will result in serving more residents of city than as required.

### **10.2 Annexed Areas and Requirements**

#### **(a) City Notice of Annexation**

In the event the City annexes any area which is being provided cable service by Grantee, the City shall provide to Grantee, within (10) ten working days of passage by City Council, a copy of the City ordinance, legal description, if not found in the ordinance, addresses and a map defining the annexed area.

**(b) Grantee Update of Subscriber Information Following Annexation**

Grantee shall provide written notice to the City, within one hundred-twenty (120) days following an annexation, indicating that subscriber addresses within the annexation area have been updated to reflect the City as the franchising authority. Grantee shall provide revenue for new subscribers effective from the date of annexation.

**(c) Grantee service to newly annexed areas**

Upon the annexation of any additional land area by the City, the following conditions apply:

- (1) If the annexed area is not currently served by a cable operator, Grantee will be subject to the other provisions of this franchise.
- (2) If the annexed area is served by a cable operator other than Grantee, the Grantee has the option to extend its Cable System to the newly annexed area if Grantee determines that it is economically feasible to do so.

## **SECTION 11. COMPENSATION AND FINANCIAL PROVISIONS**

### **11.1 Franchise Fees**

During the term of the Franchise, Grantee shall pay to the City a franchise fee of 5% of Gross Revenues. If any such law, regulation or valid rule alters the 5% franchise fee enacted by the Cable Act, then the City shall have the authority to increase or decrease the franchise fee accordingly, provided such change is for purposes not inconsistent with Applicable Law. In the event franchise fee is modified by the City, City agrees to provide Grantee with prompt written notice of such modification. In the event Grantee bundles or combines Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee) so that Subscribers pay a single fee for more than one class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the franchise fee, it shall allocate Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

- (a) Franchise fees shall be paid monthly not later than 45 days following the end of a given month. In accordance with Section 8.1 of this Franchise, and not later than the date of each payment, Grantee shall file with the City on a monthly basis a franchise fee payment report which identifies Gross Revenues earned by Grantee during the prior month. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.
- (b) Neither current nor previously paid franchise fees shall be subtracted from the Gross Revenue amount upon which franchise fees are calculated and due for any period, unless otherwise required by Applicable Law. Nor shall copyright fees or other license fees paid by Grantee be subtracted from Gross Revenues for purposes of calculating franchise fees.
- (c) Any franchise fees owing pursuant to this Franchise which remain unpaid more than 45 days after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12% per annum or 2% above prime lending rate as quoted by major Seattle banks, whichever is greater.

### **11.2 Franchise Fees for Government and Education Access Operation**

During the term of the Franchise, the City shall place no less than 1.25% of Franchise fees received in a fund to support BTV10 operations.

### **11.3 City Annual Report to Grantee of PEG Fee Purchases**

City shall provide to Grantee, within ninety (90) days following the end of each calendar year, a report detailing the City's PEG related capital expenditures.

If Grantee alleges that City has inappropriately used PEG fees, Grantee agrees to first notify the City of its concern prior to taking any legal action or withholding payment against any other fees owed City.

### **11.4 Auditing and Financial Records**

Grantee shall manage all of its operations in accordance with a policy of keeping relevant books and records open and accessible to the City. The City shall have the right as necessary for effectively enforcing the Franchise, to inspect at any time during Normal Business Office Hours upon reasonable notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by Grantee and any parent company pursuant to the rules and regulations of the FCC and other regulatory agencies, and other like materials of Grantee and any parent company which relate to the enforcement of the Franchise. Access to the aforementioned records shall not be denied by Grantee to representatives of the City on the basis that said records contain "proprietary" information. However, to the extent allowed by Washington law, the City shall protect the trade secrets and other confidential information of Grantee and any parent company. All books and records relating to Grantee's activities under the Franchise shall be, or upon request be made, available in the City of Bellingham.

Grantee agrees to meet with representatives of the City upon request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records.

The City or its authorized agent may at any time and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of franchise fees paid to the City. Grantee and each parent company of Grantee shall cooperate fully in the conduct of such audit. Any such audit shall take place within three (3) years from the date the City receives such payment, after which period any such payment shall be considered final.

Upon the completion of any such audit by the City, the City shall provide to the Grantee a final report setting forth the City's findings in detail, including any and all substantiating documentation. Enforcement of any overpayment or underpayment shall be undertaken in accordance with Section 7.5 of this Franchise. In the event Grantee has underpaid the City by an amount greater than five percent (5%) underpayment, Grantee agrees to pay the cost of the audit in an amount up to fifteen thousand dollars (\$15,000). No such payment shall be required of Grantee until Grantee has exhausted all of its Legal and administrative remedies.

In the event of an overpayment by Grantee, the City shall have the option of reimbursing Grantee within forty-five (45) days or of requesting in writing within forty-five (45) days

that Grantee withhold fifty percent (50%) of each future Franchise Fee payment until such time as said overpayment is recovered and thereafter remitting the full amounts to the City.

The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement of the Franchise.

#### **11.5 Performance Bond**

Within 30 days after the Grantee's acceptance of this Franchise, Grantee shall post a performance bond, in the amount of two hundred fifty thousand dollars (\$250,000.00), to ensure Grantee's faithful performance of the terms of this Franchise.

Neither the provisions of this section, any bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by Grantee or to limit liability of Grantee under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

#### **11.6 Validity of Bond**

If, at any time during the term of the Franchise, the condition of the entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the City, Grantee shall replace such bond by a bond of like amount and similarly conditioned, issued by an entity satisfactory to the City.

#### **11.7 Indemnification by Grantee**

Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of, or alleged to arise out of, any claim for damages for Grantee's invasion of the right of privacy, defamation of any person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington or any local agency applicable to Grantee in its business. Nothing herein shall be deemed to prevent the City, its officers, or its employees, from participating in the defense of any litigation by their own counsel, at such parties expense. Such participation shall not, under any circumstances, relieve

Grantee from its duty of defense against liability, or of paying any judgment entered against the City, its officers, or its employees.

Notwithstanding, this Section (11.7) does not include PEG Access programming, operations, or administration, Access Channel(s), Access Facilities, or Access Provider(s), all of which is the City's sole responsibility.

#### **11.8 Grantee Insurance**

Grantee shall maintain, throughout the term of the Franchise, liability insurance in the minimum amounts of:

- (a) \$2,000,000 for personal injury or death to any one person and \$5,000,000 aggregate for personal injury or death per single accident or occurrence.
- (b) \$2,000,000 for property damage to any one person and \$5,000,000 aggregate for property damage per single accident or occurrence.
- (c) \$2,000,000 for all other types of liability, including claims for damages for invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or, for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington, or any local agency with jurisdiction.

Such insurance shall specifically name as additional insured the City of Bellingham, its officers, employees and agents, shall further provide that the policy shall not be modified or canceled during the life of this Franchise without giving 30 days' written notice to the City.

Grantee shall file with the City a certificate of insurance showing up-to-date coverage and additional insured coverage, as set forth above. Coverage shall not be changed or canceled without approval of the City.

## **SECTION 12. MISCELLANEOUS PROVISIONS**

### **12.1 Posting and Publication**

Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

### **12.2 Guarantee of Performance**

Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a 10-year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Grantee.

### **12.3 Entire Agreement**

This Franchise agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

### **12.4 Consent**

Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

### **12.5 Resolutions Terminated**

The cable television franchises as originally granted by Ordinance No. 10709 is hereby terminated.

### **12.6 Franchise Acceptance**

This Franchise granted by this Ordinance shall be effective 15 days from date of final passage by City Council; provided, however, that Grantee shall have 60 days to accept the Franchise and comply with all conditions for such acceptance. This Franchise shall be voidable at the City's discretion if Grantee fails to accept within 60 days.

### **12.7 Force Majeure**

In the event that either party is prevented or delayed in the performance of any of its obligations, under this Agreement by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, sabotage, boycotts, lockouts, labor disputes, shortage of qualified labor, freight embargoes, shortages or unavailability of materials or supplies, unusually severe weather conditions, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Agreement, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

### **12.8 Work of Contractors and Subcontractors**

Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all

work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

#### **12.9 Severability**

If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

#### **12.10 Counterparts**

This Franchise Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

#### **12.11 No Waiver of Rights**

Nothing in this Franchise shall be construed as a waiver of any rights, substantive or procedural, either City or Grantee may have under Federal or state law unless such waiver is expressly stated herein.

#### **12.12 No Third Party Beneficiaries**

Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

#### **12.13 Modification**

No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

#### **12.14 Governing Law**

Franchise shall be deemed to be executed in the State of Washington, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Washington, as applicable to contracts entered into and performed entirely within the State.

### **12.15 Notices**

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of Bellingham  
210 Lottie Street  
Bellingham, WA 98225  
Attn: Finance Director

Non-binding courtesy copy to:

City of Bellingham  
210 Lottie Street  
Bellingham, WA 98225  
Attn: I.T. Director

To the Grantee:

Comcast of Washington IV, Inc.  
15815 25<sup>th</sup> Ave. W.  
Lynnwood, WA 98087  
Attn: Government Affairs Dept.

Non-binding courtesy copy to:

Comcast Cable Communications, Inc.  
1525 75<sup>th</sup> St. S.W.  
Everett, WA 98203  
Attn.: Government Affairs Dept.

**PASSED** by Council this 24<sup>th</sup> day of October, 2011.


  
\_\_\_\_\_  
Council President

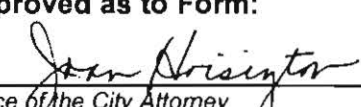
**EXECUTED**, this the 2nd day of December, 2011, for the Grantee:  
  
\_\_\_\_\_  
Name Signature Title  
Timothy T. Nester  
SVP - Finance and Accounting

**EXECUTED**, this the 26<sup>th</sup> day of October, 2011, for the **CITY OF BELLINGHAM**:

  
\_\_\_\_\_  
Mayor

**Departmental Approval:**  
  
\_\_\_\_\_  
Department Head

**Attest:**  
  
\_\_\_\_\_  
Finance Director

**Approved as to Form:**  
  
\_\_\_\_\_  
Office of the City Attorney

## EXHIBIT A – FRANCHISE FEE PAYMENT WORKSHEET

	Month/Year	Month/Year	Month/Year	Total
Basic Service				
Expanded Basic Service				
Bad Debt/Write-offs				
Bulk Revenue				
Digital Cable/Services				
Equipment Revenue				
FCC Fee Revenue				
Franchise Fee Revenue				
Guide Revenue				
Inside Wiring				
Installation Charge				
Late Fee Revenue				
Other Revenue				
Premium Service				
Pay-per-view				
Processing Fees				
Allocated Revenue				
Home Shopping Revenue				
Leased Access				
Other Revenue				
Tower & Rental Income				
Local Advertising				
National Advertising				
Bad Debt on Advertising				
<b>TOTAL REVENUE</b>				
Fee Calculated				

Fee Factor: 5%

Note: PEG fees paid will be described in a separate monthly report.

## **EXHIBIT B - FCC CUSTOMER SERVICE STANDARDS**

Grantee shall comply in all respects with the following customer service requirements established by the §76.309 of the FCC's rules and regulations:

- (1) Cable System office hours and telephone availability:

  - (i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

    - (A) Trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours.
    - (B) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
  - (ii) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
  - (iii) The operator shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
  - (iv) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
  - (v) Customer service center and bill payment locations will be open at least during Normal Business Office Hours and will be conveniently located.
- (2) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

  - (i) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

- (ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The cable operator must begin actions to correct other Service problems the next business day after notification of the Service problem.
  - (iii) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The operator may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)
  - (iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  - (v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (3) Communications between Cable operators and Subscribers:
- (i) Refunds. Refund checks will be issued promptly, but no later than either:
    - (A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
    - (B) The return of the equipment supplied by the cable operator if service is terminated.
  - (ii) Credits. Credits for Service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

## **EXHIBIT C- CHECKLIST OF NOTICES AND REPORTS**

This Exhibit provides excerpts from this agreement related to regular notice and reporting requirements of this document. Other less-routine notice requirements are described in relevant sections of this agreement and are not listed below.

### **Reports and notice requirements – Cross-reference – Grantee to City**

Section 4.6 – Performance Testing – Grantee shall inform the City of the time and place of each test no less than three weeks prior to the scheduled compliance test

Section 5.2 – Changes in Programming Services – Grantee shall provide at least thirty (30) day's prior written notice to Subscribers and to the City of Grantee's intent to effectively delete any broad category of programming or any channel... including all proposed changes in channel allocation, including any new equipment requirements.... The Grantee shall also give 30 days' written notice to both Subscribers and the City before implementing any service change.

Section 5.3 – Basis for Programming Decisions – An explanation of local programming policies guiding Grantee's programming decisions shall be provided as part of each year's annual report.

Section 6.6 – PEG Channel Location – Grantee will give the City at least 90 day notice prior to changing any PEG channel location or number.

Section 7.4 – Regulation of Rates and Charges – Grantee shall give the City and all Subscribers within the City of Bellingham at least thirty (30) days' notice of any intended change to Subscriber rates or charges.

Section 8.1 – Monthly Revenue Report

Section 8.2 – Quarterly Trouble Call Report

Section 8.4 – Annual Report

Section 8.5 – Ascertainment Process – Every third year, beginning in 2013, using a methodology approved by the City, provide a systematic ascertainment of the community's views... At least sixty (60) days prior to beginning ascertainment survey, Grantee and City shall meet to discuss proposed survey questions...

Section 8.8 – Grantee report of communications with State regulatory bodies or committees - Grantee shall notify the City whenever the Grantee names the City in any filings which Grantee may submit to the State of Washington that bear relevance on the terms of this Franchise... Grantee shall within 10 days of any communication to or from any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement relating to the City's administration of this Franchise, provide the City a copy of the communication

Section 10.2 – Annexed Areas and Requirements - Grantee shall provide written notice to the City, within one hundred-twenty (120) days following an annexation, indicating that

subscriber addresses within the annexation area have been updated to reflect the City as the franchising authority.

**Reports and notice requirements – Cross-reference – City to Grantee**

Section 10.2 – Annexed Areas and Requirements - In the event the City annexes any area which is being provided cable service by Grantee, the City shall provide to Grantee, within (10) ten working days of passage by City Council, a copy of the City ordinance, legal description, if not found in the ordinance, addresses and a map defining the annexed area.

Section 11.3 – City annual report to Grantee of PEG fee purchases - City shall provide to Grantee, within ninety (90) days following the end of each calendar year, a report detailing the City's PEG related capital expenditures.

CABLE FRANCHISE BOND

Bond 09057483

KNOW ALL BY THESE PRESENTS: That COMCAST OF WASHINGTON IV, INC.

15815 25th Avenue, W Lynnwood WA 98097, as Principal,  
and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, as Surety, are  
held and firmly bound unto CITY OF BELLINGHAM, WA

\_\_\_\_\_, as Obligee,  
in the sum of Two Hundred Fifty Thousand and 00/100

DOLLARS (\$ 250,000.00), to the payment whereof well and truly to be made to the Obligee, we bind ourselves,  
our successors and assigns, firmly by these presents. Sealed with our seals and dated this 12th day of  
December, 2011.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas the Obligee has granted unto the Principal, a  
franchise beginning November 8th, 2011, and whereas the said Principal is required to execute a bond in  
the penal sum of Two Hundred Fifty Thousand and 00/100  
(\$ 250,000.00) in favor of the Obligee, conditioned upon its performance of the obligations of the grantee under said  
franchise;

NOW, THEREFORE, if the above bounden Principal shall perform the obligations of the grantee under said franchise, then this  
obligation to be void otherwise to remain in full force and virtue. This bond may be canceled by the Surety upon thirty days  
notice to the Obligee by registered mail.

ATTEST:

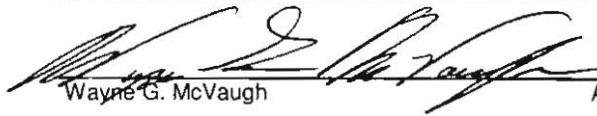
COMCAST OF WASHINGTON IV, INC.

(Principal)

BY: 

**ARTHUR R. BLOCK**  
Senior Vice President

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

  
Wayne G. McVaugh

Attorney-in-Fact

**Power of Attorney  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by M. P. HAMMOND, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Richard G. DICCIANI, Darella E. WHITE, Douglas R. WHEELER, Richard A. JACOBUS, Mary C. O'LEARY, Sandra E. BRONSON, Maureen MCNEILL, Wayne G. MCVAUGH and Nancy K. WALLACE, all of Philadelphia, Pennsylvania, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Richard G. DICCIANI, Darella E. WHITE, Douglas R. WHEELER, Richard A. JACOBUS, Mary C. O'LEARY, Sandra E. BRONSON, Maureen E. MCNEILL, Wayne G. MCVAUGH, Nancy K. WALLACE, dated June 13, 2006.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 20th day of June, A.D. 2006.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Gregory E. Murray*

By:

*M. P. Hammond*

Gregory E. Murray Assistant Secretary

M. P. Hammond

Vice President

State of Maryland }  
City of Baltimore } ss:

On this 20th day of June, A.D. 2006, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came M. P. HAMMOND, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Maria D. Adamski*

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2015

## EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,....and to affix the seal of the Company thereto."

### CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 12<sup>th</sup> day of December, 2011.

  
Assistant Secretary



Comcast Cable  
11815 25th Ave West  
Lynnwood, WA 98087

December 14, 2011

**Sent Via Overnight Mail**

Mr. John Carter  
Director of Finance  
City of Bellingham  
625 Halleck Street  
Bellingham, WA 98225

Re: Cable Television Franchise Renewal

Dear Mr. Carter:

Enclosed please find one (1) fully executed copy of the Cable Television Franchise Agreement between the City of Bellingham, WA (hereinafter, "the City") and Comcast of Washington IV, Inc. (hereinafter, "Comcast"), and the deliverables as required.

- The Certificate of Insurance No. CLE-003744919-01 as required by Section 11.8 of the franchise agreement. Please replace the certificate of insurance previously issued.
- Cable Performance Bond No. 09057483 in the amount of two hundred and fifty thousand dollars (\$250,000) as required by Section 11.5 of the franchise agreement. And the Programming Channel Guide side letter agreement.

If you have any questions concerning any of the above-referenced documents, please feel free to call me at (425) 741-5752 or Stan Finley at (425) 263-5314.

Sincerely,

Ann Svensson  
Franchise Contracts Administrator  
Comcast - WA Market

Enclosures

cc: Stan Finley, Comcast - with enclosures  
Marty Mulholland, City of Bellingham with enclosures  
Franchise File, Comcast



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/12/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
MARSH USA INC.  
TWO LOGAN SQUARE  
PHILADELPHIA, PA 19103-2797  
Attn: Comcast.Certs@marsh.com Fax: 212-948-0360

CONTACT  
NAME:  
PHONE  
(A/C, No, Ext):  
E-MAIL  
ADDRESS:

FAX  
(A/C, No):

05194 -ALL-GAWU-11-12 COMCA LYNNW WA NO NO

INSURED  
COMCAST OF WASHINGTON IV, INC.  
15815 25TH AVENUE W.  
LYNNWOOD, WA 98087

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	ACE American Insurance Company	22667
INSURER B:	ACE Property And Casualty Ins Co	20699
INSURER C:	Indemnity Ins Co Of North America	43575
INSURER D:		
INSURER E:		
INSURER F:		

## COVERAGES

CERTIFICATE NUMBER:

CLE-003744919-01

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b>					
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY		XSL G25532867	12/01/2011	12/01/2012	EACH OCCURRENCE \$ 4,900,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 4,900,000
	<input checked="" type="checkbox"/> \$100,000 SIR					MED EXP (Any one person) \$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PERSONAL & ADV INJURY \$ 4,900,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					GENERAL AGGREGATE \$ 25,000,000
						PRODUCTS - COMP/OP AGG \$ 6,000,000
						\$
A	<b>AUTOMOBILE LIABILITY</b>					
	<input checked="" type="checkbox"/> ANY AUTO		ISA H08692506	12/01/2011	12/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 10,000,000
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR				EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE	XOO G25833892	12/01/2011	12/01/2012	AGGREGATE \$ 5,000,000
	DED <input type="checkbox"/> RETENTION \$					\$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>					
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A	WLRC46771473 (AOS)	12/01/2011	12/01/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	(Mandatory in NH)		WLRC46771485 (CA)	12/01/2011	12/01/2012	E.L. EACH ACCIDENT \$ 2,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below		WLRC46771497 (MN)	12/01/2011	12/01/2012	E.L. DISEASE - EA EMPLOYEE \$ 2,000,000
			SCFC46771503 (WI)	12/01/2011	12/01/2012	E.L. DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

## RE. FRANCHISE AGREEMENT

THE CITY OF BELLINGHAM, ITS OFFICERS, EMPLOYEES AND AGENTS, ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECT TO GENERAL LIABILITY POLICY AND AUTOMOBILE LIABILITY POLICY WHERE REQUIRED BY WRITTEN CONTRACT WITH THE NAMED INSURED. \$100,000 PER OCCURRENCE SELF INSURED RETENTION APPLIES ONLY TO THE ABOVE GENERAL LIABILITY POLICY.

## CERTIFICATE HOLDER

CITY OF BELLINGHAM  
210 LOTTIE STREET  
BELLINGHAM, WA 98225

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
of Marsh USA Inc.

Manashi Mukherjee

*Manashi Mukherjee*

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**ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION**

Named Insured COMCAST CORPORATION			Endorsement Number
Policy Symbol XSL	Policy Number G25532857	Policy Period 12/01/11- 12/01/12	Effective Date of Endorsement 12/1/11
Issued By (Name of Insurance Company) ACE AMERICAN INSURANCE COMPANY			

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**This endorsement modifies insurance provided under the following:**

**EXCESS COMMERCIAL GENERAL LIABILITY POLICY**

**SCHEDULE**

**Name of Person or Organization:**

**All where required by written or oral contract.**



April 1, 2019

UPS-Overnight Mail-Signature Required

Marty Mulholland  
Information Services Director  
City of Bellingham  
210 Lottie Street  
Bellingham, WA 98225

Subject: FRANCHISE RENEWAL

Dear Mr. Mulholland:

We at Comcast appreciate the opportunity to serve the citizens of Bellingham. It is our credo that *we will be the company to look to first for the communications products and services that connect people to what's important in their lives*. In living our credo, we look forward to providing cable services to our customers in Bellingham for many years to come. Therefore, we are taking this step to ensure the renewal of our franchise with you.

The Cable Communications Policy Act of 1984 ("the 1984 Cable Act") encourages franchisors and cable operators to reach renewal agreements at any time through an informal process of discussion. However, Section 626 of the 1984 Cable Act also provides for commencement of a formal renewal procedure. To preserve our statutory rights to this formal procedure, this letter is our official notice to you invoking that provision.

This letter is not intended to introduce a new formality into our discussions, nor is that the intention of the 1984 Cable Act. In fact, we prefer to reach a mutually satisfactory agreement through informal negotiations, thus making many of the 1984 Cable Act's formal procedures unnecessary.

I will be happy to discuss this matter with you, or provide any additional information that you may require. I look forward to meeting with you in the near future and to continuing a relationship that, we believe, benefits both the community and the residents of Bellingham.

Sincerely,

Carla Carrell  
Comcast – Director, Government Affairs



## BELLINGHAM CITY COUNCIL

210 Lottie Street, Bellingham, Washington 98225  
Telephone (360) 778-8200 Fax (360) 778-8101  
Email: [ccmail@cob.org](mailto:ccmail@cob.org) Website: [www.cob.org](http://www.cob.org)

## BELLINGHAM CITY COUNCIL NOTICE OF PUBLIC HEARING

Notice is hereby given that the Bellingham City Council will hold a Public Hearing on **December 06, 2021 at 7:00 PM** or as soon thereafter as possible during their Regular City Council meeting, which will take place remotely, to take public comment on the following:

**Cable Television Franchise. An Ordinance Renewing the Grant of a Franchise to Comcast Cable Communications Management, LLC to Operate and Maintain a Cable System in the City of Bellingham; Setting Forth Conditions Accompanying the Grant of Franchise; and Providing for City Regulation and Administration of the Cable System. A complete copy of the Proposed Ordinance will be Furnished upon Request.**

Detailed information can be found at: [meetings.cob.org](http://meetings.cob.org) five days prior to the public hearing.

**Staff Contact:** Sarah Chaplin, Senior Assistant City Attorney, [swchaplin@cob.org](mailto:swchaplin@cob.org) 360-778-8276

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 prior to 10:00 AM on December 01 2021, 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 December 06, 2021 may do so via the following link: <https://cob.org/cczoom>.

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
- (929) 205-6099

Meeting ID: **941 9601 5179**

Password: **9**

Publication date: **November 14, 2021, November 21, 2021, November 28, 2021, and December 5, 2021**

HANNAH STONE  
Council Member  
1<sup>st</sup> Ward  
778-8211  
[hetsone@cob.org](mailto:hetsone@cob.org)

GENE KNUTSON  
Council Member  
2<sup>nd</sup> Ward  
734-4686  
[gknutson@cob.org](mailto:gknutson@cob.org)

DANIEL HAMMILL  
Council Member  
3<sup>rd</sup> Ward  
778-8213  
[dchamill@cob.org](mailto:dchamill@cob.org)

PINKY VARGAS  
Council Member  
4<sup>th</sup> Ward  
778-8210  
[ptvargas@cob.org](mailto:ptvargas@cob.org)

LISA ANDERSON  
Council Member  
5<sup>th</sup> Ward  
778-8217  
[laanderson@cob.org](mailto:laanderson@cob.org)

MICHAEL LILLQUIST  
Council Member  
6<sup>th</sup> Ward  
778-8212  
[mlilliquist@cob.org](mailto:mlilliquist@cob.org)

HOLLIE HUTHMAN  
Council Member  
At Large  
778-8216  
[hahuthman@cob.org](mailto:hahuthman@cob.org)



# City Council Agenda Bill

23180

Bill Number

**Subject: Public Hearing to Consider an Ordinance Amending the Infill Housing Toolkit Provisions of the Bellingham Municipal Code**

Summary Statement: The Infill Housing Toolkit (ITK) was enacted in 2009 to allow and encourage the development of alternative housing forms and ownership opportunities. Staff has proposed a number of targeted amendments to the ITK provisions in BMC Titles 20, 21 and 23. The intent of the amendments is to further encourage the development of "missing middle" housing forms such as small lot single family homes, townhomes, duplexes, triplexes and cottage housing.

The Planning Commission completed their review on Nov. 18 and recommends approval of the changes.

Previous Council Action: **2009 adoption of Infill Housing Toolkit provisions of the BMC**

Fiscal Impact: **TBD**

Funding Source: **Staff time to develop the amendments is included in the PCDD Budget**

Attachments:

1. ATTACHMENT 1 - DRAFT ORDINANCE WITH EXHIBIT A
2. ATTACHMENT 2 - PC STAFF REPORT 11/4/21
3. ATTACHMENT 3 - PC MINUTES 11/4/21
4. PC MEMO 11/17/21
5. ATTACHMENT 5 - PUBLIC COMMENT
6. ATTACHMENT 6 - PRESENTATION
7. PUBLIC HEARING NOTICE

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Public Hearing - Direction Requested	12/06/2021	Provide Direction	Greg Aucutt, PCDD	20 minutes

**Recommended Motion:**

**Council Committee:**

**Agenda Bill Contact:**

Greg Aucutt, Planning and Community Development, 360-778-8300

**Reviewed By**

*Gregory R. Aucutt*

**Department**

Planning & Community Development

**Date**

11/29/2021

**Council Action:**

*James E. Erb*

Legal

11/30/2021

*Seth M. Fleetwood*

Executive

11/30/2021

ATTACHMENT A

Attachment 1

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BELLINGHAM AMENDING TITLES 20 AND 21 OF THE BELLINGHAM MUNICIPAL CODE REGARDING INFILL HOUSING PROVISIONS.**

**WHEREAS**, the infill housing chapter, Chapter 20.28 BMC, was established in 2009 to introduce innovative housing types meant to offer alternative housing forms in addition to the city's familiar and typical single and multifamily development; and

**WHEREAS**, between 2009 and 2015, the city received few applications under these provisions;

**WHEREAS**, since 2015, the city has seen an increased interest to utilize the infill housing provisions and continues to process a significant number of land use applications for these housing types; and

**WHEREAS**, zoning and development codes are intended to be amended periodically to implement the visions, goals and policies of the comprehensive plan. The infill housing provisions have been modified only a few times as necessary to address new land use regulations concerning ADUs, stormwater, land division and the RM Project and have not been amended to address beneficial code refinements; and

**WHEREAS**, the intent of this ordinance is to implement minor amendments to the Infill Housing chapter to address identified site planning and bulk and mass limitations to further the city's goals and policies of establishing development with pedestrian oriented design, encourage reliance on alternative modes of transportation, utilize the remaining developable land more efficiently and create opportunities for more housing choice, home ownership, and affordable housing; and

**WHEREAS**, the responsible official reviewed the proposed amendments under the procedures of the State Environmental Policy Act and issued a non-project Determination of Non-Significance (SEP2021-0044) on October 20, 2021; and

**WHEREAS**, as required by RCW 36.70A.106, notice of the City's intent to adopt the proposed Comprehensive Plan amendments was sent the Department of Commerce on October 27, 2021; and

**WHEREAS**, after mailed and published notice as required by the Bellingham Municipal Code, the Planning Commission held a public hearing on the proposed amendments on November 4, 2021 and a work session on November 18, 2021; and

**WHEREAS**, the Planning Commission determined that the proposed amendments comply with and will implement the goals and policies of the 2016 Bellingham Comprehensive Plan; and

1  
2 **WHEREAS**, the Planning Commission considered the staff report and public comments and  
3 thereafter made Findings of Fact, Conclusions and Recommendations for approval of the  
4 proposed amendments by a 6 - 1 vote; and

5  
6 **WHEREAS**, after mailed and published notice as required by the BMC, the City Council held  
7 a public hearing on the proposed amendments on December 6, 2021; and

8  
9 **WHEREAS**, the City Council conducted a work session on December 13, 2021; and

10  
11 **WHEREAS**, the City Council has considered the recommendation of the Planning  
12 Commission, the staff report, other meeting materials, and all public comments and hereby  
13 adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission;  
14 and

15  
16 **WHEREAS**, the City Council finds that the proposed amendments are consistent with the  
17 Growth Management Act, the Bellingham Municipal Code, and the 2016 Bellingham  
18 Comprehensive Plan.

19  
20 **NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**  
21

22 **Section 1.** Bellingham Municipal Code, Section 20.00.200 concerning Attachment 1 is  
23 hereby amended as follows:  
24

25 **Residential development in Area 8 is limited to:**

- 26 1. Attached and detached accessory dwelling units subject to the provision in BMC [20.10.036](#).  
27 2. Infill housing subject to the provisions in Chapter [20.28](#) BMC, and further limited to the following infill  
28 housing forms and standards:  
29 ~~a. BMC [20.28.060](#), Smaller house.~~  
30 ~~ab. BMC [20.28.070](#), Small lothouse.~~  
31 ~~be. BMC [20.28.080](#), Cottage.~~  
32 ~~cd. BMC [20.28.140](#), Townhouse. Maximum of two units may be attached with each unit located~~  
33 ~~on a "fee simple lot." Townhouses are not permitted along Illinois Street.~~

34 ~~3. Single floor area limits specified in Chapter [20.28](#) BMC may be exceeded on the first story of a dwelling~~  
35 ~~unit, provided the maximum floor area ratio allowed for each housing type is not exceeded.~~  
36

**Commented [KCJ1]:** This will result in no substantive changes. The proposed code changes eliminate single floor area limits which is consistent with what this provision already allows. All housing types will still be required to have a floor area ratio (FAR) pursuant to BMC 20.28.

**Section 2.** Bellingham Municipal Code, Section 20.12.030(E) concerning Landscaping is hereby amended as follows:

E. *Green Factor Measurement.* The following standards apply to certain areas and uses that require landscaping to meet a minimum green factor score.

1. The green area factor score for a lot is determined by:

- a. Multiplying the square feet, or equivalent square footage where applicable, of each of the existing and proposed landscape elements in Table 20.12.030 by the green area multiplier shown for that element; ~~and~~
- b. Adding together all the products computed under subsection (E)(1)(a) of this section to determine the total green area factor; ~~and~~
- c. Divide the total green area factor by the lot area to determine the green area factor score. ~~or~~
- d. [Green factor landscaping for infill housing development per Chapter 20.28 BMC is determined on the net portion of the parent site that is exclusive of all critical areas regulated by Chapter 16.55 BMC which are not proposed to be impacted as a result of the development.](#)

2-7. [No Change]

**Section 3.** Bellingham Municipal Code, Section 20.25.020 Applicability is hereby amended as follows:

The following areas and developments are subject to design review under this chapter. No building or sign permit shall be issued for projects regulated under this chapter until design review approval has been issued unless the activity is exempt from design review under subsection (A) of this section. Buildings and activities which are exempt from the design review process shall comply with adopted site lighting standards regarding shielded outdoor lighting. The provisions of Chapter 20.14 BMC regarding nonconformance establish which of the standards and criteria in this chapter apply to developed sites. In addition, some standards in this chapter specify the level of development that requires full compliance.

A. The following activities are exempt from design review:

1. Single-family detached dwelling units unless specified otherwise in an adopted urban village regulated under this chapter ~~or Chapter 20.28 BMC.~~
2. Single-family attached dwelling units consisting of less than three attached units and not located in an adopted urban village regulated under this chapter.

1 3. A duplex on a site that is not located in an adopted urban village regulated under this chapter or  
2 regulated by Chapter 20.28 BMC.

3 4-10. [No Change]

4 B. *Multifamily Residential Projects and Mixed Uses in Residential Multi Zones.*

5 1. The following development activities shall obtain design review approval when located in any use  
6 district except within an urban village design district listed in subsections (C) and (D) of this  
7 section, institutional general use types that are governed by an adopted institutional master plan, or  
8 when exempt by subsection (A) of this section:

9 a. Single-family attached residential development consisting of three or more attached units;

10 b. Residential development consisting of three or more dwelling units on a site;

11 c. Projects involving any use that is allowed as a “mixed use” by the use qualifier in residential  
12 multi zones;

13 d. All infill housing development pursuant to Chapter 20.28 BMC;

14 e. Accessory buildings for any of the developments listed above;

15 fe. Any additions or exterior alterations to buildings of the types listed above and/or to their  
16 associated site improvements. The design standards apply only to the proposed additions or  
17 alterations to the extent feasible while allowing the flexibility to accommodate the design of  
18 the existing improvements.

19 2-3. [No Change]

20 4. *Decision Criteria.* For projects listed in subsections (B)(1) and (2) of this section, the director shall  
21 base his or her decision on consistency with the provisions of the adopted multifamily residential  
22 design handbook.

23 C-G. [No Change]

**Section 4.** Bellingham Municipal Code, Section 20.28.010 Purpose is hereby amended as follows:

**20.28.010 Purpose and intent.**

A. This chapter establishes special development regulations for a series of housing forms that are ~~different than the traditional in addition to the standard~~ detached single-family dwelling unit and multi-family housing types. These regulations are intended to implement comprehensive plan goals and policies encouraging infill development, more efficient use of the remaining developable land, protection of environmentally sensitive areas, ~~and~~ creating opportunities for more affordable housing and increasing housing choice and diversity. ~~The housing forms listed in this chapter are intended for use in city neighborhoods, urban villages, and in Bellingham's urban growth areas as described in BMC 20.28.020.~~

B. Development and design standards in this chapter emphasize pedestrian oriented design with street oriented front porches, entries, and windows, and architectural and landscape features that add human scale visual interest and compliment building and site design. These design principals are also applied equally to lesser streets called lanes, and to common pedestrian corridors when used in lieu of streets or lanes. An intent of these design details is that they collectively contribute to and enhance the public realm, create a sense of place, foster social interaction, and make alternative transportation options more attractive, inviting, and safe to use, and thereby more likely to be used. Guiding principles are 1) parking should not be located between dwelling units and the street or lane, and 2) when garages front on a street or lane, they should be proportionally subordinate to the width of the dwelling unit, and 3) Fronting housing units on an existing street should be prioritized over fronting units internally off a new lane or common pedestrian corridor.

**Figure 20.28.010 – Examples of pedestrian oriented design**



**Commented [BKM2]:** Retain per Planning Commission recommendation.

**Commented [BKM3]:** Figure recommended by Planning Commission

C. Flexibility in applying standards to site and building design is encouraged when the proposal is consistent with the broad intent of implementing strong pedestrian-oriented design. Larger scale projects and green field development may necessitate unique design solutions and exceptions to standards that were not specifically contemplated by this chapter. This may include increased allowance in height, floor area, and other standards, especially when creating entirely new neighborhoods.

**Section 5.** Bellingham Municipal Code, Section 20.28.020 Applicability is hereby amended as follows:

**20.28.020 Applicability.**

~~A. The housing types in this chapter are not permitted in residential single zones, except as permitted in cluster subdivision pursuant to BMC Title 23, neighborhood commercial zones or property regulated by Chapter 16.80 BMC, Lake Whatcom Reservoir Regulatory Provisions, except in those areas that were annexed into the city after 1995 with a “mixed” qualifier that allows multifamily residential, and in Area 8 of the Sunnyland neighborhood. The housing types in this chapter are permitted in all other zones that allow residential, including specifically designated areas of urban villages. In the residential multi-transition zone, all forms of attached housing shall be limited to no more than 4 attached units in a single building.~~

A. The housing types in this chapter are not permitted in:

1. Residential single zones, except as permitted in:

a. Cluster subdivision pursuant to BMC Title 23,

b. Those areas that were annexed into the city after 1995 with a “mixed” qualifier that allows multifamily residential, and

c. Area 8 of the Sunnyland neighborhood,

2. Neighborhood commercial zones, or

3. Property regulated by Chapter 16.80 BMC, Lake Whatcom Reservoir Regulatory Provisions.

B. The housing types in this chapter are permitted in all other zones that allow residential uses, including specifically designated areas of urban villages.

1 C. In the residential multi-transition zone, all forms of attached housing shall be limited to no more than 4  
2 attached units in a single building.

3 D. If the provisions of this chapter conflict with any other provision in BMC Title 20, 21 or 23, the  
4 provisions of this chapter shall apply.

5 **Section 6.** Bellingham Municipal Code Section 20.28.030 Process is hereby amended as  
6 follows:

7 **20.28.030 Process.**

8 A. In accordance with Chapter 21.10 BMC, all housing forms will use either a Type I or II process, and all  
9 land use applications may be consolidated under the highest type. Design review applies as outlined in  
10 Chapter 20.25 BMC with additional design standards and guidelines as specified under each housing  
11 type.

12 B. Modifications – General: Applicants may request minor modifications to the general parameters  
13 development and design standards set forth in this chapter. The planning director or hearing examiner,  
14 when the hearing examiner makes the final decision on a design review application consolidated  
15 pursuant to BMC 21.10.060, may modify the requirements if all of the following criteria are met:

16 1. a. The site is constrained due to unusual shape, topography, easements, or sensitive areas, the  
17 location of pre-existing improvements, or other extraordinary situation or condition, or

18 2. The modification is consistent with the purpose of this chapter.

19 3. b. The granting of the modification will not result in a development that is less compatible with  
20 neighborhood land uses; establishes a better development pattern found to be compatible with  
21 adjacent development (existing and anticipated) including, but not limited to, pedestrian  
22 oriented development, setbacks, lot orientation, or other contextual elements associated with  
23 the proposed development; and

24 2. The modification is consistent with the purpose and intent of this chapter.

25 C. Modifications – Mixed Housing. When proposing a mix of housing types and/or uses within a project,  
26 including multifamily and commercial development when allowed by the underlying zoning, general  
27 development standards applicable to each use and housing type may be modified at the discretion of the  
28 Planning Director to account for conflicts between standards for each use and/or housing type.  
29 Examples include:

**Commented [KCJ4]:** Main changes:  
1. Create a type 1 process for housing of 4 units or less, and  
2. Add broader discretion for minor modifications consistent  
with the land division ordinance, and addressing greenfield  
development

1. When multifamily under BMC 20.32 is proposed as a mixed use with townhouses under BMC 20.28.140, there is no internal setbacks between buildings, minimum lot sizes, or minimum lot dimensions and open space and parking areas may be consolidated.

2. Internal setbacks, open space, usable space, lot coverage, and other standard requirements may be averaged or reduced to the minimum allowed by any housing type or use proposed within a development. In some cases, the Director, may require the maximum or increased standards to mitigate a reduction in other standards.

The objective for granting administrative modifications in this subsection (C) shall be to facilitate a unified internal design that minimizes the presence of private surface parking, is compatible with abutting development (existing or anticipated), ~~reduces conflict and redundancy in regulations~~ and is consistent with the purpose and intent of this chapter.

D. Modification - Front Porches. The minimum sizes of front porches as specified for each housing type in this chapter may be averaged within a project when consistent with a plan to provide greater diversity and individuality in housing designs.

E. Property ownership may be held in common, through a subdivision or a binding site plan.

**Section 7.** Bellingham Municipal Code, Section 20.28.040 Definitions is hereby amended as follows:

#### **20.28.040 Definitions.**

The following definitions apply to this chapter:

~~“Alley, private” means, a private hard-surfaced facility for use by vehicles, utilities, and/or other necessary service functions, but which affords only a secondary means of access.~~

“Common pedestrian corridor” means a defined space containing a hard-surface facility with the primary intent of providing non-motorized pedestrian access from multiple dwelling units to an abutting street or to on- or off-site amenities(s).

“Common shared structure” means a building or structure designed and intended for the common use of the residents of the cottage housing.

~~“Cottage housing” means a coordinated grouping of four to eight small detached single-family dwellings clustered around common open space and having shared parking.~~

**Commented [BKM5]:** Addition recommended by Planning Commission.

**Commented [KCJ6]:** The housing definitions are being deleted here because they duplicate the housing type descriptions under each housing type and because some are worded slightly differently between the two which is confusing.

**Commented [BKM7]:** New definition recommended by the Planning Commission.

1 “Design guidelines” means guidelines for meeting the intention of the ordinance.

2 “Design standards” means requirements related to the design of the project. Developments are required to  
3 meet the design standards in this chapter.

4 “Duplex” means a building containing only two dwelling units.

5 “Garden-court housing” means four to eight dwelling units clustered around a common open space or  
6 courtyard.

7 “Lane” means a private street that provides both pedestrian and vehicle access designed with a change of  
8 material, that may include a unique paving pattern, that serves as visual cues for reducing or slowing the  
9 flow of traffic and within which pedestrians and cyclists have priority over motorists.

10 “Parent site” means all area within the boundaries of the subject property included in the land use  
11 application.

12 “Shared-court housing” means four to six dwelling units oriented to a shared courtyard providing access for  
13 both vehicles and pedestrians but designed to give priority to pedestrians.

14 “Small house” means detached single-family dwelling units on lots over 3,000 square feet but not more  
15 than 5,000 square feet in size.

16 “Smaller house” means detached single-family dwelling units on lots 1,800 square feet to 3,000 square feet  
17 in size.

18 “Townhouse” means a dwelling in a row of units in which each unit has its own front and rear access to the  
19 outside, no unit is located over another unit, and each unit is separated from any other unit by one or more  
20 vertical common walls.

21 “Triplex” means a building containing only three dwelling units.

22 **Section 8.** Bellingham Municipal Code, Section 20.28.050 General Standards is hereby  
23 amended as follows:

24 A. Pedestrian oriented design. All development in this chapter shall incorporate the following pedestrian  
25 oriented design standards and guidelines:

- 26 1. Fronting infill housing units on existing improved streets shall be prioritized over fronting units  
27 internally off a new street, lane, or common pedestrian corridor. Gaps may occur as necessary for

**Commented [KCJ8]:** The following design standards are necessary to implement the purpose and intent of this chapter.

1 building setbacks, vehicular and pedestrian access, and features that contribute to the pedestrian  
2 realm.

3 2. Parking shall not be located between dwelling units and the street or lane except as allowed in this  
4 chapter.

5 3. Site design shall prioritize locating parking off an alley to minimize pedestrian/auto conflicts with  
6 cars backing out across pedestrian facilities such as city sidewalks and lanes.

7 4. When alley access is not available or feasible, and street/lane loaded garages are necessary:

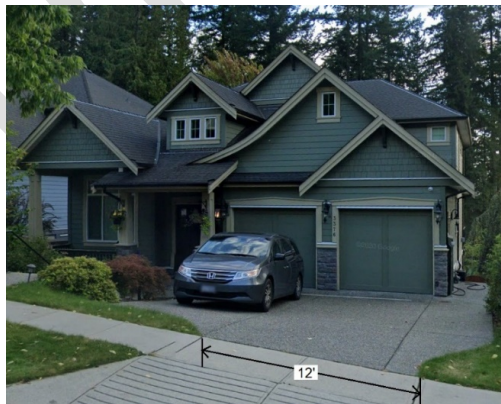
8 a. The width of the garages and driveways accessing a street or lane shall be proportionally less  
9 than the width of the dwelling unit. See Figures 20.28.050(A) and (B).

10 b. The maximum width of a driveway serving an individual unit that crosses a pedestrian facility  
11 associated with a street or lane shall not be more than twelve feet (12'). See Figure  
12 20.28.050(A).

13 c. Architectural and landscaping details shall be embellished to minimize the visual presence of  
14 the garages and any open driveway parking. See Figures 20.28.050(B) and (C).

15 d. Parking shall only be located between the dwelling units and the street or lane when in  
16 conjunction with a driveway access to a garage.

17  
18 Figure 20.28.050(A)  
19



**Commented [BKM9]:** Figures recommended by Planning Commission.

**Commented [BKM10]:** Figure recommended by Planning Commission.

**Commented [BKM11]:** Figures recommended by Planning Commission.

Figure 20.28.050(B) – Design strategies to minimize garages and driveways

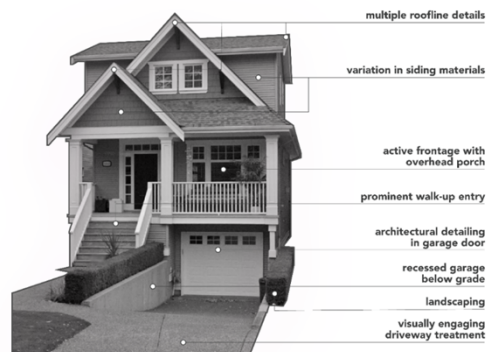
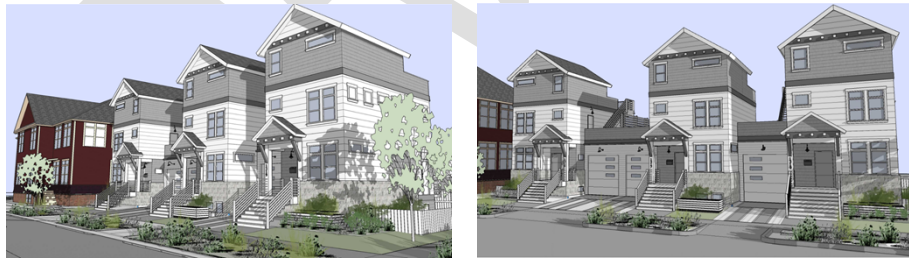


Figure 20.28.050(C) - The figures below show an example of townhouses that incorporate the design principles detailed in Figure 20.28.050(B) above, and how the visibility of their garages is diminished as viewed from different angles.



Images courtesy of Matt Remsbecher, Slab Design Inc.

**AB.** *Density.* Density shall be as specified in the associated area in the zoning table. If there is more than one density listed, the highest listed density for any housing type specified in the applicable neighborhood subarea pursuant to zoning tables in Chapter 20.00 BMC shall be considered the maximum possible density. The maximum density may be exceeded through the density bonus provisions pursuant to BMC 20.32.040(B)(5) and BMC 23.08.040(C).

1 BC. Lot Requirements. There are no minimum lot dimensions, lot sizes or minimum street frontage  
2 requirements unless otherwise specified in this chapter. All infill housing development shall provide  
3 access to a public right-of-way whether directly, by easement, or other means acceptable to the  
4 Planning Director. Up to eight dwelling units may take access from a single private lane in place of  
5 public street frontage.

6 CD. Subdivision.

7 1. Infill housing units approved as part of a cluster subdivision in single-family zoning subareas with  
8 a cluster, cluster detached, and cluster attached shall be located on separate, fee simple lots. All  
9 cluster subdivisions that include infill housing types shall comply with the lot transition provision  
10 pursuant to BMC 23.08.060(F)(1).

11 2. Sites with duplex, triplex, fourplex, cottage, shared court, garden court, and townhouse types in all  
12 other zoning areas permitting infill housing types may be subdivided into lots that do not comply  
13 with development standards in BMC Titles 20 or 23 individually, as long as the parent site as a  
14 whole complies with this chapter. Where allowed by zoning, this provision also applies to  
15 subdivision of individual commercial, multifamily, and other uses onto separate lots when  
16 proposed as mixed uses with an infill housing development. Subsequent alterations to buildings are  
17 subject to review and approval of plans such that they are consistent with the regulations in this  
18 chapter that were previously applied to this site.

19 3. The plat shall contain notice of any associated land use approvals. Subsequent alterations to  
20 buildings are subject to review and approval of plans such that they are consistent with the  
21 regulations in this chapter that were previously applied to this site.

22 DE. Common Facilities. Legal documents identifying the rights and responsibilities of property owners  
23 and/or the homeowners' association for use and maintenance of common facilities shall be submitted  
24 for approval by the planning director and recorded. When part of a subdivision they shall be noted on  
25 the plat.

26 EE. Encroachments and common wall development into Required Setbacks. The following architectural  
27 features are permitted to project two feet into the required setback: bay windows, chimneys, porches,  
28 balconies, facade treatment and other architectural features approved by the planning director.

29 1. Encroachments into required yards are allowed as specified in BMC 20.10.080(B).

30 2. For common wall development such as townhouses and detached garages, and encroachments over  
31 property lines such as eaves, a joint agreement must be approved as to form by the City of

Bellingham and recorded with the Whatcom County auditor's office and thereafter filed with the city.

3. Required building setbacks from streets may be reduced to be consistent with that allowed by the underlying zoning for other permitted housing types such as apartments in multifamily zoning.

F.G. Private Lanes, Common Pedestrian Corridors, and Alleys. The following applies to the design and development of private transportation facilities within a development.

1. Each lot must abut a street, ~~or lane, or common pedestrian corridor~~ except lots for individual units in ~~cottage, shared court, and garden court~~. Each dwelling unit must abut and have access to a pedestrian facility that provides access to a street ~~or lane~~.

2. Lanes and common pedestrian corridors shall be considered streets for frontage, setback and design purposes.

- ~~2. Private lanes and alleys must be surfaced with a hard material such as concrete or asphalt. The use of permeable pavement shall be used for hard surface ground cover areas unless infeasible per the infeasibility criteria listed within BMP T5.15 of the Ecology Manual. Projects that include less than 2,000 square feet of new or replaced impervious surface are exempt from this requirement. Gravel or loose material is prohibited.~~

- ~~3. Lanes and alleys must be maintained to city standards, and legal documents regarding common facilities and maintenance must be submitted for approval by the planning director and recorded.~~

- 4.3. Lanes, common pedestrian corridors, and alleys must be constructed and maintained to the following minimum improvement standards:

Table 20.28.050

	Travel Lane Width	Pedestrian Path Width	Total Width
Small Lane (one to two dwelling units)	9 feet	N/A	9 feet
Medium Lane (three to five dwelling units)	11 feet	4 feet, one side	15 feet
Large Lane (six plus dwelling units and lanes over 100 feet long)	12 feet	4 feet, both sides	20 feet
Alleys	15 feet	N/A	<del>20-15</del> feet
<u>Common Pedestrian Corridor</u>	<u>N/A</u>	<u>4 feet</u>	<u>10 feet</u>

Commented [KCJ12]: Moved to (4)(a) and edited.

Commented [KCJ13]: Moved to (4)(b) and edited.

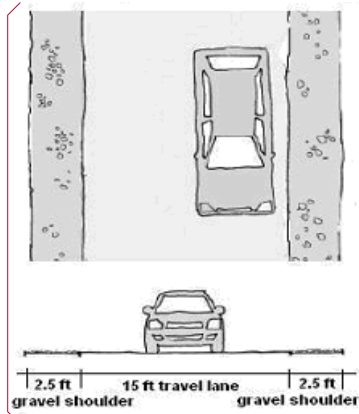


Figure 20.28.050(A) Typical Alley Plan and Section

**Commented [KCJ14]:** Repeal figure. Not needed since gravel shoulders are discouraged. Prefer pervious landscaping.

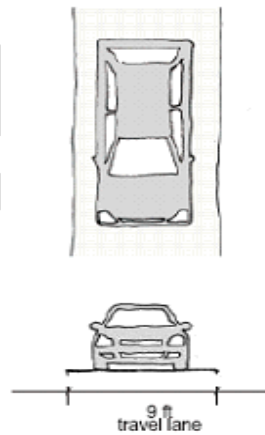


Figure 20.28.050(DB) Small Lane Plan and Section

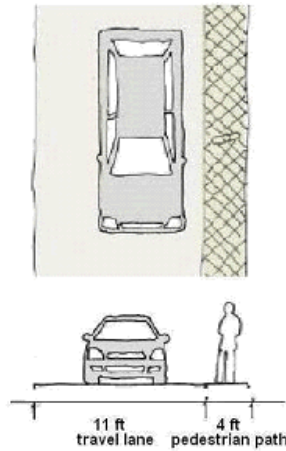


Figure 20.28.050(EC) Medium Lane Plan and Section

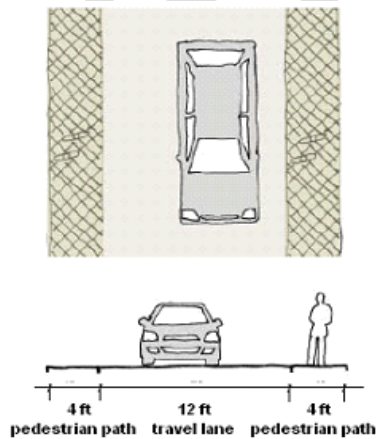


Figure 20.28.050(ED) Large Lane Plan and Section

4. Lanes, common pedestrian corridors, and alleys must be:

- a. Surfaced with a hard material such as concrete or asphalt, except that asphalt shall not be used for common pedestrian corridors. The use of permeable pavement shall be used for hard surface ground cover areas unless infeasible per the infeasibility criteria listed within BMP

T5.15 of the Ecology Manual. Projects that include less than 2,000 square feet of new or replaced impervious surface are exempt from this requirement. Gravel or loose material is prohibited.

b. Maintained to city standards, and legal documents regarding common facilities and maintenance must be submitted to the city for review and approval.

5. Pedestrian paths within a lane must be delineated with a change in material, color or pattern.

6. Pedestrian paths within a lane or fire apparatus road must be flush with the travel lane.

7. No single lane may serve more than eight dwelling units unless emergency access can be provided compliant with Title 17 BMC.

78. Parking is not allowed within the lane width but may be allowed in a parallel pocket abutting a lane.

8. Lanes longer than 150 feet must either connect to an improved public street or provide a turnaround sufficient for emergency access.

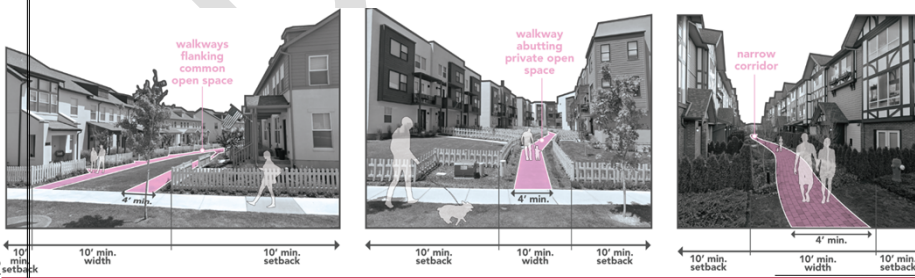
9. Private lanes shall be considered streets for frontage, setback and design purposes.

109. Private lanes and alleys are not included in FAR and Open Space calculations. Pedestrian paths within common pedestrian corridors shall be separated from property lines, fences, walls and hedges by a minimum of two feet (2'). See Figure 20.28.050(G).

**Commented [KCJ15]:** Moved to #2 above and edited to add "common pedestrian corridors."

**Commented [BKM16]:** Figure recommended by Planning Commission.

Figure 20.28.050(G) – Common Pedestrian Corridors



1 H. Parking. All housing types shall provide parking in accordance with the following standards:

2 1. Number of spaces.

3 a. Infill housing: Dwelling units less than 1,000 square feet shall provide one on-site parking  
4 stall. Units of 1,000 square feet or greater shall provide two on-site parking stalls.

5 b. Guest parking. When a site contains 20 or more units and lacks on-street parking abutting or  
6 parking within the parent site, the planning director may require additional guest parking.  
7 Guest parking may be improved on site, or in the public right-of-way with approval of the city  
8 engineer.

9 2. Parking stall dimensions. When parking for individual units is in separate garages or carports,  
10 parking stalls shall be at least 9 feet by 18 feet. Open parking and group parking may use  
11 dimensional parking standards in BMC 20.12.010.

12 3. Parking setbacks. The required setbacks for open parking are as follows:

13 a. Streets: The parking shall be set back at least 25' from a front street and 10' from a side  
14 flanking street, except that one tandem stall may be located in a driveway that provides access  
15 to a garage or carport.

16 b. Side and rear: 5', except none for side and rear yard when parking is perpendicular to and  
17 accessed directly from the alley.

18 4. Tandem parking. Tandem parking is allowed when:

19 a. No more than two spaces are parked in tandem.

20 b. One tandem space per tandem pair is in a structure.

21 5. Access and maneuvering.

22 a. If a platted alley exists, parking shall be accessed via the alley except when the planning  
23 director determines that alley access is impractical or environmentally constrained.

24 b. If a lane exists, but no alley, parking shall be accessed via the lane.

25 c. The maneuvering area between the back of parking (or a garage/carport entry) and an alley or  
26 lane shall not be greater than 10 feet or less than 18 feet to prevent parked cars from  
27 overhanging into a lane or alley. See Figure 20.28.050(H).

**Commented [KCJ17]:** Parking standards have been removed from individual housing sections and revised and consolidated here to work for all housing types.

**Commented [KCJ18]:** Detached garage, carport, and accessory building setbacks are under each housing type

**Commented [BKM19]:** Figure recommended by Planning Commission.

28  
29 Figure 20.28.050(H)



6. Parking may be consolidated for all housing types except small lot.

7. The planning director may reduce parking requirements based on applicant's demonstration of site-specific factors that justify a lower standard consistent with the purpose and intent of this chapter.

I. Landscaping and fencing. Development shall provide landscaping in accordance with BMC 20.12.030 except as provided herein and as specified under each housing type.

1. One tree shall be required for every 40 feet of street or lane frontage. Trees required along a lane or common pedestrian corridor shall be installed adjacent to the lane, or adjacent to or within the pedestrian corridor.

2. Landscaping shall be provided between each housing unit and abutting streets, lanes, alleys, and common pedestrian corridors except where driveway and walkway crossings occur.

3. Along streets, lanes and alleys, landscaping shall be provided to separate the parking and driveways between individual dwelling units, or the director may approve an alternative approach that breaks up parking and provides visual interest to parking facilities. See Figure 20.28.050(I).

**Commented [BKM20]:** Figure recommended by Planning Commission.

Figure 20.28.050(I) - Examples of alley landscaping between driveways



4. ~~All fences in the front and side street setbacks are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side street setback.~~

**Commented [KCJ21]:** This is already in code under every housing type and has been moved/consolidated here.

**Section 9.** Bellingham Municipal Code, Section 20.28.060 concerning Smaller House is hereby repealed in its entirety.

**Section 10.** Bellingham Municipal Code, Section 20.28.070 Small House is hereby amended as follows:

**20.28.070 Small lothouse.**

A. *Description.* Small ~~lotshouses~~ consist of ~~detached~~ single-family ~~lotsdwelling units on lots over 3,000 with a site area square feet and up to~~ less than or equal to 5,000 square feet.

B. *Site Requirements and Setbacks.*

1. Lot size: ~~minimum 3,001 square feet and~~ maximum 5,000 square feet.
2. The required setbacks are as shown in Figures 20.28.070(A) ~~and (B)~~, except ~~garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width)~~ detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street

face of the dwelling unit (excluding front porches). Buildings shall be placed within the shaded areas shown in the figures except as provided above.

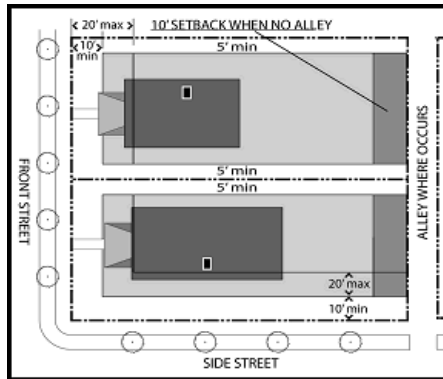


Figure 20.28.070(A) Setbacks – Main Building

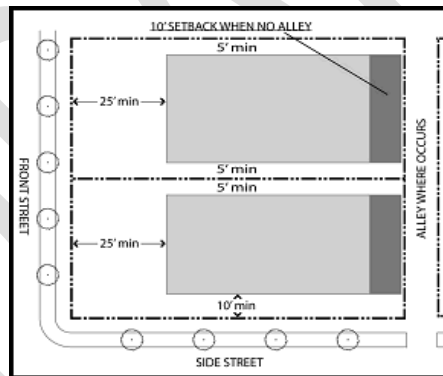


Figure 20.28.070(B) Setbacks—Garages and Carports

Commented [KCJ22]: Delete figure.

### C. Bulk and Massing.

1. Maximum floor area ratio (FAR): 0.35, or 0.5 with an or 1,200 square feet, whichever is greater. An accessory dwelling unit (ADU) pursuant to BMC 20.10.036 is exempt from FAR. Attached garages are included in FAR. Detached garages up to 220 square feet, or 440 square feet with an ADU, are exempt from FAR. For housing under 1,000 square feet, garage floor area in excess of

300 square feet shall count towards the FAR. For housing at or above 1,000 square feet, garage floor area in excess of 500 square feet shall count towards the FAR.

~~2. 2. No single floor shall be greater than 800 square feet.~~

3. Maximum height is 25 feet under BMC 20.08.020, height definition No. 1 and ~~2015~~ feet under definition No. 2.

D. Usable Space, Open Space and Landscaping.

1. A minimum of ~~60~~ 40 percent of the site area shall be in open space consisting of landscaping and permeable materials (may include permeable paving, landscape-based LID BMPs, and green roofs). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by the planning director.

~~2. A green factor landscaping score of 0.3 is required (see BMC 20.12.030).~~

E. Parking. All parking shall be provided pursuant to BMC 20.28.050(H).

~~1. Dwelling units less than 1,000 square feet shall provide one on-site parking stall. Units of 1,000 square feet or larger shall provide two on-site parking stalls. The planning director may reduce parking requirements based on applicant's demonstration of site-specific factors that justify a lower standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping, as specified in Figure 20.12.030(A).~~

~~2. Tandem parking is allowed (may be exterior or interior).~~

~~3. If an alley exists, parking shall be accessed via the alley unless the planning director determines that alley access is impractical or environmentally constrained.~~

~~4. If a lane exists, but no alley, parking shall be accessed via the lane.~~

~~5. Adjacent properties may share a driveway upon approval of a shared access and maintenance agreement.~~

~~6. Detached garages may share a common wall along a property line if a shared maintenance agreement is in place.~~

~~7. Parking accessed from the public street shall be limited to one driveway of 20 feet maximum width.~~

~~8. Parking setbacks from property line:~~

**Commented [BKM23]:** Recommended revisions by Planning Commission.

ORIGINAL PROPOSED LANGUAGE:

Street-front loaded garages are included in FAR. Garages accessed from an alley or side flanking street are exempt from FAR as follows:-

- a. 300 square feet for housing under 1,000 square feet, or
- b. 500 square feet for housing that is 1,000 square feet or larger, or when an ADU is included.

Front:	25-feet
Side-street:	10-feet

~~9. All common shared driveway, common wall or any common facility needs to be approved by the planning director. Final documents are required to be recorded.~~

F. *Design Standards.*

1. Shall have a covered front porch with an area of ~~60-40~~ square feet or more, with no dimension less than five feet. ~~This is in addition to the open space requirement.~~
2. Dwelling units that front the public street or lane shall have entrances facing the public street or lane.
- ~~3. All fences in the front and side street setbacks are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side street setback.~~

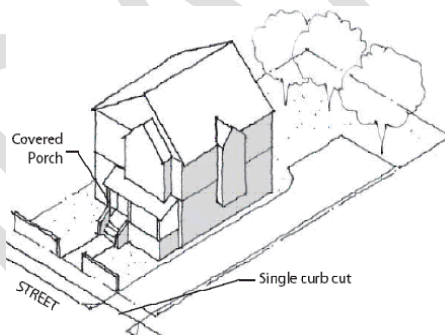


Figure 20.28.070(C) Annotated Graphic of Small ~~House~~ Lot

G. *Design Guidelines.* Use context-sensitive site design and building details to help ensure that new infill development will enhance the neighborhood and respect the scale and character of the existing houses on a street.

1. *Building Design.*

- a. Single story massing elements should be emphasized on the front facades, using porches and bays seen from the street or lane.

b. ~~Roof forms that Gable roofs~~ emphasize vertical proportions and, create modulation and are strongly encouraged.

Commented [BKM24]: Recommended revisions Planning Commission.

c. The massing should be varied with elements such as bays, dormers, etc.

d. A change of materials, colors or textures on different elements is encouraged to provide further articulation and adds variety and character.

e. Homes should minimize the impact of the garage on the streetscape by minimizing blank garage doors, through the use of windows and/or architectural detail on the garage door.

2. *Site Design.*

~~a. Front yard parking aprons are not allowed.~~

ab. Back yards should be designed for privacy from neighbors.

be. Fencing, especially when seen from the street, should be designed to integrate into the architecture of the building and add visual interest in its detail, materials or color.

**Section 11.** Bellingham Municipal Code, Section 20.28.080 Cottage is hereby amended as follows:

A. *Description.* Cottage housing is a grouping of small compact, detached single-family dwelling units clustered around a common usable area and developed with a shared plan for access and parking, and a coordinated design for the buildings and site.

B. *Site Requirements and Setbacks.*

1. Cottages may be located on a separate (fee simple) lot or several units may be located on a common parcel. A cottage unit with an ADU must be located on a separated lot.

2. The required setbacks are as shown in Figure 20.28.080(A), except ~~garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width)~~ detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of residential buildings (excluding front porches). Buildings shall be placed within the shaded areas shown in the figure except as provided above.

C. *Bulk and Massing.*

1. The minimum is four dwelling units and the maximum is eight dwelling units in a [single development cottage cluster](#).
2. No structure shall be larger than [1,200](#) square feet ~~and no single floor area shall be larger than 600 square feet.~~

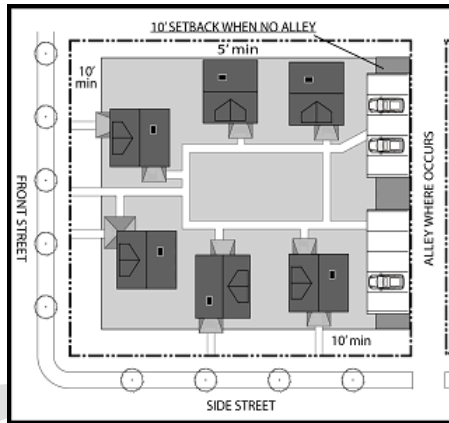


Figure 20.28.080(A) Setbacks for Cottage

3. Maximum floor area ratio (FAR) is ~~0.4~~ [0.6](#). [An accessory dwelling unit \(ADU\) pursuant to BMC 20.10.036 is exempt from FAR.](#)
  4. Common shared structures are allowed, limited to the same bulk and mass restrictions as dwelling units, and are exempt from FAR.
  5. The height limit is 25 feet under BMC [20.08.020](#), definition No. 1 or ~~20~~ [25](#) feet under definition No. 2.
- D. [Usable Space, Open Space and Landscaping.](#)
1. Each dwelling unit shall have at least 100 square feet of private usable ~~open~~ space with no dimension less than five feet. [Up to 50 square feet of the private usable space may be provided in decks and patios may be included.](#)
  2. Private usable ~~open~~ space must be directly accessible from the dwelling unit, and be separated from shared spaces or paths and other units [through the use of landscaping and/or fencing.](#)

1 3. Common usable ~~open~~-space equivalent to ~~200~~500 square feet per dwelling unit shall be provided. ~~It~~  
2 ~~shall be consolidated, with a minimum average dimension of 20 feet~~~~No single dimension shall be~~  
3 ~~less than 20 feet~~, exclusive of parking or lanes except for emergency access. All units shall have  
4 direct access to ~~common~~shared open space.

5 4. A minimum of ~~60~~40 percent of the site area shall be in ~~open space consisting of~~ landscaping or  
6 permeable materials (may include permeable paving, landscape-based LID BMPs, and green  
7 roofs). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as  
8 determined by the city.

9 ~~5. A green factor landscaping score of 0.3 is required (see BMC 20.12.030).~~

10 E. *Parking.* ~~All parking shall be provided pursuant to BMC 20.28.050(H).1. The project shall include at~~  
11 ~~least one on-site parking stall per unit. The planning director may reduce parking requirements based~~  
12 ~~on applicant's demonstration of site-specific factors that justify a lower standard. Parking stalls shall be~~  
13 ~~at least nine feet by 18 feet, unless adjacent to landscaping, as specified in Figure 20.12.030(A).~~

14 ~~2. Parking may not be located between structures or front directly upon a street.~~

15 ~~3. If an alley exists, parking shall be accessed via the alley except when the planning director determines~~  
16 ~~that alley access is impractical or environmentally constrained.~~

17 ~~4. Parking shall be consolidated in areas not less than four spaces.~~

18 ~~5. Parking accessed from the public street shall be limited to one driveway of 20-foot maximum width.~~

19 ~~6. Parking shall be screened from the public street by landscape feature or fence.~~

20 F. *Design Standards.*

21 1. A front porch with a minimum of ~~60~~40 square feet and no dimension less than five feet is required  
22 for each dwelling unit. ~~This is in addition to the private usable space requirement (in addition to~~  
23 ~~private open space requirements).~~

24 2. Dwelling units that front a public street or lane shall have a porch that faces the street or lane. Units  
25 that face the shared open space shall have a porch that faces the open space. In some cases, units  
26 will require two front porches to satisfy this criteria.

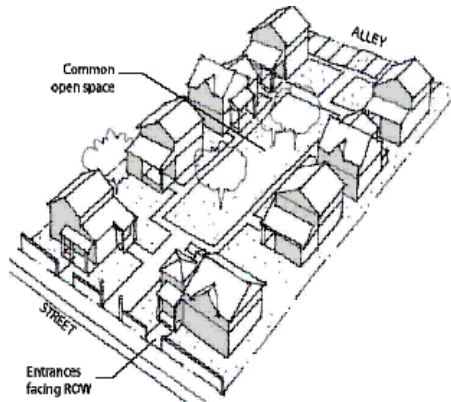


Figure 20.28.080(B) Annotated Illustration of Cottage

3. All fences in the front and side street setbacks, or between the common areas and the dwelling units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side street yard. Garbage/recycling areas shall be consolidated, unless the local refuse provider approves otherwise, and screened from public view.

G. *Design Guidelines.* Cottage housing developments should architecturally blend into existing neighborhoods through careful attention to the design of the units, open spaces, parking and landscaping. Well proportioned cottage houses, with porches, small gardens, varied roof lines and dormers can fit comfortably into surrounding neighborhoods of older, detached homes.

1. *Building.*

- a. Buildings should employ variety in orientation, design, and layout between cottages while maintaining a similar character to help distinguish units and support a neighborhood feel.
- b. Cottages should reflect common neighborhood design features such as porches, dormers, gables, and architectural detailing.
- c. Changes in materials, colors or textures and colors to add visual interest and character to the development are encouraged.

2. *Site Design.*

- a. Provide small private open spaces in conjunction with a large commonshared open space.

- b. Provide generous use of landscape structures such as trellises, gate houses, decks, patios, and raised beds to provide plenty of usable outdoor space with a variety of environments. Use planting materials and elements such as fencing to unify the overall site design.
- c. Shared driveways are preferred.
- d. Walkways should connect all dwelling units to the ~~common~~shared open space and consolidated parking and should utilize pervious materials.

**Section 12.** Bellingham Municipal Code, Section 20.28.110 Duplex/Triplex is hereby amended as follows:

**20.28.110 Duplex/triplex/~~fourplex~~.**

A. *Description.* A duplex/triplex/~~fourplex~~ is a single structure comprised of two, ~~or three, or four~~ dwelling units on a single lot, either side by side, ~~or~~ on different floors, ~~or a combination thereof~~.

B. *Site Requirements and Setbacks.*

1. The required setbacks are as shown in Figures 20.28.110(A) ~~and (B)~~, except ~~garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of the residential building (excluding front porches).~~ Buildings shall be placed within the shaded areas shown in the figures ~~except as provided above~~.

C. *Bulk and Massing.*

1. Maximum floor area ratio (FAR) is ~~0.50.6~~.
2. ~~Maximum dwelling unit size is 1,000 square feet.~~
- ~~3.~~ The height limit is 25 feet under BMC 20.08.020, definition No. 1 or ~~20.15~~ feet under definition No. 2. ~~The height may be increased to 35 feet under BMC 20.08.020, definition No. 1 when in residential-multi, multiple and commercial zoning designations.~~

**Commented [KCJ25]:** This is a new housing category. It will not result in increased density, mass, or bulk compared to what is allowed by the underlying zoning. The PC should discuss the pros and cons of this new housing type.

**Commented [KCJ26]:** This height increase will not apply to residential single zones or residential multi-transition zones. It will bring infill housing toolkit into closer parity with what is allowed in residential multi zones for multifamily development.

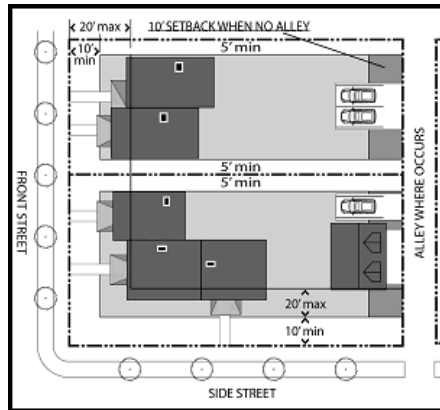


Figure 20.28.110(A) Setbacks – Main Building

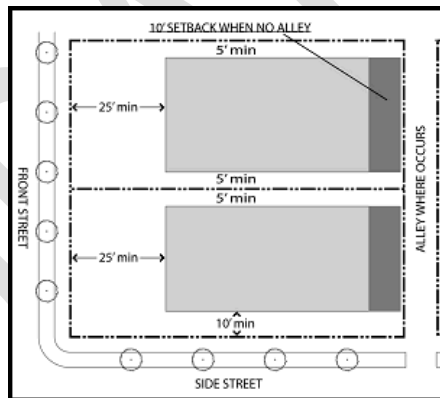


Figure 20.28.110(B) Setbacks – Garages and Carports

Commented [KCJ27]: Delete figure.

D. Usable Space, Open Space and Landscaping.

1. Each dwelling unit shall have 75 square feet of private usable open space with no dimension less than five feet. ~~It~~ No more than 50 square feet may be accommodated with a deck or porch.
2. Private usable space may be consolidated and provided as common usable space with minimum dimensions of 10 feet by 10 feet. All units shall have direct access to usable space.

3. No less than ~~40-30~~ percent of the site area shall be in open space consisting of landscaping or permeable material (may include permeable paving, landscape-based LID BMPs, and green roofs). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by the city.

3. A green factor landscaping score of 0.4 is required (see BMC 20.12.030).

E. *Parking.* All parking shall be provided pursuant to BMC 20.28.050(H).

1. ~~Each dwelling unit shall provide at least one on-site parking stall. The planning director may reduce parking requirements based on applicant's demonstration of site-specific factors that justify a lower standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping, as specified in Figure 20.12.030(A).~~

2. ~~Parking setbacks from property line:~~

Front:	25 feet
Side streets:	40 feet

3. ~~If an alley exists, parking shall be accessed via the alley except when the planning director determines that alley access is impractical or environmentally constrained.~~

4. ~~Parking accessed from the public street or lane shall be limited to one driveway per street or lane with a maximum width of 20 feet.~~

F. *Design Standards.*

1. At least one entrance must be visible from the public street.

2. ~~Ground level D~~dwelling units that front the public street shall ~~each~~ have ~~entrances-a covered front porch~~ facing the public street. ~~Said porches shall be no less than 40 square feet with no dimension less than five feet. A shared front porch entry no less than 60 square feet with no dimension less than five feet may be provided in lieu of private entries. Front porches are in addition to the private usable space requirement.~~

3. ~~All fences in the front and side street setbacks are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side street setback. Garbage/recycling areas shall be consolidated, unless the local refuse provider approves otherwise, and screened from public view.~~

G. *Design Guidelines.* A duplex/triplex should be designed as either a larger, single-family composition or as distinct separate units.

1. *Building Design.*

- a. The design should break the home's facades into several distinct elements.
- b. ~~Roof forms that~~ Gable roofs emphasize vertical proportions and, create modulation and are strongly encouraged.

**Commented [BKM28]:** Recommended revisions Planning Commission.

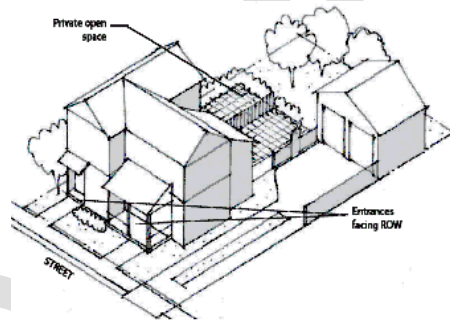


Figure 20.28.110(C) Annotated Illustration of Duplex/Triplex

- c. The massing should be varied with elements such as bays, dormers, etc.
- d. A change of materials, colors or textures on building elements is encouraged to provide further articulation and additional variety and craftsmanship.
- e. Buildings should minimize the impact of garages on the streetscape by utilizing garage doors with windows or other architectural features.

2. *Site Design.*

~~a. Front yard parking aprons are not allowed.~~

~~b.a.~~ Back yards should be designed for privacy from neighbors.

**Section 13.** Bellingham Municipal Code, Section 20.28.120 Shared Court is hereby amended as follows:

- A. *Description.* A shared court is a multifamily development that shares a courtyard that also allows vehicular access to parking. The structure(s) is arranged in a “U” shape around a central shared court. Design details, paving and landscape should create the impression of a small, intimate courtyard when viewed from the street.
- B. *Site Requirements and Setbacks.*
- Shared court units may be located on a separate (fee simple) lot or several units may be located on a common parcel. A shared court unit with an ADU must be located on a separated lot.
  - The required setbacks are as shown in Figures 20.28.120(A) and (B), except ~~garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width)~~ detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of residential buildings (excluding front porches). Buildings shall be placed within the shaded areas shown in the figures except as provided above.

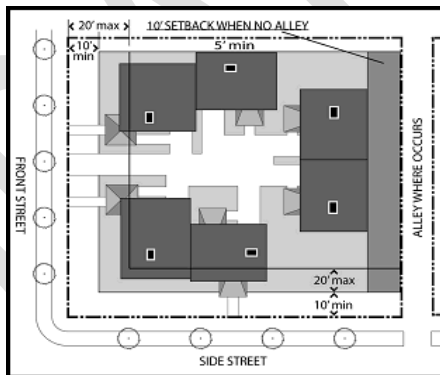


Figure 20.28.120(A) Setbacks – Main Building(s)

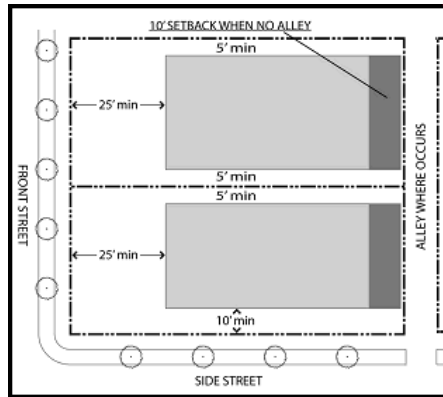


Figure 20.28.120(B) Setbacks—Garages and Carports

Commented [KCJ29]: Delete figure.

#### C. Bulk and Massing.

1. There shall be a maximum of six dwelling units and a minimum of four dwelling units clustered around a shared court.
2. Maximum floor area ratio (FAR) is ~~0.50.6~~. An accessory dwelling unit (ADU) pursuant to BMC 20.10.036 is exempt from FAR. Projects meeting green factor requirements in section (D)(4) of this section may request additional FAR up to 0.7 with approval by the planning director.
3. The maximum dwelling unit size is 2,000 square feet.
- ~~4. No single floor area shall be larger than 1,000 square feet per dwelling unit.~~

5.4. The height limit is 25 feet under BMC 20.08.020, definition No. 1 or ~~2045~~ feet under definition No. 2. The height may be increased to 35 feet under BMC 20.08.020, definition No. 1 when in residential-multi, multiple and commercial zoning designations.

#### D. Usable Space, Open Space and Landscaping.

1. Each dwelling unit shall have at least ~~10050~~ square feet of private ~~usable~~open space with no dimension less than five feet. Some or all of ~~this~~use requirement may be accommodated in a deck.
2. All private ~~usable~~open space must be directly accessible from the dwelling unit and shall be separated from shared pathways, driveways, and other units through the use of landscaping and/or fencing.

1 3. No less than ~~30~~ 40 percent of the site area shall be in open space consisting of landscaping or  
2 permeable material (may include permeable paving, landscape-based LID BMPs, and green roofs).  
3 Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by  
4 the city.

5 4. ~~Use of the green factor is strongly encouraged. When used as a FAR bonus option in subsection~~  
6 ~~(C)(2) of this section, a~~ A green factor landscaping score of ~~0.6-0.4~~ is required (see BMC  
7 20.12.030).

8 E. *Parking.* All parking shall be provided pursuant to BMC 20.28.050(H).

9 ~~1. Dwelling units less than 1,000 square feet shall provide at least one on-site parking stall. Units of~~  
10 ~~1,000 square feet or larger shall provide two on-site parking stalls. The planning director may~~  
11 ~~reduce parking requirements based on applicant's demonstration of site-specific factors that justify~~  
12 ~~a lower standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping,~~  
13 ~~as specified in Figure 20.12.030(A).~~

14 ~~2. Parking shall not be located between structures and a public street.~~

15 ~~3. Parking accessed from a public street or lane shall be limited to driveway with a maximum width of~~  
16 ~~20 feet.~~

17 F. *Design Standards.*

18 1. Each dwelling unit must have a separate, ground-related entrance. Units that front the public street  
19 shall have entrances facing the public street; all other units shall have entrances facing the shared  
20 open space.

21 ~~2. No roof pitch shall be less than 2:12 (may be shed type) except for green roofs.~~

22 ~~23.~~ Each dwelling unit shall have a covered front porch no less than ~~50-40~~ square feet with no  
23 dimension less than five feet; ~~this~~ This is in addition to the private ~~usable open~~ space requirement.

24 ~~34.~~ Garbage/recycling areas shall be consolidated, unless the local refuse provider approves  
25 otherwise, and screened from public view.

26 ~~5. All fences in the front and side street setbacks, or between the common areas and the dwelling~~  
27 ~~units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or~~  
28 ~~eyelone fencing is not allowed in the front or side street setback.~~

**Commented [BKM30]:** Deletion recommended by Planning Commission.

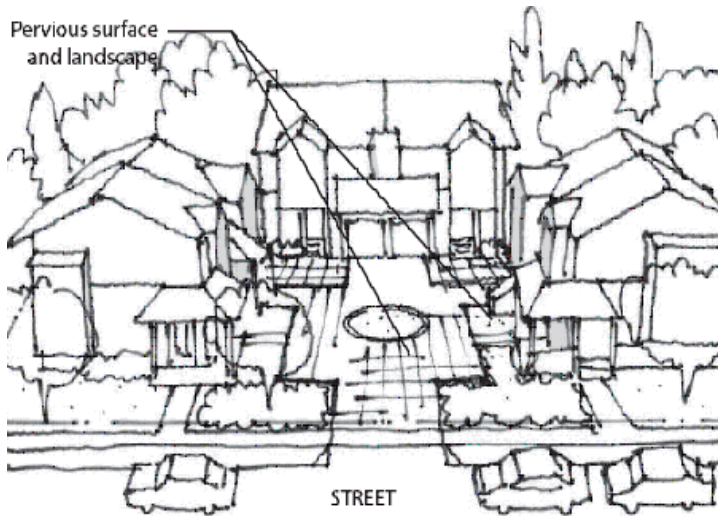


Figure 20.28.120(C) Annotated Illustration of Shared Court

- 6.4. The following design standards shall be met to define the shared courtyard space, enhance the function as a shared, attractive, and usable open space, and unify site elements through the use of paving and landscape materials:
- a. Provide clear direction to primary building entries and enhance circulation paths with trees, lighting, and plant materials.
  - b. At least 35 percent of the total shared court area shall be landscaped.
  - c. Poured surfaces (e.g., asphalt or concrete) may be used for vehicle treaded areas up to 10 feet in width but are not acceptable for area paving. The remaining unplanted areas shall be paved with unit pavers (e.g., brick, concrete, or tile) set or covered with gravel. Permeable pavements are acceptable paving options for all unplanted, shared court area.
  - d. The incorporation of courtyard amenities is required. Courtyard areas shall include at least two of the following elements:
    - i. Benches, bench-type edges for planters.
    - ii. Fountain or other water feature.

iii. Ornamental shrubbery and landscape trees.

G. *Design Guidelines.*

1. *Site Design.*

- a. Provide for the functional and visual integration of buildings, vehicular access and parking, and the “outdoor room” function of the shared court.
- b. Define and contain the shared court space through a combination of building, landscape, and other site furnishings.
- c. Provide a walkway from each dwelling unit to the shared court and street.

2. *Building Design.*

- a. The design should break the facades into several distinct elements.
- b. ~~Roof forms that~~Gable roofs emphasize vertical proportions and, create modulation and are strongly encouraged.
- c. The massing should be varied with elements such as bays, dormers, etc.
- d. Changing materials, colors or textures on building elements is encouraged to provide further articulation and add variety and craftsmanship.
- e. Buildings should minimize the impact of garages on the streetscape by utilizing garage doors with windows or other architectural features.

**Commented [BKM31]:** Recommended revisions Planning Commission.

**Section 14.** Bellingham Municipal Code, Section 20.28.130 Garden Court is hereby amended as follows:

A. *Description.* A garden court is a multifamily development that shares a landscaped courtyard. The structures ~~are is~~ arranged ~~in a “U” shape~~ around the garden court, a common usable space area, with parking typically consolidated and located to the side or rear of the development.

B. *Site Requirements and Setbacks.*

1. Garden court units may be located on a separate (fee simple) lot or several units may be located on a common parcel. A garden court unit with an ADU must be located on a separated lot.

2. The required setbacks are as shown in Figures 20.28.130(A) and (B), except ~~garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of residential buildings (excluding front porches).~~ Buildings shall be placed within the shaded areas shown in the figures except as provided above.

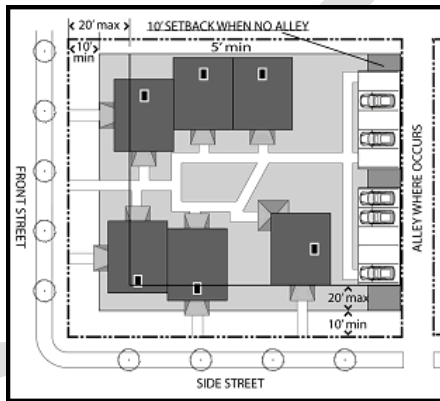


Figure 20.28.130(A) Setbacks – Main Building(s)

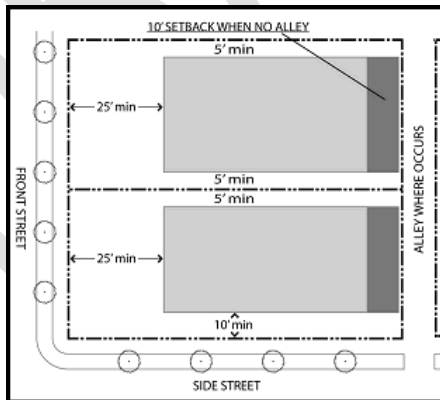


Figure 20.28.130(B) Setbacks – Garages and Carports

Commented [KCJ32]: Delete figure.

C. Bulk and Massing.

1. There shall be a maximum of eight dwelling units and a minimum of four dwelling units clustered around a shared open space.
  2. Maximum floor area ratio (FAR) is 0.6. An accessory dwelling unit (ADU) pursuant to BMC 20.10.036 is exempt from FAR. Projects meeting green factor requirements in subsection (D)(4) of this section may request additional FAR up to 0.75 with approval by the planning director.
  3. No dwelling units may be larger than 2,000 square feet.
  4. The single floor area is limited to 1,000 square feet per dwelling unit.
  5. The height limit is 25 feet under BMC 20.08.020, definition No. 1 or 2045 feet under definition No. 2. The height may be increased to 35 feet under BMC 20.08.020, definition No. 1 when in residential-multi, multiple and commercial zoning designations.
- D. Usable Space, Open Space and Landscaping.
1. Common usable Shared-open space equivalent to shall be provided in the amount of 200 square feet for each dwelling unit shall be provided. It shall be consolidated, with a minimum average dimension of 20 feet, exclusive of parking or lanes except for emergency access. All units shall have direct access to common open space.
  2. Each dwelling unit shall have at least 100 square feet of private usableopen space with no dimension less than five feet. Up to 50 square feet of the private usable space may be provided in either a deck or patiospace may be included.
  3. Private usableopen space must be delineatedseparated from public rights-of-way, shared paths, shared open space, and lanes through the use of landscaping and/or fencing.
  4. A minimum of 40 percent of the site shall be in open space consisting of landscaping or permeable materials (may include permeable paving, landscape-based LID BMPs, and green roofs). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by the city.
  5. Use of the green factor is strongly encouraged. When used as a FAR bonus option in subsection (C)(2) of this section, a green factor landscaping score of 0.50-6 is required (see BMC 20.12.030).
- E. Parking. All parking shall be provided pursuant to BMC 20.28.050(H).
1. Dwelling units less than 1,000 square feet shall provide at least one on-site parking stall. Units of 1,000 square feet or larger shall provide two on-site parking stalls. The planning director may

1 reduce parking requirements based on applicant's demonstration of site-specific factors that justify  
2 a lower standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping,  
3 as specified in Figure 20.12.030(A).

4 ~~2. Parking generally shall be located to the rear or side only, but 20 percent of parking may be located~~  
5 ~~between structures, but may not be located between structures and a public street.~~

6 ~~3. Parking may be consolidated.~~

7 ~~4. Parking accessed from a street or lane shall be limited to one driveway with a maximum width of~~  
8 ~~20 feet.~~

9 F. *Design Standards.*

10 1. Each dwelling unit must have a separate, ground-related entrance. Units that front the public street  
11 shall have entrances facing the public street; all other units shall have entrances facing the shared  
12 open space.

13 2. Each dwelling unit shall have a covered front porch no less than ~~50~~40 square feet with no  
14 dimension less than five feet; this is in addition to the private ~~usable~~open space requirement.

15 3. Garbage/recycling areas shall be consolidated, ~~unless the local refuse provider approves otherwise,~~  
16 and screened from public view.

17 ~~4. No roof pitch shall be less than 2:12 (may be shed type) except for green roofs.~~

18 ~~5. All fences in the front and side street setbacks, or between the common areas and the dwelling~~  
19 ~~units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or~~  
20 ~~eyelone fencing is not allowed in the front or side street setback.~~

**Commented [BKM33]:** Deletion recommended by Planning Commission.

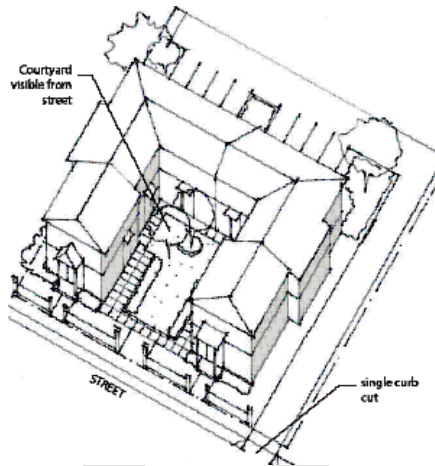


Figure 20.28.130(C) Annotated Illustration of Garden Court

#### G. Design Guidelines.

##### 1. Site Design.

- a. The courtyard should address the street, and be easily accessible from the street, with a spacious, clearly defined entry.
- b. At least a portion of the courtyard should be visible from the street. The courtyard is best located at street level, or a foot or two above or below the street.
- c. Create opportunities for exposure to, and shade from sun as well as weather protection.
- d. Define the garden court space through a combination of building, landscape, and other site furnishings.
- e. Provide a walkway from each dwelling unit to the garden court and street.

##### 2. Building Design.

- a. The design should break the facades into several distinct elements.
- b. Roof forms that Gable roofs emphasize vertical proportions and; create modulation and are strongly encouraged.

**Commented [BKM34]:** Recommended revisions Planning Commission.

- c. The massing should be varied with elements such as bays, dormers, etc.
- d. Changing materials, colors or textures on building elements is encouraged to provide further articulation and add variety and craftsmanship.

**Section 15.** Bellingham Municipal Code, Section 20.28.140 Townhouse is hereby amended as follows:

A. *Description.* A townhouse is one of a row of homes sharing common walls, each with its own front and rear access to the outside.

B. *Site Requirements and Setbacks.*

1. Townhouses may be located on a separate (fee simple) lot or several units may be located on a common parcel. A townhouse with an ADU must be located on a separated lot.
2. The required setbacks are as shown in Figures 20.28.140(A) and (B), except garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of residential buildings (excluding front porches). Buildings shall be placed within the shaded areas shown in the figures except as provided above.

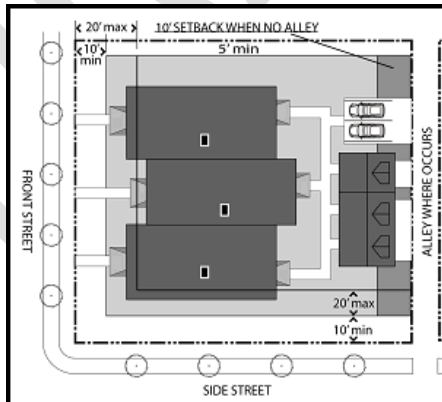


Figure 20.28.140(A) Setbacks – Main Building(s)

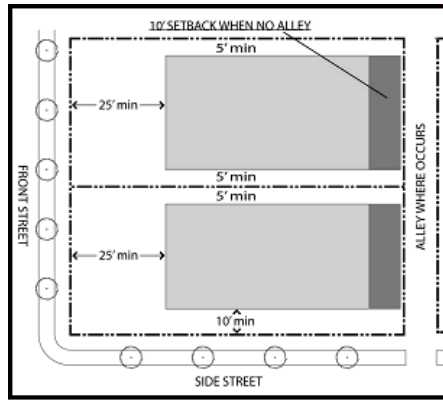


Figure 20.28.140(B) Setbacks—Garages and Carports

Commented [KCJ35]: Delete figure

C. *Bulk and Massing.*

1. Maximum attached dwelling units is eight.
2. Maximum Floor Area Ratio (FAR) is 0.75. [An accessory dwelling unit \(ADU\) pursuant to BMC 20.10.036 is exempt from FAR.](#)
3. The height limit is 35 feet under BMC [20.08.020](#), definition No. 1 or 20 feet under definition No. 2.

D. *Usable Space, Open Space and Landscaping.*

1. Each dwelling unit shall have 200 square feet of private ~~usable~~open space with no dimension less than five feet. Up to 100 square feet of deck, ~~patio~~ or structure may be included. [Private usable space may be consolidated and provided as common usable space with minimum dimensions of 10 feet by 10 feet. All units shall have direct access to usable space.](#)
2. Private ~~usable~~open space must be [directly accessible from the dwelling unit. All ground level usable space delineated](#) ~~screened~~ from public right-of-way, paths, and lanes [through the use of landscaping and/or fencing.](#)
3. ~~Private open space must be directly accessible from the dwelling unit. A minimum of 30 percent of the site area shall be in open space consisting of landscaping or permeable materials (may include permeable paving, landscape-based LID BMPs, and green roofs). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by the city.~~

4. A green factor landscaping score of ~~0.6~~ 0.4 is required (see BMC [20.12.030](#)).

E. *Parking.* All parking shall be provided pursuant to BMC 20.28.050(H).

~~1.— Dwelling units less than 1,000 square feet shall provide at least one on-site parking stall. Units of 1,000 square feet or larger shall provide two on-site parking stalls. The planning director may reduce parking requirements based on applicant's demonstration of site-specific factors that justify a lower standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping, as specified in Figure 20.12.030(A).~~

~~2.— Parking may be consolidated.~~

~~3.— Parking accessed from a street or lane shall be limited to one driveway with a maximum width of 20 feet. Individual driveways may access a private lane.~~

F. *Design Standards.*

1. ~~Each townhouse unit shall front a street, or lane, or common pedestrian corridor, and have an entrance that faces a street, or lane, or common pedestrian corridor.~~

2. Entrances for each unit shall be separate.

3. ~~Each unit shall have direct access to both the public street, or lane, or common pedestrian corridor and parking.~~

4. Each unit must have a covered, main entry-related porch or stoop area of at least ~~50~~ 40 square feet with no dimension less than five feet. This is in addition to the private usable space requirement.

5. Buildings must be modulated along the public street at least every 30 feet. Building modulations must step the building wall back or forward at least four feet, or at least two feet when architectural detailing is used to clearly delineate the individuality of each unit.

~~6.— All fences in the front and side street setbacks, or between the common areas and the units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side street setback.~~

~~7.6.~~ Garbage/recycling areas shall be consolidated, unless the local refuse provider approves otherwise, and screened from public view.

**Commented [BKM36]:** Recommended revisions from Planning Commission.

**Commented [BKM37]:** Recommended revisions from Planning Commission.

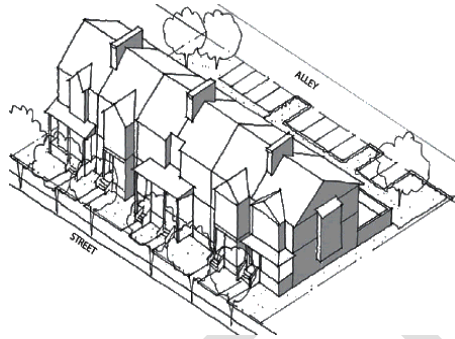


Figure 20.28.140(C) Annotated Illustration of Townhouse

G. *Design Guidelines.*

1. *Building Design.*

- a. Reduce the potential impact of new townhouse development on established and historic neighborhoods by incorporating elements and forms from nearby buildings of character. This may include reference to architectural details, building massing, proportionality, and use of high-integrity materials such as wood, brick, and stone. References to period architecture can be made in a contemporary manner.
- b. *Use lines and rhythms to create a human scale streetscape.* These may include vertical and horizontal patterns as expressed by bays, belt lines, doors and windows.

2. *Site Design.*

- a. Front yard parking aprons are not allowed.
- b. Provide generous use of planting materials and landscape structures such as trellises, raised beds and fencing to unify the overall site design.

**Section 16.** Bellingham Municipal Code, Section 20.37.120 Samish Way urban village Table 20.37.120 Permitted Uses is hereby amended as follows:

P = Permitted # = See note C = Conditional Use N = Not allowed					
Land Use Classification	Area				
	Commercial Core	Commercial Approach	Commercial Transition 1 and 2	Residential Transition 1	Residential Transition 2
1 -26. [No Change]					
27. Chapter <a href="#">20.28</a> BMC, Infill Housing					
a. <del>Repealed</del> Smaller House	N	P(5)	P(5)	P(5)	P(5)
b. Small <del>Lot</del> House	N	P(5)	P(5)	P(5)	P(5)
c. Cottage	N	P(5)	P(5)	P(5)	P(5)
d. Duplex/Triplex/ <del>Fourplex</del>	P(5)	P(5)	P(5)	P(5)	P(5)
e-g. [No Change]					
28-44. [No Change]					

**Section 17.** Bellingham Municipal Code, Section 20.37.220 Fountain district urban village Table 20.37.220 Permitted Uses is hereby amended as follows:

P = Permitted # = See note C = Conditional Use N = Not allowed				
Land Use Classification	Area			
	Commercial Core	Commercial Transition	Residential Transition 1	Residential Transition 2
1-29. [No Change]				
30. Chapter <a href="#">20.28</a> BMC, Infill Housing.				
a. <del>Repealed</del> Smaller House	P(5)	P(5)	P(5)	N
b. Small <del>Lot</del> House	P(5)	P(5)	P(5)	N
c. Cottage	P(5)	P(5)	P(5)	N
d. Duplex	P(5)	P(5)	P(5)	N
e. Triplex/ <del>Fourplex</del>	P(5)	P(5)	N	N
f-h. [No Change]				

P = Permitted # = See note C = Conditional Use N = Not allowed				
Land Use Classification	Area			
	Commercial Core	Commercial Transition	Residential Transition 1	Residential Transition 2
31-48. [No Change]				

**Section 18.** Bellingham Municipal Code, Section 21.10.040 Types of land use decisions is hereby amended as follows:

A - B. [No Change]

C. *Type II.* A Type II review process is an administrative review and decision by the director. Public notice is required. Appeals of Type II decisions are decided by the hearing examiner. The following are Type II decisions:

1. Accessory dwelling unit;
2. Design review for projects that:
  - a. Require a SEPA threshold decision; or
  - b. Include construction of a new building; or
  - c. Include an exterior nonresidential addition to an existing building; or
  - d. Include an exterior addition of one or more residential units; or
  - e. Consist of more than 4 infill housing units pursuant to Chapter 20.28 BMC;

3 - 12. [No Change]

13. Repealed Infill housing projects under Chapter 20.28 BMC;

14 - 18. [No Change]

D - J. [No Change]

**Section 19.** City administration and the codifiers of this ordinance are authorized to make necessary clerical corrections including, but not limited to, the correction of scrivener's/clerical

errors, references, ordinance numbering, section/subsection numbers and any reference thereto.

**Section 20.** The City Council agrees with and adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission attached as **Exhibit A** and incorporated by reference.

**PASSED** by the Council this \_\_\_\_ day of \_\_\_\_, 2021

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_ day of \_\_\_\_, 2021

\_\_\_\_\_  
Mayor

**ATTEST:** \_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Office of the City Attorney

**Published:** \_\_\_\_\_

## BELLINGHAM PLANNING COMMISSION FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS

NOVEMBER 4, 2021

### SUMMARY

Following the public hearing and deliberation on the proposed amendments to the infill housing provisions (commonly referred to as the "infill toolkit or ITK") in BMC Titles 20 and 21, 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 proposed amendments were developed by the Planning and Community Development Department staff as a result of our experience with a number of ITK projects over the past few years. A refinement of new codes after a period of time is often desirable. This project includes targeted amendments intended to improve the use and implementation of the ITK. It is focused on changes to the development and design regulations and permit processing pursuant to BMC Chapters 20.25, 20.28 and 21.10. It includes the following components:

- The chapter's "Purpose and Intent" statements are revised to emphasize pedestrian oriented design, satisfying comprehensive plan goals to create walkable neighborhoods and increase transportation mode shift to alternative transportation modes;
- The current allowance of minor modifications from standards is expanded to allow greater flexibility when a proposed project includes a strong pedestrian-oriented design, a better development pattern, and/or a mix of housing types;
- Some of the chapter's dimensional standards have been revised to encourage use of the ITK to achieve intended densities and to encourage a mix of housing types and good design. Examples include increasing floor area ratios and building height limits, amending and/or adding green factor landscaping requirements to all housing types, balancing the open space and private usable space standards with the floor area ratios and green factor landscaping requirements;

- The review process requirements are revised so that infill housing project applications use the design review process pursuant to proposed amendments in Chapter 20.25;
- The Smaller and Small House housing types are consolidated to eliminate inconsistencies and redundancies between them; and
- Additional minor changes are proposed throughout the land use code as needed to achieve project objectives.

The overall objective of the amendments is to establish code provisions that result in pedestrian oriented development, create flexibility to achieve this objective for both infill and greenfield development, amend some development regulations for infill housing types to be more consistent with other permitted housing types in the same zoning designation, and streamline the application review process for small projects.

Staff is proposing these changes because current code provisions are not achieving pedestrian oriented design. In response to the code deficiencies, development proposals frequently include requests for the same minor modifications. This adds time to the review process for applicants and staff. The code deficiencies should be addressed through this amendment process to avoid modification requests from becoming more common rather than the occasional request. Without the amendments, the code is likely not sufficient to achieve the overall objectives. The proposed amendments will also further the implementation of recent code provisions in the RM project and the land division ordinance update that seek to encourage a variety of housing forms in new developments through use of the ITK.

The proposal also includes amendments to other sections of the municipal code that are necessary to support the intent of the project. For example, currently all infill housing proposals are reviewed using a Type II application process, requiring notice to all property owners within 500 feet of the proposal's boundaries. Staff proposes to change the review process for infill projects consisting of 4 or fewer units to Type I process when no other land use decisions of a higher process type are required. Developers and property owners interested in small infill projects have reported that the current review process discourages use of the ITK, and public comments received in response to notices are less directed to the infill housing provisions and more to general concerns, such as traffic, drainage, density, etc. Therefore, staff believes that revising the process type for small infill projects will encourage use of the ITK for projects with little or no impact on the surrounding neighborhood. This change is consistent with what would otherwise be allowed for a standard 4-lot subdivision for detached single family housing with no design standards.

The proposal does NOT include any expansion of the areas or zones where use of ITK is currently allowed.

## **2. Background Information/Procedural History:**

2009: BMC Chapter 20.28 Infill Housing was adopted.

1 October 3, 2021: A notice of Planning Commission public hearing was issued.

2  
3 October 20, 2021: A non-project SEPA Determination of Nonsignificance was issued.

4  
5 November 4, 2021: Planning Commission public hearing.

6  
7 November 18, 2021: Planning Commission work session to finalize a recommendation on the  
8 draft ordinance. The Planning Commission's recommendation includes the following  
9 revisions to the draft ordinance:

- 10  
11 a. Retain the reference to affordability in the Purpose and Intent statement.  
12 b. Add figures throughout the draft ordinance intended to provide examples of the  
13 written code.  
14 c. Include additional language in the modification criteria section to clarify and  
15 emphasis intent.  
16 d. Include a definition for private alley.  
17 e. Revise the floor area ratio for Small Lot infill units.  
18 f. Revise design standard language for roof forms and designs for many housing types.  
19 g. Other code clean-ups.

20  
21 The proposal includes amending the provisions and application review process of the City's  
22 infill housing toolkit (often referred to as the "infill toolkit" or ITK).

23  
24 The infill housing chapter, BMC Chapter 20.28, was established in 2009 to allow and  
25 encourage the development of alternative housing forms and ownership opportunities in  
26 addition to the city's familiar and typical single and multifamily development. Housing types  
27 allowed under these provisions can include small lot single family housing, cottage housing,  
28 townhomes, zero lot line housing, duplexes, triplexes and accessory dwelling units.

29  
30 Between 2009 and 2015, the City received few applications under these provisions.  
31 Since 2015, interest in using the infill housing code provisions by private developers has  
32 increased substantially. Staff is currently processing several land use applications that  
33 include infill toolkit housing types. This increase is due in part to the changing demographics  
34 of the city, market demand for these housing types, the few early projects being completed  
35 proving a market exists for such housing and creating greater awareness and interest among  
36 developers, and recent code changes that have sought to increase opportunities to use the  
37 infill housing forms.

38  
39 In 2018, the land division (subdivision) ordinance was updated. It established a 50% density  
40 bonus when development includes at least 50% of the total dwelling units as infill housing  
41 types.

42  
43 The RM Project, recently approved by City Council, established minimum density  
44 requirements and restricted the development of detached single-family homes in residential-  
45 multi areas to no more than 25% of the allowed density. However, the 25% restriction does  
46 not apply to infill housing forms. This was done specifically to encourage a diversity of

housing types other than apartment buildings and as a way of meeting the new minimum density requirements.

### 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 October 20, 2021. Notice was mailed to the appropriate agencies, parties of record and published in the Bellingham Herald and on the City's website. 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 infill housing provisions of the BMC were originally adopted in 2009, 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 infill development, development of alternative (or "missing middle") housing forms, good design, and increase opportunities for home ownership 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-2** Encourage mixed housing types for new development on greenfield sites, a benefit of which is the integration of people from various socio-economic backgrounds.

**Policy H-3** Encourage well-designed infill development on vacant or underutilized properties.

**Policy H-4** Continue to support implementation of the Infill Housing Toolkit, which permits innovative housing forms such as small and smaller lot single-family homes, cottages, duplexes, triplexes, common courtyards and townhomes.

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

**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.

**Policy LU-7** Periodically review and update the City's residential zoning regulations and design standards to promote quality development that considers and complements existing neighborhoods.

**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:

- Where possible, install physical buffers between the sidewalk and traffic such as site-appropriate street trees and landscaping, street furniture, rain gardens or other low impact development techniques, and on-street parking.
- Orient new development to streets, and effectively frame in the streetscape.
- Restrict parking to the side or rear of development, or within a structure.
- 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.
- Encourage the use of alleys for vehicle access and utility installation.
- Coordinate placement of physical features between streets and buildings to accommodate staging areas for emergency response vehicles, including aerial apparatus.

1 **GOAL CD-2 Express the City's distinct community identity and sense of place**  
2 **through improvements to the appearance of new development,**  
3 **commercial centers, urban villages, transit corridors and streetscapes.**  
4

5 **Policy CD-7** Ensure that new development is of a type, scale, orientation,  
6 and design that maintains or improves the character,  
7 aesthetics, and livability of neighborhoods. While compatibility  
8 is more of an issue in established neighborhoods, new  
9 development needs to take into account the context of the area  
10 and should result in an improvement to the surrounding  
11 neighborhood.  
12

13 **Policy CD-12** Periodically review and update the City's zoning regulations,  
14 design standards and design review process to ensure they  
15 promote quality development and result in projects that  
16 consider and complement existing neighborhoods. Specific  
17 recommendations include:  
18

- 19 • Require the installation and maintenance of adequate  
20 landscaping and screening in commercial, industrial and  
21 multi-family (including duplex) projects.
- 22 • Allow open space to be satisfied with innovative and  
23 flexible applications of landscaping in denser  
24 development, including green walls and roofs and more  
25 intense landscaping of smaller open spaces, to allow  
26 more efficient use of the land for buildings.
- 27 • Review auto parking standards to reduce the impacts of  
28 parking on urban form, adjacent uses, housing  
29 affordability, pedestrian mobility, and the natural  
30 environment. Continue to pursue parking management  
31 best practices.  
32

33 **Policy CD-14** Provide builders, developers and architects with a set of clear  
34 objectives and performance goals which promote the highest  
35 attainable standard of quality consistent with economic  
36 feasibility for new development.  
37  
38

**GOAL CD-4 Provide a well-designed, pedestrian-friendly, and community-oriented environment.**

**Policy CD-21** Maintain a system of design review that applies more intense levels of review where the scope of the project has greater potential impacts to the community. Implement this system through a formal design review board process in conjunction with administrative review.

**Policy CD-22** Use design standards and design review to accomplish the following:

- Ensure elements of design, proportion, rhythm, scale and massing are appropriate for proposed structures and sites and contextually compatible with surrounding development.
- Consolidate on-site landscaped areas to be large enough to balance the scale of development and functional enough for leisure and recreation.

**GOAL CD-6 Encourage contextually-appropriate infill development projects and property renovations.**

**Policy CD-32** Provide development standards that are adaptable to a variety of conditions to allow for diversity in building styles within districts and neighborhoods.

**Policy CD-33** Encourage the construction of innovative small-scale housing types that fit the context of single-family neighborhoods such as accessory dwelling units, cottage housing, cohousing, townhomes, zero lot line homes, and small lot housing.

**Policy CD-34** Emphasize pedestrian-oriented development that includes building facades that relate to the street and clear pedestrian entries.

**Policy CD-35** Allow flexible setback, parking and lot coverage requirements in older neighborhoods with established lots, so that infill housing can conform to the existing neighborhood structures. In established neighborhoods, for example, new buildings should be the same distance from the street as neighboring buildings.

1 Integration of Land Use and Transportation Planning

2 Due to Bellingham's status as the largest population, employment, and service center in  
3 Whatcom County, the local multimodal transportation network is significantly affected by  
4 regional traffic generated from outside the City limits. The affordability of housing options,  
5 individual choice to live in the county or another city and commute to work in Bellingham, and  
6 the attraction of Canadian shoppers from lower mainland British Columbia just 20 miles to the  
7 north all contribute vehicle traffic generated from outside the City. This presents Bellingham  
8 with significant challenges in using land use and transportation planning policies to  
9 encourage infill development, maintain a compact urban area, and promote transportation  
10 mode shift, while also managing increasing vehicle traffic congestion on the Citywide  
11 multimodal transportation system.

12  
13 **GOAL T-1 Limit urban sprawl by linking land use and transportation planning.**

14  
15 **GOAL T-3 Increase infrastructure for bicycles, pedestrian, and non-single-**  
16 **occupancy vehicle modes of transportation.**

- 17  
18 **Policy T-16** Employ Transportation Demand Management (TDM) and  
19 Transportation System Management (TSM) strategies,  
20 including, but not limited to, those listed below to increase the  
21 safety, efficiency, and long-term sustainability of the Citywide  
22 multimodal transportation system. TDM Actions:  
23 • Implement urban village plans and Multifamily Design  
24 Review Guidelines to encourage development to be transit  
25 supportive, pedestrian oriented, and bicycle friendly;  
26 • Encourage compact land use patterns that reduce vehicle  
27 trips and vehicle miles traveled;  
28 • Monitor U.S. Census data and report annual progress in the  
29 TRAM toward achieving transportation mode shift goals for  
30 increasing the share of work trips made by bicycle,  
31 pedestrian, and transit trips and reducing work trips made by  
32 SOVs;  
33

34 The proposed code amendments, as amended by the Planning Commission, are consistent  
35 with the Housing, Land Use, Community Design and Transportation goals and policies  
36 referenced.  
37

38  
39 **II. CONCLUSIONS**

40  
41 The Planning Commission finds that proposed amendments will:

- 42  
43 1. Foster pedestrian-oriented development by establishing appropriate design and  
44 development standards.

2. Protect the unique character and qualities of existing neighborhoods, while identifying opportunities for improved livability, safety, and housing affordability and diversity.
3. Encourage mixed housing types for new development on greenfield sites.
4. Establish flexibility in code provisions to achieve most efficient use of land and better site design.
5. Streamline the application review process for small infill housing projects.
6. Implement the goals and policies of the Bellingham Comprehensive Plan.

### III. RECOMMENDATION

After careful consideration of all public comments, the staff report, other meeting materials, and the Findings and Conclusions, the Planning Commission recommends, with a 6-1 vote, that the City Council approve the proposed amendments to the Bellingham Municipal Code as shown in the draft ordinance.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
*Planning Commission Chairperson*

**ATTEST:**

\_\_\_\_\_  
*Recording Secretary*

**APPROVED AS TO FORM:**

\_\_\_\_\_  
*City Attorney*

## PLANNING COMMISSION AGENDA ITEM COVER SHEET

Meeting Date		Staff Contact	
November 4, 2021		Chris Koch and Kathy Bell	
<b>Subject:</b>			
A public hearing to consider amendments to Titles 20 and 21 BMC to modify development standards and the application review process for infill housing types pursuant to Chapter 20.28 BMC.			
<b>Attachments:</b>			
<del>A. Draft Ordinance</del>			
<del>B. Draft Findings of Fact, Conclusions and Recommendations</del>			
C. Matrix – Menu of Issues			
<del>D. Public Comment</del>			
E. SEPA Non-project Threshold Determination of Non-Significance			
Meeting Type		Category	
<input checked="" type="checkbox"/> Public Hearing		<input checked="" type="checkbox"/> Legislative	
<input type="checkbox"/> Public Meeting		<input type="checkbox"/> Quasi-judicial	
<input type="checkbox"/> Work Session		<input type="checkbox"/> Information Only	
<input type="checkbox"/> Briefing			
Clearances		Initials	Date
Greg Aucutt, PCDD Assistant Director			
James Erb, Assistant City Attorney			
<b>Previous Commission Meeting or Action:</b>			
None.			
<b>Recommended Action:</b>			
Staff recommends the Planning Commission forward a recommendation of approval to the City Council.			

# CITY OF BELLINGHAM PLANNING STAFF REPORT

<b>Agenda Topic:</b>	<i>Amendments to the infill housing provisions in BMC Titles 20 and 21</i>
<b>For:</b>	<i>November 4, 2021 Planning Commission Public Hearing</i>
<b>Staff Contact:</b>	<i>Chris Koch, Planner II and Kathy Bell, Sr. Planner</i>

## I. SUMMARY OF PROPOSAL

Consideration of amendments to Titles 20 and 21 BMC to modify development standards and the application review process for infill housing types pursuant to Chapter 20.28 BMC.  
**(Attachment A – 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 B)**. 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

2009: BMC Chapter 20.28 Infill Housing was adopted.  
October 3, 2021: A notice of Planning Commission public hearing was issued.  
October 20, 2021: A non-project SEPA Determination of Nonsignificance was issued.  
November 4, 2021: Planning Commission public hearing.

The proposal includes amending the provisions and application review process of the City's infill housing toolkit (often referred to as the "infill toolkit" or ITK).

The infill housing chapter, BMC Chapter 20.28, was established in 2009 to allow and encourage the development of alternative housing forms and ownership opportunities in addition to the city's familiar and typical single and multifamily development. Housing types allowed under these provisions can include small lot single family housing, cottage housing, townhomes, zero lot line housing, duplexes, triplexes and accessory dwelling units.

Between 2009 and 2015, the City received few applications under these provisions.

Since 2015, interest in using the infill housing code provisions by private developers has increased substantially. Staff is currently processing several land use applications that include

1 infill toolkit housing types. This increase is due in part to the changing demographics of the city,  
2 market demand for these housing types, the few early projects being completed proving a  
3 market exists for such housing and creating greater awareness and interest among developers,  
4 and recent code changes that have sought to increase opportunities to use the infill housing  
5 forms.  
6

7 In 2018, the land division (subdivision) ordinance was updated. It established a 50% density  
8 bonus when development includes at least 50% of the total dwelling units as infill housing types.  
9

10 The RM Project, recently approved by City Council, established minimum density requirements  
11 and restricted the development of detached single-family homes in residential-multi areas to no  
12 more than 25% of the allowed density. However, the 25% restriction does not apply to infill  
13 housing forms. This was done specifically to encourage a diversity of housing types other than  
14 apartment buildings and as a way of meeting the new minimum density requirements.  
15

#### 16 17 **IV. PROPOSAL** 18

19 The proposed amendments were developed by the Planning and Community Development  
20 Department staff as a result of our experience with a number of projects over the past few  
21 years. A refinement of new codes after a period of time is often desirable. This project includes  
22 targeted amendments intended to improve the use and implementation of the ITK. It is focused  
23 on changes to the development and design regulations and permit processing for infill housing  
24 types pursuant to BMC Chapters 20.25, 20.28 and 21.10. It includes the following components:  
25

- 26 • The chapter's "Purpose and Intent" statements are revised to emphasize pedestrian  
27 oriented design, satisfying comp plan goals to create walkable neighborhoods and  
28 increase transportation mode shift to alternative transportation;
- 29 • The allowance of minor modifications from standards are expanded to allow greater  
30 flexibility when development incorporates strong pedestrian oriented design, better  
31 development pattern, and/or mixed housing.
- 32 • Some of the chapter's dimensional standards have been revised to encourage use of the  
33 ITK to achieve intended densities and to encourage a mix of housing types and good  
34 design. Examples include increasing floor area ratios and building height limits, amending  
35 and/or adding green factor landscaping requirement to all housing types, balancing the  
36 open space and private usable space standards with the floor area ratios and green factor  
37 landscaping requirements;
- 38 • The review process requirements are revised so that infill housing project applications use  
39 the design review process pursuant to proposed amendments in Chapter 20.25;
- 40 • Consolidate the Smaller and Small House housing types to eliminate inconsistencies and  
41 redundancies between them.
- 42 • Additional minor changes proposed throughout the land use code as needed to address  
43 project objectives.  
44

45 The overall objective of the amendments is to establish code provisions that result in pedestrian  
46 oriented development, create flexibility to achieve this objective for both infill and greenfield  
47 development, amend some development regulations of infill housing types to be more  
48 consistent with other permitted housing types developing in the same zoning designation, and  
49 streamline the application review process.  
50

1 Staff is proposing these changes in part to address the challenges of achieving pedestrian  
2 oriented design. Current code provisions are not achieving pedestrian oriented design. In  
3 response to the code deficiencies, development proposals frequently include requests for the  
4 same minor modifications. Staff believes that these code deficiencies should be fixed through  
5 this amendment process to avoid modification requests from becoming more common rather  
6 than the occasional request. Without the amendments, the code is likely not sufficient to achieve  
7 the overall objectives. The proposed amendments will also further the implementation of recent  
8 code provisions in the RM project and the land division ordinance update that seek to  
9 encourage a variety of housing forms in new developments through use of the ITK.

10  
11 The proposal also includes amendments to other sections of the municipal code that are  
12 necessary to support the intent of the project. For example, currently all infill housing proposals  
13 are reviewed using a Type II application process, requiring notice to all property owners within  
14 500 feet of the proposal's boundaries. Staff proposes to change the review process for infill  
15 projects consisting of 4 or fewer units to Type I process when no other land use decisions of a  
16 higher process type are required. Developers and property owners interested in small infill  
17 projects have reported that the current review process discourages use of the ITK and public  
18 comments received in response under the current process are less directed to the infill housing  
19 provisions and more to general concerns, such as traffic, drainage, density, etc. Therefore, staff  
20 believes that revising the process type for small infill projects will encourage use of the ITK for  
21 projects with little or no impact on the surrounding neighborhood, and bring them into parity with  
22 what would otherwise be allowed for a standard 4-lot subdivision for detached single family  
23 housing with no design standards.

24  
25 The proposal does NOT include any expansion of the areas or zones where use of ITK housing  
26 forms is currently allowed.  
27

## 28 29 **V. ISSUES AND OPPORTUNITIES**

30  
31 Issues and opportunities with the current infill housing provisions are identified in the attached  
32 matrix (**Attachment C**). These were derived from recent experiences with infill housing projects  
33 and discussions with staff and with other stakeholders (land use consultants, engineers and  
34 landscape architects) who have extensive experience with the ITK.  
35

## 36 37 **VI. COMPREHENSIVE PLAN GOALS AND POLICIES**

38  
39 Zoning and development regulations should be reviewed and amended periodically to address  
40 changing circumstances and to implement the goals and policies of the comprehensive plan.  
41 The infill housing provisions of the BMC were originally adopted in 2009, prior to the approval of  
42 the 2016 version of the Bellingham Comprehensive Plan. The proposed amendments are  
43 intended to address the comprehensive plan goals and policies that encourage infill  
44 development, development of alternative (or "missing middle") housing forms, good design, and  
45 increase opportunities for home ownership as established in the following goals and policies.  
46

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

1	<b>Policy H-2</b>	Encourage mixed housing types for new development on
2		greenfield sites, a benefit of which is the integration of people from
3		various socio-economic backgrounds.
4	<b>Policy H-3</b>	Encourage well-designed infill development on vacant or
5		underutilized properties.
6	<b>Policy H-4</b>	Continue to support implementation of the Infill Housing Toolkit,
7		which permits innovative housing forms such as small and smaller
8		lot single-family homes, cottages, duplexes, triplexes, common
9		courtyards and townhomes.
10		
11	<b>GOAL H-2</b>	<b>Foster housing that is safe, healthy, livable, and affordable for all income</b>
12		<b>levels in all neighborhoods.</b>
13	<b>Policy H-24</b>	Continue streamlining the regulatory review and building permit
14		process and reviewing the cost of infrastructure improvements
15		and their impact on housing costs.
16	<b>GOAL LU-1</b>	<b>Support sense of place in neighborhoods.</b>
17		
18	<b>Policy LU-4</b>	Protect the unique character and qualities of existing
19		neighborhoods, while identifying opportunities for improved
20		livability, safety, and housing affordability and diversity.
21		
22	<b>Policy LU-7</b>	Periodically review and update the City's residential zoning
23		regulations and design standards to promote quality development
24		that considers and complements existing neighborhoods.
25	<b>GOAL CD-1</b>	<b>Promote streetscapes that enhance the economic vitality and overall visual</b>
26		<b>quality of the City, support the circulation network, and support pedestrian-</b>
27		<b>scale streets and patterns of activity.</b>
28		
29	<b>Policy CD-2</b>	Ensure that land use, fire, and street standards are coordinated to
30		provide greater pedestrian comfort and safety and more attractive
31		alternative modes of transportation. Implementation strategies
32		include:
33		
34		• Where possible, install physical buffers between the sidewalk
35		and traffic such as site-appropriate street trees and
36		landscaping, street furniture, rain gardens or other low impact
37		development techniques, and on-street parking.
38		• Orient new development to streets, and effectively frame in the
39		streetscape.
40		• Restrict parking to the side or rear of development, or within a
41		structure.
42		• Consider allowing on-street parking to count toward off-street
43		requirements in selected mixed-use areas to encourage
44		compact, pedestrian-oriented development and to lessen the
45		size and impacts of large parking lots.

- Encourage the use of alleys for vehicle access and utility installation.
- Coordinate placement of physical features between streets and buildings to accommodate staging areas for emergency response vehicles, including aerial apparatus.

**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-7** Ensure that new development is of a type, scale, orientation, and design that maintains or improves the character, aesthetics, and livability of neighborhoods. While compatibility is more of an issue in established neighborhoods, new development needs to take into account the context of the area and should result in an improvement to the surrounding neighborhood.

**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:

- Require the installation and maintenance of adequate landscaping and screening in commercial, industrial and multi-family (including duplex) projects.
- Allow open space to be satisfied with innovative and flexible applications of landscaping in denser development, including green walls and roofs and more intense landscaping of smaller open spaces, to allow more efficient use of the land for buildings.
- 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 CD-4 Provide a well-designed, pedestrian-friendly, and community-oriented environment.**

**Policy CD-21** Maintain a system of design review that applies more intense levels of review where the scope of the project has greater potential impacts to the community. Implement this system through a formal design review board process in conjunction with administrative review.

**Policy CD-22** Use design standards and design review to accomplish the following:

- Ensure elements of design, proportion, rhythm, scale and massing are appropriate for proposed structures and sites and contextually compatible with surrounding development.
- Consolidate on-site landscaped areas to be large enough to balance the scale of development and functional enough for leisure and recreation.

**GOAL CD-6 Encourage contextually-appropriate infill development projects and property renovations.**

**Policy CD-32** Provide development standards that are adaptable to a variety of conditions to allow for diversity in building styles within districts and neighborhoods.

**Policy CD-33** Encourage the construction of innovative small-scale housing types that fit the context of single-family neighborhoods such as accessory dwelling units, cottage housing, cohousing, townhomes, zero lot line homes, and small lot housing.

**Policy CD-34** Emphasize pedestrian-oriented development that includes building facades that relate to the street and clear pedestrian entries.

**Policy CD-35** Allow flexible setback, parking and lot coverage requirements in older neighborhoods with established lots, so that infill housing can conform to the existing neighborhood structures. In established neighborhoods, for example, new buildings should be the same distance from the street as neighboring buildings.

**Integration of Land Use and Transportation Planning**

Due to Bellingham's status as the largest population, employment, and service center in Whatcom County, the local multimodal transportation network is significantly affected by regional traffic generated from outside the City limits. The affordability of housing options, individual choice to live in the county or another city and commute to work in Bellingham, and the attraction of Canadian shoppers from lower mainland British Columbia just 20 miles to the north all contribute vehicle traffic generated from outside the City. This presents Bellingham with significant challenges in using land use and transportation planning policies to encourage infill development, maintain a compact urban area, and promote transportation mode shift, while also managing increasing vehicle traffic congestion on the Citywide multimodal transportation system.

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

**GOAL T-3 Increase infrastructure for bicycles, pedestrian, and non-single-occupancy vehicle modes of transportation.**

**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;
- Monitor U.S. Census data and report annual progress in the TRAM toward achieving transportation mode shift goals for increasing the share of work trips made by bicycle, pedestrian, and transit trips and reducing work trips made by SOVs;

## **VII. ANALYSIS**

The proposed code amendments are consistent with the Comprehensive Plan's Housing, Land Use, Community Design and Transportation goals and policies referenced above. These policy statements guided staff's efforts to develop amendments that support the purpose and intent of the infill housing chapter by creating development and design regulations that:

- Foster pedestrian-oriented development;
- Protect and enhance existing and new neighborhood character;
- Establish flexibility in code provisions to achieve most efficient use of land and better site design; and
- Streamline the application review process for small projects

Compact, pedestrian oriented development is supported by the comprehensive plan and the existing infill housing provisions. Staff desires to amend certain code provisions to reinforce this overall objective to ensure development in existing neighborhoods maintains or enhances its character through bulk and mass provisions as well as design standards.

Current codes encourage the use of the infill housing provisions in both infill and greenfield developments. It is recognized that when developing in greenfield scenarios, there should be a greater degree of discretion and flexibility given to the overall design objectives when new neighborhoods are created. The proposal includes modifications that address greenfield development while ensuring attention is paid to the character of existing neighborhoods.

The city's current permit application review process is determined by who makes the decision, the amount of discretion exercised by the decision maker and the amount and type of public input sought. Staff is proposing that certain small infill housing projects to not require public notice unless required by other land use applications associated with a proposal. Public comments received for smaller projects seem to be directed more toward the impacts resulting from growth, such as increased traffic, too much density and drainage, rather than comments specific to the actual infill housing code provisions. The city reviews proposals against other code provisions that are specific to these general concerns.

1  
2 **VIII. PUBLIC COMMENT**  
3

4 Notice of the Planning Commission hearing was mailed pursuant to BMC 21.10.150(D) and  
5 published in the Bellingham Herald on October 3, 2021.  
6

7 Public comments received to date are included, see **Attachment D**.  
8  
9

10 **IX. STATE ENVIRONMENTAL POLICY ACT (SEPA)**  
11

12 A non-project State Environmental Policy Act Determination of Non-Significance was issued on  
13 October 20, 2021. No public comments have been received regarding this determination.  
14 **(Attachment E)**  
15

16 **X. STAFF RECOMMENDATION**  
17

18 Staff believes the proposed code amendments are consistent with and will implement the goals  
19 and policies of the Bellingham Comprehensive Plan. The proposed changes will promote the  
20 continued use of infill housing in a manner that uses the city's developable land efficiently. The  
21 changes establish codes that are predictable for developers and staff and use an appropriate  
22 review process scaled to the intensity of a proposed development. Staff recommends the  
23 Planning Commission adopt the draft findings and conclusions and forward a recommendation  
24 of approval to the City Council.  
25

26 **XI. LIST OF ATTACHMENTS**  
27

- 28 A. Draft Ordinance  
29 B. Draft Findings of Fact, Conclusions and Recommendations  
30 C. Matrix – Menu of Issues  
31 D. Public comment  
32 E. SEPA Non-project Threshold Determination of Non-Significance

MENU OF KEY ISSUES - INFILL TOOLKIT

The following key issues have been identified by Planning and Community Development staff and summarize the proposed amendments to the Infill Toolkit provisions, Chapter 20.28 BMC.

ISSUES	OPPORTUNITIES	PROS AND CONS
<b>Pedestrian Orientation:</b> The purpose of the ITK chapter lacks emphasis to create pedestrian orientated development that is supportive of alternative transportation. The infill housing provisions should be amended to ensure development is meeting this purpose.	Identify how the design of infrastructure and housing will result in pedestrian-oriented development.	Pro: Pedestrian oriented developments contribute to a more attractive public realm and make alternative transportation options more attractive, inviting, and safe to use. Pedestrian oriented development is more environmentally and fiscally sustainable than auto centric development.  Con: None identified.
<b>Development standards:</b> Specific ITK development regulations including, but no limited to, floor area ratio (FAR), open space, usable space, and minimum floor area limitations may be discouraging, rather than encouraging, the use of the ITK. For many housing types, the FAR is too low, the open space provisions too high, and the minimum floor area limitations are too low. Staff has identified that these regulations are resulting in lost opportunities to maximize infill development.	Review bulk and dimensional standards for all infill housing types. Establish standards that provide developments with increased design flexibility to improve housing designs and achieve neighborhood character.	Pro: Unifies implementation by housing type; enhance infill opportunities; more efficient use of land; more functional design; simplicity of implementation; increase housing options and diversity.  Con: None identified.
<b>Green Factor:</b> Green factor (GF) landscaping currently is not required for all infill housing types resulting in an inconsistent application of landscaping between housing types. On unencumbered sites, the GF landscaping has often resulted in excessive landscaping (crowding). Also, it has been interpreted to apply to the same area of the site that is used to calculate floor area ratio. In practice, this provision is difficult to meet when the site area that is suitable for landscaping is reduced due to critical areas and/or hard surfacing. Meeting this requirement can result in an unsustainable landscaping density at maturity and can reduce the function of the limited usable space areas.	Explore appropriate green factor landscaping scores and/or landscaping requirements for all infill housing types to achieve functional and sustainable landscaping.	Pro: Enables long term maturity of landscaping, increases long term usability of open space; preservation of landscaping once it matures; decreases cost of initial planting and future thinning; more consistent application of landscaping between housing types.  Con: Increased development costs associated with providing landscaping for infill housing types that currently do not have landscape requirements.
<b>Multifamily design review:</b> Infill toolkit proposals are required to obtain approval of both an infill housing and design review applications, which often require the submittal of redundant information. The infill housing provisions state that infill housing proposals must satisfy the multifamily design provisions of BMC 20.25 and those in the infill housing chapter. Staff does not believe that two applications are necessary to adequately review infill housing for compliance with the municipal code.	Reduce the number of required application submittals by processing infill housing proposals through only the design review process.	Pro: Reduces procedural redundancies, applications materials, and fees.  Con: None identified.
<b>Administrative modifications:</b> The infill toolkit provisions include administrative authority to approve minor modifications. The criteria for considering a minor modification is limited in part to demonstrating site constraints due to shape, topography, easements, or sensitive areas. This narrow scope of hardship is not allowing the design flexibility intended by the administrative authority to consider other site constraints such as the location of existing structures on the site or resulting in a better design.	Incorporate additional criteria that can be considered for authorizing minor administrative modifications that will result in pedestrian-oriented developments, increased infill opportunity, and better site and building design.	Pro: Increases design flexibilities for existing situations and creating developments that will result in a better design.  Con: None identified.



**Planning and Community Development Department**

210 Lottie Street, Bellingham, WA 98225

Phone: (360) 778-8300 Fax: (360) 778-8301 TTY: (360) 778-8382

Email: [planning@cob.org](mailto:planning@cob.org) Web: [www.cob.org](http://www.cob.org)

**Determination of Non-Significance (DNS)  
Infill Housing Amendments**

**SEP2021-0041**

**Date of Issuance of Threshold Determination:** 10/20/2021

**Project Description:** Non-project SEPA review of proposed amendments to the land use code that will amend development and design regulations and permit processing for infill housing types pursuant to Titles 20 and 21 of the Bellingham Municipal Code. This update to the "infill toolkit" is a refinement of codes adopted in 2009 and intended to improve the use and implementation of the toolkit.

**Project Location:** City of Bellingham, WA - Amendments to BMC applicable Citywide, unless otherwise noted

**Proponent:** City of Bellingham, 210 Lottie Street, Bellingham, WA 98225 360-778-8390

**Lead Agency:** City of Bellingham, Planning and Community Development Department (PCDD)

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**Environmental Information Considered:**

- 2016 Bellingham Comprehensive Plan and associated DNS (SEP2015-5009)
- Final EIS: 2016 Whatcom County Comprehensive Plan and Development Regulations Update and Urban Growth Areas Review
- 2015 North Bellingham and Urban Growth Boundary Wetland, Stream, Habitat Conservation Area and Buffer Assessment
- March 31, 2009 SEPA DNS for initial adoption of Chapter 20.28 BMC Infill Housing (SEP2009-0013)
- Bellingham Municipal Code
- SEPA checklist prepared October 12, 2021

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.

- ☒ This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date of issuance. Anyone wishing to comment on this threshold determination is invited to submit written comments to the PCDD by **5:00pm on 11/3/2021**.

**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).

**Staff Contact:**

Kathy Bell, Senior Planner  
Planning and Community Development  
Department  
210 Lottie Street - Bellingham, WA 98225

**Responsible Official:**

Kurt Nabbefeld, Development Services  
Manager  
Planning and Community Development  
Department  
210 Lottie Street, Bellingham, WA 98225



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Signature

## RECORD OF PROCEEDINGS OF THE PLANNING COMMISSION CITY OF BELLINGHAM, WASHINGTON

Thursday  
November 4, 2021  
Video Recorded

7:00 PM  
City Council Chambers  
[www.cob.org](http://www.cob.org)

### **Call to Order / Roll Call**

Mike Estes (Chair), Ali Taysi (Vice-Chair), Barbara Plaskett, Jed Ballew, Rose Lathrop, Scott Jones and Victor Crosetti

### **Approval of Minutes**

### **Public Comment Period**

*Opportunity for citizens to speak informally to the Planning Commissioners on any subject not listed on the agenda. Speakers are allowed a MAXIMUM of three (3) minutes to address the Commission. Speakers will not be required to disclose their address.*

### **PUBLIC HEARING**

*Infill Housing Amendments - consider amendments to the Infill Housing (toolkit) provisions in BMC Title 20 and Title 21.*

Staff provided a brief history of the existing toolkit and reviewed the scope being followed for this update. They explained the proposed amendments to the ordinance include:

- Photos of what the following terms should look like when developed correctly:
  - Pedestrian Oriented Development
  - Minimizing Street front Garages, Driveways and Parking
  - Common Pedestrian Corridors
- Rationale for combining the Smaller House & Small House housing types into the single housing type "Small Lot"
- Rationale for allowing the fourplex housing type in the same building envelope that a duplex or triplex are already allowed in

Staff also reviewed the proposed amendments related to:

- Bulk and Massing: examples were reviewed of how balance could be achieved with Floor Area Ratio (FAR), Open Space and Green Factor Landscaping (including Alley Landscaping).
- Minor Modifications that would allow for staff discretion in extraordinary circumstances, and in those instances where the result would be a better design while still satisfying the purpose or intent of the regulations.
- Rationale for changes to the existing process.

Staff shared the other sections of the code that would be affected by these amendments and would also require modifications.

### **Public Hearing Open**

**Thomas Scott**, York Neighborhood Association President commented on the lack of time available to review the packet. He expressed concern about the proposed changes to the notice requirements moving from a Type II to a Type I process.

### **Public Hearing closed**

### **Commissioner Discussion**

The Commissioners asked staff to address the following questions / issues:

- Why was “affordable housing” stricken from the purpose and intent statement?
- How is the infill toolkit being used currently?
- Why was the infill toolkit originally created?
- Rationale for limiting the scope for this update?
- Clarity on the proposed process (Type I vs. Type II and single application).
- Clarity on new approach to access (Common Pedestrian Corridor).
- Understand the Green Factor a little more.
- What was done to address any environmental impacts of the proposed changes?
- How much consideration was made to requiring ADA units, what are the Federal Regulations?
- How did the numbers get calculated for the Floor Area Ratio figures?
- Would modern styles of architecture be welcome, existing language appears to restrict creativity?
- Timing of permits.
- Will more units be allowed on a single property?
- How can the toolkit be used in other locations – where / what would come before PC in the future?
- For infill projects in multi-family residential zones they seem to have more restrictions than other similar development would in the same location.
- Why do the infill toolkit housing forms have a FAR requirement?
- What are the barriers to having the infill toolkit housing forms being developed in multi-family residential zoned areas?

Staff provided the following responses:

- They shared the history of the infill toolkit and discussed why there are design standards and FAR associated with the housing forms.
- They addressed the removal of “affordable housing” language.
- Staff explained that the Building Code addresses the ADA requirements that must be adhered to, not the Infill Toolkit Ordinance.
- It was pointed out that a separate process will be coming forward to addresses the timing of all permits.
- Staff clarified that the proposed updates do not change where the toolkit housing forms are allowed.
- Staff reiterated that FAR does not affect density – it only affects the size of the building, which in turn can affect the size of the units – not the number of units that can be developed.
- Staff shared that the Infill Housing Toolkit provides choices for development and the proposed amendments address many of the barriers that have been identified to date.
- Staff explained the difference between open space and usable space.

**Affordable Housing Conversation:**

There was a discussion about the removal of “affordable housing” language. Some Commissioners felt that even though it may not be producing affordable housing units currently, does not mean it won’t in the future. There was support for leaving the language in the ordinance as a reminder of what the community would like to see the toolkit achieve.

It was suggested that the City consider inclusionary zoning to help address the affordable housing crisis. Staff explained that the City will be looking at inclusionary zoning in the upcoming year.

**Pedestrian Oriented Development:**

Staff explained the proposed changes and how it helps to achieve a better pedestrian experience. There was some discussion on what is trying to be achieved with the amendments. It was suggested that “alley” be a defined term like “lane” and “pedestrian corridor” have been. There was a brief discussion about the requirement to prioritize the existing street, and the importance of having allowances included in the ordinance for when that is not appropriate. Staff clarified that there is flexibility in this requirement.

**Development Standards:**

There was a discussion about the changes made to the different sections of the code that identified how the housing forms would be required to utilize FAR, open space and usable space and minimum floor area. It was pointed out that the amendments created more flexibility in the housing that could be developed, as well as helped to make it more competitive with what could otherwise be developed under standard development regulations. Although there was support expressed for the changes made to the bulk and massing sections, there was a question as to why there are different requirements for different housing forms.

Staff explained the rationale for the different standards depending on the housing type. There was also a brief conversation about the garage exemptions for the smaller lot.

**Green Factor:**

Staff explained that every housing type would now require a green factor component and reviewed the proposed amendments and the rationale for making the changes. There was a brief conversation about how critical areas affect how Green Factor would be determined. There was general support for the proposed amendments.

**Multi-Family Design Review:**

Staff shared the rationale for the making the change to a single permit, rather than requiring two permits for only the Infill Housing Toolkit housing forms. It was pointed out that the Ordinance will contain additional illustrations and diagrams to help convey the intent of the requirements. Staff explained how the process would be different moving from a Type II to a Type I. There was support expressed for the proposed changes.

Staff will review any outstanding questions / comments that have not yet been addressed and will come back to the work session with responses and any additional proposed changes for consideration based on public and Commissioner comments.

**Old/New Business**

## **Adjournment**

Minutes prepared by:

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Heather Aven, Recording Secretary

Minutes edited by Planning Commission members and various Planning Staff.

# RECORD OF PROCEEDINGS OF THE PLANNING COMMISSION

## CITY OF BELLINGHAM, WASHINGTON

Thursday  
November 18, 2021  
Video Recorded

7:00 PM  
City Council Chambers  
[www.cob.org](http://www.cob.org)

### **Call to Order / Roll Call**

**Present:** Mike Estes (Chair), Ali Taysi (Vice Chair), Barbara Plaskett, Jed Ballew, Rose Lathrop, Scott Jones, Victor Crosetti

### **Approval of Minutes**

### **Public Comment Period**

*Opportunity for citizens to speak informally to the Planning Commissioners on any subject not listed on the agenda. Speakers are allowed a MAXIMUM of three (3) minutes to address the Commission. Speakers will not be required to disclose their address.*

### **WORK SESSION**

*Work Session on Infill Toolkit Amendments*

Staff reviewed the minor modifications included in the proposed ordinance and provided responses to some of the public comment received. Staff also responded to some follow-up items that Commissioners identified at the November 4, 2021 public hearing. Staff commented on the changes they are proposing to include in the ordinance in response to the discussion at the public hearing, and written comment.

### **Commissioner Discussion:**

There was a conversation about the language regarding garages and driveways shall be proportionately less than the width of the dwelling unit. Staff explained the rationale for this language.

There was some concern expressed about limiting the building height to 25' and suggested that some flexibility be allowed. There was also a discussion about the different components of the Common Pedestrian Corridor requirements with regard to alley width.

A brief discussion was held on "roofs". It was suggested that some of the language is restrictive, and does not really allow for the non-traditional architecture. Staff clarified that only one housing type is impacted by the restriction.

There was concern expressed that toolkit housing forms are subject to design review processes that a single family housing form would not be subject to.

**MOTION:** Ali Taysi / Rose Lathrop moved to accept all the proposed changes outlined in the November 18, 2021 Staff Memo, as well as the two additional changes staff proposed at the meeting, and incorporate them into the Draft Infill Toolkit ordinance.

**VOTE: MOTION PASSES 6-1 (Plaskett Opposed)**

**MOTION:** Ali Taysi / Jed Ballew moved to include the language “reduces conflict and redundancy in regulations” at the end of the last paragraph of BMC 20.28.030(C).

It was stated that there are different sets of code that overlap, and this language will help to clarify the primary reason the new section was created.

Staff indicated they are in support of this additional language.

**VOTE: MOTION PASSES 7-0**

**MOTION:** Ali Taysi / Mike Estes moved to change the language in BMC 20.28.070(C)(1) to read “Garages are exempt from FAR except as follows:”

Staff noted that the smaller lot is the only housing type this is applicable to and that the language “Garages are included in FAR” should be retained. It was also shared that staff was trying to incentivize having the garage in the rear to allow for a better pedestrian experience.

There was concern expressed that street loaded garages should not be penalized if they incorporated the proposed pedestrian oriented design standards.

It was confirmed that all garages should be eligible for the FAR exemption and the BMC section would then read: “Garages are included in FAR, but are exempt as follows:”, or something similar as staff may need to clean- up the language a bit more.

**VOTE: MOTION PASSES 5-2 (Crosetti and Plaskett Opposed)**

**MOTION:** Ali Taysi / Jed Ballew moved to strike the two references to roof pitch in BMC 20.28.120(F)(2) (in both shared court and garden court sections) and in BMC 20.28.130(F)(4) “No roof pitch shall be less than 2-12 (may be shed type) except for green roofs”.

Staff confirmed that the multi-family design standards would be there to encourage compatibility that could come up for those neighborhoods with an established character.

**VOTE: MOTION PASSES 7-0**

**MOTION:** Jed Ballew / Ali Taysi moved to strike the language “Gable roof emphasize vertical proportions, create modulation and are strongly encouraged” from both BMC 20.28.070(G)(1)(b) and BMC 20.28.110(G)(1)(b).

There was concern expressed about the current language because it could restrict the ability for creative design. It was pointed out that if an issue arises with neighborhood compatibility, it could be addressed through the multi-family design review standards.

Staff stated that they would prefer that a design element for roofs be retained in the ordinance.

**AMENDMENT:** Ali Taysi / Jed Ballew moved to replace the language in the two referenced sections to read “roof forms that emphasize vertical proportions and create modulation are strongly encouraged”. **VOTE: MOTION PASSES 7-0**

**VOTE: MOTION PASSES 7-0**

**MOTION:** Rose Lathrop / Ali Taysi moved to accept the findings of fact, conclusions and recommendations as presented in the November 4, 2021 staff report and amended via discussion at the

November 18, 2021 work session and forward a recommendation of approval for the Infill Housing Toolkit Ordinance to the City Council.

There was general consensus that the barriers that led to modifications being granted have been addressed in this update.

**VOTE: MOTION PASSES 6-1 (Plasket Opposed)**

### **Old/New Business**

Greg advised there will be two more meetings this year:

- December 2<sup>nd</sup> where the Commission will have two presentations for the members.
- December 16<sup>th</sup> will be a public hearing on the proposed changes to the docketing process.

### **Adjournment**

Minutes prepared by:

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Heather Aven, Recording Secretary

Minutes edited by Planning Commission members and various Planning Staff.

**To:** Planning Commission

**From:** Greg Aucutt, AICP, Assistant Director  
Kurt Nabbefeld, Development Services Manager  
Kathy Bell, Senior Planner  
Chris Koch, Planner II

**Date:** November 16, 2021

**Re:** Follow-up to November 4th Public Hearing on Infill Toolkit (ITK) Amendments

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### **Background**

The Commission held a public hearing on proposed changes to the Bellingham Municipal Code Chapters 20, 21 and 23 to facilitate amendments intended to improve the use and implementation of the ITK. Staff continues to receive inquiries requesting development of infill housing units and believes there is enough anecdotal experience working with the ITK to identify areas of the code that should be amended to advance the city's overall objectives of providing missing-middle housing forms.

Within the last few years, city staff have reviewed ITK proposals that include more than 700 infill housing units. Through the review of these proposals, staff have identified areas of code that can be difficult to implement and/or are not achieving the maximum effectiveness of the code's intent. Often development proposals require a broad range of exceptions to achieve a desirable, pedestrian oriented development.

This is the first phase of a review of the ITK and limited in scope. The intent of this phase is not to completely rewrite a code that is effectively achieving the city's goals of providing infill housing but instead amend it to remove known obstacles and add provisions to improve clarity and outcomes. The proposed amendments are minor refinements to the design and development regulations intended to achieve pedestrian oriented development and resolve nuisances and make-work situations that the existing regulations create. A subsequent phase exploring a broader range of changes, such as where the ITK should be allowed and greenfield vs infill application, will be included in future work plans.

Staff believes the amendments will provide an even greater opportunity for development of a variety of infill housing forms, which in turn could lead to greater housing affordability and homeownership opportunities.

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### **Response to Public Comment - Attached**

The city received multiple written comments and public testimony at the hearing. Much of the written public comment was not submitted in time for staff to fully evaluate the issues and provide responses at the public hearing. The following are staff's responses to the topics raised in public comment as of the date of issuing this memo:

- Timing of amendments - need more time/outreach to stakeholders: **Staff response.** The Commission agreed more time should be allotted for review and left the written comment

period open. Staff did reach out to stakeholders to discuss and solicit feedback on phase I of this project because the proposed amendments are minor. No increase in the number of dwelling units is expected, nor does the proposal change the areas where ITK housing forms are allowed. Phase II of the project will include a discussion with the community regarding these issues.

- Single-family neighborhoods: **Staff response.** As indicated above, this proposal does not include expanding the use of the ITK into single-family zoned areas where it is not already allowed.
- Eliminate floor area ratio (FAR): **Staff response.** A floor area ratio is an appropriate development regulation to ensure new development is consistent with the size and scale of existing neighborhoods. Staff does not recommend eliminating this requirement.
- Eliminate landscaping requirements (green factor landscaping): **Staff response.** Landscaping is important for meeting several city commitments, including climate change, and should be required for all development in the city. General application of the ITK is within established neighborhoods with mature landscaping. One way to help ensure new development is compatible with existing areas, is to require a higher level of landscaping. As proposed, all infill housing units would have a landscaping requirement. If these landscaping amendments are approved, standard detached single family will be the only development that would not have a landscaping requirement. Staff believes the draft ordinance includes regulations that will result in a balanced implementation of the green factor landscaping, FAR and open space requirements and help ensure compatible development.
- Eliminate single floor area limitations: **Staff response.** Staff agrees and these have been removed from code.
- Reduce open space for Cottages: **Staff response.** Staff believes the draft ordinance addresses this comment with the reduced open space requirement for cottage housing.
- Eliminate certain design standards for Shared Court: **Staff response.** Staff does not recommend amending the design standards for the common shared court. This housing type is meant to be unique from others by providing a shared courtyard that is designed for the pedestrian first while still providing vehicular access to garages. Design standards are essential to defining the hierarchy of the intended users of the courtyard.
- Review development standards concerning lanes: **Staff response.** The proposed amendments are intended to remove the common barriers experienced when implementing the existing lane provisions. Based on our experience, the lane standards can be a barrier to achieving the goal of pedestrian oriented design. Staff has seen an increase in the number of modifications requested from the lane standards to achieve pedestrian oriented development. When modifications are the norm rather than the exception, the barrier to achieving good development is within the codes.
- ITK development regulations are more restrictive than multifamily. **Staff response.** Proposed amendments bring several ITK provisions such as open space into closer parity with single-family and multifamily regulations, but differences remain (and should remain) given that the ITK consists of several unique housing types. The differences in development regulations for each is part of what makes them unique. The ability to grant exceptions were added to the minor modification provisions to account for greenfield development and circumstances where a development includes a mix of housing types. The city is currently reviewing its design guidelines for urban villages and multifamily guidelines will also be reviewed in coming work programs, which allows for better alignment between uses and requirements.

- Consistency with neighborhood character: **Staff response.** ITK projects are reviewed using the multifamily design standards as well as the standards within the ITK. Neighborhood scale and compatibility are specific design topics with criteria in the multifamily design standards. New development must address these standards. No changes are proposed to these standards.
- Public notice for ITK projects: **Staff response.** Concern was raised regarding notice for projects developing under the ITK with density bonuses. Staff agrees and the draft ordinance is written to ensure that all projects that include a density bonus, regardless of scale, will include public notice in the review process.

The Commission kept the written record open until end of the business day on November 17<sup>th</sup> to allow additional time for public review and comment. Staff will provide responses at the work session to any written comment received between the date of this memo and the deadline for submitting written comment.

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### **Planning Commission Discussion – Public Hearing**

The Commission asked staff to provide additional information concerning the proposed amendments. Staff offers the following in response to the Commission's discussion:

#### Pedestrian Oriented Development (POD)

At the onset of this project, staff's overall objective was to present amendments that achieve pedestrian oriented development (POD). Current ITK "standards" are intended to achieve pedestrian oriented designs, but the Purpose statements in BMC 20.28.010 lack clear guidance or mandate for POD, or explanation of what effective POD should include. As a result, granting of minor modifications are the norm, not the exception.

The proposed amendments to the Purpose section are intended to remedy this barrier to good design. They will give developers a clearer understanding of what is expected in project designs and will be especially helpful to staff when evaluating requests for minor modifications. Also, the proposed amendment to allow common pedestrian corridors in lieu of streets or lanes will increase site design options while reinforcing pedestrian orientation and activity.

#### Development Standards

The proposed amendments to the bulk and massing provisions include FAR and open space standards. As a reminder, here is what each of those are:

- Floor Area Ratio (FAR) is the maximum building mass, represented as a ratio of total floor area to total site area, that can be developed on a property
- Open Space is the minimum amount of land, measured in square feet, that must be free of buildings or impervious surfaces.
- Useable Space is all or a portion of the required open space that must be set aside as either private or common area for use by the residents of the site for leisure or recreational purposes.

Development regulations should work together and not conflict with or inhibit the full implementation of other development regulations. FAR and open space are two regulations with a unique relationship. Generally, what is not covered by buildings and impervious surfaces such as parking is open space. As the buildings get taller, the FAR is distributed among upper stories, decreasing the building's footprint and increasing the open space. As the floor area of the building spreads out, the building gets shorter and the open space gets smaller. Eliminating the single floor area limitations and adjusting the open space requirement will allow the cohesive implementation of these two regulations and offer a wider range of housing designs.

The current FAR and open space requirements are out of balance with their respective housing types. The amendments are intended to balance these regulations for housing types with similarities, such as, cottage and garden court, and townhouse and shared court.

#### Green Factor Landscaping Score

What it is: Green Factor (GF) landscaping is a score-based code requirement that increases and improves the quality of landscaping in new development. It encourages "layered" landscaping with a mix of small, medium and large plantings, and preservation of existing significant trees. It aims to manage stormwater runoff, aesthetically enhance neighborhoods, and improve habitat for birds and beneficial insects.

How it is measured: ITK development must achieve a minimum GF score tied to the various ITK housing types. To achieve the score, developers may choose from a menu of options that award points. The options include rain gardens, native landscaping, vegetated walls, green roofs, and food gardens. The points are weighted by green infrastructure size, functionality, and aesthetics, with the total divided by the parcel size to create the GF score. The system encourages maximizing the "vegetation potential" of the rights-of-way through planting of layers of vegetation and larger trees in areas visible to the public. There are additional bonuses for rainwater harvesting and/or low water use plantings. Use of larger trees, tree preservation, green roofs, green walls, and water features are encouraged.

Proposed changes for some housing types: Landscaping plays an important role in how new development looks and functions. The proposed amendments will require GF landscaping for all housing types (currently only required for townhouse and optional for garden and shared court). The amendments are intended to increase the amount and quality of urban landscaping in dense areas while allowing increased flexibility for developers and designers to efficiently use their properties.

#### Application Review and Process Type

The Commission asked why staff is proposing ITK development be processed through a design review application instead of through an infill housing application. Currently, both ITK and design review applications and fees must be submitted. Whether in the multifamily handbook or the ITK regulations, "design" related standards and guidelines are applied to ITK projects. As such, staff believes the design review process is the most relevant and applicable review process to ensure specific site and building standards are included in a review. Staff agrees, this question has merit but is beyond the scope of the phase I ITK amendments and should be evaluated as a separate proposal.

### New Housing Types – Small Lot and 4-plex

Staff is requesting the Commission's direction on the staff proposal to consolidate the Small and Smaller House unit types into a single housing form, called Small Lot. The consolidation is proposed to address a code problem concerning floor area. Currently, a smaller house with 0.4 FAR can have more floor area on a 3,000 SF lot than a small house with 0.35 FAR on a lot between 3,001 and 3,420 SF. Staff made many attempts to address this scenario and realized that consolidating these housing types would achieve the overall objective of providing a smaller, single-family detached housing form that does not have conflicting development regulations.

Staff is also requesting the Commission's direction whether to add a 4-plex as a new housing type. As proposed, the 4-plex would have the same bulk and massing regulations as a duplex and triplex. Consistent floor area ratio and open space regulations for all three housing types will help offset impacts from the range of dwelling units. In other words, the bulk and mass are limited regardless whether you have two, three or four units. Similar to the existing duplex and triplex housing type, a four plex would be permitted only when the density is allowed by the underlying zoning.

### Draft Ordinance – Proposed Revisions

In response to direction from the Commission, staff has revised the draft ordinance to retain language in the ITK Purpose statement that references "creating opportunities for more affordable housing" and to add a new definition of an alley.

Following the Commission's discussion concerning affordability, staff has revised the Purpose and Intent statement to retain the affordability reference as shown below:

#### **20.28.010 Purpose and intent.**

A. This chapter establishes special development regulations for a series of housing forms that are ~~different than the traditional~~ in addition to the standard detached single-family ~~dwelling unit and multi-family housing types~~. These regulations are intended to implement comprehensive plan goals and policies encouraging infill development, more efficient use of the remaining developable land, protection of environmentally sensitive areas, ~~and~~ creating opportunities for more affordable housing and increasing housing choice and diversity. ~~The housing forms listed in this chapter are intended for use in city neighborhoods, urban villages, and in Bellingham's urban growth areas as described in BMC 20.28.020.~~

The Commission recommended staff include a definition of an alley, seeing that all other transportation facilities were defined. Staff indicated that alley is already defined in BMC 20.08.020. After further review, the existing definition is specific to public alleys and does not address the intent to allow access from private alleys as referenced in the ITK. Staff proposes the following definition for a private alley to be added to BMC 20.28.040:

“Alley, private” means, a private hard-surfaced facility for use by vehicles, utilities, and/or other necessary service functions, but which affords only a secondary means of access.

The following are figures that staff proposes to add in various sections of the ITK to improve clarity and understanding:

**1. Add “Figure 20.28.010” to draft BMC 20.28.010(B) as follows:**

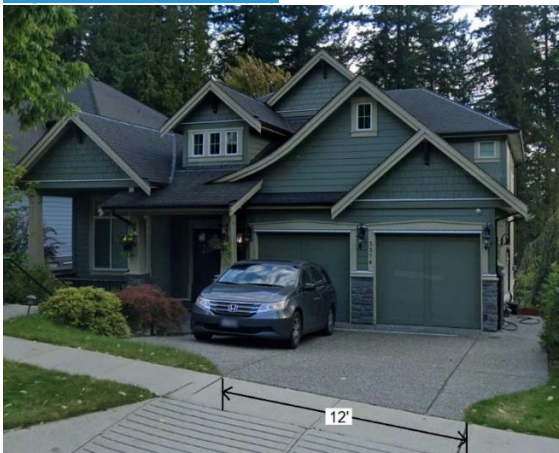
Figure 20.28.010 – Examples of pedestrian oriented design



**2. Amend draft BMC 20.28.050(A)(4)(b) as follows:**

b. The maximum width of a driveway serving an individual unit that crosses a pedestrian facility associated with a street or lane shall not be more than twelve feet (12'). See Figure 20.28.050(A)

Figures 20.28.050(A)



3. Amend draft BMC 20.28.050(A)(4)(c) to reference “Figure BMC 20.28.050(B)” and amend the heading of the subject figure to be “Figure BMC 20.28.050(B) and (C)” as follows:

c. Architectural and landscaping details shall be embellished to minimize the visual presence of the garages and any open driveway parking. See Figures 20.25.050(A) 20.28.050(B) and (C).

Figure 20.28.050(B) – Design strategies to minimize garages and driveways

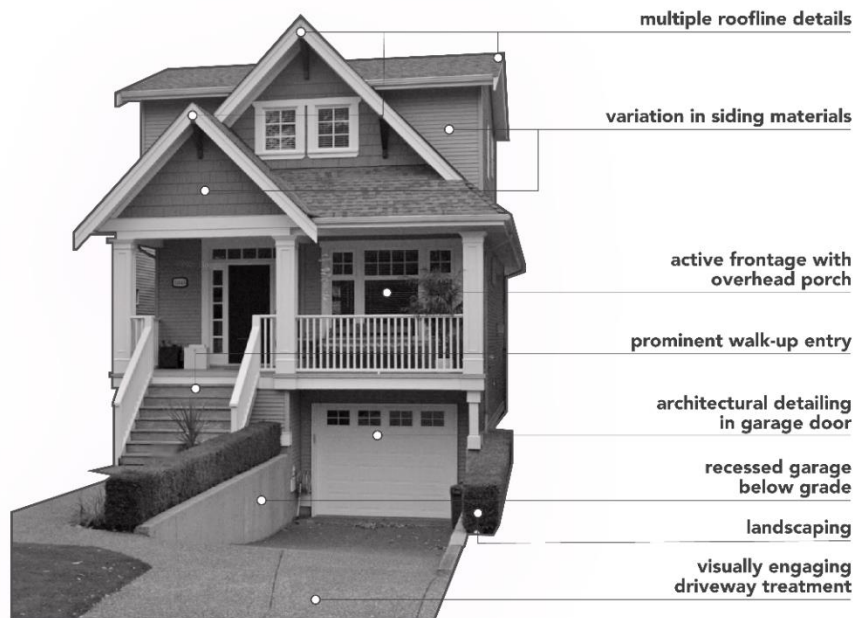


Figure 20.28.050(C) - The figures below show an example of townhouses that incorporate the design principles detailed in Figure 20.28.050(B) above, and how the visibility of their garages is diminished as viewed from different angles.



Images courtesy of Matt Remsbecher, Slab Design Inc.

4. Amend draft BMC 20.28.050(G)(4) as follows:

Figure 20.28.050(B)(D) Small Lane Plan and Section

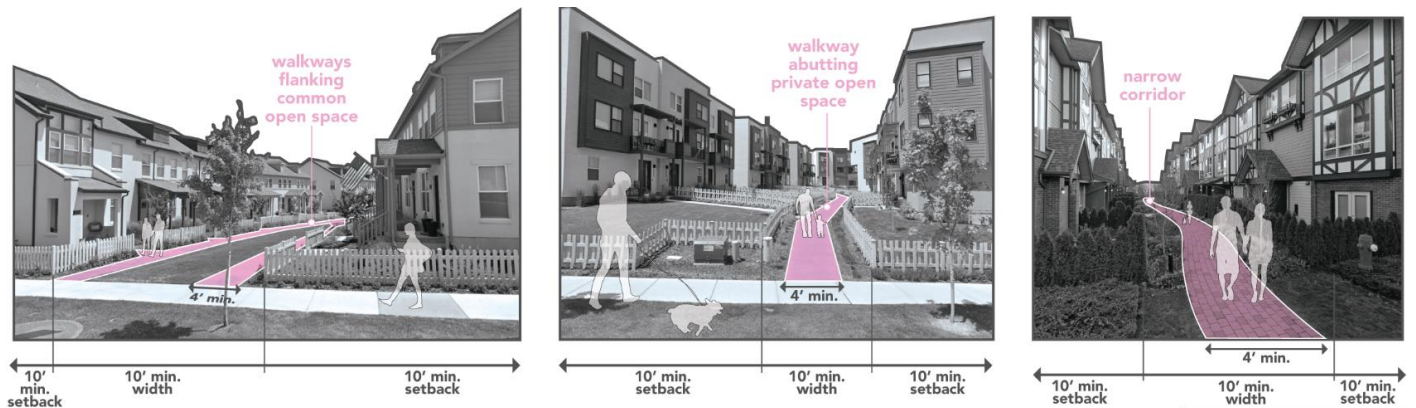
Figure 20.28.050(C)(E) Medium Lane Plan and Section

Figure 20.28.050(D)(F) Large Lane Plan and Section

5. Amend draft BMC 20.28.050(G)(9) as follows:

109. Private lanes and alleys are not included in FAR and Open Space calculations. Pedestrian paths within common pedestrian corridors shall be separated from property lines, fences, walls and hedges by a minimum of two feet (2'). See Figure 20.28.050(G).

Figure 20.28.050(G) – Common Pedestrian Corridors



6. Amend draft BMC 20.28.050(H)(5)(c) as follows:

c. The maneuvering area between the back of parking (or a garage/carport entry) and an alley or lane shall not be greater than 10 feet or less than 18 feet to prevent parked cars from overhanging into a lane or alley. See Figure 20.28.050(H).

Figure 20.28.050(H)



**7. Amend draft BMC 20.28.050(I)(3) as follows:**

3. Along streets, lanes and alleys, landscaping shall be provided to separate the parking and driveways between individual dwelling units, or the director may approve an alternative approach that breaks up parking and provides visual interest to parking facilities.

Figure 20.28.050(I) - Examples of alley landscaping between driveways



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**Recommendation**

Though the ITK remains a valuable set of regulations for compatible infill development and expanding housing choice, it needed to be updated. Staff acknowledges that additional changes exploring how Bellingham can address growth through the ITK should be reviewed and be included in a future work program, however this discussion should not diminish the current phase of amendments. This first phase will correct known deficiencies in the existing code language, balance the regulations between housing forms, streamline the review process and provide an even greater opportunity for development of a variety of infill housing forms; staff recommends the Planning Commission approve the amendments.



June 29, 2020

City of Bellingham

**ATTN: Rick Sepler, Planning Director**

210 Lottie Street

Bellingham WA 98225

**Subject: Infill Toolkit “quick changes” list**

Dear Rick,

Thank you for meeting with Rob and I last week. We always enjoy sharing our vision with you and discussing possibilities and opportunities in Bellingham.

The purpose of this letter is to share with you a short list of items that we would like to see changed in the Infill Toolkit code BMC 20.28. Although this list is by no means all-encompassing, I have compiled a list of five items that we believe would be beneficial changes to the ITK code. This list was created after meeting with our internal team, and with other consultants and design professionals who use the ITK code in Bellingham.

Five things that we believe would be beneficial changes in the ITK code are as follows:

**1. Eliminate FAR**

All parties that we spoke to agree that FAR is by far the biggest issue when it comes to toolkit design. Being tied down to specific allowed areas under FAR is extremely limiting, and risks creating the continued construction of homogenous housing forms under ITK. There are many other limitations within the ITK code that ultimately impose restrictions on unit sizes, and FAR is an unnecessary burden on design. The current front, rear and side setback requirements along with the height limits all work well within the ITK. FAR is an added element that further impedes the creativity that leads to a diverse neighborhood.

**2. Eliminate landscaping requirements**

Landscaping requirements such as Greenfactor, or other percentage based requirements are not working to meet their intent. The intent of these code sections seems to be to require that ITK projects receive lush landscapes that help them tie into mature existing landscaping in existing neighborhoods. However in reality the landscaping requirements generally limit or eliminate entirely the usable function of open spaces, or are achieved by other non-visible ways such as installation of greater

soil depths. Instead of these ITK landscape requirements, we suggest that landscaping plans be reviewed in the same fashion that multifamily landscape plans are reviewed.

3. **Eliminate maximum size limitations for any single floor area**

This will allow for much greater flexibility in styles and allow for more marketable options across all ITK housing forms.

4. **Reduce the requirement for cottages to have 500 SF of open space per unit, as stated in BMC 20.28.080 (D)(3).**

This high SF requirement limits the ability to maximize density and utilize this housing form effectively. A reduced open space requirement closer to 200 SF would be more in line with the requirements of other housing forms and will still help cottages to meet their design intent.

5. **Remove the requirements for Shared Court listed under BMC20.28.120 (F)(6)(b, c, d).**

These design standards for the shared courtyard areas make this housing form impractical for dense infill design. The space needed to accommodate all of these design features makes this housing form unpalatable, and is not conducive to maximizing density.

We appreciate the opportunity to share this list with you, and look forward to seeing changes to the toolkit that will help it evolve to meet the needs of our community.

If you would like to discuss any of the items listed above in further detail, or discuss additional toolkit code changes, our team would be happy to meet with you.

Warm Regards,

*Devon Caines*

Devon Caines  
Senior Project Manager



BUILDING INDUSTRY ASSOCIATION OF WHATCOM COUNTY

*"The Voice of the Construction Industry in Whatcom County"*

Kurt Nabbefeld  
Development Services Manager  
210 Lottie Street  
Bellingham, WA, 98225

Dear Kurt

The BIAWC is committed to help solve the Home Ownership crisis that we find ourselves in. We believe, as many others in our industry, that the Infill Toolkit could use some healthy revision. Many of our members avoid utilizing this option due to its many difficulties. We whole heartedly endorse the suggestions below that have been thoughtfully put together by various stakeholders. Please let us know if you have questions and our Government Affairs Committee will be happy to provide expertise.

### **BIAWC Infill Toolkit Update Suggestions**

#### **1. Eliminate FAR**

All parties that we spoke to agree that FAR is by far the biggest issue when it comes to toolkit design. Being tied down to specific allowed areas under FAR is extremely limiting, and risks creating the continued construction of homogenous housing forms under ITK. There are many other limitations within the ITK code that ultimately impose restrictions on unit sizes, and FAR is an unnecessary burden on design. The current front, rear and side setback requirements along with the height limits all work well within the ITK. FAR is an added element that further impedes the creativity that leads to a diverse neighborhood.

#### **2. Eliminate landscaping requirements**

Landscaping requirements such as Greenfactor, or other percentage-based requirements are not working to meet their intent. The intent of these code sections seems to be to require that ITK projects receive lush landscapes that help them tie into mature existing landscaping in existing neighborhoods. However, in reality the landscaping requirements generally limit or eliminate entirely the usable function of open spaces, or are achieved by other non-visible ways such as installation of greater soil depths. Instead of these ITK landscape requirements, we suggest that landscaping plans be reviewed in the same fashion that multifamily landscape plans are reviewed.

#### **3. Eliminate maximum size limitations for any single floor area.**

This will allow for much greater flexibility in styles and allow for more marketable options across all ITK housing forms.

#### **4. Reduce the requirement for cottages to have 500 SF of open space per unit, as stated in BMC 20.28.080 (D)(3).**

This high SF requirement limits the ability to maximize density and utilize this housing form effectively. A reduced open space requirement closer to 200 SF would be more in line with the requirements of other housing forms and will still help cottages to meet their design intent.

#### **5. Remove the requirements for Shared Court listed under BMC20.28.120 (F)(6)(b, c, d).**

These design standards for the shared courtyard areas make this housing form impractical for dense infill design. The space needed to accommodate all of these design features makes

**6. Remove BMC 20.28.050(F)(6), (F)(9), and (F)(10)**

These three items tend to generate problems for site design. (F)(6) limits the number of units accessing a lane to 8, (F)(9) requires lanes to be considered a street frontage for setbacks, and (F)(10) requires lanes/alleys to be removed from FAR and Open Space calcs.

Thank You for your Consideration

A handwritten signature in black ink, appearing to read "Robert E Lee", with a stylized flourish at the end.

Robert E Lee

Executive Officer/Government Affairs

BIAWC

rlee@biawc.com

## Aven, Heather M.

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**From:** David Stalheim <mudbayconsulting@gmail.com>  
**Sent:** Tuesday, November 2, 2021 7:43 AM  
**To:** Aven, Heather M.  
**Subject:** Public hearing comments on ITK

Planning commissioners and staff,

I was hoping to fully review the proposed changes to the Infill Toolkit, but the proposal was not available two weeks before the hearing as provided in early public notices and my travels without internet connection has meant I have seen only snippets of what is proposed.

My first request is to keep the public record open so that the public has an opportunity to read the changes to provide informed input.

Infill is essential. It reduces sprawl, encouraging more walkable and diverse communities. It can help with housing choice (rental and ownership) and can help affordability. We need to find ways to support infill while protecting other values in our city. I'm encouraged by the city's efforts to ensure density happens where we have planned growth.

If I recall correctly, the staff report mentioned that the proposal reduces redundancy of design review through two different procedures (multifamily and infill). That should be supported. However, I also read that the proposal might also include changes in the review procedures to eliminate any notice to neighbors. That raises some concerns for me.

If there are density increases allowed, I think notice to neighbors should be required even if that density was increased at the land division stage. Notice does not have to be 500 feet as mentioned in the staff report. State law does not require that distance. 150 feet is a notice that would contact immediate neighbors to a proposed infill project, targeting those most interested in compatible development. Keeping notice for infill at a reduced distance should be considered.

I did notice that the packet included "public comments". Since the packet hadn't been sent out, that confused me. But, I see it is from the development community. Has there been any outreach to other stakeholders? Neighborhood associations, housing advocates, others?

Having seen those letters, which appear to be nearly identical, they mentioned problems with FAR and open space standards. I want to point out a couple of things with these issues, not knowing whether or not the staff proposal includes any changes.

I would tend to agree that FAR is a tool that has been abused by planners. When we redid all the development codes in Everett, we removed all FAR requirements in favor of other design standards. However, we left FAR standards for infill projects because it was essential for scale and fitting into the neighborhood. Are any changes to FAR proposed? And, if so, has there been any models put together to show the visual impact of that change?

There was concerns that 500 square feet of open space per unit was too much. That is only 25' x 20' of space per unit. I don't think that is too much but I do agree that developers should have some design flexibility for how to implement it. The Everett code allows for a combination of private and common open space. A unit might have a small, private space while the development also shares common open space. Private open space that borders common open space on the ground level is quite nice. A private balcony on upper floors, if suitably sized (60 sq. ft.?) can help meet outdoor space needs. As we infill, we need to make sure that these places are livable with outdoor spaces available to residents.

Infill standards should also consider charging stations for electric vehicles and solar orientation of buildings.

Finally, I don't know anything about the Green Landscaping. I do know that keeping our tree canopy is important for meeting several city commitments, including climate change. I hope these things can be considered as part of this proposal.

Thanks for considering my input.

David Stalheim  
Mud Bay Consulting



BUILDING INDUSTRY ASSOCIATION OF WHATCOM COUNTY

*"The Voice of the Construction Industry in Whatcom County"*

## Infill Housing Permit Timelines

To the City of Bellingham Planning Commission:

Thank you for reviewing the Infill Housing Ordinance. In addition to our previous comment from August 2020 the Building Industry Association of Whatcom County would like to submit the following comment regarding the timelines of the Infill Housing Permits.

Currently the Infill Housing Permit (a Type II review process) is valid for two years. We request this be extended to 5 years.

The problem with a 2-year expiration is that other permits such as stormwater permits, development agreements, and state and federal wetlands permits must be approved prior to breaking ground. It is not unheard of for the Infill Housing Permit to expire prior to acquiring the remaining permits. This then requires a series of gymnastics to extend the permit. Specifically, BMC 20.28.030 refers to BMC21.10 for administrative rules, including BMC21.10.260. C.1 which states the Type II permits expire after two years unless a complete building permit is filed. So long as a building permit remains in play, the Infill Housing Permit stays current. However, if a building permit times out, then the Infill Housing Permit also expires. We can envision scenarios where a complete building permit application may not be made because of other additional permits first being required, resulting in expiration of the Infill Housing Permit and a waste of time and money.

Ideally, the Infill Housing Permit should have a life at least equivalent to the longest running permit obtained through a concurrent review. For example, if this was approved together with a preliminary plat, it should be valid for five years. Alternatively, it could have a timeframe of at least five years, through amendment of BMC 21.10.260.C.2 by adding "Infill Housing approval" to the list of permits that have a five-year life. This seems most appropriate as Planned Development approvals are covered in this section, and the review process for Infill Housing is similar in scope to a Planned Development permit.

In addition, we request that permit extensions for Critical Area Permits and Consultant reports should extend with the Preliminary Plat or Infill Housing Permit.

Thank you for considering our comments, and please feel free to contact us if you have any questions or would like to discuss this idea further.

Sincerely

Robert E Lee

Executive Officer BIAWC

**Aven, Heather M.**

---

**From:** Jane Bright <jkbright@comcast.net>  
**Sent:** Tuesday, November 2, 2021 2:16 PM  
**To:** Grp.PL.Planning And Development Commission  
**Subject:** Amendments to the Infill Housing Toolkit BMC 20 and 21

Planning Commission

Given the extent of the changes proposed to BMC 20 and 21 and the less than reasonable and expected time to access and understand the proposal details, I request a a delay in any decision making. Announcing something is coming is useless without the details and these changes are significant and critically important decisions for the City as to how we grow.

Additionally, the City is about to hire a new Planning Director who should have input given the responsibility that person would assume should this pass. Past practice suggests that if your proposal to eliminate neighborhood input on many developments passes, many decisions will fall to the Director. Anyone agreeing to take on the Planning Director job with such a subjective responsibility should have a voice in how this will work.

Having built an all electric infill house in 2016, I am a beneficiary of the infill approach and understand the benefits and challenges of squeezing more housing into built neighborhoods. Additionally, trying to create a single standard for infill that works across the City's 25 different neighborhoods is a difficult task that should not be rushed. Clearly, the Planning Department has put in enormous time, effort and thought to this proposal. Now the public who are being asked to live with it need some time, too.

Jane Bright  
306 Highland Dr  
Bellingham, WA 98225  
617-755-2130

To: City of Bellingham Planning Commission  
From: Dan Dunne, CAZ Construction  
Re: Infill Toolkit Proposed Changes to Ordinance

Thank you for proposing to update this ordinance. I appreciate the staff time involved in this project, especially with numerous concurrent updates to other housing related ordinances.

I have four suggestions, and several questions.

Suggestions:

1. Increase the number of years that Type 1 and Type 2 Infill Toolkit permits are valid to 5 years.
2. Permits for Critical Area Permits and Consultant reports should extend with the Preliminary Plat or Infill Housing Permit.
3. Shorten the overall time it takes to get an infill permit so that it is competitive with other housing forms that developers might choose instead of infill, such as an apartment building. Reduce and streamline the process.

Questions:

1. For a 4 unit infill that qualifies for Type 1 review, will there be design review? Will there be public noticing? This process and applicability component needs to be clarified.
2. What is the difference between an alley, versus a lane or common pedestrian corridor? The lane and common pedestrian corridor are the "frontage" requirements, and have setbacks, landscaping, etc. The alley is like back of house and should have fewer/no requirements. This was not clear in the draft. For example, can we put rows of garage doors down an alley, if we have frontage on a lane, or pedestrian corridor with our entries?
3. Why are the green factors different for the housing types? Small Lots and Cottage = 0.3, Duplex and Shared Court = 0.4, Garden Court = 0.5, and Townhome = 0.4.
4. On page 13, section 2.E.1.d of the packet, is the denominator (lot area) reduced by the square footage of critical areas that are not proposed to be impacted? For example:  
$$AB/(C-D)=E$$

Where  
A= square footage of landscaped area  
B= green area multiplier  
C= lot square footage  
D= critical areas  
E=green factor

5. On page 27, 20.28.050.I.1 one tree is required every 40 ft of street, but in 20.12.030.C.1.a it requires one every 50 ft. Why the difference? Can we standardize this?
6. Why is FAR included in infill housing? Is it referenced in RM zoning or single family zoning? Can we eliminate this requirement?
7. Why is FAR different for the housing types? Small lots = 0.35, Cottage, Duplex, Shared Court, Garden Court = 0.6, Townhouse = 0.75. Can we eliminate FAR or make them all 0.75 or greater?
8. On p.51, when you say "Use lines and rhythms to create a human scale streetscape," what, precisely, does that mean?
9. On page 26, 20.28.050.H.1.a says "shall provide one onsite parking." Does this mean one and only one, or does it mean at least one. Can we make it at least one to allow developers to build more parking if they choose?

**Aven, Heather M.**

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**From:** David Stalheim <mudbayconsulting@gmail.com>  
**Sent:** Thursday, November 4, 2021 8:58 AM  
**To:** Aven, Heather M.  
**Subject:** Re: Public hearing comments on ITK  
**Attachments:** Ord Draft\_Planning\_Commission\_2597\_Agenda\_Stalheim Review.pdf

I was able to download the draft ordinance and have done a preliminary review. My comments are attached.

This is the first time I have looked at the Infill Toolkit. It appears very similar to many efforts in cities across Washington to encourage infill. But, these standards were really written for fitting into single family neighborhoods or transition areas. My limited understanding is that these standards only apply in MF and transition areas. As such, many of the standards for height, setbacks and roof forms are more restrictive than the underlying zone. Setbacks from the front street look like single family setbacks and not multifamily, meaning that these infill projects will not maintain the rhythm of the street. This seems counterproductive to the purpose of infill in our areas planned for density.

The standards also have quite a few code writing or interpretation challenges. References to size limits for structures do not indicate if we are talking about floor area or the footprint of buildings. Open space standards are proposed to be reduced but also include permeable paving areas that appear to include driveways. These clarifications need to be made before adoption.

Finally, it really seems like this was a missed opportunity to write a code chapter that is more user friendly and readable. Organizing standards together like open space, heights and setbacks allows you to avoid repetition in writing and to show where there might be differences that are still worth keeping.

I am not available to attend the hearing due to internet connection issues but I am interested in hearing the response to my input and am willing to provide additional assistance in getting this chapter updated. \

**David Stalheim**

**Mud Bay Consulting Services**

[mudbayconsulting@gmail.com](mailto:mudbayconsulting@gmail.com)

On Tue, Nov 2, 2021 at 7:42 AM David Stalheim <[mudbayconsulting@gmail.com](mailto:mudbayconsulting@gmail.com)> wrote:  
Planning commissioners and staff,

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Having seen those letters, which appear to be nearly identical, they mentioned problems with FAR and open space standards. I want to point out a couple of things with these issues, not knowing whether or not the staff proposal includes any changes.

I would tend to agree that FAR is a tool that has been abused by planners. When we redid all the development codes in Everett, we removed all FAR requirements in favor of other design standards. However, we left FAR standards for infill projects because it was essential for scale and fitting into the neighborhood. Are any changes to FAR proposed? And, if so, has there been any models put together to show the visual impact of that change?

There was concerns that 500 square feet of open space per unit was too much. That is only 25' x 20' of space per unit. I don't think that is too much but I do agree that developers should have some design flexibility for how to implement it. The Everett code allows for a combination of private and common open space. A unit might have a small, private space while the development also shares common open space. Private open space that borders common open space on the ground level is quite nice. A private balcony on upper floors, if suitably sized (60 sq. ft.?) can help meet outdoor space needs. As we infill, we need to make sure that these places are livable with outdoor spaces available to residents.

Infill standards should also consider charging stations for electric vehicles and solar orientation of buildings.

Finally, I don't know anything about the Green Landscaping. I do know that keeping our tree canopy is important for meeting several city commitments, including climate change. I hope these things can be considered as part of this proposal.

Thanks for considering my input.

David Stalheim  
Mud Bay Consulting

ATTACHMENT A

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BELLINGHAM AMENDING TITLES 20 AND 21 OF THE BELLINGHAM MUNICIPAL CODE REGARDING INFILL HOUSING PROVISIONS.**

**WHEREAS**, the infill housing chapter, Chapter 20.28 BMC, was established in 2009 to introduce innovative housing types meant to offer alternative housing forms in addition to the city's familiar and typical single and multifamily development; and

**WHEREAS**, between 2009 and 2015, the city received few applications under these provisions;

**WHEREAS**, since 2015, the city has seen an increased interest to utilize the infill housing provisions and continues to process a significant number of land use applications for these housing types; and

**WHEREAS**, zoning and development codes are intended to be amended periodically to implement the visions, goals and policies of the comprehensive plan. The infill housing provisions have been modified only a few times as necessary to address new land use regulations concerning ADUs, stormwater, land division and the RM Project and have not been amended to address beneficial code refinements; and

**WHEREAS**, the intent of this ordinance is to implement minor amendments to the Infill Housing chapter to address identified site planning and bulk and mass limitations to further the city's goals and policies of establishing development with pedestrian oriented design, encourage reliance on alternative modes of transportation, utilize the remaining developable land more efficiently and create opportunities for more housing choice, home ownership, and affordable housing; and

**WHEREAS**, the responsible official reviewed the proposed amendments under the procedures of the State Environmental Policy Act and issued a non-project Determination of Non-Significance (SEP2021-0044) on October 20, 2021; and

**WHEREAS**, as required by RCW 36.70A.106, notice of the City's intent to adopt the proposed Comprehensive Plan amendments was sent the Department of Commerce on \_\_\_\_\_, 2021; and

**WHEREAS**, after mailed and published notice as required by the Bellingham Municipal Code, the Planning Commission held a public hearing on the proposed amendments on November 4, 2021; and

**WHEREAS**, the Planning Commission determined that the proposed amendments comply with and will implement the goals and policies of the 2016 Bellingham Comprehensive Plan; and

1  
2 **WHEREAS**, the Planning Commission considered the staff report and public comments and  
3 thereafter made Findings of Fact, Conclusions and Recommendations for approval of the  
4 proposed amendments by a \_\_\_\_\_ vote; and  
5  
6 **WHEREAS**, after mailed and published notice as required by the BMC, the City Council held  
7 a public hearing on the proposed amendments on \_\_\_\_\_, 2021; and  
8  
9 **WHEREAS**, the City Council has considered the recommendation of the Planning  
10 Commission, the staff report, other meeting materials, and all public comments and hereby  
11 adopts the Findings of Fact, Conclusions and Recommendations of the Planning Commission;  
12 and  
13  
14 **WHEREAS**, the City Council finds that the proposed amendments are consistent with the  
15 Growth Management Act, the Bellingham Municipal Code, and the 2016 Bellingham  
16 Comprehensive Plan.  
17  
18 **NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**  
19  
20 **Section 1.** Bellingham Municipal Code, Section 20.00.200 concerning Attachment 1 is  
21 hereby amended as follows:  
22  
23 Residential development in Area 8 is limited to:  
24  
25 1. Attached and detached accessory dwelling units subject to the provision in BMC [20.10.036](#).  
26  
27 2. Infill housing subject to the provisions in Chapter [20.28](#) BMC, and further limited to the following infill  
28 housing forms and standards:  
29  
30 a. BMC [20.28.060](#), Smaller house.  
31  
32 b. BMC [20.28.070](#), Small lot house.  
33  
34 c. BMC [20.28.080](#), Cottage.  
35  
36 d. BMC [20.28.140](#), Townhouse. Maximum of two units may be attached with each unit located  
37 on a "fee simple lot." Townhouses are not permitted along Illinois Street.  
38  
39 f. Single floor area limits specified in Chapter [20.28](#) BMC may be exceeded on the first story of a dwelling  
40 unit, provided the maximum floor area ratio allowed for each housing type is not exceeded.

**Commented [KCJ1]:** This will result in no substantive changes. The proposed code changes eliminate single floor area limits which is consistent with what this provision already allows. All housing types will still be required to have a floor area ratio (FAR) pursuant to BMC 20.28.

**Commented [DS1]:** I don't know if this is true as FAR appears to be not always used. Has the Sunnyland Neighborhood been notified of these changes?

**Section 2.** Bellingham Municipal Code, Section 20.12.030(E) concerning Landscaping is hereby amended as follows:

E. *Green Factor Measurement.* The following standards apply to certain areas and uses that require landscaping to meet a minimum green factor score.

1. The green area factor score for a lot is determined by:

- a. Multiplying the square feet, or equivalent square footage where applicable, of each of the existing and proposed landscape elements in Table 20.12.030 by the green area multiplier shown for that element; and
  - b. Adding together all the products computed under subsection (E)(1)(a) of this section to determine the total green area factor; and
  - c. Divide the total green area factor by the lot area to determine the green area factor score.
- d. *Green factor landscaping for infill housing development per Chapter 20.28 BMC is determined on the net portion of the parent site that is exclusive of all critical areas regulated by Chapter 16.55 BMC which are not proposed to be impacted as a result of the development.*

2-7. [No Change]

**Section 3.** Bellingham Municipal Code, Section 20.25.020 Applicability is hereby amended as follows:

The following areas and developments are subject to design review under this chapter. No building or sign permit shall be issued for projects regulated under this chapter until design review approval has been issued unless the activity is exempt from design review under subsection (A) of this section. Buildings and activities which are exempt from the design review process shall comply with adopted site lighting standards regarding shielded outdoor lighting. The provisions of Chapter 20.14 BMC regarding nonconformance establish which of the standards and criteria in this chapter apply to developed sites. In addition, some standards in this chapter specify the level of development that requires full compliance.

A. The following activities are exempt from design review:

1. Single-family detached dwelling units unless specified otherwise in an adopted urban village regulated under this chapter or Chapter 20.28 BMC.
2. Single-family attached dwelling units consisting of less than three attached units and not located in an adopted urban village regulated under this chapter.

**Commented [DS2]:** An emphasis should be made to keep native landscaping and tree canopy

- 1 3. A duplex on a site that is not located in an adopted urban village regulated under this chapter or  
2 regulated by Chapter 20.28 BMC.
- 3 4-10. [No Change]
- 4 B. *Multifamily Residential Projects and Mixed Uses in Residential Multi Zones.*
- 5 1. The following development activities shall obtain design review approval when located in any use  
6 district except within an urban village design district listed in subsections (C) and (D) of this  
7 section, institutional general use types that are governed by an adopted institutional master plan, or  
8 when exempt by subsection (A) of this section:
- 9 a. Single-family attached residential development consisting of three or more attached units;
- 10 b. Residential development consisting of three or more dwelling units on a site;
- 11 c. Projects involving any use that is allowed as a "mixed use" by the use qualifier in residential  
12 multi zones;
- 13 d. All infill housing development pursuant to Chapter 20.28 BMC;
- 14 e. Accessory buildings for any of the developments listed above;
- 15 f. Any additions or exterior alterations to buildings of the types listed above and/or to their  
16 associated site improvements. The design standards apply only to the proposed additions or  
17 alterations to the extent feasible while allowing the flexibility to accommodate the design of  
18 the existing improvements.
- 19 2-3. [No Change]
- 20 4. *Decision Criteria.* For projects listed in subsections (B)(1) and (2) of this section, the director shall  
21 base his or her decision on consistency with the provisions of the adopted multifamily residential  
22 design handbook.
- 23 C-G. [No Change]

**Commented [DS3]:** If no design review, what are the design standards for duplexes?

**Commented [DS4]:** This seems to be in conflict with the exemptions section.

**Commented [DS5]:** Can we change to gender neutral?

**Commented [DS6]:** Where is this adopted, and by what authority? Why isn't there a reference to where it is located, and what date the standards are? What is the relationship to the design standards in the ITK chapter?

1 **Section 4.** Bellingham Municipal Code, Section 20.28.010 Purpose is hereby amended as  
2 follows:

3 **20.28.010 Purpose and intent.**

4 A. This chapter establishes special development regulations for a series of housing forms that are different  
5 than the traditional in addition to the standard detached single-family dwelling unit and multi-family  
6 housing types. These regulations are intended to implement comprehensive plan goals and policies  
7 encouraging infill development, more efficient use of the remaining developable land, protection of  
8 environmentally sensitive areas, and creating opportunities for more affordable housing increasing  
9 housing choice and diversity. The housing forms listed in this chapter are intended for use in city  
10 neighborhoods, urban villages, and in Bellingham's urban growth areas as described in BMC  
11 20.28.020.

12 B. Development and design standards in this chapter emphasize pedestrian oriented design with street  
13 oriented front porches, entries, and windows, and architectural and landscape features that add human  
14 scale visual interest and compliment building and site design. These design principals are also applied  
15 equally to lesser streets called lanes, and to common pedestrian corridors when used in lieu of streets or  
16 lanes. An intent of these design details is that they collectively contribute to and enhance the public  
17 realm, create a sense of place, foster social interaction, and make alternative transportation options  
18 more attractive, inviting, and safe to use, and thereby more likely to be used. Guiding principles are 1)  
19 parking should not be located between dwelling units and the street or lane, and 2) when garages front  
20 on a street or lane, they should be proportionally subordinate to the width of the dwelling unit, and 3)  
21 Fronting housing units on an existing street should be prioritized over fronting units internally off a  
22 new lane or common pedestrian corridor.

23 C. Flexibility in applying standards to site and building design is encouraged when the proposal is  
24 consistent with the broad intent of implementing strong pedestrian-oriented design. Larger scale  
25 projects and green field development may necessitate unique design solutions and exceptions to  
26 standards that were not specifically contemplated by this chapter. This may include increased  
27 allowance in height, floor area, and other standards, especially when creating entirely new  
28 neighborhoods.

29 **Section 5.** Bellingham Municipal Code, Section 20.28.020 Applicability is hereby amended  
30 as follows:

Commented [KCJ2]: Add photo(s)

1 **20.28.020 Applicability.**

2 ~~A. The housing types in this chapter are not permitted in residential single zones, except as permitted in~~  
3 ~~cluster subdivision pursuant to BMC Title 23, neighborhood commercial zones or property regulated~~  
4 ~~by Chapter 16.80 BMC, Lake Whatcom Reservoir Regulatory Provisions, except in those areas that~~  
5 ~~were annexed into the city after 1995 with a "mixed" qualifier that allows multifamily residential, and~~  
6 ~~in Area 8 of the Sunnyland neighborhood. The housing types in this chapter are permitted in all other~~  
7 ~~zones that allow residential, including specifically designated areas of urban villages. In the residential~~  
8 ~~multi-transition zone, all forms of attached housing shall be limited to no more than 4 attached units in~~  
9 ~~a single building.~~

10 ~~A. The housing types in this chapter are not permitted in:~~

11 ~~1. Residential single zones, except as permitted in:~~

12 ~~a. Cluster subdivision pursuant to BMC Title 23,~~

13 ~~b. Those areas that were annexed into the city after 1995 with a "mixed" qualifier that allows~~  
14 ~~multifamily residential, and~~

15 ~~c. Area 8 of the Sunnyland neighborhood.~~

16 ~~2. Neighborhood commercial zones, or~~

17 ~~3. Property regulated by Chapter 16.80 BMC, Lake Whatcom Reservoir Regulatory Provisions.~~

18 ~~B. The housing types in this chapter are permitted in all other zones that allow residential uses, including~~  
19 ~~specifically designated areas of urban villages.~~

20 ~~C. In the residential multi-transition zone, all forms of attached housing shall be limited to no more than 4~~  
21 ~~attached units in a single building.~~

22 ~~D. If the provisions of this chapter conflict with any other provision in BMC Title 20, 21, or 23, the~~  
23 ~~provisions of this chapter shall apply.~~

24 **Section 6.** Bellingham Municipal Code Section 20.28.030 Process is hereby amended as  
25 follows:

1 **20.28.030 Process.**

2 A. In accordance with Chapter 21.10 BMC, all housing forms will use either a Type I or II process, and all  
3 land use applications may be consolidated under the highest type. Design review applies as outlined in  
4 Chapter 20.25 BMC with additional design standards and guidelines as specified under each housing  
5 type.

6 B. Modifications – General: Applicants may request minor modifications to the general parameters  
7 development and design standards set forth in this chapter. The planning director or hearing examiner,  
8 when the hearing examiner makes the final decision on a design review application consolidated  
9 pursuant to BMC 21.10.060, may modify the requirements if all of the following criteria are met:

10 1. a. The site is constrained due to unusual shape, topography, easements, or sensitive areas; the  
11 location of pre-existing improvements, or other extraordinary situation or condition; or

12 2. The modification is consistent with the purpose of this chapter.

13 3. b. The granting of the modification will not result in a development that is less compatible with  
14 neighborhood land uses, establishes a better development pattern found to be compatible with  
15 adjacent development (existing and anticipated) including, but not limited to, pedestrian  
16 oriented development, setbacks, lot orientation, or other contextual elements associated with  
17 the proposed development; and

18 2. The modification is consistent with the purpose and intent of this chapter.

19 C. Modifications – Mixed Housing. When proposing a mix of housing types and/or uses within a project,  
20 including multifamily and commercial development when allowed by the underlying zoning, general  
21 development standards applicable to each use and housing type may be modified at the discretion of the  
22 Planning Director to account for conflicts between standards for each use and/or housing type.  
23 Examples include:

24 1. When multifamily under BMC 20.32 is proposed as a mixed use with townhouses under BMC  
25 20.28.140, there is no internal setbacks between buildings, minimum lot sizes, or minimum lot  
26 dimensions and open space and parking areas may be consolidated.

27 2. Internal setbacks, open space, usable space, lot coverage, and other standard requirements may be  
28 averaged or reduced to the minimum allowed by any housing type or use proposed within a  
29 development. In some cases, the Director, may require the maximum or increased standards to  
30 mitigate a reduction in other standards.

**Commented [KCJ3]:** Main changes:  
1. Create a type 1 process for housing of 4 units or less, and  
2. Add broader discretion for minor modifications consistent with the land division ordinance, and addressing greenfield development

**Commented [DS7]:** Making all 4-unit attached administrative means that no public notice would be provided in the MF transition zone since that area is limited to 4 units. Transition areas are important to ensure compatibility and lessening public input will not create support for projects and infill.

**Commented [DS8]:** What is an extraordinary situation or condition?

**Commented [DS9]:** It seems like ensuring consistency with the purpose of the chapter is essential. Why delete?

**Commented [DS10]:** Other factors should include protecting natural features – not just adjacent “development”, solar orientation, and city climate action goals.

1	<a href="#">The objective for granting administrative modifications in this subsection (C) shall be to facilitate a</a>
2	<a href="#">unified internal design that minimizes the presence of private surface parking, is compatible with</a>
3	<a href="#">abutting development (existing or anticipated), and consistent with the purpose and intent of this</a>
4	<a href="#">chapter.</a>
5	<a href="#">D. Modification - Front Porches. The minimum sizes of front porches as specified for each housing type in</a>
6	<a href="#">this chapter may be averaged within a project when consistent with a plan to provide greater diversity</a>
7	<a href="#">and individuality in housing designs.</a>
8	<a href="#">E. Property ownership may be held in common, through a subdivision or a binding site plan.</a>
9	<b>Section 7.</b> Bellingham Municipal Code, Section 20.28.040 Definitions is hereby amended as
10	follows:
11	<b>20.28.040 Definitions.</b>
12	The following definitions apply to this chapter:
13	<a href="#">“Common pedestrian corridor” means a defined space containing a hard-surface facility with the primary</a>
14	<a href="#">intent of providing non-motorized pedestrian access from multiple dwelling units to an abutting street or to</a>
15	<a href="#">on- or off-site amenities(s).</a>
16	“Common shared structure” means a building or structure designed and intended for the common use of the
17	residents of the cottage housing.
18	<a href="#">“Cottage housing” means a coordinated grouping of four to eight small detached single-family dwellings</a>
19	<a href="#">clustered around common open space and having shared parking.</a>
20	“Design guidelines” means guidelines for meeting the intention of the ordinance.
21	“Design standards” means requirements related to the design of the project. Developments are required to
22	meet the design standards in this chapter.
23	<a href="#">“Duplex” means a building containing only two dwelling units.</a>
24	<a href="#">“Garden court housing” means four to eight dwelling units clustered around a common open space or</a>
25	<a href="#">courtyard.</a>
26	<a href="#">“Lane” means a private street that provides both pedestrian and vehicle access designed with a change of</a>
27	<a href="#">material, that may include a unique paving pattern, that serves as visual cues for reducing or slowing the</a>
28	<a href="#">flow of traffic and within which pedestrians and cyclists have priority over motorists.</a>
	Draft Ordinance – Infill Housing Toolkit Update 8

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

**Commented [KC14]:** The housing definitions are being deleted here because they duplicate the housing type descriptions under each housing type and because some are worded slightly differently between the two which is confusing.

1 "Parent site" means all area within the boundaries of the subject property included in the land use  
2 application.

3 "Shared court housing" means four to six dwelling units oriented to a shared courtyard providing access for  
4 both vehicles and pedestrians but designed to give priority to pedestrians.

5 "Small house" means detached single-family dwelling units on lots over 3,000 square feet but not more  
6 than 5,000 square feet in size.

7 "Smaller house" means detached single-family dwelling units on lots 1,800 square feet to 3,000 square feet  
8 in size.

9 "Townhouse" means a dwelling in a row of units in which each unit has its own front and rear access to the  
10 outside, no unit is located over another unit, and each unit is separated from any other unit by one or more  
11 vertical common walls.

12 "Triplex" means a building containing only three dwelling units.

13 **Section 8.** Bellingham Municipal Code, Section 20.28.050 General Standards is hereby  
14 amended as follows:

15 A. Pedestrian oriented design All development in this chapter shall incorporate the following pedestrian  
16 oriented design standards and guidelines:

17 1. Fronting infill housing units on existing improved streets shall be prioritized over fronting units  
18 internally off a new street, lane, or common pedestrian corridor. Gaps may occur as necessary for  
19 building setbacks, vehicular and pedestrian access, and features that contribute to the pedestrian  
20 realm.

21 2. Parking shall not be located between dwelling units and the street or lane except as allowed in this  
22 chapter.

23 3. Site design shall prioritize locating parking off an alley to minimize pedestrian/auto conflicts with  
24 cars backing out across pedestrian facilities such as city sidewalks and lanes.

25 4. When alley access is not available or feasible, and street/lane loaded garages are necessary:

26 a. The width of the garages and driveways accessing a street or lane shall be proportionally less  
27 than the width of the dwelling unit. See Figure 20.25.050(A).

**Commented [KC35]:** The following design standards are necessary to implement the purpose and intent of this chapter.

b. The maximum width of a driveway serving an individual unit that crosses a pedestrian facility associated with a street or lane shall not be more than twelve feet (12').

Commented [KC36]: Need image

c. Architectural and landscaping details shall be embellished to minimize the visual presence of the garages and any open driveway parking. See Figure 20.25.050(A).

d. Parking shall only be located between the dwelling units and the street or lane when in conjunction with a driveway access to a garage.

Figure 20.25.050(A)

Commented [KC37]: Also add image for SF Detached





Images courtesy of Matt Remsbecher, Slab Design Inc.

**AB. Density.** Density shall be as specified in the associated area in the zoning table. If there is more than one density listed, the highest listed density for any housing type specified in the applicable neighborhood subarea pursuant to zoning tables in Chapter 20.00 BMC shall be considered the maximum possible density. [The maximum density may be exceeded through the density bonus provisions pursuant to BMC 20.32.040\(B\)\(5\) and BMC 23.08.040\(C\).](#)

**BC. Lot Requirements.** There are no minimum lot dimensions, lot sizes or minimum street frontage requirements unless otherwise specified in this chapter. [All infill housing development shall provide access to a public right-of-way whether directly, by easement, or other means acceptable to the Planning Director. Up to eight dwelling units may take access from a single private lane in place of public street frontage.](#)

**CD. Subdivision.**

[1.](#) Infill housing units approved as part of a cluster subdivision in single-family zoning subareas with a cluster, cluster detached, and cluster attached shall be located on separate, fee simple lots. All cluster subdivisions that include infill housing types shall comply with the lot transition provision pursuant to BMC 23.08.060(F)(1).

[2.](#) Sites with [duplex, triplex, fourplex](#), cottage, shared court, garden court, and townhouse types in all other zoning areas permitting infill housing types may be subdivided into lots that do not comply

1 with development standards in BMC Titles 20 or 23 individually, as long as the parent site as a  
2 whole complies with this chapter. Where allowed by zoning, this provision also applies to  
3 subdivision of individual commercial, multifamily, and other uses onto separate lots when  
4 proposed as mixed uses with an infill housing development. Subsequent alterations to buildings are  
5 subject to review and approval of plans such that they are consistent with the regulations in this  
6 chapter that were previously applied to this site.

7 3. The plat shall contain notice of any associated land use approvals. Subsequent alterations to  
8 buildings are subject to review and approval of plans such that they are consistent with the  
9 regulations in this chapter that were previously applied to this site.

10 DE. Common Facilities. Legal documents identifying the rights and responsibilities of property owners  
11 and/or the homeowners' association for use and maintenance of common facilities shall be submitted  
12 for approval by the planning director and recorded. When part of a subdivision they shall be noted on  
13 the plat.

14 EF. Encroachments and common wall development into Required Setbacks. The following architectural  
15 features are permitted to project two feet into the required setback: bay windows, chimneys, porches,  
16 balconies, facade treatment and other architectural features approved by the planning director.

17 1. Encroachments into required yards are allowed as specified in BMC 20.10.080(B).

18 2. For common wall development such as townhouses and detached garages, and encroachments over  
19 property lines such as eaves, a joint agreement must be approved as to form by the City of  
20 Bellingham and recorded with the Whatcom County auditor's office and thereafter filed with the  
21 city.

22 3. Required building setbacks from streets may be reduced to be consistent with that allowed by the  
23 underlying zoning for other permitted housing types such as apartments in multifamily zoning.

24 FG. Private Lanes, Common Pedestrian Corridors, and Alleys. The following applies to the design and  
25 development of private transportation facilities within a development.

26 1. Each lot must abut a street, or lane, or common pedestrian corridor except lots for individual units  
27 in cottage, shared court, and garden court. Each dwelling unit must abut and have access to a  
28 pedestrian facility that provides access to a street or lane.

29 2. Lanes and common pedestrian corridors shall be considered streets for frontage, setback and design  
30 purposes.

Commented [KC38]: Need photo or drawing

2. Private lanes and alleys must be surfaced with a hard material such as concrete or asphalt. The use of permeable pavement shall be used for hard surface ground cover areas unless infeasible per the infeasibility criteria listed within DMP T5.15 of the Ecology Manual. Projects that include less than 2,000 square feet of new or replaced impervious surface are exempt from this requirement. Gravel or loose material is prohibited.

Commented [KCJ9]: Moved to (4)(a) and edited.

3. Lanes and alleys must be maintained to city standards, and legal documents regarding common-facilities-and-maintenance must be submitted for approval by the planning director and recorded.

Commented [KCJ10]: Moved to (4)(b) and edited.

4.3. Lanes, common pedestrian corridors, and alleys must be constructed and maintained to the following minimum improvement standards:

Table 20.25.050

	Travel Lane Width	Pedestrian Path Width	Total Width
Small Lane (one to two dwelling units)	9 feet	N/A	9 feet
Medium Lane (three to five dwelling units)	11 feet	4 feet, one side	15 feet
Large Lane (six plus dwelling units and lanes over 100 feet long)	12 feet	4 feet, both sides	20 feet
Alleys	15 feet	N/A	20.15 feet
Common Pedestrian Corridor	N/A	4 feet	10 feet

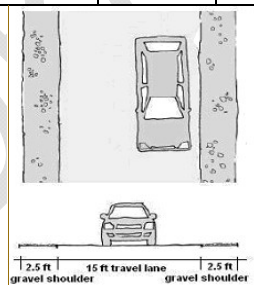


Figure 20.28.050(A) Typical Alley Plan and Section

Commented [KCJ11]: Repeat figure. Not needed since gravel shoulders are discouraged. Prefer previous landscaping.

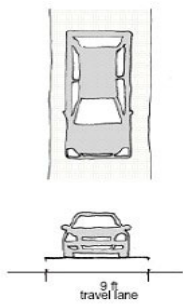


Figure 20.28.050(B) Small Lane Plan and Section

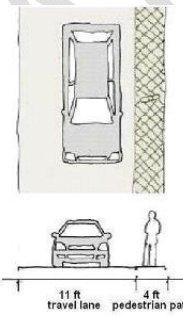


Figure 20.28.050(C) Medium Lane Plan and Section

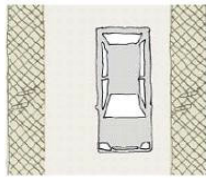


Figure 20.28.050(D) Large Lane Plan and Section

4. Lanes, common pedestrian corridors, and alleys must be:

a. Surfaced with a hard material such as concrete or asphalt, except that asphalt shall not be used for common pedestrian corridors. The use of permeable pavement shall be used for hard surface ground cover areas unless infeasible per the infeasibility criteria listed within BMP T5.15 of the Ecology Manual. Projects that include less than 2,000 square feet of new or replaced impervious surface are exempt from this requirement. Gravel or loose material is prohibited.

b. Maintained to city standards, and legal documents regarding common facilities and maintenance must be submitted to the city for review and approval.

5. Pedestrian paths within a lane must be delineated with a change in material, color or pattern.

6. Pedestrian paths within a lane or fire apparatus road must be flush with the travel lane.

7. No single lane may serve more than eight dwelling units unless emergency access can be provided compliant with Title 17 BMC.

7g. Parking is not allowed within the lane width but may be allowed in a parallel pocket abutting a lane.

1	8. Lanes longer than 150 feet must either connect to an improved public street or provide a	
2	tumaround sufficient for emergency access.	
3	9. Private lanes shall be considered streets for frontage, setback and design purposes.	Commented [KCJ12]: Moved to #2 above and edited to add "common pedestrian corridors."
4	109. Private lanes and alleys are not included in FAR and Open Space calculations. Pedestrian paths	
5	within common pedestrian corridors shall be separated from property lines, fences, walls and	
6	hedges by a minimum of two feet (2').	
7		
8	H. <u>Parking.</u> All housing types shall provide parking in accordance with the following standards:	Commented [KCJ13]: Parking standards have been removed from individual housing sections and revised and consolidated here to work for all housing types.
9	1. Number of spaces.	
10	a. Infill housing: Dwelling units less than 1,000 square feet shall provide one on-site parking	
11	stall. Units of 1,000 square feet or greater shall provide two on-site parking stalls.	
12	b. Guest parking. When a site contains 20 or more units and lacks on-street parking abutting or	
13	parking within the parent site, the planning director may require additional guest parking.	
14	Guest parking may be improved on site, or in the public right-of-way with approval of the city	
15	engineer.	
16	2. Parking stall dimensions. When parking for individual units is in separate garages or carports,	
17	parking stalls shall be at least 9 feet by 18 feet. Open parking and group parking may use	
18	dimensional parking standards in BMC 20.12.010.	
19	3. <u>Parking setbacks.</u> The required setbacks for open parking are as follows:	Commented [KCJ14]: Detached garage, carport, and accessory building setbacks are under each housing type
20	a. Streets: The parking shall be set back at least 25' from a front street and 10' from a side	
21	flanking street, except that one tandem stall may be located in a driveway that provides access	
22	to a garage or carport.	
23	b. Side and rear: 5', except none for side and rear yard when parking is perpendicular to and	
24	accessed directly from the alley.	
25	4. Tandem parking. Tandem parking is allowed when:	
26	a. No more than two spaces are parked in tandem.	
27	b. One tandem space per tandem pair is in a structure.	
28	5. Access and maneuvering.	
29	a. If a platted alley exists, parking shall be accessed via the alley except when the planning	
30	director determines that alley access is impractical or environmentally constrained.	
31	b. If a lane exists, but no alley, parking shall be accessed via the lane.	

**Commented [DS11]:** This is too much parking required. Only 1 space per dwelling unit is enough for any units with 2-bedrooms or less. There are plenty of off-street parking studies to confirm that this standard is excessive.

**Commented [DS12]:** Is this also the setback for MF buildings in these zones? This appears to be a SF standard and not a MF standard. If buildings can be 10 feet from street in the zone, then parking should not have to be 25 feet.

1	<u>c. The maneuvering area between the back of parking (or a garage/carport entry) and an alley or</u>	
2	<u>lane shall not be greater than 10 feet or less than 18 feet to prevent parked cars from</u>	
3	<u>overhanging into a lane or alley.</u>	<b>Commented [KCJ15]:</b> Provide diagram. The intent is to not allow driveways that are between 10 and 18 feet in depth.
4	6. <u>Parking may be consolidated for all housing types except small lot.</u>	
5	7. <u>The planning director may reduce parking requirements based on applicant's demonstration of site-</u>	
6	<u>specific factors that justify a lower standard consistent with the purpose and intent of this chapter.</u>	
7	1. <u>Landscaping and fencing. Development shall provide landscaping in accordance with BMC 20.12.030</u>	
8	<u>except as provided herein and as specified under each housing type.</u>	
9	1. <u>One tree shall be required for every 40 feet of street or lane frontage. Trees required along a lane or</u>	
10	<u>common pedestrian corridor shall be installed adjacent to the lane, or adjacent to or within the</u>	
11	<u>pedestrian corridor.</u>	
12	2. <u>Landscaping shall be provided between each housing unit and abutting streets, lanes, alleys, and</u>	
13	<u>common pedestrian corridors except where driveway and walkway crossings occur.</u>	
14	3. <u>Along streets, lanes and alleys, landscaping shall be provided to separate the parking and</u>	
15	<u>driveways between individual dwelling units, or the director may approve an alternative approach</u>	<b>Commented [KCJ16]:</b> Adding a picture/diagram may be helpful
16	<u>that breaks up parking and provides visual interest to parking facilities.</u>	
17	4. <u>All fences in the front and side street setbacks are limited to 42 inches in height and may be no</u>	
18	<u>more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side</u>	
19	<u>street setback.</u>	<b>Commented [KCJ17]:</b> This is already in code under every housing type and has been moved/consolidated here.
20	<b>Section 9.</b> Bellingham Municipal Code, Section 20.28.060 concerning Smaller House is	
21	hereby repealed in its entirety.	
22		
23	<b>Section 10.</b> Bellingham Municipal Code, Section 20.28.070 Small House is hereby amended	
24	as follows:	
25	<b>20.28.070 Small lot house.</b>	
26	A. <i>Description.</i> Small lot houses consist of detached single-family lot dwelling units on lots over 3,000	
27	<u>with a site area square feet and up to less than or equal to 5,000 square feet.</u>	
28	B. <i>Site Requirements and Setbacks.</i>	
29	1. Lot size: <u>minimum 3,001 square feet and</u> maximum 5,000 square feet.	
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2. The required setbacks are as shown in Figures 20.28.070(A) and (B), except ~~garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of the dwelling unit (excluding front porches).~~ Buildings shall be placed within the shaded areas shown in the figures ~~except as provided above.~~

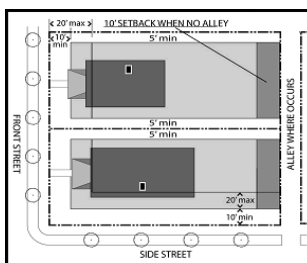


Figure 20.28.070(A) Setbacks – Main Building

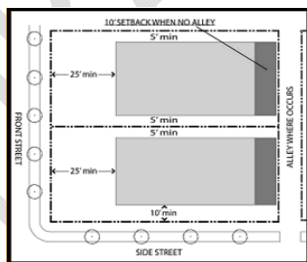


Figure 20.28.070(B) Setbacks – Garages and Carports

Commented [KC318]: Need diagram.

Commented [KC319]: Delete figure.

#### C. Bulk and Massing.

1. Maximum floor area ratio (FAR): 0.35, or 0.5 with an or 1,200 square feet, whichever is greater.  
An accessory dwelling unit (ADU) pursuant to BMC 20.10.036 is exempt from FAR. Attached  
garages are included in FAR. Detached garages up to 220 square feet, or 440 square feet with an  
ADU, are exempt from FAR. Street-front loaded garages are included in FAR. Garages accessed  
from an alley or side flanking street are exempt from FAR as follows:
    - a. 300 square feet for housing under 1,000 square feet, or
    - b. 500 square feet for housing that is 1,000 square feet or larger, or when an ADU is included.
  2. 2 No single floor shall be greater than 800 square feet.
  3. Maximum height is 25 feet under BMC 20.08.020, height definition No. 1 and 20 feet under  
definition No. 2.
- D. Usable Space, Open Space and Landscaping.
1. A minimum of 60-40 percent of the site area shall be in open space consisting of landscaping and  
permeable materials (may include permeable paving, landscape-based LID BMPs, and green  
roofs). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as  
determined by the planning director.
  2. A green factor landscaping score of 0.3 is required (see BMC 20.12.030).
- E. Parking. All parking shall be provided pursuant to BMC 20.28.050(H).
1. Dwelling units less than 1,000 square feet shall provide one on-site parking stall. Units of 1,000  
square feet or larger shall provide two on-site parking stalls. The planning director may reduce  
parking requirements based on applicant's demonstration of site-specific factors that justify a lower  
standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping, as  
specified in Figure 20.12.030(A).
  2. Tandem parking is allowed (may be exterior or interior).
  3. If an alley exists, parking shall be accessed via the alley unless the planning director determines  
that alley access is impractical or environmentally constrained.
  4. If a lane exists, but no alley, parking shall be accessed via the lane.
  5. Adjacent properties may share a driveway upon approval of a shared access and maintenance  
agreement.

**Commented [KC120]:** Garage exemption increased to 300/500 to allow for reasonable accessory storage including bike parking.

**Commented [DS13]:** Something isn't written right here. The heading is about FAR but then there is a standard of 0.35 or 1,200 square feet. 1,200 square feet is not a ratio. I suspect it has to do with floor area, but is it gross floor area of the entire building or a footprint? Regardless, it needs to be clarified in the ordinance.

This is where a drawing showing the effect of this change is important to determine impact.

**Commented [DS14]:**

**Commented [DS15R14]:**  
Ditto to comments above. Not sure what we are measuring. Gross floor area or footprint? 500 square feet for a garage and an ADU is too small if it includes gross floor area. A granny flat over a garage would add floor area but not impact visual character if roof design is sloped.

**Commented [DS16]:** See above.

**Commented [DS17]:** Are we now saying that the driveways and lanes would be considered part of the open space and you are reducing the amount down to 40%? That should be reconsidered.

This is also a placeholder comment to think about private open space for enjoyment of the residents. Has that been included?

6. Detached garages may share a common wall along a property line if a shared maintenance agreement is in place.
7. Parking accessed from the public street shall be limited to one driveway of 20 feet maximum width.
8. Parking setbacks from property line:
 

Front:	25 feet
Side street:	10 feet
9. All common shared driveway, common wall or any common facility needs to be approved by the planning director. Final documents are required to be recorded.

F. *Design Standards.*

1. Shall have a covered front porch with an area of 60-40 square feet or more, with no dimension less than five feet. This is in addition to the open space requirement.
2. Dwelling units that front the public street or lane shall have entrances facing the public street or lane.
3. All fences in the front and side street setbacks are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side street setback.

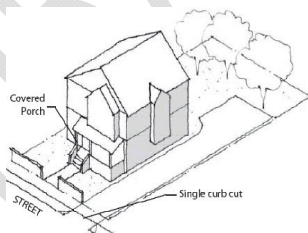


Figure 20.28.070(C) Annotated Graphic of Small House Lot

- G. *Design Guidelines.* Use context-sensitive site design and building details to help ensure that new infill development will enhance the neighborhood and respect the scale and character of the existing houses on a street.

1 1. *Building Design.*

2 a. Single story massing elements should be emphasized on the front facades, using porches and

3 bays seen from the street or lane.

4 b. Gable roofs emphasize vertical proportions, create modulation and are strongly encouraged.

5 c. The massing should be varied with elements such as bays, dormers, etc.

6 d. A change of materials, colors or textures on different elements is encouraged to provide further

7 articulation and adds variety and character.

8 e. Homes should minimize the impact of the garage on the streetscape by minimizing blank

9 garage doors, through the use of windows and/or architectural detail on the garage door.

10 2. *Site Design.*

11 ~~a. Front yard parking aprons are not allowed.~~

12 ~~a.b. Back yards should be designed for privacy from neighbors.~~

13 ~~b.e. Fencing, especially when seen from the street, should be designed to integrate into the~~

14 ~~architecture of the building and add visual interest in its detail, materials or color.~~

15

16 **Section 11.** Bellingham Municipal Code, Section 20.28.080 Cottage is hereby amended as

17 follows:

18 A. *Description.* Cottage housing is a grouping of small compact, detached single-family dwelling units

19 clustered around a common usable area and developed with a shared plan for access and parking, and a

20 coordinated design for the buildings and site.

21 B. *Site Requirements and Setbacks.*

22 1. Cottages may be located on a separate (fee simple) lot or several units may be located on a common

23 parcel. A cottage unit with an ADU must be located on a separated lot.

24 2. The required setbacks are as shown in Figure 20.28.080(A), except garage and carport setbacks

25 from an alley shall be as needed to provide a 20-foot parking backup distance (including alley

26 width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of an

27 interior side yard. Garages and carports shall be set back at least four feet (4') from the street face

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Commented [DS18]: Why is this eliminated?

of residential buildings (excluding front porches). Buildings shall be placed within the shaded areas shown in the figure except as provided above.

C. Bulk and Massing.

1. The minimum is four dwelling units and the maximum is eight dwelling units in a single development cottage cluster.
2. No structure shall be larger than 1,200+000 square feet and no single floor area shall be larger than 600 square feet.

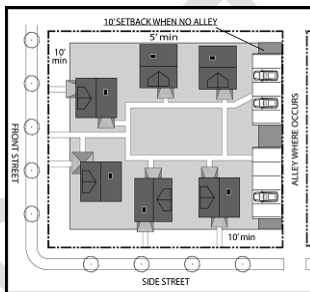


Figure 20.28.080(A) Setbacks for Cottage

3. Maximum floor area ratio (FAR) is 0.4. 0.6. An accessory dwelling unit (ADU) pursuant to BMC 20.10.036 is exempt from FAR.
4. Common shared structures are allowed, limited to the same bulk and mass restrictions as dwelling units, and are exempt from FAR.
5. The height limit is 25 feet under BMC 20.08.020, definition No. 1 or 20+5 feet under definition No. 2.

D. Usable Space, Open Space and Landscaping.

1. Each dwelling unit shall have at least 100 square feet of private usable open-space with no dimension less than five feet. Up to 50 square feet of the private usable space may be provided in decks and patios may be included.

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**Commented [DS19]:** 1,200 square feet of what? Floor area? Gross floor area? Footprint? Seems like footprint is the most logical standard here.

- 1 2. Private usable open space must be directly accessible from the dwelling unit, and be separated from  
2 shared spaces or paths and other units through the use of landscaping and/or fencing.
- 3 ~~3. Common usable open space equivalent to 200/500 square feet per dwelling unit shall be provided. It~~  
4 ~~shall be consolidated, with a minimum average dimension of 20 feet. No single dimension shall be~~  
5 ~~less than 20 feet, exclusive of parking or lanes except for emergency access. All units shall have~~  
6 ~~direct access to common/shared open space.~~
- 7 4. A minimum of 60-40 percent of the site area shall be in open space consisting of landscaping or  
8 permeable materials (may include permeable paving, landscape-based LID BMPs, and green  
9 roofs). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as  
10 determined by the city.
- 11 5. A green factor landscaping score of 0.3 is required (see BMC 20.12.030).
- 12 E. Parking. All parking shall be provided pursuant to BMC 20.28.050(H). ~~4. The project shall include at~~  
13 ~~least one on-site parking stall per unit. The planning director may reduce parking requirements based~~  
14 ~~on applicant's demonstration of site-specific factors that justify a lower standard. Parking stalls shall be~~  
15 ~~at least nine feet by 18 feet, unless adjacent to landscaping, as specified in Figure 20.12.030(A).~~
- 16 2. Parking may not be located between structures or front directly upon a street.
- 17 ~~3. If an alley exists, parking shall be accessed via the alley except when the planning director determines~~  
18 ~~that alley access is impractical or environmentally constrained.~~
- 19 4. Parking shall be consolidated in areas not less than four spaces.
- 20 5. Parking accessed from the public street shall be limited to one driveway of 20-foot maximum width.
- 21 6. Parking shall be screened from the public street by landscape feature or fence.
- 22 F. *Design Standards.*
- 23 1. A front porch with a minimum of 60-40 square feet and no dimension less than five feet is required  
24 for each dwelling unit. This is in addition to the private usable space requirement (in addition to  
25 private open space requirements).
- 26 2. Dwelling units that front a public street or lane shall have a porch that faces the street or lane. Units  
27 that face the shared open space shall have a porch that faces the open space. In some cases, units  
28 will require two front porches to satisfy this criteria.

**Commented [DS20]:** It is confusing how these two standards relate to each other. One is tied to the units and one to the development. Are they additive? It seems like there should be just one standard for the development's open space and units should have access to it, and lanes and drives should NOT count towards open space.

I would suggest that the standard for open space be best off the unit count and not the site. The demand for open space is based on the number of units. And, this standard should remain at 500 feet per unit. Reducing it down to 200 square feet per unit is a severe reduction that is not justified by any comparison to other communities or level of service standards for residential development.

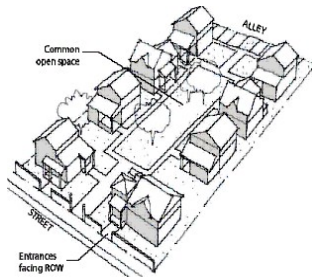


Figure 20.28.080(B) Annotated Illustration of Cottage

3. All fences in the front and side street setbacks, or between the common areas and the dwelling units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain-link or eyelone fencing is not allowed in the front or side street yard. Garbage/recycling areas shall be consolidated, unless the local refuse provider approves otherwise, and screened from public view.

G. *Design Guidelines.* Cottage housing developments should architecturally blend into existing neighborhoods through careful attention to the design of the units, open spaces, parking and landscaping. Well proportioned cottage houses, with porches, small gardens, varied roof lines and dormers can fit comfortably into surrounding neighborhoods of older, detached homes.

1. *Building.*

- a. Buildings should employ variety in orientation, design, and layout between cottages while maintaining a similar character to help distinguish units and support a neighborhood feel.
- b. Cottages should reflect common neighborhood design features such as porches, dormers, gables, and architectural detailing.
- c. Changes in materials, colors or textures and colors to add visual interest and character to the development are encouraged.

2. *Site Design.*

- a. Provide small private open spaces in conjunction with a large common/shared open space.

- b. Provide generous use of landscape structures such as trellises, gate houses, decks, patios, and raised beds to provide plenty of usable outdoor space with a variety of environments. Use planting materials and elements such as fencing to unify the overall site design.
- c. Shared driveways are preferred.
- d. Walkways should connect all dwelling units to the common/shared open space and consolidated parking and should utilize pervious materials.

**Section 12.** Bellingham Municipal Code, Section 20.28.110 Duplex/Triplex is hereby amended as follows:

**20.28.110 Duplex/triplex/fourplex.**

A. *Description.* A duplex/triplex/fourplex is a single structure comprised of two, ~~or three,~~ or four dwelling units on a single lot, either side by side, ~~or on different floors,~~ or a combination thereof.

B. *Site Requirements and Setbacks.*

1. The required setbacks are as shown in Figures 20.28.110(A) ~~and (B),~~ except ~~garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of the residential building (excluding front porches).~~ Buildings shall be placed within the shaded areas shown in the figures except as provided above.

C. *Bulk and Massing.*

1. Maximum floor area ratio (FAR) is ~~0-50.6.~~
2. ~~Maximum dwelling unit size is 4,000-square feet.~~
- ~~3.~~ The height limit is 25 feet under BMC 20.08.020, definition No. 1 or ~~20+5~~ feet under definition No. 2. The height may be increased to 35 feet under BMC 20.08.020, definition No. 1 when in residential-multi, multiple and commercial zoning designations.

**Commented [KCJ21]:** This is a new housing category. It will not result in increased density, mass, or bulk compared to what is allowed by the underlying zoning. The PC should discuss the pros and cons of this new housing type.

**Commented [KCJ22]:** This height increase will not apply to residential single zones or residential multi-transition zones. It will bring infill housing toolkit into closer parity with what is allowed in residential multi zones for multifamily development.

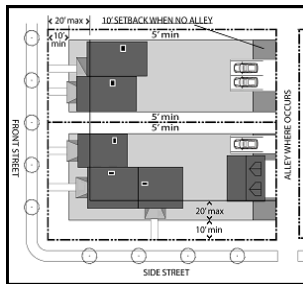


Figure 20.28.110(A) Setbacks – Main Building

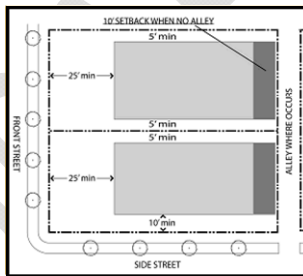


Figure 20.28.110(B) Setbacks – Garages and Carports

Commented [KCJ23]: Delete figure.

D. Usable Space, Open Space and Landscaping.

1. Each dwelling unit shall have 75 square feet of private usable open space with no dimension less than five feet. ~~#No more than 50 square feet~~ may be accommodated with a deck or porch.
2. Private usable space may be consolidated and provided as common usable space with minimum dimensions of 10 feet by 10 feet. All units shall have direct access to usable space.

- 1 3. No less than ~~40-30~~ percent of the site area shall be in open space consisting of landscaping or  
2 permeable material (may include permeable paving, landscape-based LID BMPs, and green roofs).  
3 Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by  
4 the city.
- 5 3. A green factor landscaping score of 0.4 is required (see BMC 20.12.030).
- 6 E. Parking. All parking shall be provided pursuant to BMC 20.28.050(H).
- 7 1. Each dwelling unit shall provide at least one on-site parking stall. The planning director may reduce  
8 parking requirements based on applicant's demonstration of site-specific factors that justify a lower  
9 standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping, as  
10 specified in Figure 20.12.030(A).
- 11 2. Parking setbacks from property line:
- |                     |                |
|---------------------|----------------|
| <u>Front:</u>       | <u>25 feet</u> |
| <u>Side street:</u> | <u>10 feet</u> |
- 12 3. If an alley exists, parking shall be accessed via the alley except when the planning director  
13 determines that alley access is impractical or environmentally constrained.
- 14 4. Parking accessed from the public street or lane shall be limited to one driveway per street or lane  
15 with a maximum width of 20 feet.
- 16 F. Design Standards.
- 17 1. At least one entrance must be visible from the public street.
- 18 2. Ground level ~~Dwelling~~ units that front the public street shall each have entrances a covered front  
19 porch facing the public street. Said porches shall be no less than 40 square feet with no dimension  
20 less than five feet. A shared front porch entry no less than 60 square feet with no dimension less  
21 than five feet may be provided in lieu of private entries. Front porches are in addition to the private  
22 usable space requirement.
- 23 3. All fences in the front and side street setbacks are limited to 42 inches in height and may be no  
24 more than 60 percent opaque. Chain link or cyclone fencing is not allowed in the front or side  
25 street setback. Garbage/recycling areas shall be consolidated, unless the local refuse provider  
26 approves otherwise, and screened from public view.

**Commented [DS21]:** One of the design standards should include how far the front entrance can be above the ground level. Take a look at examples in Sightline Institute's Infill portfolio of buildings with the first livable floor above the garage or some other non-livable feature. It makes the site incompatible with the neighborhood.

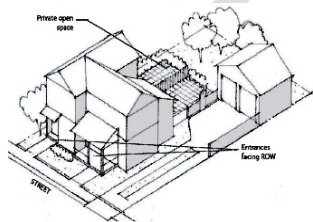
Our standards adopted in Everett included how far the first ground floor could be above the front lot line grade. Take a look at that and ensure some standard is put in or you can end up with hideous infill.  
<https://everett.municipal.codes/EMC/19.09.030> and  
<https://everett.municipal.codes/EMC/19.08.050>

**Commented [DS22]:** Should these areas be screened?

1 G. *Design Guidelines.* A duplex/triplex should be designed as either a larger, single-family composition or  
2 as distinct separate units.

3 1. *Building Design.*

- 4 a. The design should break the home's facades into several distinct elements.  
5 b. Gable roofs emphasize vertical proportions, create modulation and are strongly encouraged.



6 Figure 20.28.110(C) Annotated Illustration of Duplex/Triplex  
7

- 8 c. The massing should be varied with elements such as bays, dormers, etc.  
9 d. A change of materials, colors or textures on building elements is encouraged to provide further  
10 articulation and additional variety and craftsmanship.  
11 e. Buildings should minimize the impact of garages on the streetscape by utilizing garage doors  
12 with windows or other architectural features.

13 2. *Site Design.*

- 14 ~~a. Front yard parking aprons are not allowed.~~  
15 ~~b. Back yards should be designed for privacy from neighbors.~~  
16

17 **Section 13.** Bellingham Municipal Code, Section 20.28.120 Shared Court is hereby  
18 amended as follows:

1 A. *Description.* A shared court is a multifamily development that shares a courtyard that also allows  
2 vehicular access to parking. The structure(s) is arranged in a "U" shape around a central shared court.  
3 Design details, paving and landscape should create the impression of a small, intimate courtyard when  
4 viewed from the street.

5 B. *Site Requirements and Setbacks.*

- 6 1. Shared court units may be located on a separate (fee simple) lot or several units may be located on a  
7 common parcel. A shared court unit with an ADU must be located on a separated lot.
- 8 2. The required setbacks are as shown in Figures 20.28.120(A) and (B), except garage and carport  
9 setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including  
10 alley width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of  
11 an interior side yard. Garages and carports shall be set back at least four feet (4') from the street  
12 face of residential buildings (excluding front porches). Buildings shall be placed within the shaded  
13 areas shown in the figures except as provided above.

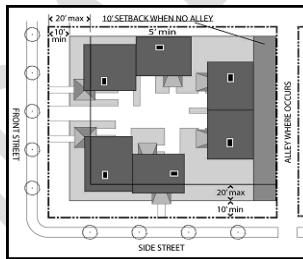


Figure 20.28.120(A) Setbacks – Main Building(s)

**Commented [DS23]:** The front setbacks should be the same as in the underlying zone in order to maintain the rhythm of the street. Setback and height standards in this chapter appear to be written for SF zones and not MF zones, which I believe this chapter particularly applies to.

If there is a chapter in the code for setbacks, the front, rear and side setbacks should match the underlying zone.

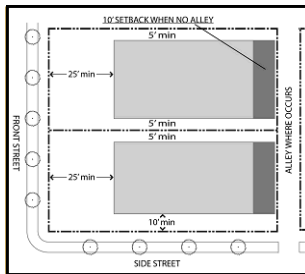


Figure 20.28.120(B) Setbacks—Garages and Carports

Commented [KCJ24]: Delete figure.

#### C. Bulk and Massing.

1. There shall be a maximum of six dwelling units and a minimum of four dwelling units clustered around a shared court.
2. Maximum floor area ratio (FAR) is ~~0.50~~ 0.6. An accessory dwelling unit (ADU) pursuant to BMC 20.10.036 is exempt from FAR. Projects meeting green factor requirements in section (D)(4) of this section may request additional FAR up to 0.7 with approval by the planning director.
3. ~~The maximum dwelling unit size is 2,000 square feet.~~
4. ~~No single floor area shall be larger than 1,000 square feet per dwelling unit.~~

Commented [DS24]: What is measured? Footprint or gross floor area? Seems to be a footprint standard.

5. ~~The height limit is 25 feet under BMC 20.08.020, definition No. 1 or 20.45 feet under definition No. 2. The height may be increased to 35 feet under BMC 20.08.020, definition No. 1 when in residential-multi, multiple and commercial zoning designations.~~

Commented [DS25]: If the height in the underlying zone allows taller, what is the purpose of placing such limits in here? Defeats infill and these heights are difficult to get a 1 ½ story building into, let alone a 2 story that should be compatible.

#### D. Usable Space, Open Space and Landscaping.

1. Each dwelling unit shall have at least ~~100~~ 50 square feet of private ~~usable~~ open space with no dimension less than five feet. Some or all of this requirement may be accommodated in a deck.
2. All private ~~usable~~ open space must be directly accessible from the dwelling unit and shall be separated from shared pathways, driveways, and other units ~~through the use of landscaping and/or fencing.~~

Commented [DS26]: See earlier comments about open space. Private open space should count towards development open space if the total amount is not reduced as proposed. There should be some flexibility.

- 1 3. No less than 30.46 percent of the site area shall be in open space consisting of landscaping or  
2 permeable material (may include permeable paving, landscape-based LID BMPs, and green roofs).  
3 Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by  
4 the city.
- 5 4. ~~Use of the green factor is strongly encouraged. When used as a FAR bonus option in subsection~~  
6 ~~(C)(2) of this section, a~~ green factor landscaping score of ~~0.6-0.4~~ is required ~~(see BMC~~  
7 ~~20.12.030).~~
- 8 E. Parking. All parking shall be provided pursuant to BMC 20.28.050(H).
- 9 1. ~~Dwelling units less than 1,000 square feet shall provide at least one on-site parking stall. Units of~~  
10 ~~1,000 square feet or larger shall provide two on-site parking stalls. The planning director may~~  
11 ~~reduce parking requirements based on applicant's demonstration of site-specific factors that justify~~  
12 ~~a lower standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping,~~  
13 ~~as specified in Figure 20.12.030(A).~~
- 14 2. ~~Parking shall not be located between structures and a public street.~~
- 15 3. ~~Parking accessed from a public street or lane shall be limited to driveway with a maximum width of~~  
16 ~~20 feet.~~
- 17 F. Design Standards.
- 18 1. Each dwelling unit must have a separate, ground-related entrance. Units that front the public street  
19 shall have entrances facing the public street; all other units shall have entrances facing the shared  
20 open space.
- 21 2. No roof pitch shall be less than 2:12 (may be shed type) except for green roofs.
- 22 3. Each dwelling unit shall have a covered front porch no less than 50.40 square feet with no  
23 dimension less than five feet. ~~this~~ This is in addition to the private usable open space requirement.
- 24 4. Garbage/recycling areas shall be consolidated, unless the local refuse provider approves otherwise,  
25 and screened from public view.
- 26 5. ~~All fences in the front and side street setbacks, or between the common areas and the dwelling~~  
27 ~~units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or~~  
28 ~~eyelone fencing is not allowed in the front or side street setback.~~

**Commented [DS27]:** A previous section did not require screening and I provided comment. These types of provisions should be consistent from one type to another. All should require screening.

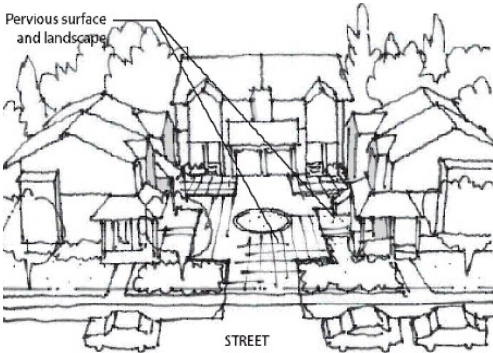


Figure 20.28.120(C) Annotated Illustration of Shared Court

- 6.5. The following design standards shall be met to define the shared courtyard space, enhance the function as a shared, attractive, and usable open space, and unify site elements through the use of paving and landscape materials:
- a. Provide clear direction to primary building entries and enhance circulation paths with trees, lighting, and plant materials.
  - b. At least 35 percent of the total shared court area shall be landscaped.
  - c. Poured surfaces (e.g., asphalt or concrete) may be used for vehicle treaded areas up to 10 feet in width but are not acceptable for area paving. The remaining unplanted areas shall be paved with unit pavers (e.g., brick, concrete, or tile) set or covered with gravel. Permeable pavements are acceptable paving options for all unplanted, shared court area.
  - d. The incorporation of courtyard amenities is required. Courtyard areas shall include at least two of the following elements:
    - i. Benches, bench-type edges for planters.
    - ii. Fountain or other water feature.

iii. Ornamental shrubbery and landscape trees.

G. *Design Guidelines.*

1. *Site Design.*

- a. Provide for the functional and visual integration of buildings, vehicular access and parking, and the “outdoor room” function of the shared court.
- b. Define and contain the shared court space through a combination of building, landscape, and other site furnishings.
- c. Provide a walkway from each dwelling unit to the shared court and street.

2. *Building Design.*

- a. The design should break the facades into several distinct elements.
- b. Gable roofs emphasize vertical proportions, create modulation and are strongly encouraged.
- c. The massing should be varied with elements such as bays, dormers, etc.
- d. Changing materials, colors or textures on building elements is encouraged to provide further articulation and add variety and craftsmanship.
- e. Buildings should minimize the impact of garages on the streetscape by utilizing garage doors with windows or other architectural features.

**Section 14.** Bellingham Municipal Code, Section 20.28.130 Garden Court is hereby amended as follows:

A. *Description.* A garden court is a multifamily development that shares a landscaped courtyard. The structures ~~are~~ is arranged ~~in a “U” shape~~ around the garden court, a common usable space area, with parking typically consolidated and located to the side or rear of the development.

B. *Site Requirements and Setbacks.*

1. Garden court units may be located on a separate (fee simple) lot or several units may be located on a common parcel. A garden court unit with an ADU must be located on a separated lot.

Commented [DS28]: Why?

2. The required setbacks are as shown in Figures 20.28.130(A) and (B), except ~~garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of residential buildings (excluding front porches).~~ Buildings shall be placed within the shaded areas shown in the figures except as provided above.

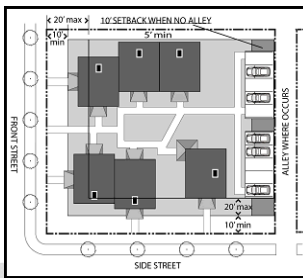


Figure 20.28.130(A) Setbacks – Main Building(s)

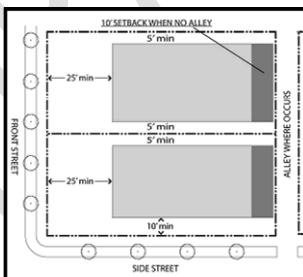


Figure 20.28.130(B) Setbacks – Garages and Carports

**Commented [DS29]:** Same comments as before regarding setbacks. They should be tied to the underlying zone on the perimeter of the property rather than making them different.

**Commented [KCJ25]:** Delete figure.

C. Bulk and Massing.

Draft Ordinance – Infill Housing Toolkit Update

34

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

1. There shall be a maximum of eight dwelling units and a minimum of four dwelling units clustered around a shared open space.
2. Maximum floor area ratio (FAR) is 0.6. An accessory dwelling unit (ADU) pursuant to BMC 20.10.036 is exempt from FAR. Projects meeting green factor requirements in subsection (D)(4) of this section may request additional FAR up to 0.75 with approval by the planning director.
3. ~~No dwelling units may be larger than 2,000 square feet.~~
4. ~~The single floor area is limited to 1,000 square feet per dwelling unit.~~
5. ~~The height limit is 25 feet under BMC 20.08.020, definition No. 1 or 20.15 feet under definition No. 2. The height may be increased to 35 feet under BMC 20.08.020, definition No. 1 when in residential-multi, multiple and commercial zoning designations.~~
- D. Usable Space, Open Space and Landscaping.
  1. ~~Common usable Shared open space equivalent to shall be provided in the amount of 200 square feet for each dwelling unit shall be provided. It shall be consolidated, with a minimum average dimension of 20 feet, exclusive of parking or lanes except for emergency access. All units shall have direct access to common open space.~~
  2. Each dwelling unit shall have at least 100 square feet of private usable open space with no dimension less than five feet. Up to 50 square feet of the private usable space may be provided in either a deck or patio space may be included.
  3. Private usable open space must be delimited separated from public rights-of-way, shared paths, shared open space, and lanes through the use of landscaping and/or fencing.
  4. A minimum of 40 percent of the site shall be in open space consisting of landscaping or permeable materials (may include permeable paving, landscape-based LID BMPs, and green roofs). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by the city.
  5. Use of the green factor is strongly encouraged. When used as a FAR bonus option in subsection (C)(2) of this section, a green factor landscaping score of 0.5-0.6 is required (see BMC 20.12.030).
- E. Parking. All parking shall be provided pursuant to BMC 20.28.050(H).
  1. Dwelling units less than 1,000 square feet shall provide at least one on-site parking stall. Units of 1,000 square feet or larger shall provide two on-site parking stalls. The planning director may

**Commented [DS30]:** What is measured?

**Commented [DS31]:** See earlier comments on height and underlying zone. These heights are challenging to build to, and if the zone is MF, it should not be so limiting.

**Commented [DS32]:** The standards for open space appear different for different housing types. Are they now proposed to be consistent? If consistent, why repeat yourself and not just have one section on open space standards.

Matrix for standards is much more readable and friendly than digging through text. Look at our Everett codes to see how easily they read in comparison to this chapter.

**Commented [DS33]:** Does the permeable paving include the vehicular access drives and lanes? It shouldn't.

1 reduce parking requirements based on applicant's demonstration of site-specific factors that justify  
2 a lower standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping,  
3 as specified in Figure 20.12.030(A).

4 2. Parking generally shall be located to the rear or side only, but 20 percent of parking may be located  
5 between structures, but may not be located between structures and a public street.

6 3. Parking may be consolidated.

7 4. Parking accessed from a street or lane shall be limited to one driveway with a maximum width of  
8 20 feet.

9 F. Design Standards.

10 1. Each dwelling unit must have a separate, ground-related entrance. Units that front the public street  
11 shall have entrances facing the public street; all other units shall have entrances facing the shared  
12 open space.

13 2. Each dwelling unit shall have a covered front porch no less than 50 40 square feet with no  
14 dimension less than five feet; this is in addition to the private ~~usable~~ open space requirement.

15 3. Garbage/recycling areas shall be consolidated, unless the local refuse provider approves otherwise,  
16 and screened from public view.

17 4. No roof pitch shall be less than 2:12 (may be shed type) except for green roofs.

18 5. All fences in the front and side street setbacks, or between the common areas and the dwelling  
19 units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain link or  
20 cyclone fencing is not allowed in the front or side street setback.

**Commented [DS34]:** Why? Flat roofs and upper decks can be just fine. These are old design standards that don't allow some design flexibility for builders.

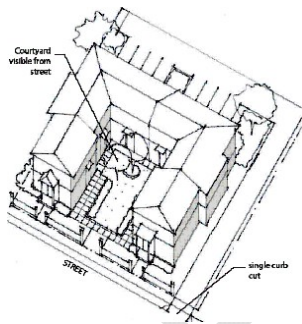


Figure 20.28.130(C) Annotated Illustration of Garden Court

G. Design Guidelines.

1. Site Design.

- a. The courtyard should address the street, and be easily accessible from the street, with a spacious, clearly defined entry.
- b. At least a portion of the courtyard should be visible from the street. The courtyard is best located at street level, or a foot or two above or below the street.
- c. Create opportunities for exposure to, and shade from sun as well as weather protection.
- d. Define the garden court space through a combination of building, landscape, and other site furnishings.
- e. Provide a walkway from each dwelling unit to the garden court and street.

2. Building Design.

- a. The design should break the facades into several distinct elements.
- b. Gable roofs emphasize vertical proportions, create modulation and are strongly encouraged.
- c. The massing should be varied with elements such as bays, dormers, etc.

- d. Changing materials, colors or textures on building elements is encouraged to provide further articulation and add variety and craftsmanship.

**Section 15.** Bellingham Municipal Code, Section 20.28.140 Townhouse is hereby amended as follows:

A. *Description.* A townhouse is one of a row of homes sharing common walls, each with its own front and rear access to the outside.

B. *Site Requirements and Setbacks.*

1. Townhouses may be located on a separate (fee simple) lot or several units may be located on a common parcel. A townhouse with an ADU must be located on a separated lot.
2. The required setbacks are as shown in Figures 20.28.140(A) and (B), except garage and carport setbacks from an alley shall be as needed to provide a 20-foot parking backup distance (including alley width) detached accessory buildings may be located in a rear yard and in the rear 22 feet of an interior side yard. Garages and carports shall be set back at least four feet (4') from the street face of residential buildings (excluding front porches). Buildings shall be placed within the shaded areas shown in the figures except as provided above.

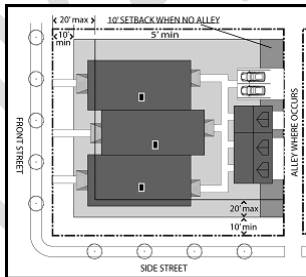


Figure 20.28.140(A) Setbacks – Main Building(s)

**Commented [DS35]:** Why?

**Commented [DS36]:** See earlier comments on setbacks. They should be the same as the underlying zone. If we have townhouses in MF zones, which is a great ownership opportunity, then we want to bring them to the same front setback as other buildings on the street. Having townhomes right on the sidewalk is a very old building pattern in cities. Why regulate against that?

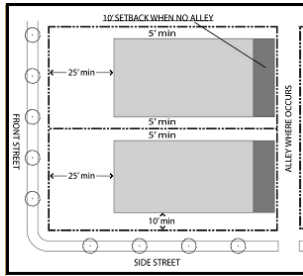


Figure 20.28-140(B) Setbacks—Garages and Carports

Commented [KCJ26]: Delete figure

#### C. Bulk and Massing.

1. Maximum attached dwelling units is eight.
2. Maximum Floor Area Ratio (FAR) is 0.75. [An accessory dwelling unit \(ADU\) pursuant to BMC 20.10.036 is exempt from FAR.](#)
3. [The height limit is 35 feet under BMC 20.08.020, definition No. 1 or 20 feet under definition No. 2.](#)

Commented [DS37]: See earlier comments on height. 35 feet would be challenging to get a 3-story building into.

#### D. Usable Space, Open Space and Landscaping.

1. Each dwelling unit shall have 200 square feet of private [usable/open](#) space with no dimension less than five feet. Up to 100 square feet of deck, [patio](#) or structure may be included. [Private usable space may be consolidated and provided as common usable space with minimum dimensions of 10 feet by 10 feet. All units shall have direct access to usable space.](#)
2. Private [usable/open](#) space must be [directly accessible from the dwelling unit. All ground level usable space delineated](#) [screened](#) from public right-of-way, paths, and lanes [through the use of landscaping and/or fencing.](#)
3. [Private open space must be directly accessible from the dwelling unit. A minimum of 30 percent of the site area shall be in open space consisting of landscaping or permeable materials \(may include permeable paving, landscape-based LID BMPs, and green roofs\). Exceptions may be made in erosion hazard zones or areas with shallow bedrock as determined by the city.](#)

Commented [DS38]: Other housing types required 100 feet of usable space. Why would townhomes require 200 feet?

Commented [DS39]: Now we are down to 30% open space. Maybe that is reasonable for a more dense type of development, but the staff report fails to provide any rationale for any of these changes. It would be helpful to explain and have some drawings to show why.

Also, again, permeable materials for open space?

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4. A green factor landscaping score of ~~0.6~~ 0.4 is required (see BMC [20.12.030](#)).

E. *Parking.* All parking shall be provided pursuant to BMC 20.28.050(H).

~~1. Dwelling units less than 1,000 square feet shall provide at least one on-site parking stall. Units of 1,000 square feet or larger shall provide two on-site parking stalls. The planning director may reduce parking requirements based on applicant's demonstration of site-specific factors that justify a lower standard. Parking stalls shall be at least nine feet by 18 feet, unless adjacent to landscaping, as specified in Figure 20.12.030(A).~~

~~2. Parking may be consolidated.~~

~~3. Parking accessed from a street or lane shall be limited to one driveway with a maximum width of 20 feet. Individual driveways may access a private lane.~~

F. *Design Standards.*

1. Each townhouse unit shall front a street or lane, and have an entrance that faces a street or lane.

2. Entrances for each unit shall be separate.

3. Each unit shall have direct access to both the public street or lane and parking.

4. Each unit must have a covered, main entry-related porch or stoop area of at least ~~50-40~~ square feet with no dimension less than five feet. This is in addition to the private usable space requirement.

5. Buildings must be modulated along the public street at least every ~~30 feet~~. Building modulations must step the building wall back or forward at least four feet, or at least two feet when architectural detailing is used to clearly delineate the individuality of each unit.

~~6. All fences in the front and side street setbacks, or between the common areas and the units, are limited to 42 inches in height and may be no more than 60 percent opaque. Chain-link or eyelone fencing is not allowed in the front or side street setback.~~

~~7.6.~~ Garbage/recycling areas shall be consolidated, unless the local refuse provider approves otherwise, and screened from public view.

Commented [DS40]: I'm curious if builders think 30 feet is reasonable.

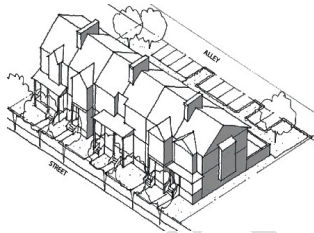


Figure 20.28.140(C) Annotated Illustration of Townhouse

G. *Design Guidelines.*

1. *Building Design.*

- a. Reduce the potential impact of new townhouse development on established and historic neighborhoods by incorporating elements and forms from nearby buildings of character. This may include reference to architectural details, building massing, proportionality, and use of high-integrity materials such as wood, brick, and stone. References to period architecture can be made in a contemporary manner.
- b. *Use lines and rhythms to create a human scale streetscape.* These may include vertical and horizontal patterns as expressed by bays, belt lines, doors and windows.

2. *Site Design.*

- a. Front yard parking aprons are not allowed.
- b. Provide generous use of planting materials and landscape structures such as trellises, raised beds and fencing to unify the overall site design.

**Section 16.** Bellingham Municipal Code, Section 20.37.120 Samish Way urban village Table 20.37.120 Permitted Uses is hereby amended as follows:

P = Permitted # = See note C = Conditional Use N = Not allowed					
Land Use Classification	Area				
	Commercial Core	Commercial Approach	Commercial Transition 1 and 2	Residential Transition 1	Residential Transition 2
1-26. [No Change]					
27. Chapter 20.28 BMC, Infill Housing					
a. <del>Repealed</del> /Smaller House	N	P(5)	P(5)	P(5)	P(5)
b. Small <del>Lot</del> /House	N	P(5)	P(5)	P(5)	P(5)
c. Cottage	N	P(5)	P(5)	P(5)	P(5)
d. Duplex/Triplex/ <del>Fourplex</del>	P(5)	P(5)	P(5)	P(5)	P(5)
e-g. [No Change]					
28-44. [No Change]					

**Section 17.** Bellingham Municipal Code, Section 20.37.220 Fountain district urban village Table 20.37.220 Permitted Uses is hereby amended as follows:

P = Permitted # = See note C = Conditional Use N = Not allowed					
Land Use Classification	Area				
	Commercial Core	Commercial Transition	Residential Transition 1	Residential Transition 2	
1-29. [No Change]					
30. Chapter 20.28 BMC, Infill Housing.					
a. <del>Repealed</del> /Smaller House	P(5)	P(5)	P(5)	N	
b. Small <del>Lot</del> /House	P(5)	P(5)	P(5)	N	
c. Cottage	P(5)	P(5)	P(5)	N	
d. Duplex	P(5)	P(5)	P(5)	N	
e. Triplex/ <del>Fourplex</del>	P(5)	P(5)	N	N	
f-h. [No Change]					

P = Permitted # = See note C = Conditional Use N = Not allowed				
Land Use Classification	Area			
	Commercial Core	Commercial Transition	Residential Transition 1	Residential Transition 2
31-48. [No Change]				

**Section 18.** Bellingham Municipal Code, Section 21.10.040 Types of land use decisions is hereby amended as follows:

A - B. [No Change]

C. *Type II.* A Type II review process is an administrative review and decision by the director. Public notice is required. Appeals of Type II decisions are decided by the hearing examiner. The following are Type II decisions:

1. Accessory dwelling unit;
2. Design review for projects that:
  - a. Require a SEPA threshold decision; or
  - b. Include construction of a new building; or
  - c. Include an exterior nonresidential addition to an existing building; or
  - d. Include an exterior addition of one or more residential units; or
  - e. Consist of more than 4 infill housing units pursuant to Chapter 20.28 BMC;

3 -12. [No Change]

~~13. Repealed infill housing projects under Chapter 20.28 BMC;~~

14 - 18. [No Change]

D - J. [No Change]

**Section 19.** City administration and the codifiers of this ordinance are authorized to make necessary clerical corrections including, but not limited to, the correction of scrivener's/clerical

Draft Ordinance – Infill Housing Toolkit Update 43

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

**Commented [DS41]:** I think any infill project that has received a density bonus should have public notice. Change distance of notice to 150'.

One of the concerns in how Bellingham code works is that density bonuses can be granted at the land division stage. Under state law (don't know Bellingham code enough), division into 9 lots does not require notice. Thus, you could create 9 lots that have density bonuses included (multiple units per lot) and not provide any notice to neighbors. If the Bellingham code requires notice at land division, that is helpful but only if done in conjunction with binding site and architectural plans that the neighbors can see.

1 errors, references, ordinance numbering, section/subsection numbers and any reference  
2 thereto.  
3

4 **Section 20.** The City Council agrees with and adopts the Findings of Fact, Conclusions and  
5 Recommendations of the Planning Commission attached as **Exhibit \*\*\*\*** and incorporated by  
6 reference.  
7

8  
9 **PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021  
10

11  
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13 \_\_\_\_\_  
14 Council President  
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18 **APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021  
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22 \_\_\_\_\_  
23 Mayor  
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26 **ATTEST:** \_\_\_\_\_  
27 Finance Director  
28

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31 **APPROVED AS TO FORM:**  
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34 \_\_\_\_\_  
35 Office of the City Attorney  
36

37  
38 **Published:** \_\_\_\_\_  
39



November 4, 2021

City of Bellingham  
Planning Commission & Planning Department  
210 Lottie Street  
Bellingham, WA 98225

Re: Proposed Infill Toolkit Revisions

Dear Planning Commissioners & Planning Staff,

I want to first extend my appreciation to Kathy Bell and Chris Koch for their efforts on the toolkit revisions in a short amount of time. All of the proposed changes we have shared over the years with staff have been reviewed and revised. Overall, these revisions bring a better toolkit to work with in practice.

I would like to bring up the following points for discussion as Planning Commission reviews the proposed changes:

1. I am still concerned with FAR across the toolkit. Building envelopes are defined through front/side/rear setbacks, height limits and open space calculations. Among all housing types, these standards already work very well. With FAR or maximum building square footages we leave room on the table to build an extra room/office, etc. to allow for diversity in demographics. This extra space would allow multigenerational living or homes for larger family types. What better way to achieve density and efficiently utilize land than to allow more people to live under one roof? There is no need to put additional limits on unit sizes, even when it's infill.
2. I do believe the reduced green factor scores could work, however, I would like to point out that the Aurora Court Ph 1 project located north of Mahogany Avenue is an ITK project with a robust landscape design. This project achieved a .36 green factor score through an approved departure request.
3. ITK should be allowed in single family zones.
4. Frontage requirements should be reviewed for what provides the highest quality of life for the resident. If fronting on an open space can be accommodated, that should be prioritized over fronting on an existing improved street especially what that street is an arterial. Of course,

driveways should not be allowed on arterials and therefore an internal lane or alley would be needed in this instance.

5. It seems as if design flexibility has been built into the code but still a lot of design standards exist. This would imply that applicants will be reliant on modifications granted by the Planning Director or Hearing Examiner. Would it be better to reduce the amount of design standards than to be reliant on modifications? I understand the intent of design standards is to weed out bad design, but this could lead to more creative designs in the process.

Questions:

1. The introduction of a pedestrian facility seems exciting, but examples of how it is intended to be used would be great since it is prioritized and incentive throughout the ITK.
2. Section 8.4.b. When alley access is not available and only a 12' driveway is allowed, can a side-by-side garage still be accommodated if the crossing at the pedestrian facility is only 12' wide?

I look forward to more discussion and more questions will arise as time allows to go through the code in more detail.

Sincerely,

*Carrie Veldman*

Carrie Veldman



1701 Ellis St #221 Bellingham, WA  
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info@whatcomhousing.org  
www.whatcomhousingalliance.org

**November 2, 2021**

**To: Bellingham Planning Commission Members**

**CC: City of Bellingham Mayor, Seth Fleetwood, and the City of Bellingham Planning & Community Development Department**

**From: Whatcom Housing Alliance Steering Committee**

**Subject: WHA Support for Infill Toolkit**

The Whatcom Housing Alliance Steering Committee is writing to express support for Infill Toolkit (ITK) revisions and appreciates the City's willingness to update the toolkit to better serve the needs of our community and housing developers who utilize it.

The Whatcom Housing Alliance (WHA) is a broad alliance of 40 organizations all united to build an affordable, healthy, equitable, thriving, and inclusive community. ITK housing types can offer more opportunity for homeownership and are typically smaller than most new single detached housing options. We believe these “missing middle” housing forms, such as those offered through the ITK, will help us be a more sustainable region by improving our environment, the social fabric and health of our people, and creating a stronger economy.

The WHA membership has recognized that building infill housing forms using the ITK can be difficult for developers to achieve the intended goals with the requirements within. While we need more time to consult with our membership about the specific changes proposed in the draft ordinance, we support improvements to the ITK that will lead to the development of more infill housing in Bellingham.

The Whatcom Housing Alliance believes ITK applicability should be explored to allow these housing forms in all neighborhoods, in all residential zones. We are currently in a housing crisis and should be considering opportunities to make our neighborhoods more diverse, for more people, of all incomes. Our neighborhoods are increasingly unaffordable for the majority of Bellingham residents as sale and rent prices skyrocket which is creating neighborhoods that are more exclusive and unattainable for the people who live and work here.

We appreciate the City Administration addressing the Infill Toolkit as a top priority. We urge the Planning Commission to take special consideration for changes that will make diverse housing forms easier and more affordable to build which our community desperately needs.

## Bell, Kathy M.

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**From:** Aucutt, Gregory R.  
**Sent:** Wednesday, November 17, 2021 1:57 PM  
**To:** Nabbefeld, Kurt D.; Bell, Kathy M.; Koch, Christopher J.  
**Subject:** FW: Comments on Infill Toolkit Amendments

FYI

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**From:** David Stalheim <mudbayconsulting@gmail.com>  
**Sent:** Wednesday, November 17, 2021 12:55 PM  
**To:** Grp.PL.Planning And Development Commission <planningcommission@cob.org>; Aven, Heather M. <haven@cob.org>  
**Subject:** Comments on Infill Toolkit Amendments

Hello,

I have had an opportunity to review the public hearing and the staff response dated 11/16. Planning commissioners also struggled with making this toolkit fit within the context of multifamily zones rather than the original intent of the toolkit - single family and transitional zones. Commissioners also asked for sketches and drawings to show the effect of changes to open space, FAR, etc., but none of that was provided. Having good analysis is really important, so those drawings should be available before action is taken.

Many of my comments have not been addressed and so I ask that the planning commission direct staff as follows:

1. Modifications:
  - a. Retain the requirement in 20.28.030.B.2 that modifications to the standards in the chapter are consistent with the purpose of the chapter.
  - b. Add a provision in 20.28.030.B that modifications result in a development pattern found to be compatible with adjacent natural features.
  - c. Direct staff to add a Type II review process for any design modification from adopted standards, even if 4-units or less. If deviations are proposed, notice should be given and not left to discussions solely between staff and the developer. This is an area, however, where reduced notice to only 150 feet is reasonable.
2. Setbacks: Direct staff to amend all setbacks of the perimeter of the development to be consistent with the underlying zone. For example, in 20.32.040, setbacks in the Residential Multifamily zones have front setbacks of 40-50 feet from centerline. Why are the setbacks for the front yard for infill units more? This makes no sense or demonstrates any public purpose. (The pictures added in the 11-16 memo are not examples of what a typical multifamily neighborhood setback looks like.)
3. Heights: Direct staff to come back with explanation or amendment to make building heights consistent with the underlying zones. It appears that heights are being reduced, which since this toolkit is only available in multifamily zones, does not make any sense.
4. Open Space and Usable Space:
  - a. Direct staff to come back with amendments that exclude any vehicular access areas, whether driveways, lanes or alleys, from the calculated open space requirements even if using permeable materials. The draft is not clear on this.
  - b. Direct staff to come back with amendments that have open space and usable space requirements consistent with the underlying zone. For example, 20.32.040.E-F have requirements for open space and usable space set. There are not any valid reasons to have different standards for infill projects. The need for space is based on each unit and not the type of housing.

5. ADU on separate lot: Have staff explain a valid public reason to require infill units with ADUs to be located on a separated lot. See 20.28.130.B.1 and 20.28.140.B.1.
6. Design and Roof Pitches: Design standards should be simplified and written to be consistent with the underlying zone. Having roof pitches in a multifamily zone where they are not otherwise required is not necessary. See 20.28.130.F.4.

Regards,

**David Stalheim**

**Mud Bay Consulting Services**

[mudbayconsulting@gmail.com](mailto:mudbayconsulting@gmail.com)

**Bell, Kathy M.**

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**From:** Aucutt, Gregory R.  
**Sent:** Thursday, November 18, 2021 9:24 AM  
**To:** Lilliquist, Michael W.; Anderson, Lisa A.  
**Cc:** Nabbefeld, Kurt D.; Bell, Kathy M.; Koch, Christopher J.  
**Subject:** RE: Public Participation for Proposed Ordinances

Hi Michael and Lisa,

Our goal is always to get Planning Commission packets out 2 weeks prior to a hearing. In this case, the packet for the 11/4 Planning Commission hearing on the proposed changes to the toolkit was available 8 days prior to the hearing. That is why the PC left the comment public period open for an additional 13 days, so that any additional comments can be considered at the PC's worksession tonight. One person commented about the short review time at the PC hearing.

The City Council's public hearing is scheduled for Dec. 6. So the information about the proposed changes will have been available 40 days prior to the Council hearing.

We will do our best to meet the 2-week goal in the future.

Greg

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**From:** Lilliquist, Michael W. <mlilliquist@cob.org>  
**Sent:** Wednesday, November 17, 2021 4:06 PM  
**To:** Nabbefeld, Kurt D. <knabbefeld@cob.org>; Aucutt, Gregory R. <gaucutt@cob.org>  
**Cc:** Anderson, Lisa A. <laanderson@cob.org>  
**Subject:** FW: Public Participation for Proposed Ordinances

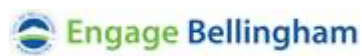
Kurt and Greg, CC: Planning Comm chair, Lisa Anderson

I assume one of you is supervising the possible updates to the Toolkit, which apparently just came forward to the planning commission. There is some concern, see below, about whether or not we have been giving the community and ourselves enough time to review and comment on the proposal(s). What are your thoughts?

Best regards,

**Michael Lilliquist**  
Bellingham City Council  
Representative, Ward 6  
[mlilliquist@cob.org](mailto:mlilliquist@cob.org)

Per state law RCW 42.56, my incoming and outgoing email messages are public records and are therefore subject to public disclosure requirements.



Sign up at **Engage Bellingham**, our online venue for **public feedback about key projects**.

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**From:** CC - Shared Department ([ccmail@cob.org](mailto:ccmail@cob.org)) <[ccmail@cob.org](mailto:ccmail@cob.org)>  
**Date:** Wednesday, November 17, 2021 at 2:01 PM  
**To:** Grp.CC <[Grp.CC@cob.org](mailto:Grp.CC@cob.org)>  
**Subject:** FW: Public Participation for Proposed Ordinances

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**From:** David Stalheim <[mudbayconsulting@gmail.com](mailto:mudbayconsulting@gmail.com)>  
**Sent:** Wednesday, November 17, 2021 11:29 AM  
**To:** Grp.PL.Planning And Development Commission <[planningcommission@cob.org](mailto:planningcommission@cob.org)>; CC - Shared Department ([ccmail@cob.org](mailto:ccmail@cob.org)) <[ccmail@cob.org](mailto:ccmail@cob.org)>; MY - [mayorsoffice@cob.org](mailto:mayorsoffice@cob.org) <[mayorsoffice@cob.org](mailto:mayorsoffice@cob.org)>  
**Subject:** Public Participation for Proposed Ordinances

Commissioners. Mayor and City Council,

I would ask that the City address an issue of effective public notice and participation for proposed development ordinances.

In order to have effective public input, the public needs adequate notice. A 30-day public hearing notice only puts a place on your calendar but if you actually want the public's input, they need to see the proposal well in advance of the public hearing.

I am particularly interested in conversations regarding housing and infill in our community. A public hearing before the Planning Commission on the Infill Toolkit was advertised 30 days prior to the hearing but the 69-page packet of information was not available to the public until 8 days before the hearing. The Planning Commission extended the written comment period for an effective period of 20 days.

The public hearing did not meet the effective public notice expectations adopted by Bellingham and I am not the only person to notice. The public comments include others who wish that they had more time to review and comment. These are complicated issues and the public needs time to review and provide input. Public support for infill is essential and that support is eroded with bad public process.

My understanding is that the process isn't much better when it gets to city council, with the public hearing packet available just days before the public hearing. The ordinance subject to the hearing should be available to the public concurrent with your public hearing notice requirements.

I request that the city review and amend the procedures. The Growth Management Act requires the "broad dissemination of proposals" (RCW 36.70A.140), not just public notice of hearings. "Broad dissemination means that a...city has made the documents widely available and provided information on how to access the available documents and how to provide comments." WAC365-165-600)

Regards,

David Stalheim

Mud Bay Consulting Services

[mudbayconsulting@gmail.com](mailto:mudbayconsulting@gmail.com)

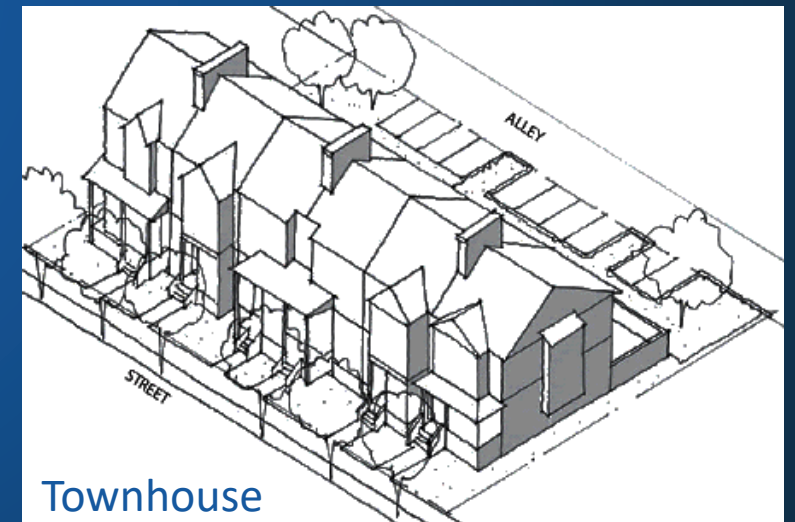
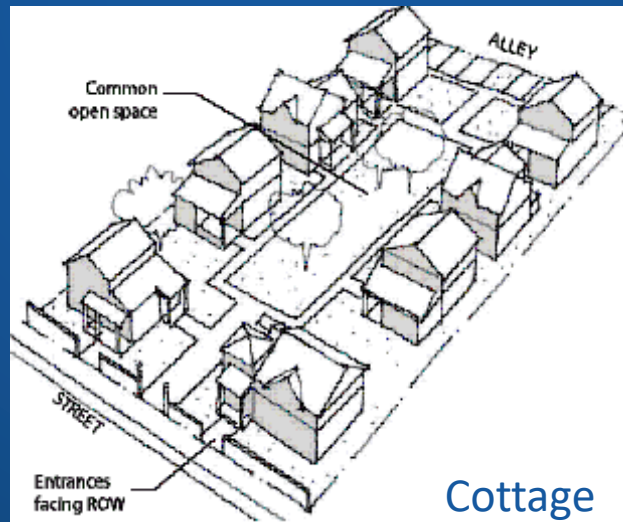
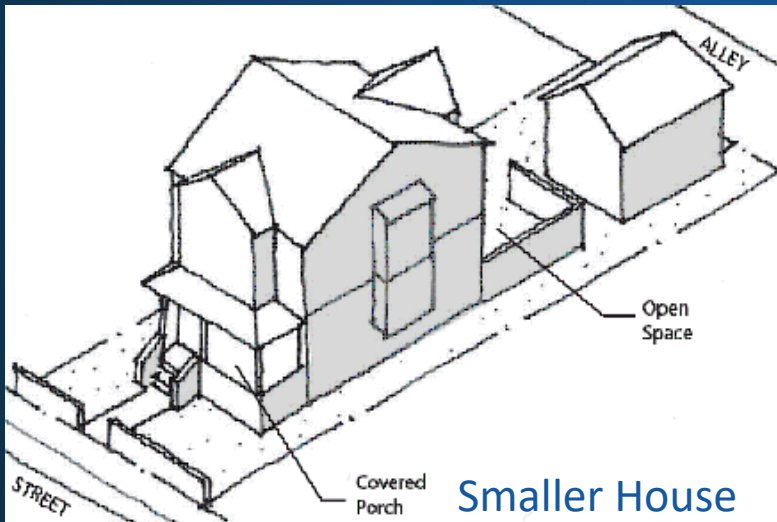
# Infill Toolkit Amendments

City Council Public Hearing  
December 6, 2021



# Introduction – What is the ITK

- Adopted in 2009
- Kit of parts - many housing types



# Introduction (con't)

- Increased interest
- Encourage the use of all housing types. Found that only a few housing types were being used.
- Recent code changes
  - Land division ordinance
  - RM Project
- Broader implementation

# Scope – Amendments

## What is not included:

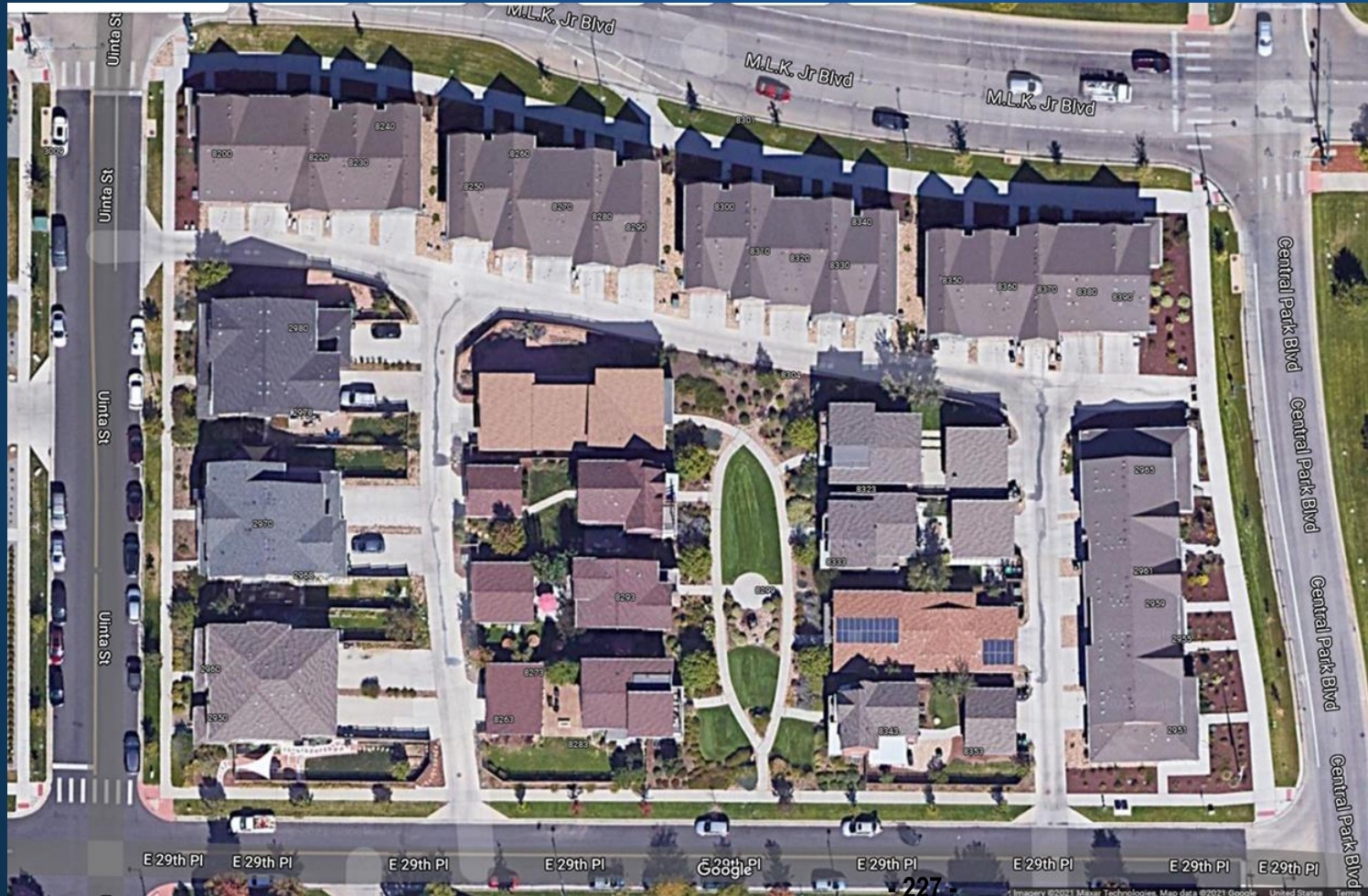
- Increasing areas where ITK can be used
- Full rewrite
- Zoning amendments
- Change to public infrastructure requirements
- Changes to Multifamily Design Handbook

# Scope – Amendments (con't)

## What is included:

- Achieve pedestrian oriented development
- Modify housing types
- Modify Bulk and Massing regulations
- Modify minor modification process
- Modify application review process
- Supporting code amendments

# Pedestrian Oriented Design



# Pedestrian Oriented Design

Not this



This



# Pedestrian Oriented Design

Not this



This



# Pedestrian Oriented Design



Minimize Street-front Garages, Driveways, & Parking

# Common Pedestrian Corridors



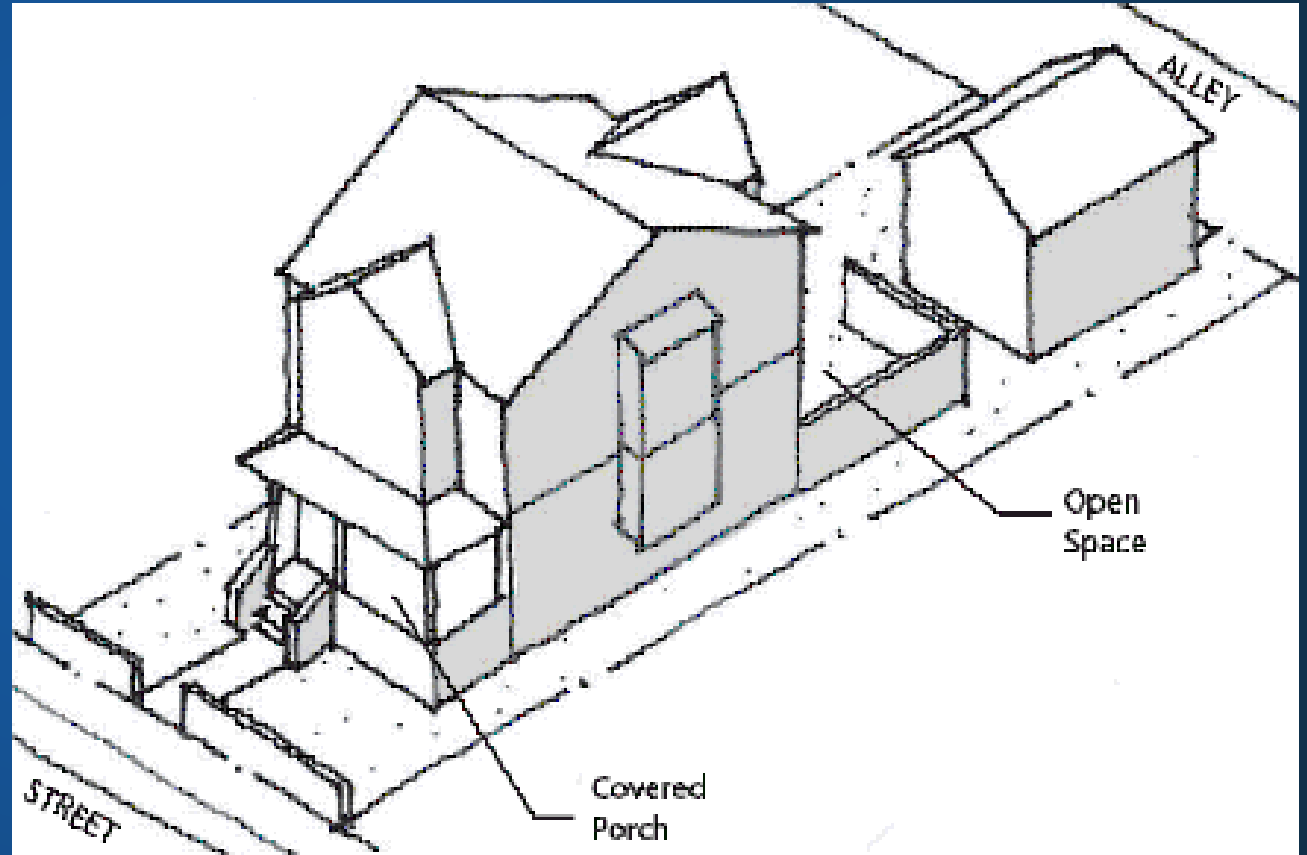


- 232 -

Google

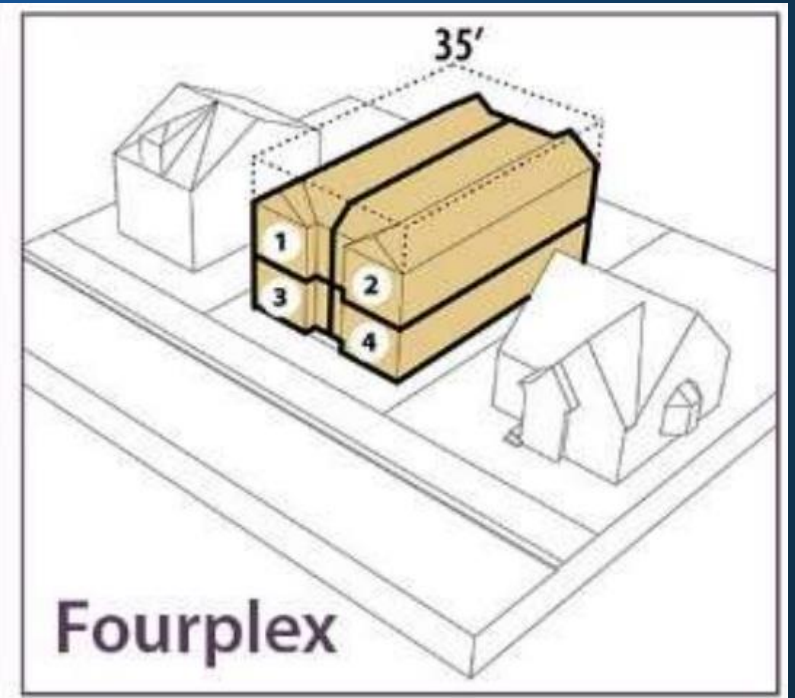
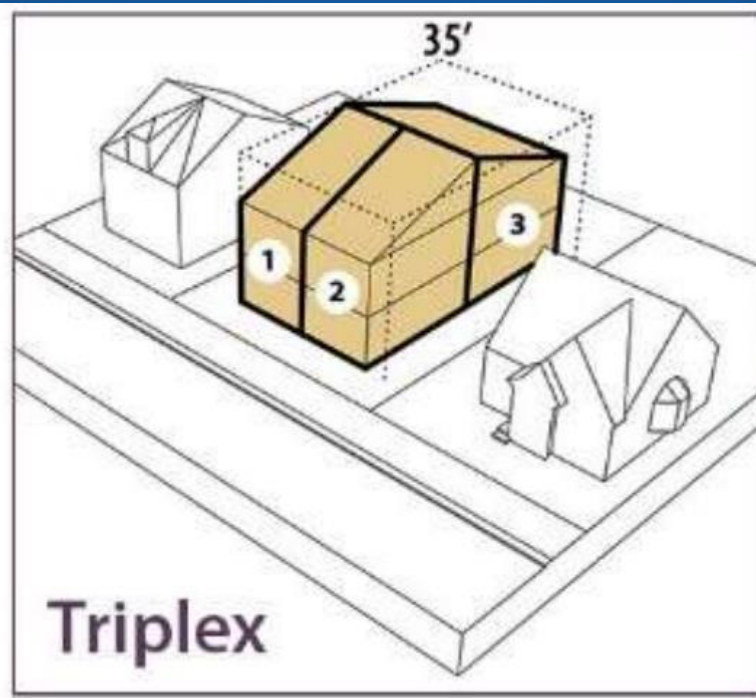
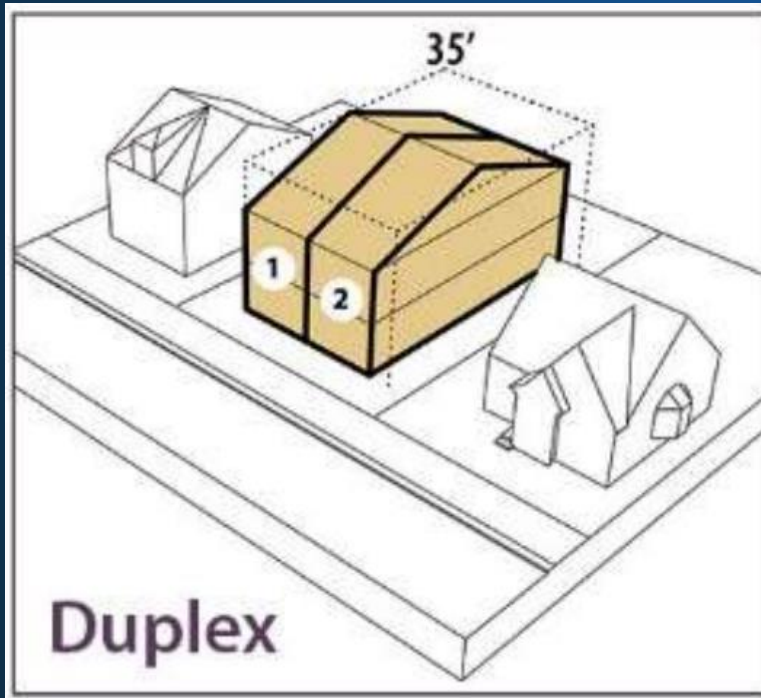
# Housing Types: Small Lot

- Combines Smaller & Small House into a single “Small Lot” housing type
- For detached single family housing on lots of 5,000 SF or less
- Reconciles inconsistency in floor area on lots between 3,001 and 3,420 SF



# Housing Types: Duplex, Triplex, Fourplex

- Proposed amendment would allow duplex, triplex or fourplex within the same building envelope.



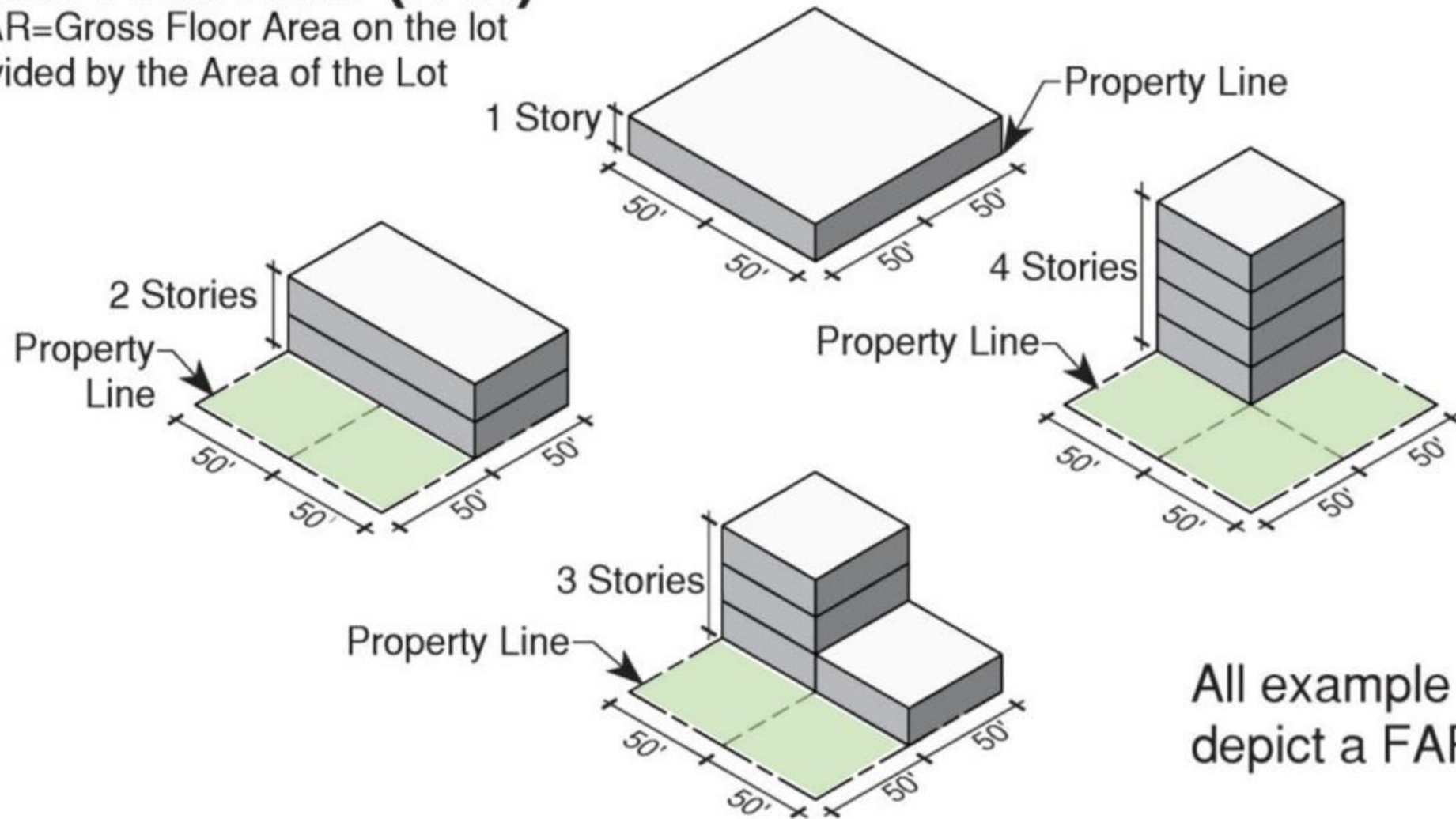
# Bulk and Massing

Amendments include:

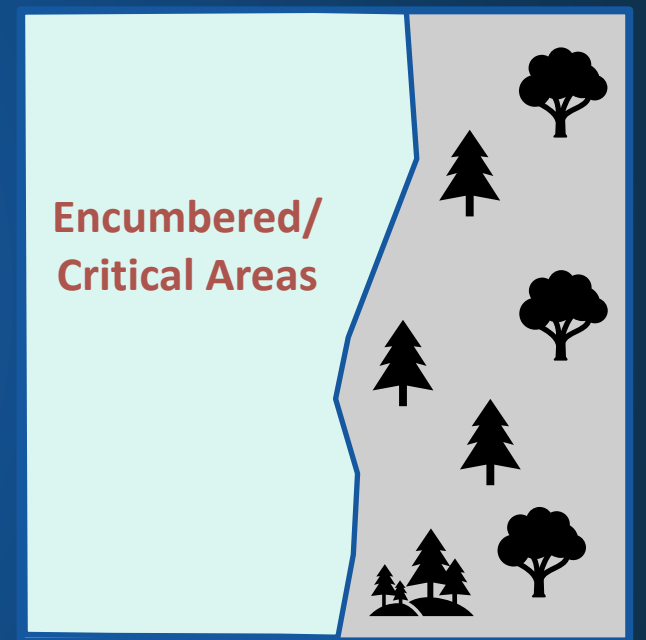
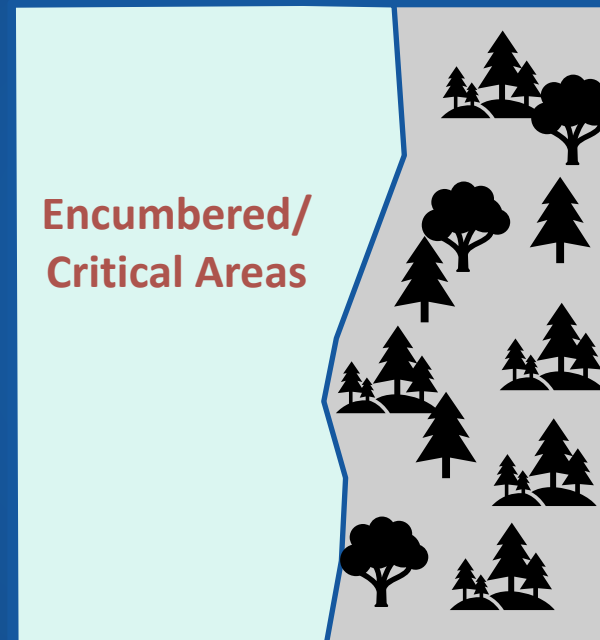
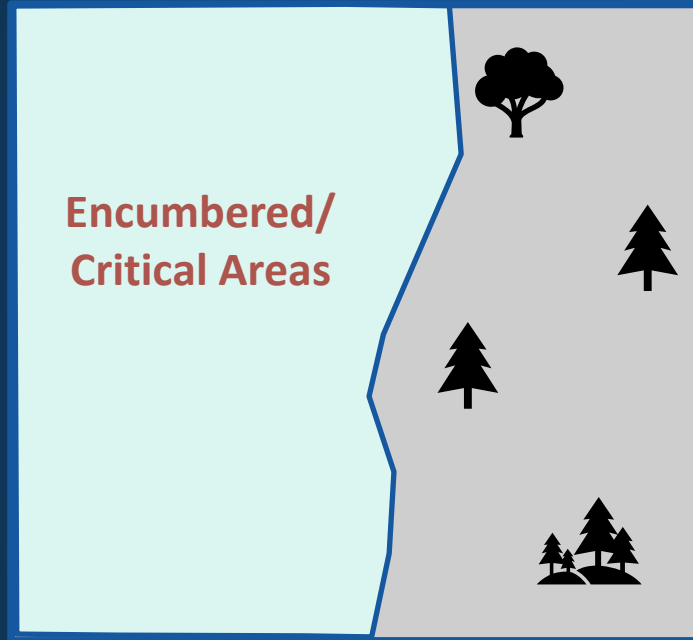
- Standardizing parking design, usable space, front porches for all housing types.
- Providing a balance between mass/bulk regulations:
  - Floor Area Ratio (FAR)
  - Open Space
  - Green Factor (GF) landscaping

# Floor Area Ratio (FAR)

FAR=Gross Floor Area on the lot  
divided by the Area of the Lot



# Green Factor Landscaping



# Alley Landscaping

Not this



This



# Minor Modifications

**Proposed amendments expand applicability to include more discretion when:**

- Existing buildings on site or other extraordinary circumstance
- Greenfield development
- Mixed uses
- Will result in better design
- Will satisfy purpose/intent of chapter

# Process

## ITK vs. Design Review applications

- Current: Two applications
- Proposed: One application

## Type I vs. Type II Review Process

- Current: All ITK Type II
- Proposed: Type I for 4 units or less w/o density bonus

Affordability – faster permitting/supply

# Supporting Code Amendments

- BMC 20.12 Landscaping
- BMC 20.25 Design Review
- BMC 20.37 Urban Village
- BMC 20.21 Process

# Comprehensive Plan

## Implement Comprehensive Plan goals for:

- Housing options
- Compact growth
- Climate action

# Planning Commission Recommendation

- Attachment 1 – Draft Ordinance
- Includes Planning Commission revisions to:
  - Design standards
  - Bulk and mass
  - Addition of Figures
  - Minor modification

# ITK Amendments

Presented by: Chris Koch, Planner II and Kathy Bell, Sr. Planner  
Planning and Community Development Department  
360.778.8347 [ckoch@cob.org](mailto:ckoch@cob.org) and [kbell@cob.org](mailto:kbell@cob.org)





## BELLINGHAM CITY COUNCIL

210 Lottie Street, Bellingham, Washington 98225  
Telephone (360) 778-8200 Fax (360) 778-8101  
Email: [ccmail@cob.org](mailto:ccmail@cob.org) Website: [www.cob.org](http://www.cob.org)

## BELLINGHAM CITY COUNCIL NOTICE OF PUBLIC HEARING

Notice is hereby given that the Bellingham City Council will hold a public hearing on **December 06, 2021 at 7:00 PM** or as soon thereafter as possible during their Regular City Council meeting, which will take place remotely, to take public comment on the following:

**Consideration of staff initiated amendments to the Infill Housing Toolkit provisions of the Bellingham Municipal Code.**

Detailed information can be found five days prior to the meeting at: [meetings.cob.org](http://meetings.cob.org)

**Staff Contact: Gregory Aucutt, Assistant Director of Planning and Community Development,**  
[gaucutt@cob.org](mailto:gaucutt@cob.org) 360-778-8344

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 prior to 10:00 AM on December 01 2021, 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 December 06, 2021 may do so via the following link: <https://cob.org/cczoom>.

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
- (929) 205-6099

Meeting ID: **941 9601 5179**

Password: **9**

Publication date: **November 5, 2021**



# City Council Agenda Bill

23181

Bill Number

Subject: **Mayor's Reappointment of Dima Hart to the Mayor's Neighborhood Advisory Commission (Information)**

Summary Statement: The Mayor's Neighborhood Advisory Commission is authorized by BMC 2.33.020.

The Mayor reappoints Dima Hart as the King Mountain Neighborhood Primary Representative to her first full term, which will expire on December 27, 2023, at which time she may be reappointed.

Previous Council Action: **N/A**

Fiscal Impact: **None**

Funding Source: **None**

Attachments:

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Mayor's Report - Appointment - For Information	12/06/2021	Information/Discussion	Mayor Seth Fleetwood	0 minutes

**Recommended Motion:**

**Council Committee:**

**Agenda Bill Contact:**  
Tracy Lewis, Mayor's Office

**Council Action:**

Reviewed By	Department	Date
<i>Brian M. Heinrich</i>	Executive	11/12/2021
<i>Alan A. Marriner</i>	Legal	11/15/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021



# City Council Agenda Bill

23182

Bill Number

Subject: **Post Point Resource Recovery Project Update**

**Summary Statement:** Work on the Post Point Resource Recovery Project continues to advance. This update will include a summary of recent laboratory test results from the Post Point Resource Recovery Plant as well as a discussion of alternative project-delivery methods. Samples were tested for Per-and Polyfluorinated Substances (PFAS) compounds as requested by the Council on July 26, 2021. Comparisons to other studies and regulatory requirements will also be presented. A letter from RESources-Sierra Club is also included as an attachment. Staff will also provide an update on the project and options for project delivery. Staff will be requesting Council direction, by motion, to apply to the Washington State Project Review Board to use the General Contractor-Construction Manager project delivery method for the project.

**Previous Council Action:** Approval of 2021-2022 Budget. Council Briefings on 7/26/2021, 3/08/2021, 7/27/2020, 9/09/2019, 1/28/2019, 7/24/2017, 4/10/2017, 10/24/2016 and adoption of the 2018 Climate Action Plan

**Fiscal Impact:** The cost for the Post Point Resource Recovery project is currently estimated at more than \$200M

**Funding Source:** Waste Water Fund #420

**Attachments:**

1. STAFF MEMO - POST POINT RESOURCE RECOVERY PROJECT UPDATE
2. STAFF MEMO - EXHIBIT A
3. BROWN & CALDWELL PRESENTATION
4. STAFF PRESENTATION 12.6.21
5. RESOURCES-SIERRA CLUB LETTER

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Committee Briefing - Direction Requested	12/06/2021	Provide Direction	Eric Johnston, Public Works Director	60 minutes

**Recommended Motion:** Authorize staff to apply for certification from the Washington State Project Review Board to use the General Contractor Construction Manager delivery method for the Post Point Resource Recovery Project.

**Council Committee:**  
Public Works and Natural Resources  
Committee

**Agenda Bill Contact:**  
Chad Schulhauser, Assistant Public Works Director - 360-778-7910

Reviewed By	Department	Date
<i>Eric C. Johnston</i>	Public Works	11/29/2021

**Council Action:**

<i>Matthew T. Stamps</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021



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**MEMORANDUM**

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**TO:** BELLINGHAM CITY COUNCIL  
**FROM:** ERIC JOHNSTON, PUBLIC WORKS DIRECTOR  
**CC:** MAYOR SETH FLEETWOOD  
**SUBJECT:** POST POINT RESOURCE RECOVERY PROJECT UPDATE  
**DATE:** 6 DECEMBER 2021

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The Post Point Resource Recovery project continues to progress. This presentation will discuss two specific components of the project – a discussion of PFAS and test results to answer questions that have arisen at previous Council presentations and a discussion of project delivery.

## **I. TEST RESULTS**

The City selected anaerobic digestion as the core solids stabilization technology for the replacement of the current incineration system through an extensive decision-making process. Two products from the anaerobic digestion process will be recovered for beneficial use – Class A biosolids (e.g., fertilizer and soil amendment) and biogas (injection into a natural gas pipeline for use as a renewable vehicle fuel).

Land application of biosolids as a beneficial use has been practiced for many decades and is a common method for enriching soils and supplementing or replacing commercial fertilizers. In Washington, biosolids are regulated by the Department of Ecology. Ecology's process follows and enhances requirements from federal regulations and US EPA, which tracks, assesses, and sets standards for pollutants of concern (e.g., PFAS compounds). This practice is closely monitored by Ecology and EPA and is the subject of many ongoing studies to assess the risks of exposure. Ecology discourages incineration and long-term reliance on landfills and instead favors recycling to pursue the maximum beneficial use of biosolids.

Historically, there have been concerns about potential compounds in biosolids, such as metals and pharmaceuticals. More recently, PFAS compounds are of concern. To address these concerns, regulatory authorities conduct risk assessments to establish guidance for the safe use of biosolids. At the request of City Council, the Post Point Resource Recovery project team conducted testing in the fall of 2021 to better understand levels of contaminants of concern in the city's wastewater. A summary of the testing results are attached as Exhibit A to this memo. The full test results are posted on the project website at <https://cob.org/project/resourcerecovery>

## **II. ALTERNATIVE PROJECT DELIVERY**

As the City moves through the planning process and prepares to move into the preliminary design phase of the project, a project delivery method needs to be selected for construction of the onsite facilities.

Staff worked with our consultant to review potential project delivery methods to choose the one most appropriate for the Post Point on-site project components. Delivery methods discussed and evaluated for the project included traditional Design-Bid-Build (DBB), General Contractor/Construction Manager (GC/CM) (also commonly referred to as Construction Management At-Risk [CMAR]), and Design-Build (DB) options – Progressive Design-Build (PDB) and Fixed-Price Design-Build (FPDB). A key consideration in assessing delivery methods beyond DBB is permissibility under applicable state and local statutes. In Washington, per state and local laws (RCW 39.10 – Alternative Public Works Contracting Procedures), collaborative delivery methods are permissible for public agencies delivering large dollar projects and that meet other criteria. An approval process applies for obtaining State authorization for using a delivery method other than DBB.

Staff held various workshops with the project consultant to review and evaluate the benefits, risks, advantages, and disadvantages of each alternative delivery method, with DBB being utilized as a baseline for context. The on-line workshops were held with the objectives of understanding: the City's overall project objectives and success factors; previous experience with collaborative delivery methods; risk allocation; and other variables, such as administrative familiarity and required City resources. After evaluation of all the criteria and recognition of the City's past positive experience with GC/CM on the Post Point facility improvement project in 2012, it is recommended that GC/CM is the preferred delivery methodology for this project.

Public bodies are authorized to use the GC/CM process for public projects where at least one of the following criteria contained in RCW 39.10.340 are met:

- 1) Implementation of the project involves complex scheduling, phasing, or coordination;
- 2) The project involves construction at an occupied facility which must continue to operate during construction;
- 3) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;
- 4) The project encompasses a complex or technical work environment;
- 5) The project requires specialized work on a building that has historic significance; or
- 6) The project is, and the public body elects to procure the project as, a heavy civil construction project.

The Post Point Resource Recovery Project meets multiple criteria.

### **III. STAFF RECOMMENDATION**

Staff recommend the Council direct staff, by motion, to apply to the state Project Review Committee for certification to use the general contractor/construction manager (GC/CM) contracting procedure for delivery of the Post Point Resource Recovery project.



# Post Point Wastewater Resource Recovery

Fall 2021

## EMERGING CONTAMINANTS OF CONCERN TEST RESULTS

### Overview

At the request of City Council and local non-profit organization RE Sources, the Post Point Resource Recovery project team conducted testing in the fall of 2021 to better understand levels of emerging contaminants of concern in the city's wastewater (listed in summary and table below).

Staff researched cost and availability of testing options for these compounds and contracted with ALS Environmental to conduct the tests.

**Important note:** When discussing these compounds and test results, it is important to note Post Point Treatment Plant is not producing emerging contaminants of concern. A treatment plant is a recipient, not a generator of these compounds. The treatment process works to remove contaminants to the degree possible with current affordable technology. The City is committed to keeping informed of innovations in technology, testing, and regulations for all emerging contaminants of concern, as well as new uses for biosolids.

### Summary of Results

When possible, both an incinerator feed solids sample (currently incinerated solids that will become biosolids) and an effluent sample (treated liquid that returns to Bellingham Bay) were sent for testing.

Using available methods for testing, comparisons with data in current scientific literature, and relevant state-level regulations, the tests showed the following:

- **Per-and Polyfluoroalkyl Substances (PFAS):** Post Point showed the lowest level of PFAS in effluent out of 14 sampled plants in Washington State. When compared to Maine regulations, the only state currently regulating PFAS, the incinerator solids were below acceptable screening levels. PFOA and PFOS, the most concerning and researched PFAS, have been mostly phased out of products, eliminating new sources.
- **Polybrominated diphenyl ethers (PBDE):** Results from the incinerator solids are delayed due to supply chain and staffing challenges at ALS. Bellingham has an established record of no PBDE being detected in effluent.
- **Polychlorinated biphenyls (PCB), dioxins, and furans:** Results from the incinerator solids are delayed due to supply chain and staffing challenges at ALS. Bellingham has an established record of no PCBs being detected in effluent.
- **Polycyclic Aromatic Hydrocarbons (PAHs):** Post Point showed a cumulative level of 0.888 mg/Kg of PAHs in incinerator solids.<sup>1</sup> This amount is below standards established in Europe as safe for children playing in soil and established in the U.S. for invertebrates in soil (e.g., earthworms).
- **Microplastics:** An effluent sample contained 1,980 microplastic particles per liter, which is 67% fewer particles than was measured in a washing machine load from a cited study. Western Washington University researchers are attempting to quantify microplastics found in the incinerator solids. It has proven difficult as there are limitations in current methods to quantify microplastics. There are not currently any standards for microplastics in effluent or solids.
- **SARS-CoV-2:** None detected in treated effluent or incinerator solids.

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<sup>1</sup> mg/Kg is equivalent to parts per million. A part per million is like one in 1,000,000.

## Discussion of Results

### Per-and Polyfluoroalkyl Substances (PFAS)

As of July 2021, there were no EPA approved methods for analyzing PFAS in biosolids and there are no federal regulations for PFAS in biosolids. Bellingham's effluent and incinerator solids were analyzed for a suite of PFAS. Neither sample indicates major sources of PFAS in the service area. Additionally, sources of Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA) are declining due source point regulations, controls, and their elimination from consumer goods. Bellingham's drinking water, which could contribute PFAS to the wastewater stream, is non-detect for PFAS. Bellingham has no known industrial dischargers in high-risk PFAS use categories. Post Point's incinerator solids sample was shown to be the lowest for PFAS of 14 sampled plants in Washington State. The State of Maine does regulate three PFAS compounds and the sample tested was below Maine's acceptable limits for those compounds.

### Polybrominated diphenyl ethers (PBDE)

Post Point's treated effluent has been analyzed for the PBDE 4-bromophenyl phenyl ether since 1991 with no detections. Enhanced monitoring was conducted (46 PBDE compounds) twice in 2009 with no detections. Results on the incinerator solids have been delayed due to supply chain/staffing challenges at ALS Laboratory.

### Polychlorinated biphenyls (PCB), dioxins, and furans

Bellingham treated effluent has been analyzed for PCBs since 1991 with no detections. Enhanced monitoring was conducted twice in 2009 with no detections. Results on the incinerator solids have been delayed due to supply chain/staffing challenges at ALS Laboratory.

### Polycyclic aromatic hydrocarbons (PAHs)

Bellingham's incinerator solids were analyzed for the 18 most common PAH compounds using low-level detection methodology. There are no PAH regulations for sewage solids or biosolids, so results were compared against two safety standards. First, the Environmental Protection Agency has established soil screening levels to protect wildlife. Lower molecular weight PAHs degrade faster in soil, so there are two acceptable levels based on the species present. The most stringent levels apply to terrestrial invertebrates (e.g., earthworms). Another standard established in Europe is based on research designating safe levels of PAHs for areas where children are in contact with soils. Bellingham's 18-PAH cumulative level of 0.888 mg/Kg is well below both standards.

### Microplastics

Wastewater treatment plants can be very effective at reducing microplastic loads – one study showing reductions of 88% by conventional treatment alone.<sup>2</sup> Post Point Resource Recovery Plant treated effluent was analyzed for microplastics by the standardized method for liquids. The Post Point Effluent sample contained 1,980 microplastic particles per liter. A liter equals 0.26 liquid gallons. For context, a typical washing machine load is 30 gallons and studies have shown 700,000 microplastic particles from an average wash load of acrylic fabric.<sup>3</sup> Post Point's sample showed 67% less particles than what was measured in the wash load from the cited study. Removed particles would be expected to be present in sewage solids. Western Washington University researchers are attempting to quantify the microplastics found in Post Point's incinerator solids. It has proven to be difficult. There are limitations in the current methods to quantify microplastics in sludge, with one recent study citing an inability to account for 96% of the expected microplastics in sewage sludge.

### SARS-CoV-2

SARS-CoV-2 was not detected in plant effluent or incinerator solids. Current federal requirements for biosolids production help ensure that biosolids are processed, handled, and land-applied in a manner that minimizes the risk of exposure to pathogens, including viruses with level of treatment based on end use. Thermal destruction (including digestion), air drying and/or pH elevation methods are used to meet specific bacteria, viral and helminth ova reduction requirements. SARS-CoV-2 is susceptible to destruction by these means.

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<sup>2</sup> Iyare, Paul U., Ouki, Sabeha K., Bond, Tom (2020). Microplastics removal in wastewater treatment plants: a critical review. Water Research and Technology, 2020 Issue 10.

<sup>3</sup> Napper, Imogen E., Thompson, Richard C. (2016). Release of synthetic microplastic fibres from domestic washing machines: Effects of fabric type and washing conditions. Marine Pollution Bulletin, 2016 Nov. 15; 112(1-2):41-45.



# Post Point Wastewater Resource Recovery

**Key Findings Summary Table**

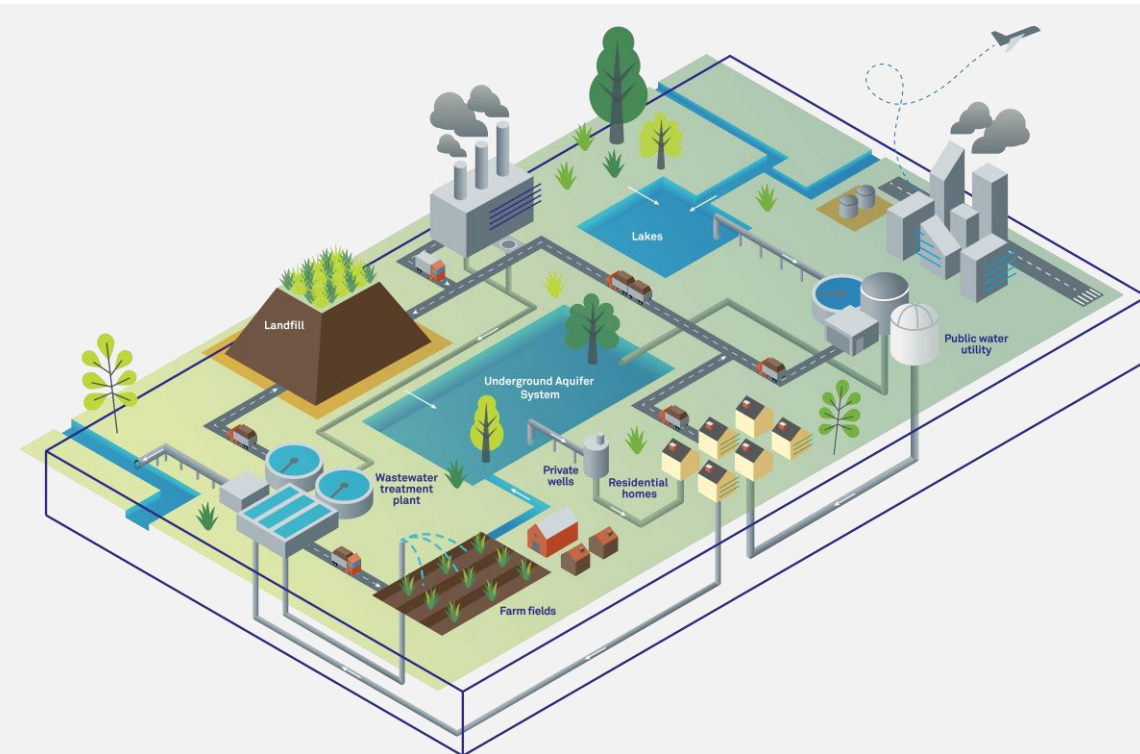
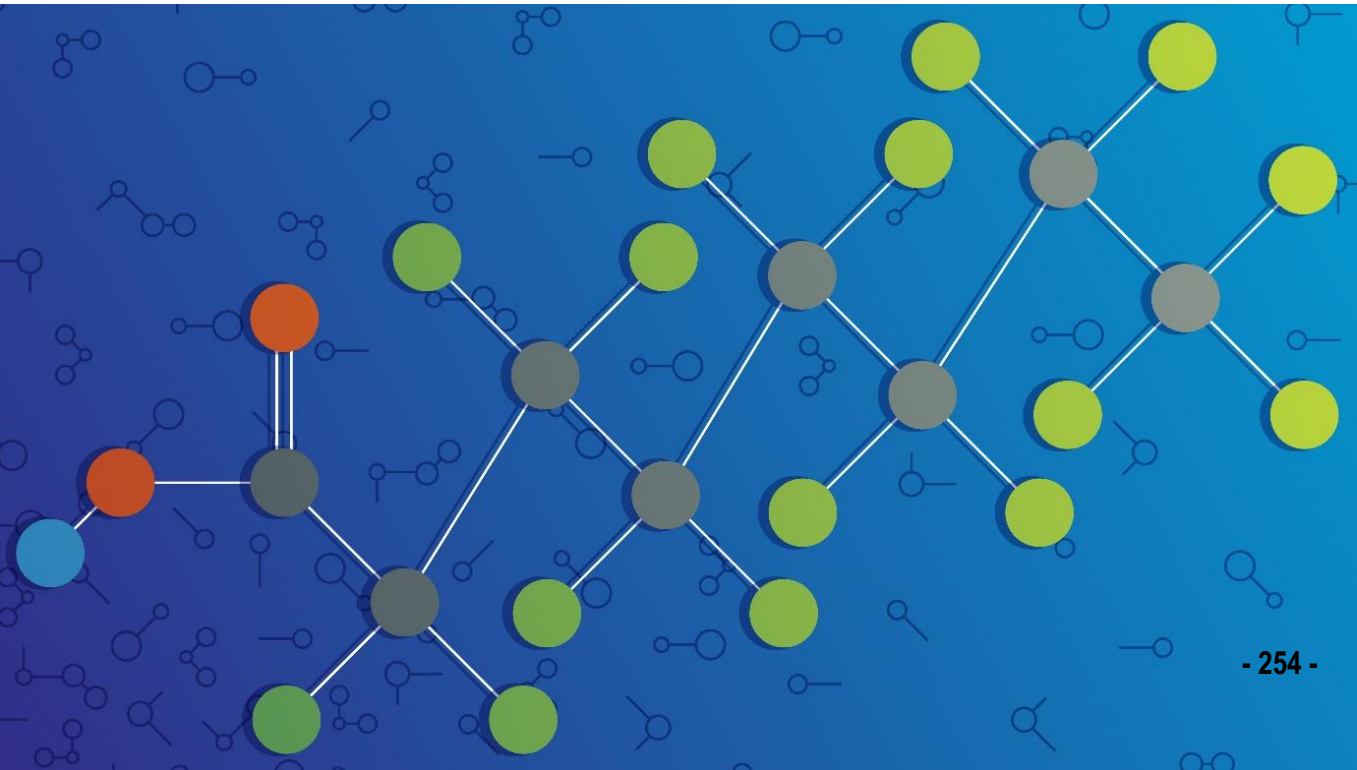
Emerging contaminant of concern tested	Common Sources	Incinerator Feed Solids Sample (solids that will become biosolids rather than incinerated)	Treated Effluent Sample (treated water released through an outfall to Bellingham Bay)
<b>Per-and Polyfluoroalkyl Substances (PFAS)</b> <i>A family of compounds – 23 were analyzed in the tests</i>	<ul style="list-style-type: none"> <li>• Nonstick cookware</li> <li>• Stain and water-resistant coatings</li> <li>• Plumbing tape</li> <li>• Fast-food wrappers</li> <li>• Industrial uses</li> <li>• Firefighting foam</li> </ul>	Post Point's settled solids sample is the lowest for PFAS out of 14 sampled plants in Washington State. Maine does regulate 3 PFAS compounds and the sample tested met or was below Maine's Biosolids Soil Beneficial Use Screening levels for these compounds.	Bellingham's effluent sample does not indicate major sources of PFAS in the service area and sources of Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA) are declining, due to source point regulations and controls. Bellingham's drinking water, which could contribute PFAS to the wastewater stream, is non-detect for PFAS.
<b>Polybrominated diphenyl ethers (PBDE)</b>	<ul style="list-style-type: none"> <li>• Flame retardants in furniture foam</li> <li>• Plastics</li> <li>• Consumer electronics</li> <li>• Upholstery</li> </ul>	<i>Results pending</i>	No detections in the PBDE 4-bromophenyl phenyl ether in monitoring conducted since 1991.
<b>Polychlorinated biphenyls (PCB), dioxins, and furans</b>	<ul style="list-style-type: none"> <li>• Transformers and capacitors</li> <li>• Fluorescent light ballasts</li> <li>• Cable insulation</li> </ul>	<i>Results pending</i>	No detections in monitoring conducted since 1991.

Emerging contaminant of concern tested	Common Sources	Incinerator Feed Solids Sample (solids that will become biosolids rather than incinerated)	Treated Effluent Sample (treated water released through an outfall to Bellingham Bay)
<b>Polycyclic Aromatic Hydrocarbons (PAHs)</b> <i>Over 100 hazardous substances from incomplete combustion of carbon-containing materials (e.g., wood, coal, oil, gas) – 18 of the most common were analyzed</i>	<ul style="list-style-type: none"> <li>Natural sources: <ul style="list-style-type: none"> <li>Volcanoes</li> <li>Forest fires</li> </ul> </li> <li>Human-made products: <ul style="list-style-type: none"> <li>Household products (e.g., mothballs, some shampoos)</li> <li>Cigarette smoke</li> <li>Oil-based heating</li> <li>Indoor and outdoor grilling</li> <li>Jet exhaust</li> <li>Road paving</li> </ul> </li> </ul>	A cumulative level of 0.888 mg/Kg was detected in incinerator feed solids. This is below standards established in Europe as safe for children playing in soil, and in the U.S. for invertebrates (e.g., earthworms) in soil.	No detections in annual priority pollutant monitoring.
Microplastics - polymeric (polyethylene, polypropylene, nylon, etc.) less than 5 millimeters in diameter.	<ul style="list-style-type: none"> <li>Clothes</li> <li>Paints</li> <li>Tire dust</li> <li>Plastic litter (e.g., bags, bottles, straws)</li> <li>Personal care products (e.g., microbeads in body wash)</li> </ul>	Method for quantifying microplastics in incinerator solids is not available. The project team is working with Western Washington University researchers to quantify the microplastics found in the test sample, which has proven to be difficult.	The effluent sample contained 1,980 microplastic particles per liter. A liter equals 0.26 liquid gallons. For context, a typical washing machine load is 30 gallons and studies have shown 700,000 microplastic particles from an average wash load of acrylic fabric. Post Point's sample showed 67% less particles than what was measured in the wash load from the cited study.
SARS-CoV-2		SARS-CoV-2 was not detected in incinerator solids. SARS-CoV-2 does not appear to survive the treatment process, based on current science.	Effluent testing showed no detectable SARS-CoV-2 present.

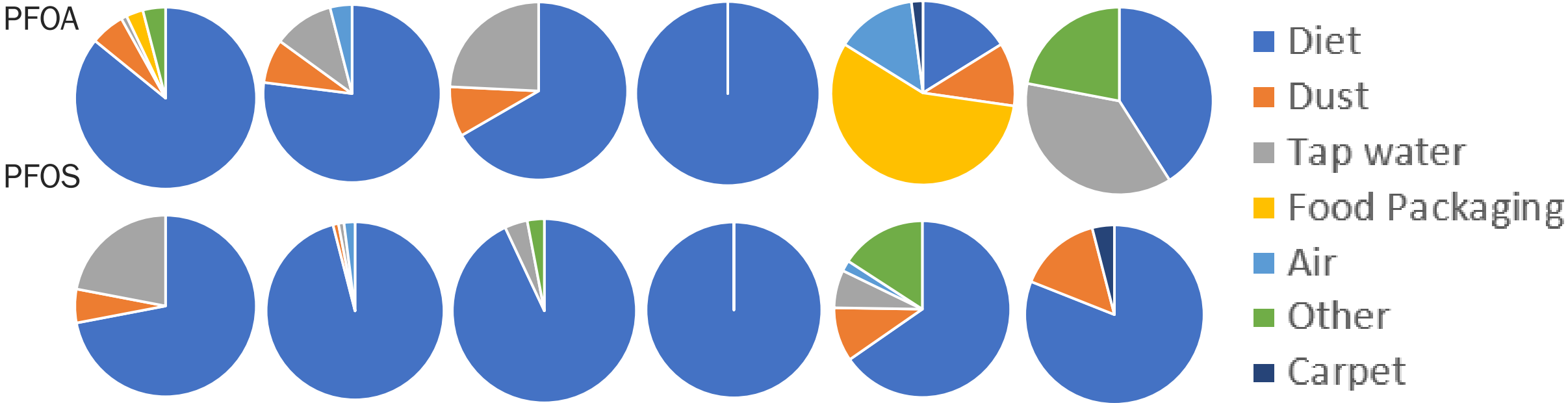
City of Bellingham

# Per- and Polyfluoroalkyl Substances (PFAS) in Biosolids

December 6, 2021



# How are Most People Exposed to PFAS?



*Most studies identify **diet** as the main source of PFAS exposure*

Estimates from review by Sunderland et al 2019  
Each pie chart represents the results of a different study reviewed by the authors - 255 -

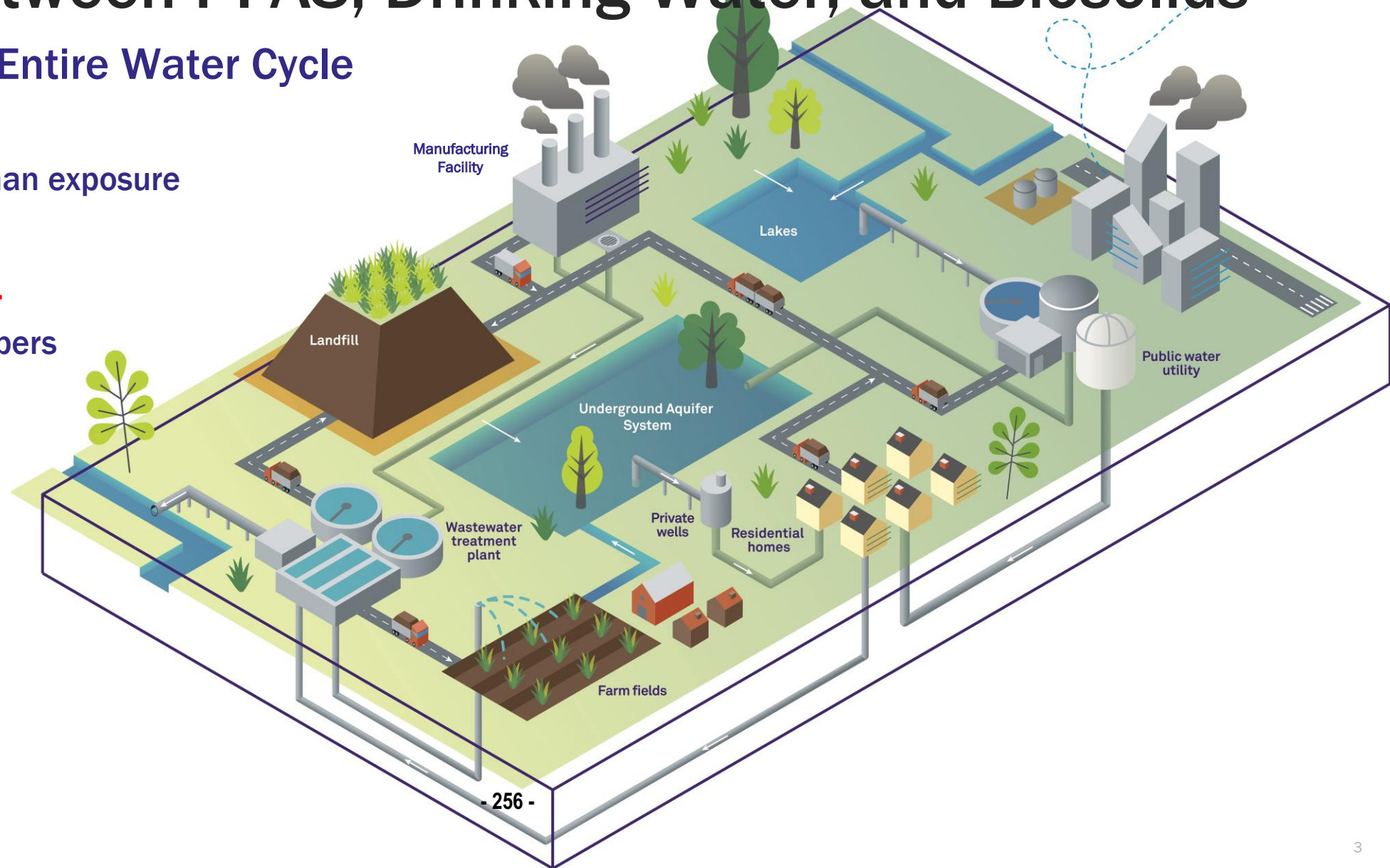
# The Link Between PFAS, Drinking Water, and Biosolids

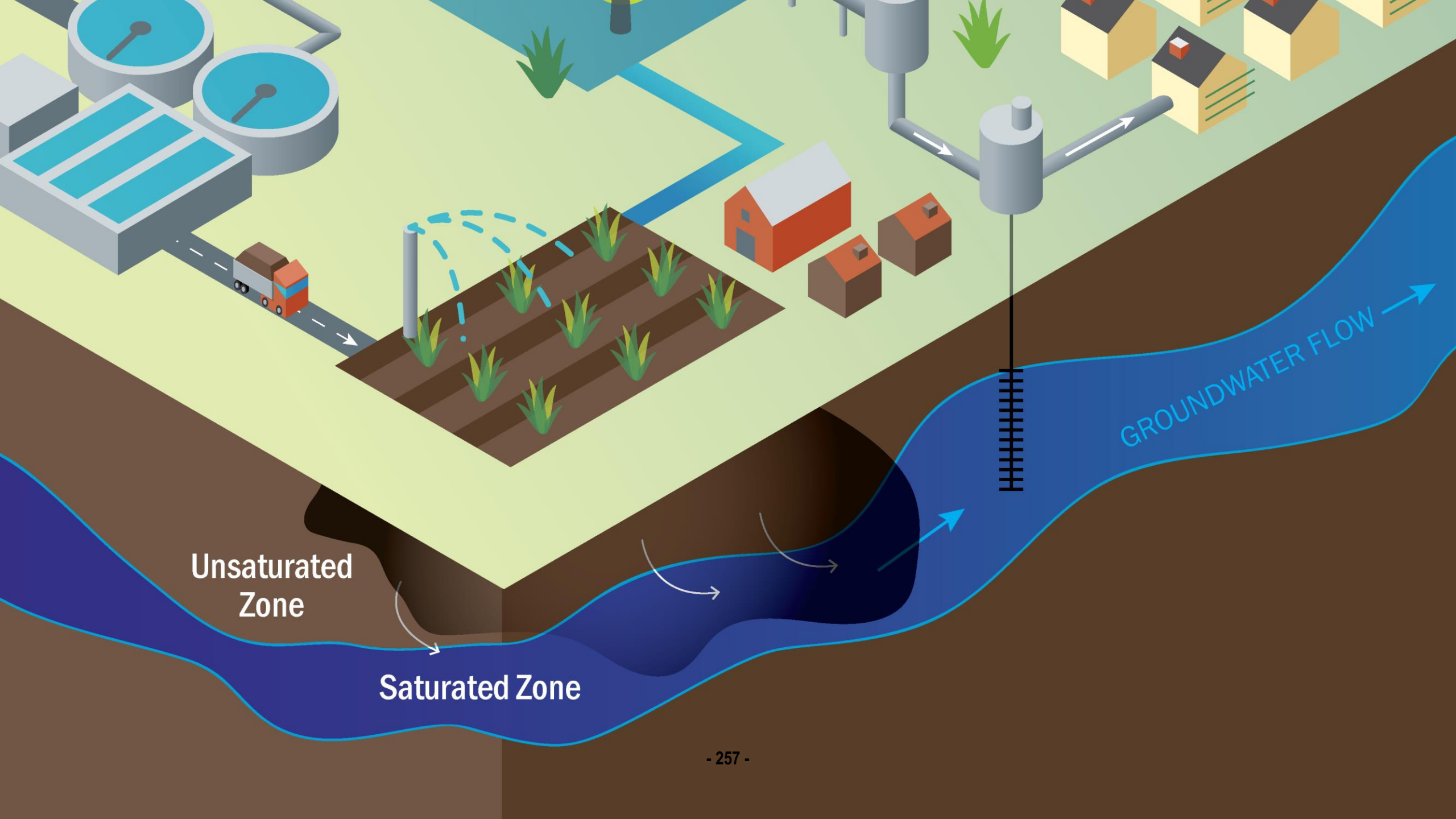
## PFAS Impact the Entire Water Cycle

## Points of potential human exposure

- Air
- Consumer Products
- Private/Public water
- Food and food wrappers

## Wastewater Treatment Plants are Recipients of PFAS, not Generators





Unsaturated  
Zone

Saturated Zone

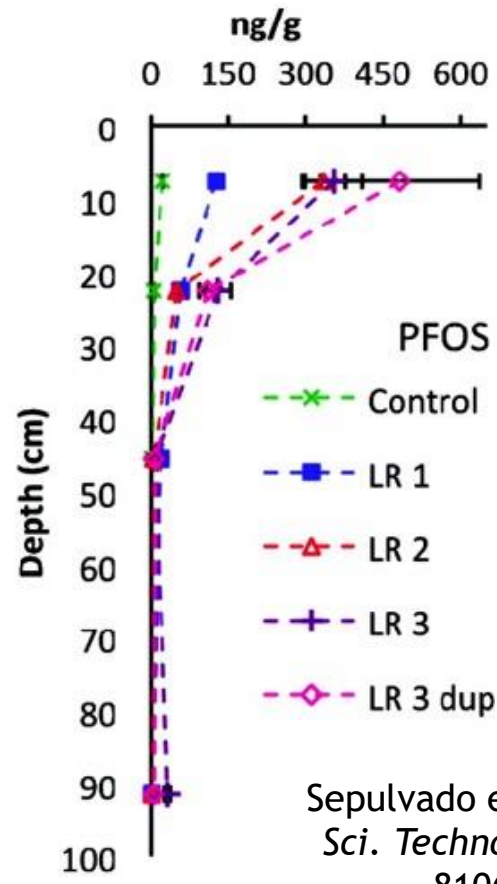
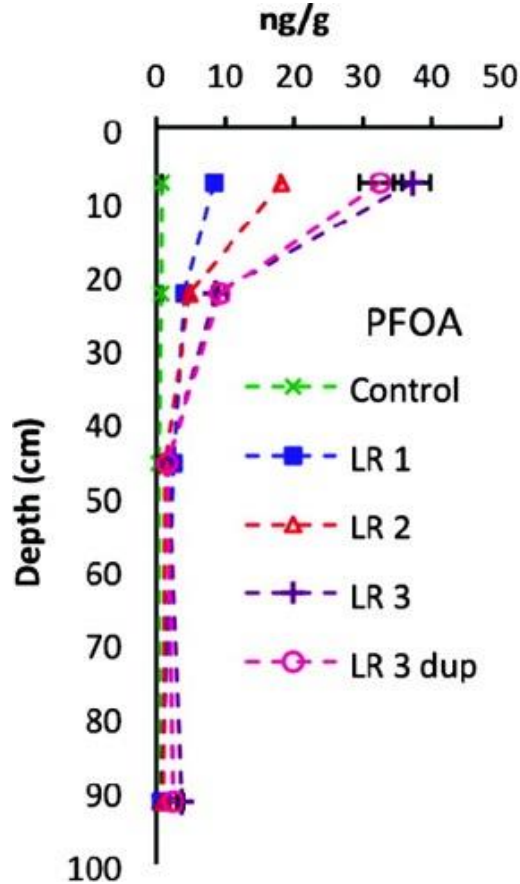
GROUNDWATER FLOW →

# PFAS and Biosolids Land Application

- PFAS have been found in groundwater near land application sites
- Legislatures and state environmental agencies expressing increased concern about PFAS in response to general public awareness
- PFAS have been found in residuals and land applied soils not impacted by industrial sources. (Sepulvado et al. 2011, Gottschall et al. 2016)



# Should we worry about this in land application?



Sepulvado et al; *Environ. Sci. Technol.* 2011, 45, 8106-8112

- Note: PFAS content in biosolids matters but other soil and biosolids properties likely matter too (e.g. organic matter, Al, Fe)

Concentrations of PFOA and PFOS with depth in the long-term plots at various loading rates. Control = 0 Mg/ha, LR 1 = 553 Mg/ha, LR 2 = 1109 Mg/ha, and LR 3 and LR 3 dup = 2218 Mg/ha (on dry weight basis).

- 259 -

# Comparing Bellingham's Data

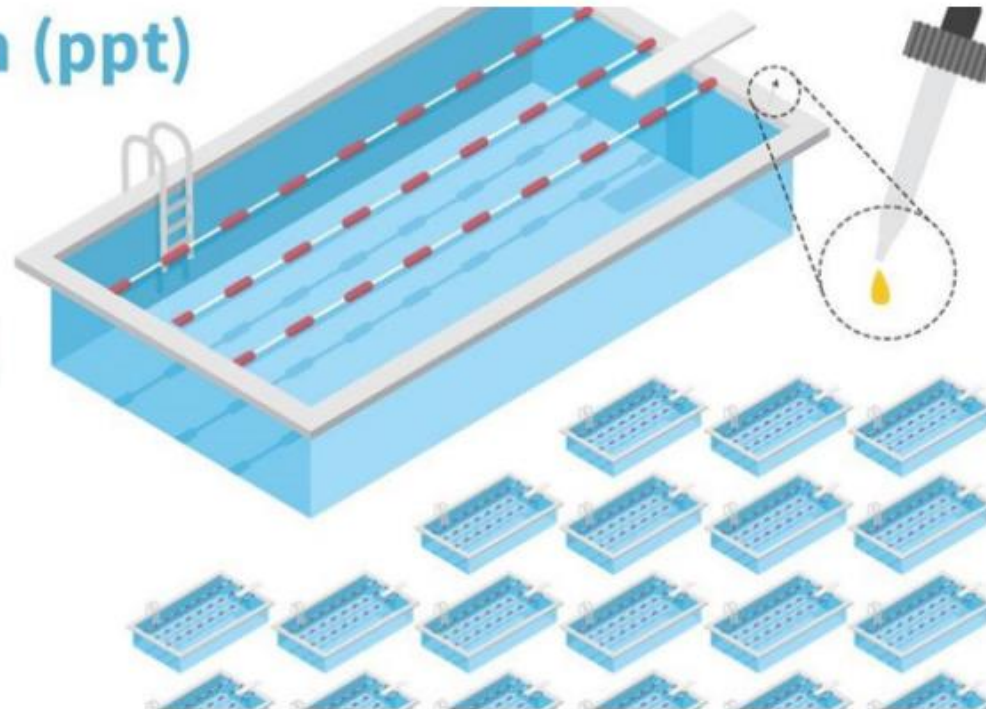
- What's Typical?
  - Data in the literature
  - Recent data from California Bay Area
- Relevant Regulatory References
  - Michigan “industrially impacted biosolids”
  - Maine soil screening standard

# What Exactly is a Part per Trillion (ppt) and Part per Billion (ppb)?

**1 part per trillion (ppt)**

IS EQUIVALENT TO A  
SINGLE DROP OF  
WATER IN

**20 olympic-sized  
swimming pools**



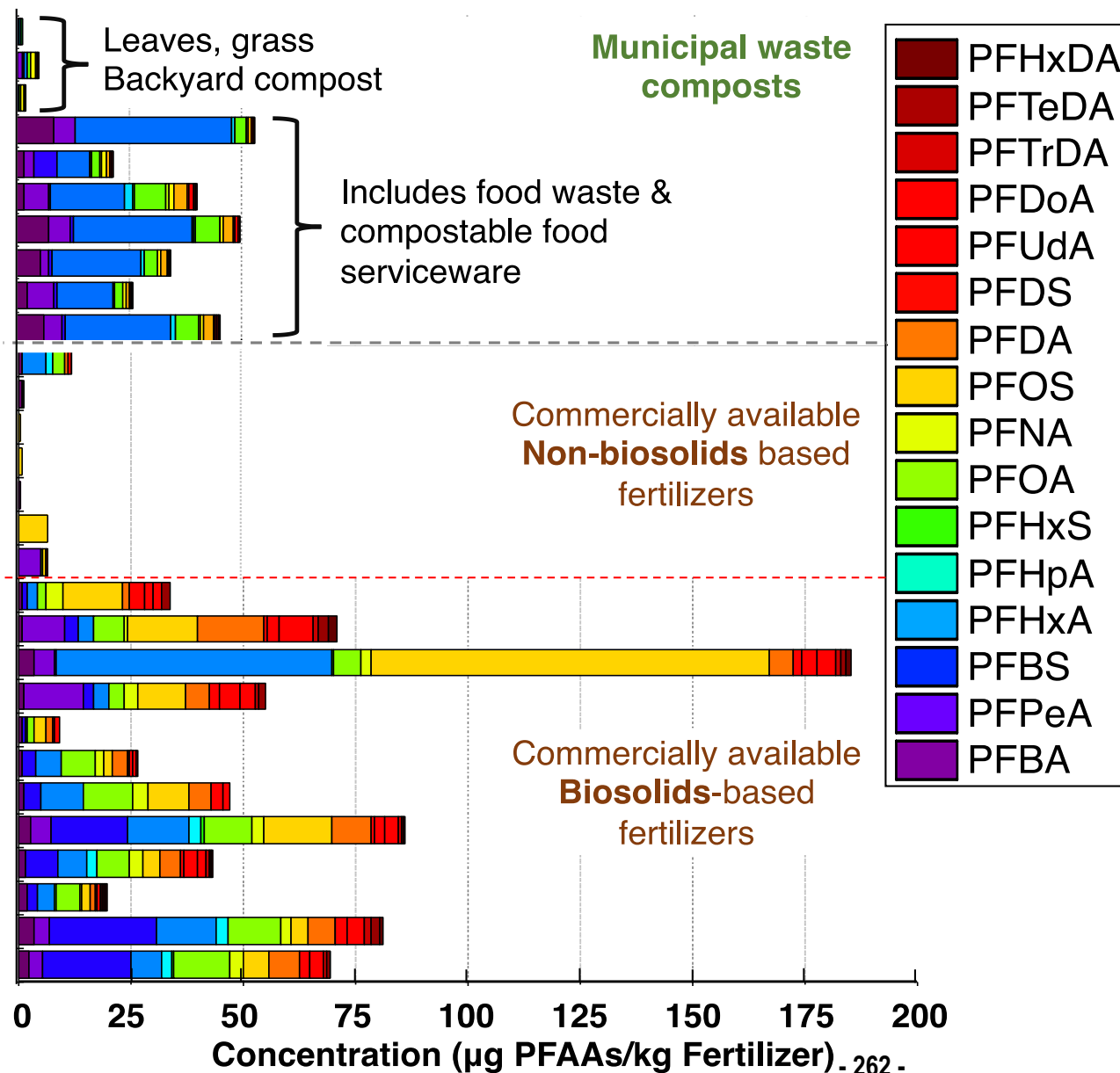
In terms of time:

ppt = 1 second in  
31,700 years

ppb = 1 second in  
31.7 years

Source: Chelmsford, Mass., Water Department

$$1 \text{ ug/kg} = 1 \text{ ng/g}$$



In general, typical PFAS ranges in biosolids\* are:

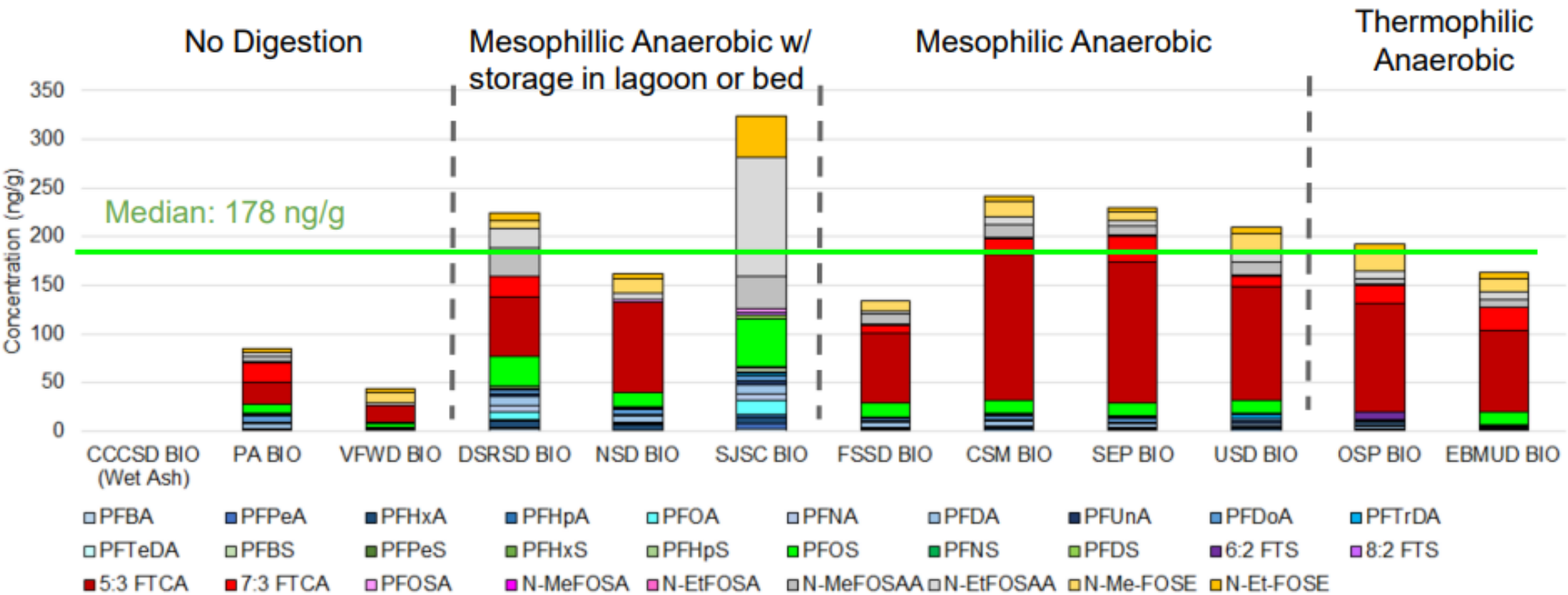
- Total PFAS: 60-450 µg/kg
- PFOA: 3.3 – 26.6 µg/kg
- PFOS: 5.2 – 127 µg/kg
- PFBS: 9.9 – 131 µg/kg

Graph Source: Kim-Lazcano – presentation for USCC webinar, Jan. 18, 2019. © Kim-Lazcano, Purdue Univ. Data in publication.

Data Summary: Linda Lee, Purdue University

# San Francisco Bay Area Data (BACWA, 2021)

Municipal biosolid samples generally comparable

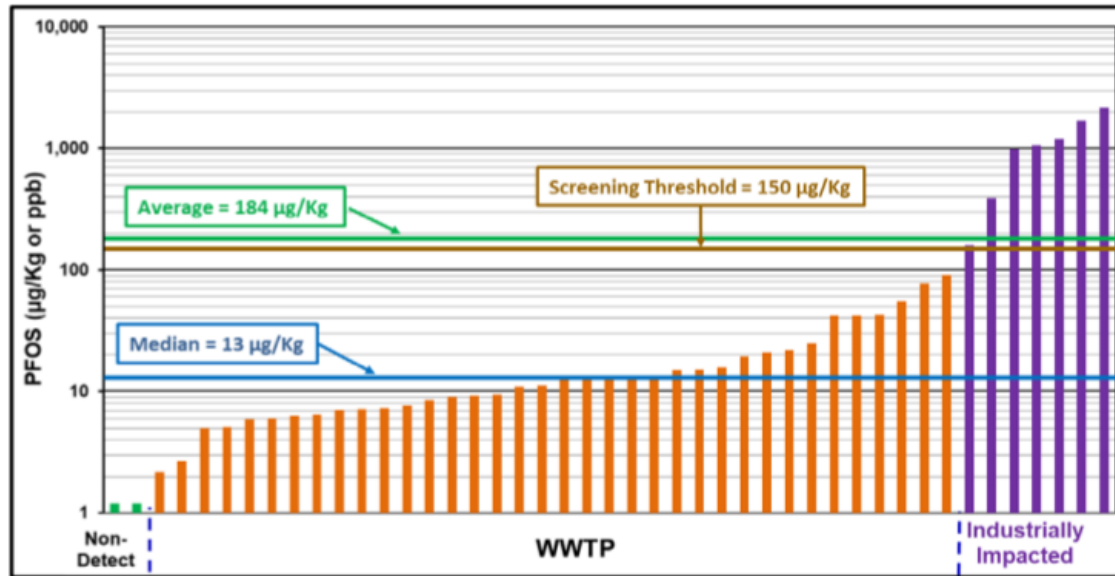


# Challenges in PFAS Analysis

- Regulation at near background levels mandates careful sampling and handling procedures
- Published data sets include different analytes
- Newer analyses for total oxidizable precursors (TOP) show transformation of PFAS through the wastewater treatment process and in soils



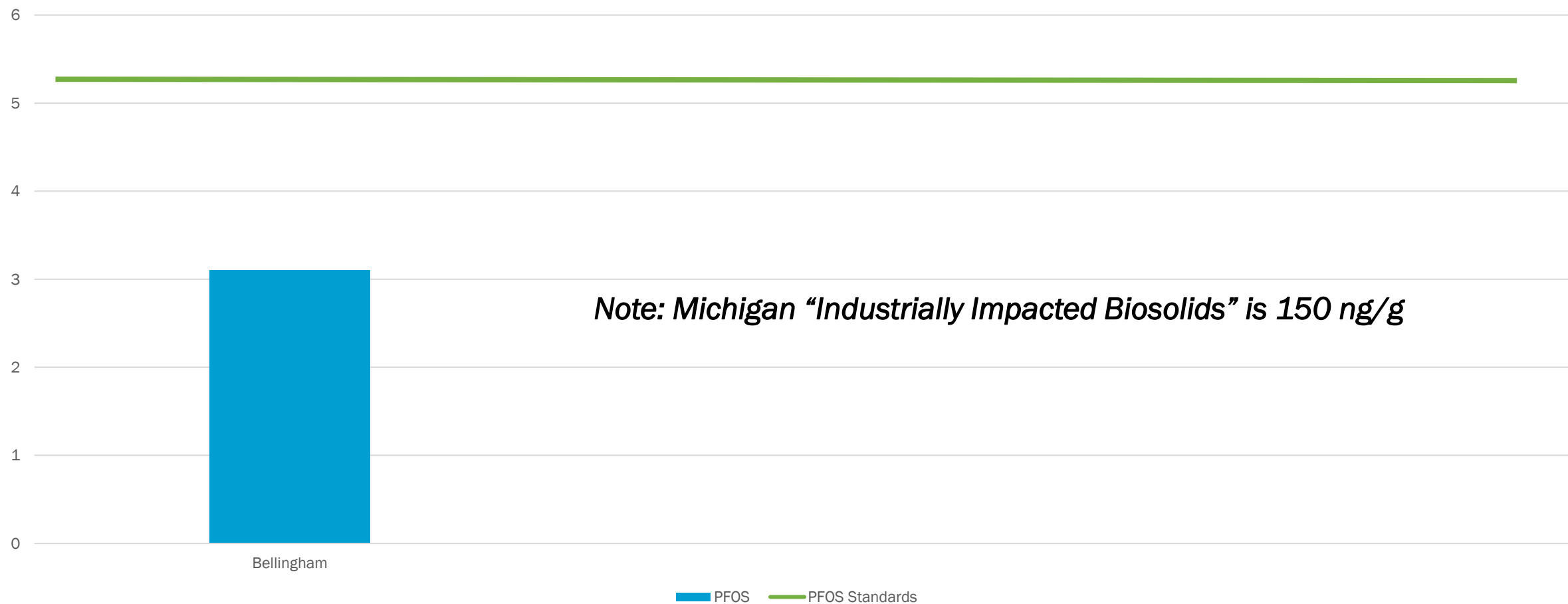
# Regulatory References



- **Michigan:** Targeted approach based on industrial inputs - analysis of land applied biosolids across the state led to characterization of “industrially impacted biosolids” at 150 µg/kg PFOS
- **Maine** applied soil screening standards and conservative fate and transport model to regulate biosolids (5.2 ng/g PFOS, 2.5 ng/g PFOA)

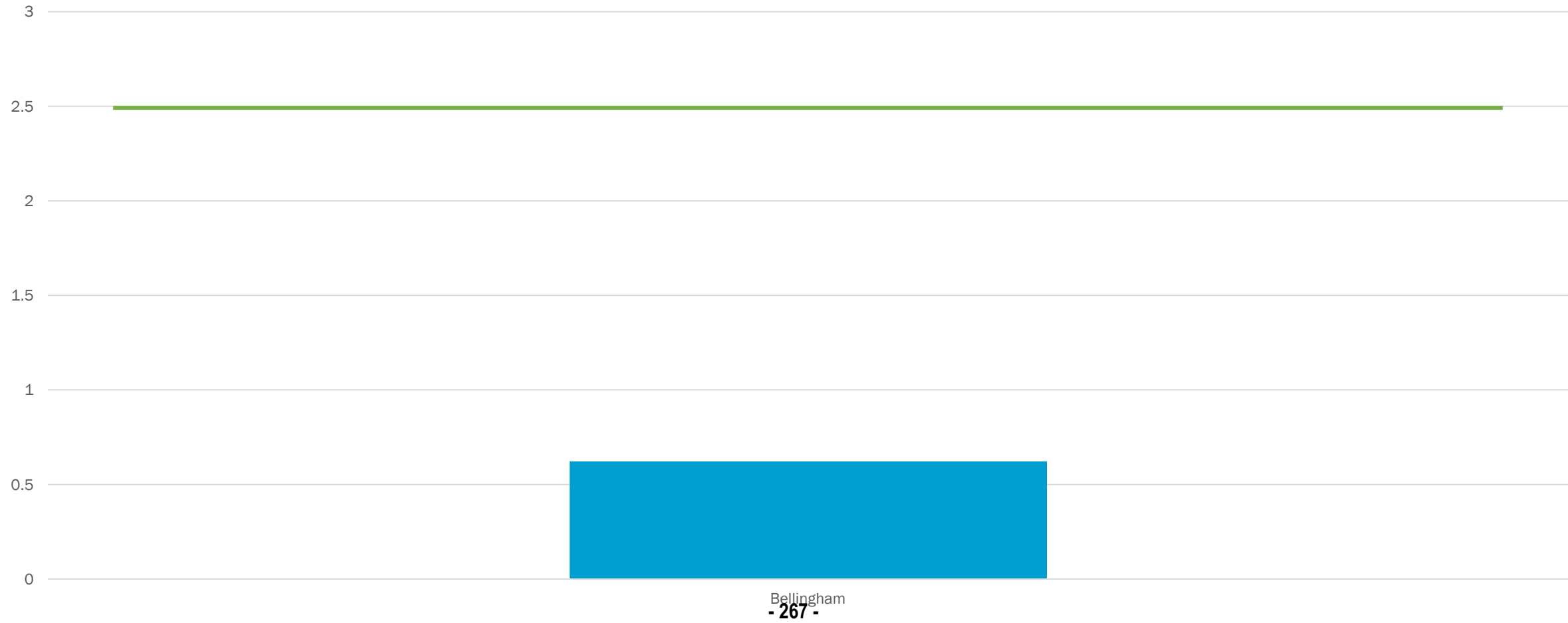
# PFOS Comparison

Comparison Against Maine Screening Standard (ng/g)

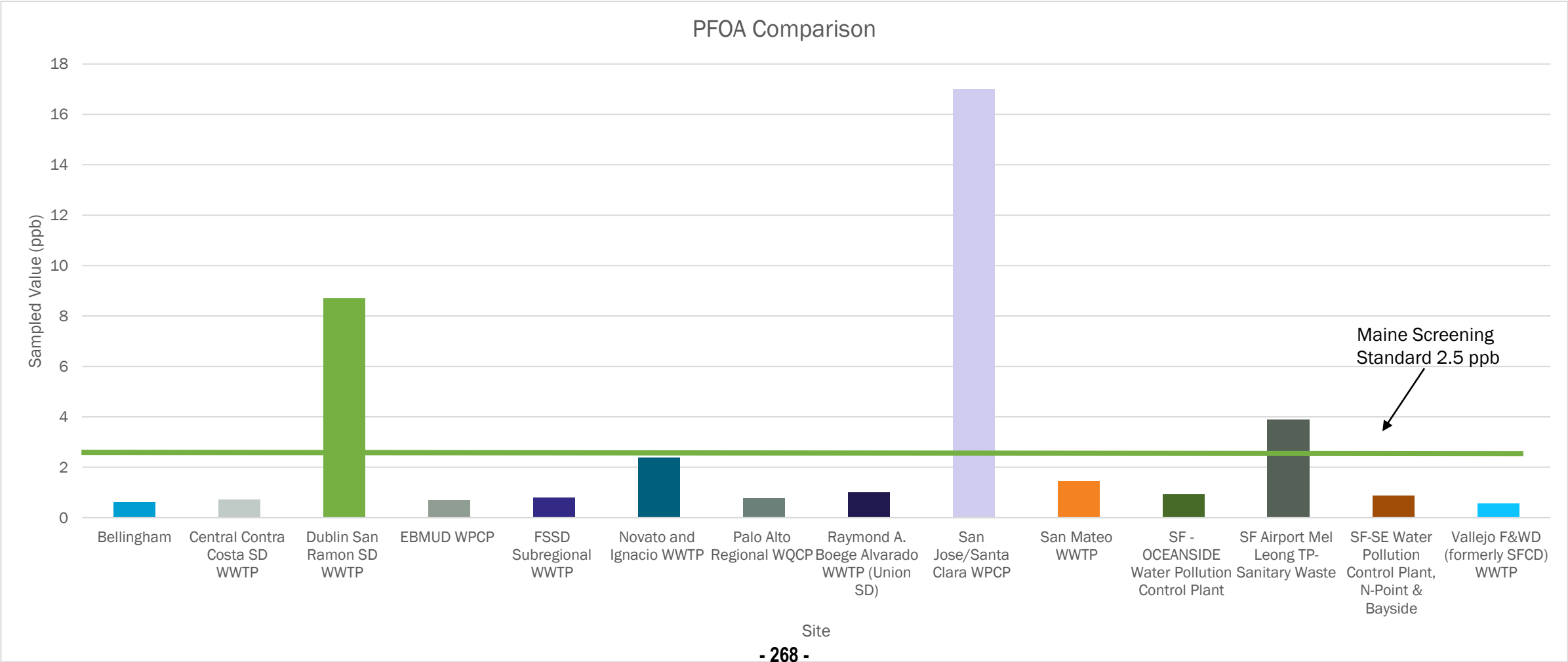


# PFOA Comparison

Comparison Against Maine Screening Standard (ng/g)

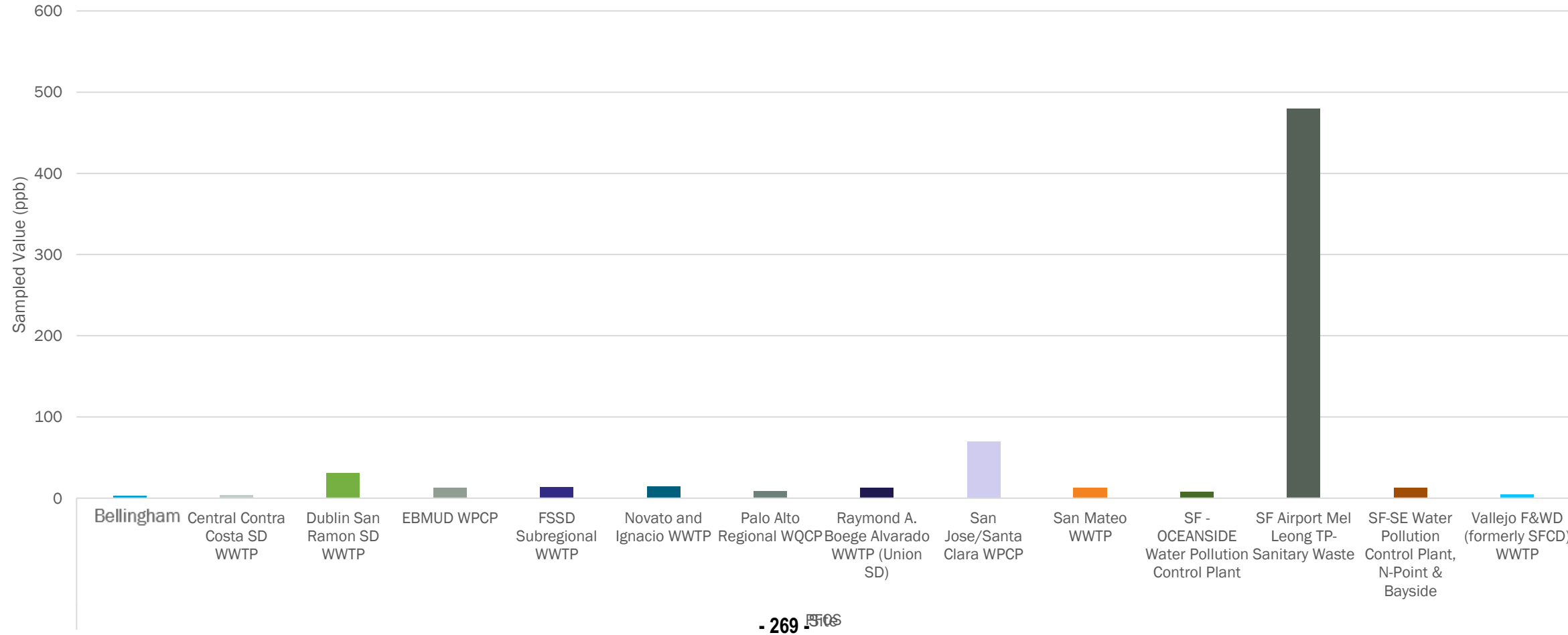


# Comparison Against SF Bay Area - PFOA

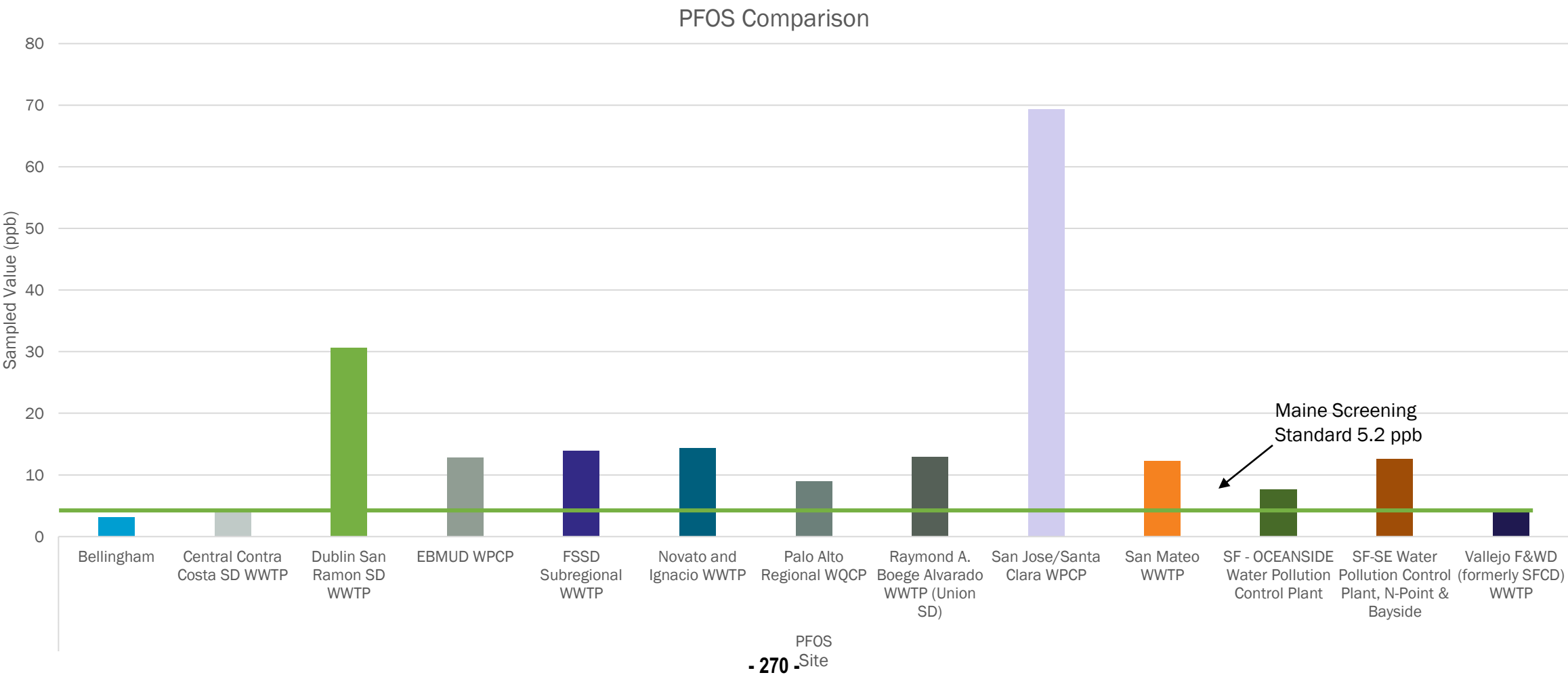


# Comparison Against SF Bay Area - PFOS

PFOS Comparison



# Comparison Against SF Bay Area - PFOS

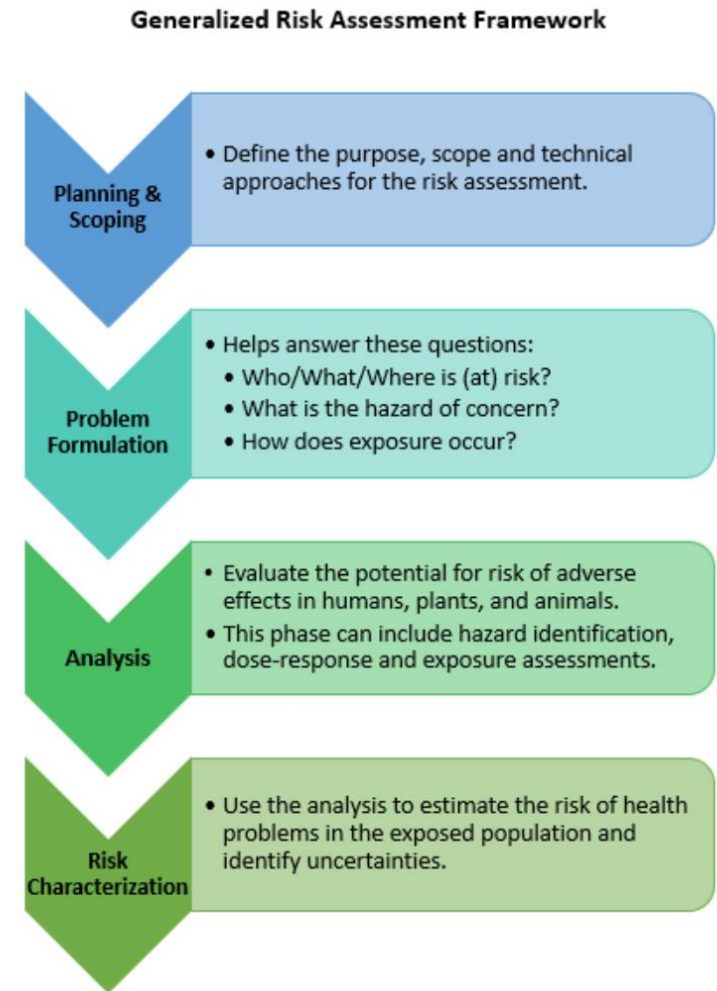


## What Else is Known About PFAS in Bellingham?

- Post Point WW lowest for PFAS of 14 sampled plants in WA and below EPA advisory standard for drinking water (70 parts per trillion)
- No known industrial dischargers in high-risk PFAS use categories
- Bellingham drinking water supply non-detect for PFAS

# Federal Action and PFAS Roadmap

- **Analytics:** Draft method 1633 for 40 PFAS in wastewater, soil, biosolids, and landfill leachate published
- Draft NPDES permits in some states now contain monitoring language
- **Risk Assessment:** Problem formulation published for land applied *and* incinerated biosolids
- **Risk analysis for PFOS and PFOA – target completion in 2024**
- Emphasis on Pretreatment and Effluent Standards for Target Industries

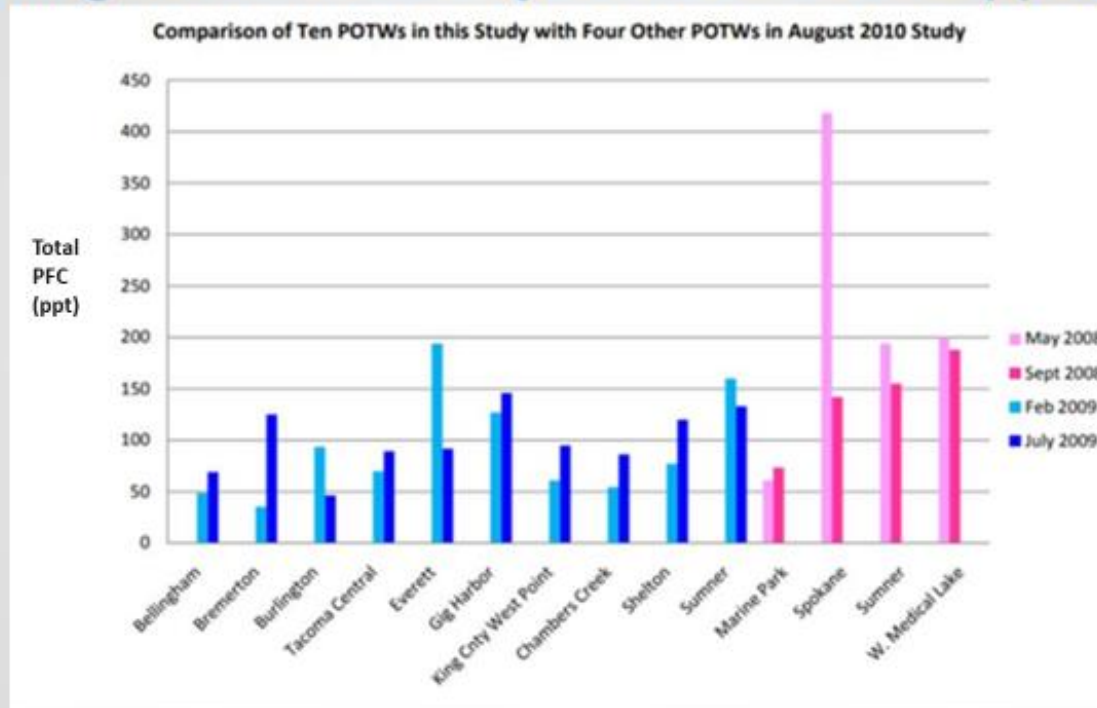


# Characterizing PFAS in Biosolids

- Work underway through regulatory action in CA, VT, MA, NH, ME, MI, MN
- WRF Study to Assess PFAS Release from Finished Biosolids
- WRF Study to Assess PFAS Fate in Sewage Sludge Incinerators

# Conclusions/Good News

## Bellingham WW PFAS Levels Below Current EPA Drinking Water Advisory Standard of 70 ppt (ng/L)



36

- Data do not indicate major sources of PFAS in Bellingham's service area
- Sources of PFOS and PFOA declining
- Continued focus on pretreatment/source control



Thank you.  
**Questions?**



# PFAS Moving Forward: Standards are Evolving (Federal & State)

- Required sampling
  - State sampling surveys
  - EPA UCMR5
  - EPA Risk Assessment work for biosolids underway
- More PFAS compounds
- Standards continue to trend downward

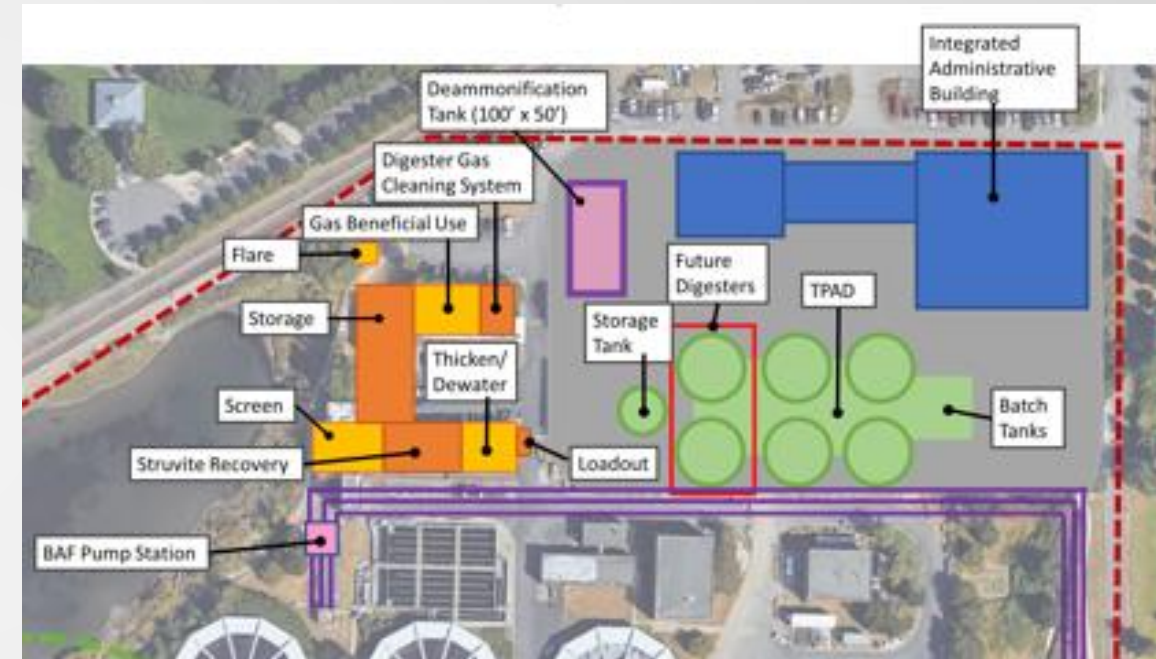
# Post Point Resource Recovery Project Update

December 6, 2021



# Post Point and Off-site Facilities Required

- **Digestion at Post Point**
  - New digestion facilities located in northeast corner of Post Point
- **Off-site Biosolids Processing**
  - Required to convert Class A digested solids to a marketable product
- **Market Outreach**
  - Identify potential private partnerships for off-site processing and/or marketing of product
- **Biogas – Pipeline Injection**
  - Scrub digester gas for pipeline injection
  - Establish gas utility requirements and agreement

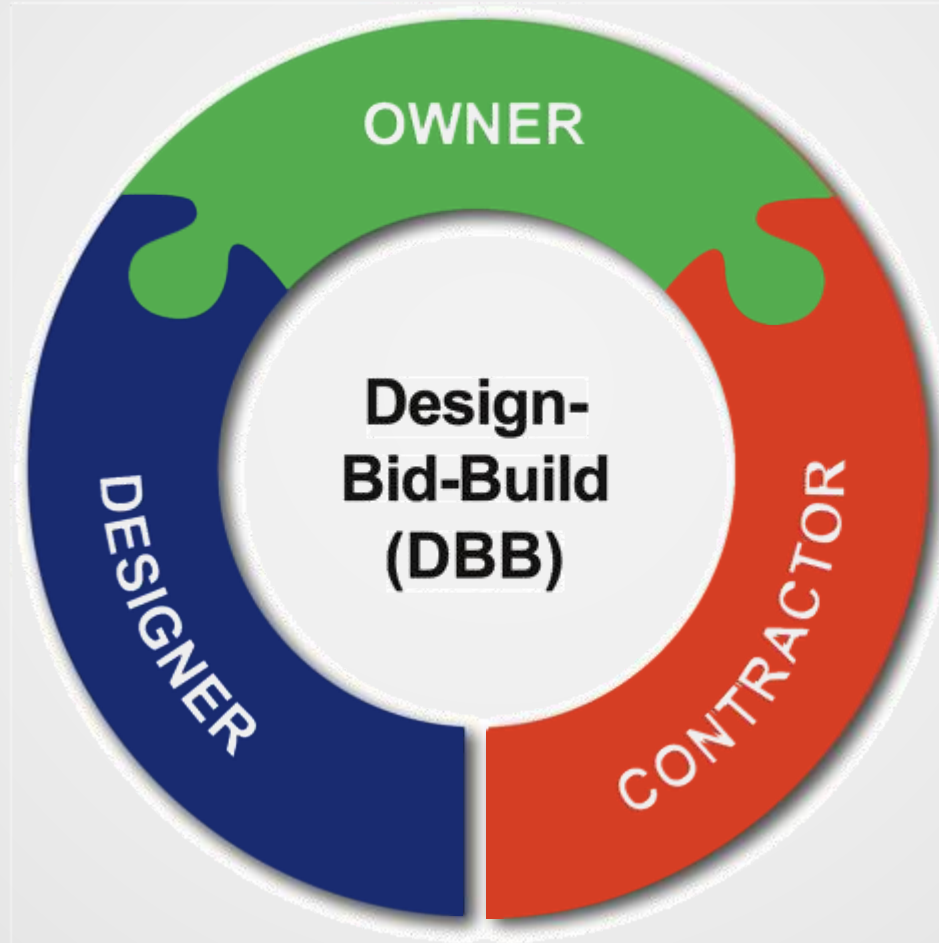


# Program Schedule



# Typical project delivery - Design-Bid-Build (DBB)

The traditional project delivery system for public entities under which the Owner holds separate contracts with a Designer followed by a Contractor.



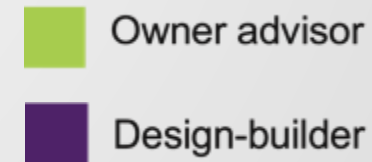
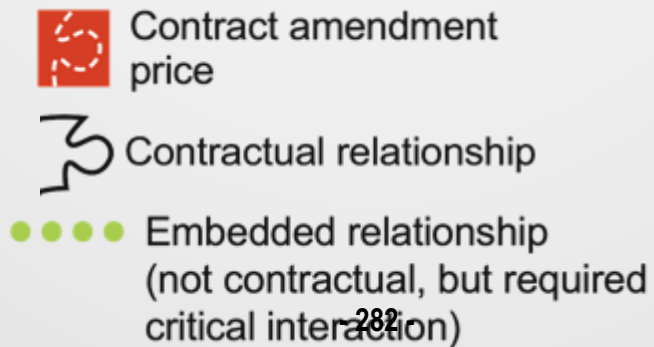
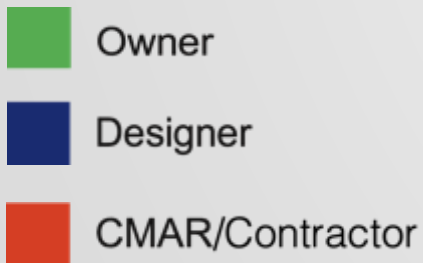
- Traditional “cast” of participants
- Widely accepted, well established linear development process
- Distinct milestones that create expected results
- Design is completed prior to bidding
- Bidding is completed prior to construction

# Spectrum of Collaborative Project Delivery Options

Traditional

Collaborative

Design-Build

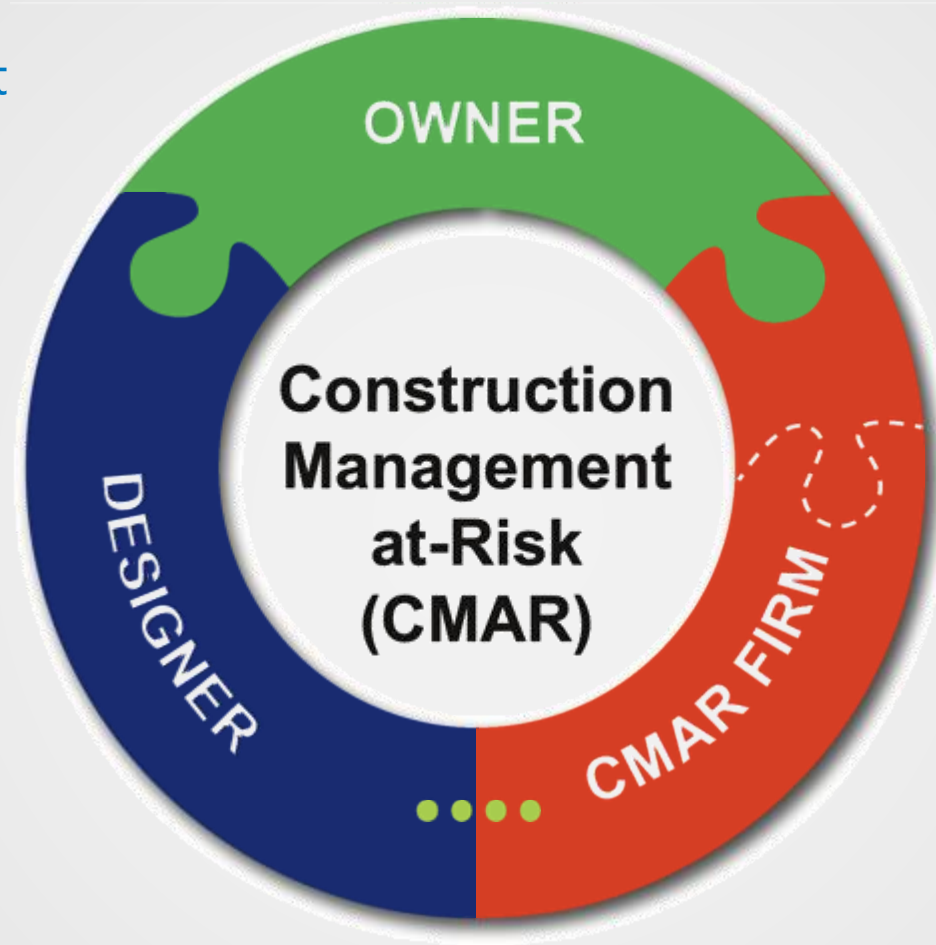


# General Contractor/Construction Manager (GC/CM)

Separate contracts with a Designer and a Contractor but working together.

Design is performed in parallel with the construction planning and estimating.

Construction can start after mutual agreement on cost and price.



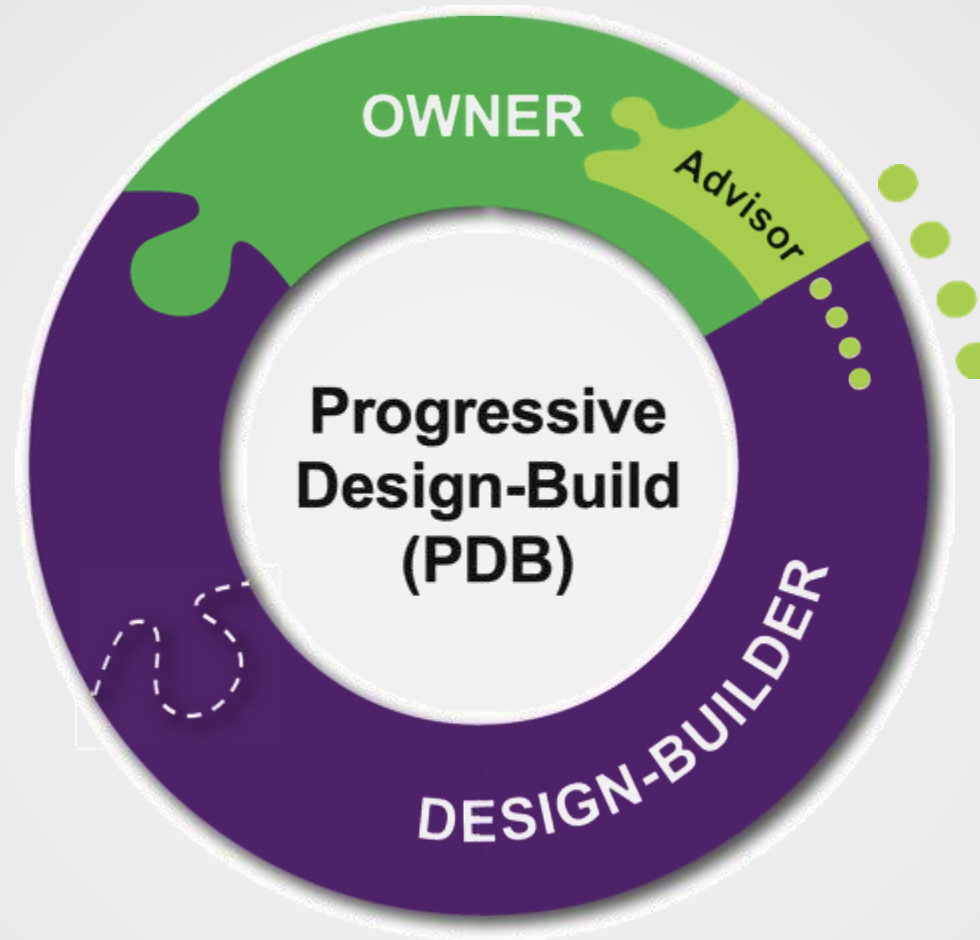
- Familiar “cast” of participants, but can be delivered faster
- Still two separate contracts with CW
- Traditional selection of Designer, but alternative method to select the Contractor
- Sometimes called “design-build light” or an “arranged marriage”
- Construction costs estimated in parallel with design

# Progressive Design-Build (PDB)

A single entity or purpose-built team to deliver both Design and Construction via a single contract.

Design detail and construction estimate is developed progressively.

Construction starts after mutual agreement on price.



- New cast of participants
- Concurrent activities reduce schedule – construction can start before design is complete
- Selection based on quals and fee, not a fixed price
- “Design to budget” via design and estimate iteration
- GMP, Lump Sum, and Shared Savings options
- Hard-bid “off-ramp” if construction pricing not acceptable

# Identifying Project Priorities: Consolidating Key Project Drivers

## KEY PROJECT PRIORITIES

### SCHEDULE

How can the procurement process be varied if schedule is critical?

### SELECTION CRITERIA

What criteria are important to success?  
What's the best indicator of future performance?

### DESIGN EFFORT

How much pre-design is required to ensure you get what you want (versus performance specifications)?

### PRICE

How do you evaluate proposals beyond price?  
Does low price always win?

### SCOPE

What elements of the project should be DB versus traditional delivery?

### DESIGN APPROVALS

How much oversight of design should you have?

### RISK SHARING

How are risks best shared?

### QUALITY

How do you ensure innovation and quality?

## KEY PROJECT DRIVERS

CONTROL/RISK SHARING

COST

SCHEDULE

INNOVATION

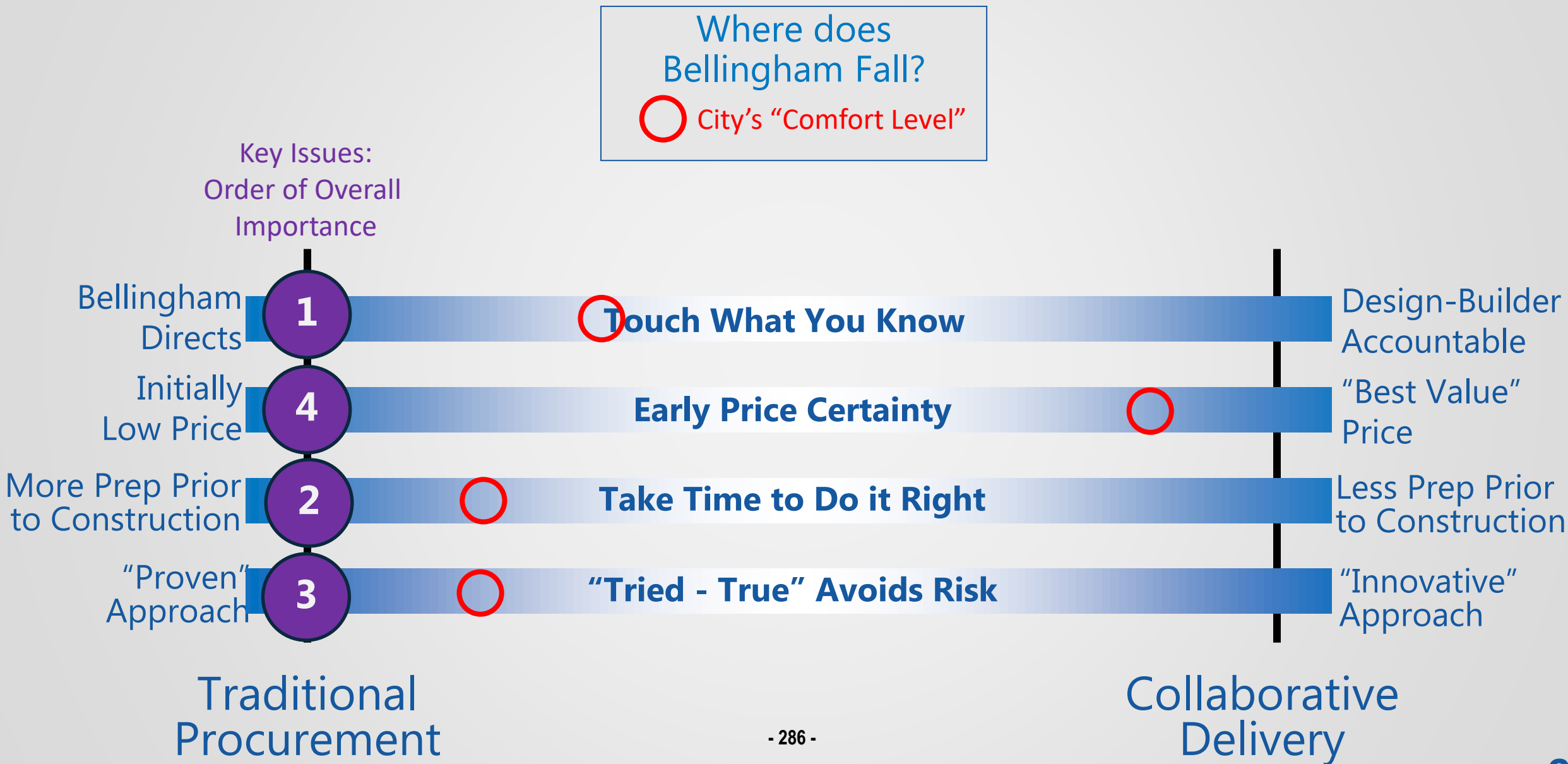
Touch What You Know

Early Price Certainty

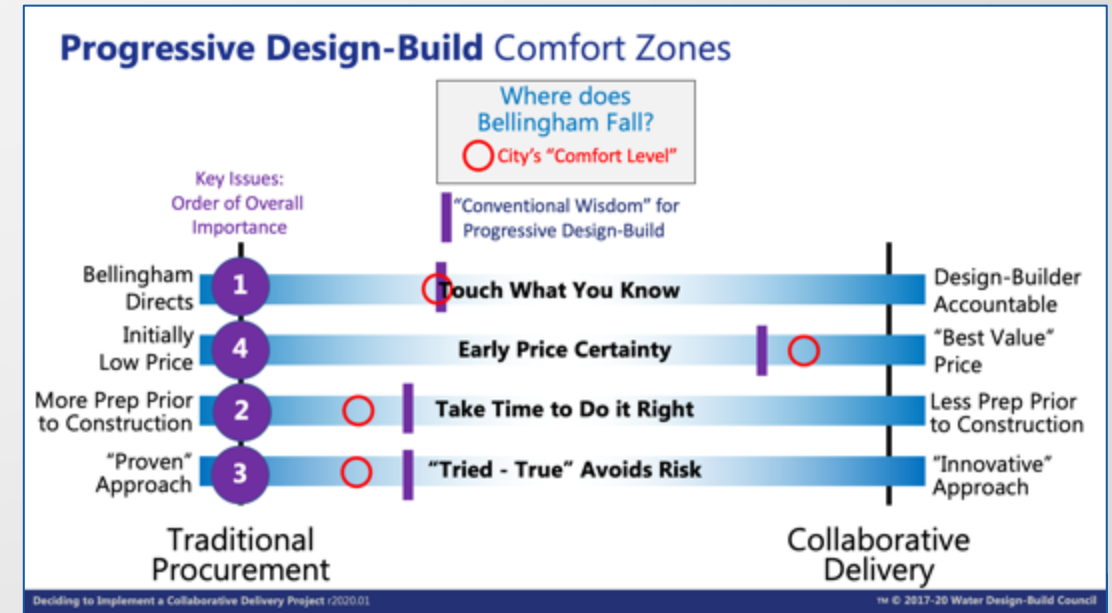
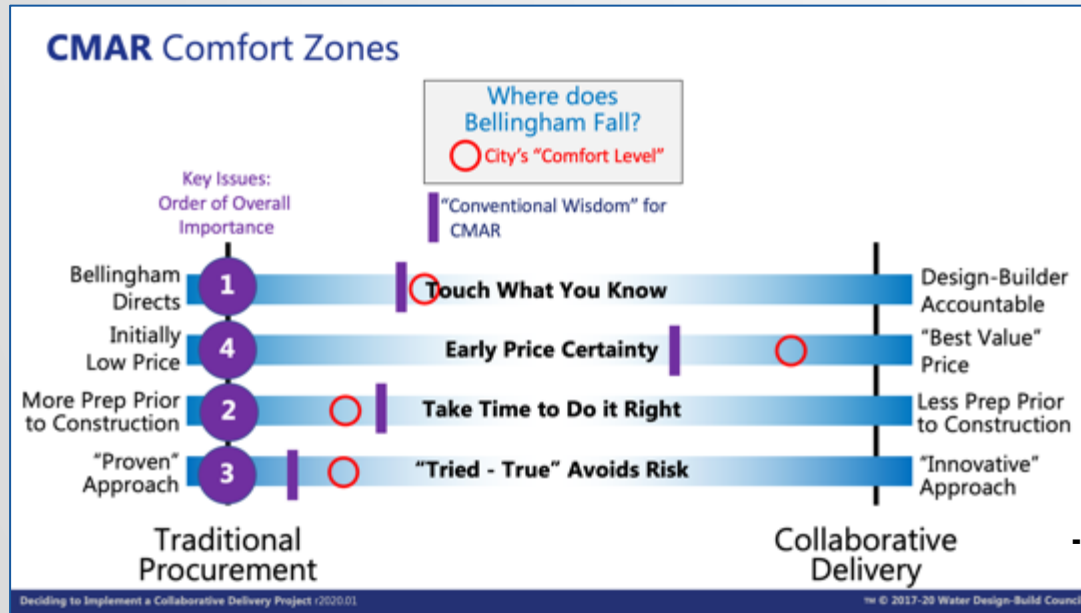
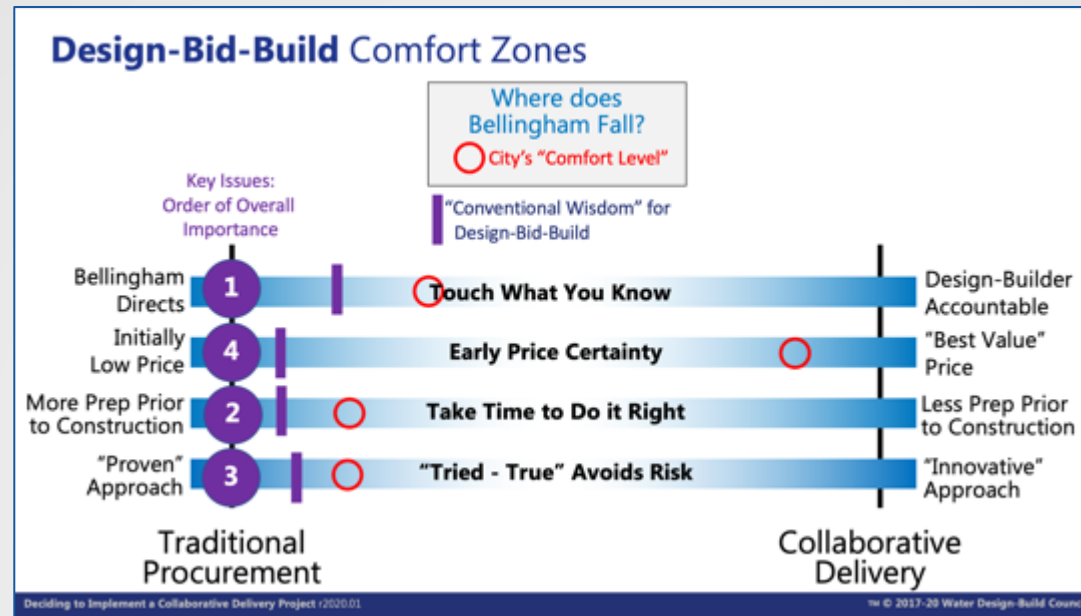
Take Time to Do it Right

"Tried - True" Avoids Risk

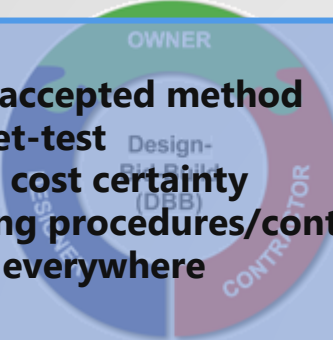

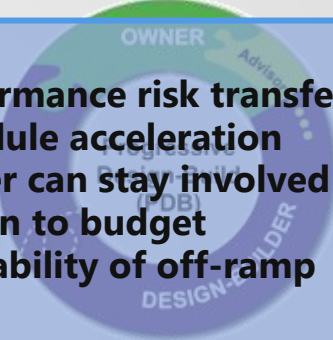
# Comfort Zone Assessment Informs Procurement Method Selection



# Comparison



# Delivery Methods: Summary of Key Attributes

 <b>Most accepted method</b> <b>Market-test</b> <b>Initial cost certainty</b> <b>Existing procedures/contracts</b> <b>Legal everywhere</b>	 <b>Allows Owner involvement</b> <b>Creates collaborative environment</b> <b>Potential schedule acceleration</b> <b>Accepted procurement process</b> <b>High market acceptance</b> <b>Availability of the off-ramp</b> <b>Potential for shared savings</b>	 <b>Performance risk transfer</b> <b>Schedule acceleration</b> <b>Owner can stay involved</b> <b>Design to budget</b> <b>Availability of off-ramp</b>
Owner responsible for scope and unforeseen conditions	Owner responsible for scope and unforeseen conditions	Owner responsible for scope and unforeseen conditions
Owner "owns" delivery issues	Owner "owns" delivery issues, but mitigates challenges early	Design-builder takes responsibility for delivery
Well-understood risk allocation (history of Change Orders)	Existing risk allocation managed with early contractor involvement	Appropriate risk transfer (performance, schedule, permits)
Specification-based	Specification-based with input	Performance-based
Predictable schedule (linear and usually longer)	Accelerated schedule; concurrent procurements	Potentially fastest delivery; Concurrent design/construct
Proven and familiar, but known challenges to success	Design-Build "lite" – familiar yet introduces collaboration	Proven, but not as familiar, introduces collaboration
Multiple contracts and separate deliverables	Multiple contracts; coordinated deliverables	Single contract; single-point responsibility
Multiple procurements	Multiple procurements	Single procurement
Existing procurement process	Adapt existing process	New procurement process
Traditional roles	Traditional roles/with additional times	New roles

# Recommendation

## GC/CM

- Simpler procurement process
- Relies on proven, accepted method for selecting professional engineering services based on qualifications
- Provides design continuity and integrates constructability early in the design process
- Provides Contractor-led estimates earlier and allows scope revision during design to meet project budget
- Can reduce overall project risk and contingency
- Can reduce design misunderstandings and resulting potential for change orders
- Allows permitting process to be better integrated into design and construction planning
- Familiarity from previous Post Point expansion project

# Next Steps for project delivery

- Get Council authorization to apply to PRC for certification to use the general contractor/construction manager (GC/CM) contracting procedure
- Continue advancing the **Biosolids Facility Plan** as part of the Resource Recovery project – summer draft to Ecology
- Continue with **stakeholder outreach** to inform the process



# Post Point Resource Recovery Project Update

Mike Olinger  
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Public Works Operations  
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Chad Schulhauser, PE  
Assistant Director,  
Public Works Engineering  
360.778.7910 [cmschulhauser@cob.org](mailto:cmschulhauser@cob.org)



Dear Mayor Fleetwood, Ms. Anderson, Mr. Lilliquist, Mr. Knutson, and Mr. Johnston:

Thank you for initiating, as we requested in July, the chemical testing of waste materials from the Post Point Wastewater Treatment Plant, and also for providing the ALS Environmental Analytical Report regarding the same.

Unfortunately, the ALS Report does not relieve our concerns, and raises some new ones. Even more concerning is that the regulatory background regarding PFAS has shifted significantly, and continues to shift, raising a multitude of concerns and questions not previously considered by the City. And all of these concerns and questions deserve to be brought before the public and examined and analyzed. This letter details these concerns, and the questions they raise, regarding the proposed land spreading of sewage solids processed from the anaerobic digester that the City wants to install at Post Point.

### Summary

I. The City's Biosolids Project is progressing as planned without a public conversation about:

- a) the concerns raised by the recent Post Point sludge testing results for Per- and Polyfluoroalkyl Substances (PFAS) and Polycyclic Aromatic Hydrocarbons (PAH) (as reported in the ALS Report); and
- b) the concerns raised by the rapidly evolving state and federal regulatory landscape, *especially* the classification of PFAS as *hazardous waste*, and what that could do to the permitting and cost requirements for the proposed anaerobic digester.

These matters must be considered, discussed, and resolved with extensive public input that, thus far, has not been sought.

II. The ALS Report on sampling data for Post Point's PAH and PFAS reveals sewage solids at Post Point containing significant levels of Perfluorooctane sulfonic acid (PFOS). This is an especially dangerous and carcinogenic compound in the PFAS family of molecules. And the sum total of PFAS chemicals in the sewage solids is also concerning.

III. The PFAS testing method used in the ALS Report is not appropriate for sewage and so is misleading. Accurate testing methods do exist.

IV. It is well documented in the research that biosolids are a source of a multitude of contaminants (besides the thousands of PFAS) that accumulate in soils, crops and waterways. Such persistent, accumulating, and hazardous contamination will result in an undue burden to human and animal health, and the environment.

## Concerns and Questions

1. **CONCERN:** The detected amount of PFOS from the “incinerator feed” from Post Point is a concern. The current incinerator feed is the activated waste sludge following separation from the wastewater, and is more dilute, with less concentration of contaminants, than the heated and dried biosolids that result from anaerobic digestion. This means it is very possible that the PFOS levels in the Post Point activated sludge not only would become more concentrated in the final product, but could also exceed legal levels.

This is not mere speculation. Maine has recently established screening levels in *final product* biosolids to include a screening level for PFOS of 5.2 ng/g (ppb) [nanograms/gram (parts per billion)], resulting in a significant reduction of land applied biosolids, by some estimates as much as two-thirds in a year.<sup>1</sup> By contrast, the Bellingham incinerator feed sample contained a PFOS level of 3.3 ng/g *before* the biosolids were heated, dried, and concentrated. (See Table 1 below.) Once it becomes anaerobically digested biosolids, this additional concentrating step could raise the PFOS screening level to something exceeding Maine’s legal levels. And if Maine’s level is accepted in Washington – something that Washington’s Dept. of Ecology is considering – that could make Bellingham’s PFOS levels illegal.<sup>2</sup>

Because PFOS is one of the most toxic PFAS compounds, and has already been banned in certain products in the State of Washington, *what will be regulated as a safe level in the future should be of great concern*. Both the Environmental Protection Agency (EPA) and Ecology are currently working on regulating what are safe levels for PFAS.<sup>3</sup>

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<sup>1</sup> *Maine PFAS Screening Levels chart*, J. Raney, <https://www1.maine.gov/dep/spills/topics/pfas/Maine-PFAS-Screening-Levels-Rev-6.28.21.pdf>, June, 2021. See also, *Are PFAS Regulations Going Too Far?* Treatment Plant Operator online magazine, [https://www.tpomag.com/online\\_exclusives/2019/09/are-pfas-regulations-going-too-far](https://www.tpomag.com/online_exclusives/2019/09/are-pfas-regulations-going-too-far), Sept. 12, 2019.

<sup>2</sup> *Per- and Polyfluoroalkyl Substances Chemical Action Plan*, Ecology Website, <https://apps.ecology.wa.gov/publications/documents/2104048.pdf>, Nov., 2021.

<sup>3</sup> *First Validated Laboratory Method to Test for PFAS in Wastewater, Surface Water, Groundwater, Soils*, EPA website, <https://www.epa.gov/newsreleases/epa-announces-first-validated-laboratory-method-test-pfas-wastewater-surface-water>, Sept. 2, 2021.

**Table 1. Comparing Three PFAS Compounds Currently Regulated in Maine With Post Point Results.**

The three types of PFAS regulated in Maine, including PFOS, are listed below with their legal screening levels compared to the results found in the incinerator feed at Post Point. *Remember that incinerator feed is more dilute than biosolids; therefore, concentrations will be higher in the final anaerobically digested product.*

PFAS Compound	Maine Biosolids Screening Levels, ng/g (ppb)	Post Point Incinerator Feed Results, ng/g (ppb)
PFBS*	1,900	ND
PFOS**	5.2	3.3
PFOA***	2.5	0.62

\*Perfluorobutane sulfonic acid

\*\*Perfluorooctane sulfonic acid

\*\*\*Perfluorooctanoic acid

2. **CONCERN:** Pollutants commonly found in biosolids are also a concern because they are not (yet) being tested for. According to future plans, what is now the incinerator feed will be fed into an anaerobic digester rather than the present-day incinerator. Anaerobic digester microbes work in hot bathwater temperatures, and aid in breaking down activated sludge's organic components (such as carbohydrates, proteins, and lipids) into primarily carbon dioxide, natural gas, and a more concentrated solid waste stream residual, the "digestate." But we already know that Post Point's activated sludge that will become digestate contains PFAS, PAH, and heavy metals, at concerning levels, and is yet to be tested for dangerous PCB's, PBDE's, Dioxins, Furans, pharmaceuticals, and microplastics.

**QUESTION:** Will the public receive sampling test results for detections of PBDE's (flame retardants), PCB's, Dioxins, Furans, pharmaceuticals, and microplastics in Post Point activated sludge? And how will the results be factored into the planning process?

3. **CONCERN:** *The PFAS testing protocol is questionable.* The EPA 573 Modified test used in the ALS Report is used to measure PFAS in *drinking water*, not soils or biosolids. That raises concerns about the PFAS testing protocol used and the results.

ALS Environmental used the EPA 537 Modified test to measure PFAS in the effluent. This method is used to test drinking water and can be modified to test for PFAS in solids. But using this method here could under-represent the quantity of PFAS found in the sample due to the obvious difference between drinking water and solids, and the concentrating effect mentioned above in going from wastewater to biosolids.

There are better methods to employ when testing solids, such as EPA 1633 draft PFAS Method 1 or ASTM D7979 method 2.<sup>4</sup> In addition, a Total OrganoFluorine Analysis (TOF) should also have been run. The TOF analysis looks at the total amount of PFAS molecules in a sample. Typical PFAS sampling methods only can analyze a small number of PFAS compounds, but there are anywhere from 5,000 to 9,000 known PFAS compounds in our environment (depending on who's counting). The TOF analysis can reveal PFAS molecules that evade sampling techniques that look only at a small sample size.

**QUESTION:** Will the City consider testing the incinerator feed using a testing method designed for solids and not drinking water, and one designed to look at all PFAS molecules?

4. **CONCERN:** Current PFAS testing standards are insufficient. States are beginning to develop their own standards for PFAS, such as Maine with its sludge application limits for biosolids (discussed above). As a leader in this area, Maine's efforts could further impact Washington's regulatory standards, *which already consider PFAS a hazardous substance*.

This must be emphasized: Ecology announced in October, 2021 that *PFAS is to be defined as a hazardous substance*,<sup>5</sup> which means cleanup will now be regulated under MTCA (the Model Toxics Control Act). Ecology is currently working to create screening standards for PFAS in biosolids similar to what Maine has done. Ecology will be taking steps to:

- Create cleanup level standards for PFAS.
- Prevent additional releases of PFAS into the environment (e.g., if PFAS compounds are released to the environment they must be reported to Ecology).
- Reduce the use of PFAS.

It is worth repeating that both the EPA and Ecology are currently working on increasing regulation for PFAS molecules, and Maine, as the leader of the regulatory pack, is an obvious starting point. Legal authorities are already wondering what this all will mean. For instance:

With its [decision](#) to list per- and polyfluoroalkyl substances (PFAS) as hazardous substances under Washington's cleanup law, the Model Toxics Control Act (MTCA), the Department of Ecology ushers in a new era of uncertainty, and potential liability, at cleanup sites across the state. Ecology's decision followed on the heels of the

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<sup>4</sup> *Standard Test Method for Determination of Per- and Polyfluoroalkyl Substances in Water, Sludge, Influent, Effluent, and Wastewater by Liquid Chromatography Tandem Mass Spectrometry (LC/MS/MS)*, ASTM International website, <https://www.astm.org/d7979-20.html>, Sept. 3, 2020.

<sup>5</sup> PFAS "forever chemicals" now regulated under state's environmental cleanup law, Dept. of Ecology website, <https://ecology.wa.gov/Blog/Posts/October-2021/PFAS-forever-chemicals%E2%80%9D-now-regulated-under-state>, Oct. 21, 2021.

Washington Department of Health's August 2021 [proposed rule](#) to set State Action Levels for five PFAS compounds in drinking water. The announcement, which was short on details, raises a host of compliance and liability questions:

- Will detection of any PFAS compounds at a facility be sufficient to trigger the reporting requirements under the state cleanup law?
- Are all PFAS compounds now subject to MTCA?
- What cleanup levels will apply to PFAS compounds?
- Do parties need to address PFAS compounds in cleanup actions before Ecology has developed cleanup levels?
- Will Ecology "re-open" sites with potential PFAS issues if they have received no further action determinations?<sup>6</sup>

**QUESTION:** What is the City's plan if the levels of PFAS in the biosolids are higher than the still-to-be-determined screening levels, and cannot be used as a commercial product?

**QUESTION:** Has the City considered that it could be a Potentially Liable Person (PLP) if it knowingly spreads PFAS into the environment?

Besides Ecology's recent actions, last month EPA Administrator Michael S. Regan announced the PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024. This roadmap includes specific language about PFAS and biosolids including:

- Holding polluters accountable for their actions and for PFAS remediation.
- Monitoring requirements for facilities where PFAS are expected. This includes *pretreatment* programs for wastewater treatment plant discharges and biosolid applications.

**QUESTION:** Has the City explored the logistics and cost of pretreatment as a means to remove PFAS and other contaminants from the wastewater and biosolid streams *before* landfilling?

5. **CONCERN:** The land application of biosolids will likely affect communities disproportionately.

We need a more careful approach to what is done and how biosolids are used because of the public health issues that are raised. Right now, land spreading is a burden on both human and animal health, as well as the environment. People who cannot afford to buy organic food or

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<sup>6</sup> *PFAS Determined To Be Hazardous Substances Under Washington's Cleanup Law*, Beveridge & Diamond law firm website, <https://www.bdlaw.com/publications/pfas-determined-to-be-hazardous-substances-under-washingtons-cleanup-law/>, Nov. 1, 2021.

those that cannot escape either contaminated floodwaters or crops affected by contaminated floodwaters, will be disproportionately affected by crops growing in contaminated biosolids. People and animals who work on fields where biosolids are applied, and the people and animals who live near those fields, will be disproportionately affected by runoff, water pollution, and air pollution created by contaminated biosolids.

**QUESTION:** Has the City investigated other options for the use of the biosolids that would not create an undue burden on the community?

6. **CONCERN:** The City's "Engage" website, where people may comment or question about the anaerobic digester proposal, does not seem to permit viewing of all the accumulated questions and concerns. This leaves people who otherwise use the website unable to see concerns of others, and unable to initiate a dialogue with others. This is not only unfair to the citizenry, it is also a severe underutilization of something that could greatly facilitate much needed public input and comment on the subject.

**QUESTION:** Will the City please release the results of the Post Point Recovery survey on the Engage website and have a community meeting where people can have a dialogue with the City about the plan?

## Conclusion

The anaerobic digester "solution" to replace the current Post Point wastewater treatment system was researched, analyzed, and decided on years ago. Since then, the Federal government, and various state and local governments nationwide, have come to recognize not only the danger of thousands of chemicals in wastewater treatment systems, especially the PFAS family (including PFOS), but also that the regulatory scheme to keep people, animals, and the environment safe from these chemicals must be significantly revised. That process is underway at this moment, with Maine and the Federal Government leading the way, and Washington committed to changing its regulatory scheme.

Whatever Washington does, it would be reckless for the City of Bellingham to forge forward with the anaerobic digester on the assumption that the old regulatory scheme will not change, and possibly change radically, by the time the digester becomes operational. *We now know that PFAS are classified as "hazardous substances."* This means that government expectations for how to remove them from the anaerobic digester's biosolids, and to safely dispose of them, will be far higher than when the digester approach was decided on. At a minimum, this creates greater expense for the City, and increased legal exposure.

In light of all this, the City should re-evaluate what it will do with the biosolids created by the anaerobic digester, once State regulatory mandates have been updated regarding testing for PFAS, PFOS, and other chemicals. It must not rely on commercial testing done without regard for the changing regulatory landscape, especially testing that doesn't use the most appropriate

testing procedures for analyzing hazardous substances (as was the case with the ALS Report). And the City should go to great lengths to provide an open and transparent re-evaluation process, that includes and welcomes public input, so that those most affected by the biosolids have a fair and equitable say in how it is to be handled.

Thank you for your careful and deliberate consideration of these matters. We continue to request that your offices communicate with our organizations about the City's next steps to address this situation.

Sincerely,

Kirsten McDade  
Pollution Prevention Specialist  
RE Sources

Rick Eggerth  
Chair, Mt. Baker Group  
Washington Chapter, Sierra Club

Darlene Schanfald  
WA State Sierra Club  
Toxics Issue Committee

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**CC:**

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# City Council Agenda Bill

23183

Bill Number

**Subject: Consideration of a Draft Ordinance Amending Certain Sections of the BMC to Improve the City's Code Enforcement Procedures**

**Summary Statement:** The majority of the current land use enforcement code in Chapter 20 is not well defined and is inconsistent between sections making enforcement challenging in some cases. In addition, it is lacking flexibility, as a violation of the land use code requires criminal misdemeanor charges if a property owner cannot or will not cooperate. This proposal will clarify specific violations, improve the enforcement process, make initial violations of the land use code an infraction, and reserve criminal charges for repeat or more willful offenses. It also provides an additional option of recording a notice of violation against the title of the property if the violation remains unresolved.

**Previous Council Action:** Adoption of the 2021-2022 Budget

**Fiscal Impact:** Staff time to process the proposed code amendment is included in the PCDD Budget

**Funding Source:** Development Services Fund

**Attachments:**

1. STAFF MEMO
2. DRAFT ORDINANCE

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Committee Briefing - Vote Requested	12/06/2021	Pass Ordinance	Jennifer Kilmer, PCDD	15 minutes

**Recommended Motion:**

**Council Committee:**  
Planning Committee

**Agenda Bill Contact:**  
Jennifer Kilmer, Planning and Community Development, 360-778-8300

**Council Action:**

Reviewed By	Department	Date
<i>Gregory R. Aucutt</i>	Planning & Community Development	11/29/2021
<i>Alan A. Marriner</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021



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MEMORANDUM

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**TO:** *Bellingham City Council*

**CC:** *Mayor Fleetwood,*  
*Alan Marriner, City Attorney*

**FROM:** *Jennifer Kilmer, PCDD Code Compliance Officer*  
*Kurt Nabbefeld, Development Services Manager*

**SUBJECT:** *A Draft Ordinance Improving Land Use Enforcement*

**DATE:** *DECEMBER 6, 2021*

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Current land use enforcement code is generally undefined and inconsistent between sections, creating enforcement challenges. It is also lacking flexibility, as a violation of the land use code requires criminal misdemeanor charges if a property owner cannot or will not cooperate. With criminal misdemeanor charges, every unresolved code enforcement case must be pursued in a criminal trial. City Prosecution staff have been working beyond capacity and as a result, the most serious crimes must be prioritized. This fact, coupled with the current pandemic backlog and unclear enforcement code language has meant that land use code violations take longer to enforce and sometimes are extremely challenging due to our current process.

Generally, the PCDD has a high voluntary compliance rate while enforcing our codes, however this proposal includes amendments that will allow the vast majority of land use code violations to be resolved more efficiently and outside of the court system. In addition to streamlining the land use code enforcement process, it will better serve residents and property owners in the City of Bellingham by reducing initial violations of the land use code to an infraction, and by reserving criminal charges for repeat or willful offenses. This code change also provides an additional tool to allow the option of recording a notice of violation against the title of the property if the property owner does not resolve the violation. A notice of violation typically needs to be resolved and removed before a property is sold. At a minimum, a new owner would understand the nature of code violation is present on the property.

The amendments are supported by PCDD, Police and Legal staff and it is recommended that the City Council pass the attached ordinance to better serve the community.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE RELATING TO LAND USE AND ZONING, AMENDING BELLINGHAM MUNICIPAL CODE SECTIONS 20.08.020, 20.10.030, 20.10.036, 20.10.037, AND 20.12.040, AND CHAPTER 20.52 TO IMPROVE THE CITY'S CODE ENFORCEMENT PROCEDURES BY MAKING VIOLATION OF THE CITY'S SHORT-TERM RENTAL, ACCESSORY DWELLING UNIT, AND SIGN ORDINANCES AND OTHER SECTIONS OF TITLE 20 A CIVIL INFRACTION AND BY AUTHORIZING THE CITY TO RECORD A NOTICE OF VIOLATION AGAINST A PROPERTY THAT IS IN VIOLATION OF THE BELLINGHAM MUNICIPAL CODE.**

**WHEREAS**, the City desires to improve its code enforcement procedures to help ensure that property owners comply with the City's land use and zoning regulations and maintain their properties free of public nuisances;

**WHEREAS**, some sections of the City's Land Use Development Code, Title 20 of the Bellingham Municipal Code (BMC), do not specifically define a violation of the code;

**WHEREAS**, the City desires to define violations of its Land Use Development Code and to make convictions for such offenses civil infractions;

**WHEREAS**, BMC Chapter 20.52 Violations – Penalty currently makes a violation of Title 20, unless otherwise specified, either a misdemeanor or a civil penalty; and

**WHEREAS**, the City desires to make convictions for violations of Title 20, unless otherwise specified, civil infractions for the first two offenses and a misdemeanor for subsequent offenses; and

**WHEREAS**, the City desires to authorize the Director of the Planning & Community Development Department to record a Notice of Violation against a property that is in violation of the Bellingham Municipal Code;

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1: Bellingham Municipal Code (BMC) 20.08.020 is amended to add the following two definitions:**

"Illegal dwelling unit" means any unpermitted residence within a building or a portion of a building that includes sleeping, sanitation, and cooking facilities.

"Unpermitted use" means a use of property that is neither an outright permitted use under the zoning classification for the property or as determined by the Department nor a use for which the City has issued a conditional use permit.

**Section 2: Bellingham Municipal Code (BMC) 20.10.030 is amended as follows:**

**20.10.030 Use of manufactured homes, ~~and recreational~~ vehicles and trailers.**

6-23-20 Draft  
Ordinance (1)

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

**A. through B. [No Change].**

**C.** No recreational vehicle, automobile, other vehicle, or trailer, unless located in a safe parking area as defined by BMC Chapter 20.15 or an improved right of way, shall be used as a residence. "Recreational vehicles" as defined in BMC 20.08.020 shall not be occupied for any commercial use, except when permitted as a watchman's quarters at a construction site or other temporary structure pursuant to Section R107 of the International Residential Code.

**D. Violation.** Any person using a manufactured home, recreational vehicle, automobile, other vehicle, or trailer as a residence in violation of this section shall be subject to the penalties in BMC Chapter 20.52.

**Section 3: BMC 20.10.036(A) is amended as follows:**

**1. through 3. [No Change].**

4. Any property owner with an unpermitted ADU on its property shall be in violation of this subsection and subject to the penalties in BMC Chapter 20.52.

5. Any property owner with an ADU on its property that is in violation of any standard in subsection B shall be in violation of this subsection and subject to the penalties in BMC Chapter 20.52.

**Section 4: BMC 20.10.037 is amended as follows:**

**A. through D. [No change].**

**E. Violation – Penalty**

1. Any person operating a short-term rental without a required permit as described in subsection C above shall be in violation of this subsection and subject to the penalties in BMC Chapter 20.52.

2. Any person operating a short-term rental in violation of any standard outlined in subsections B and D above shall be in violation of this subsection and subject to the penalties in BMC Chapter 20.52 and permit revocation under subsection D. 17.

**Section 5: BMC 20.12.040 is amended as follows:**

**A. through F. [No Change].**

**G.** Any property owner with an unpermitted sign on its property or off premises shall be in violation of this subsection and subject to the penalties in BMC Chapter 20.52.

H. Any property owner with a sign on its property or in the adjacent public right of way that is in violation of any standard in subsections A. through F. shall be in violation of this subsection and subject to the penalties in BMC Chapter 20.52.

**Section 6: BMC 20.52.010 is amended as follows:**

**20.52.010 ~~20.52.010~~ — Misdemeanors ~~Violations~~ – Penalty.**

A. Any person violating any provision of this title, unless otherwise specified, is shall be guilty of a civil infraction misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$500 for the first offense and not more than \$1,000 for the second offense. Each violation shall be a separate offense, and in the case of continuing violation, each day's continuance shall be deemed a separate and distinct violation may be imprisoned for 90 days, fined a sum not to exceed \$1,000, or both imprisoned and fined.

B. A person violating any provision of this title, upon conviction for a third or subsequent offense, and unless otherwise specified, shall be guilty of having committed a misdemeanor and shall be punished by a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or by both such fine and imprisonment.

**Section 7: BMC 20.52.020 is amended as follows:**

**20.52.020 Miscellaneous Violations Defined ~~Civil penalty~~.**

~~In addition to any other sanction or remedial injunctive procedure which may be available at law or equity, any person failing to comply with the final order issued by the hearing examiner, planning director, or city council shall be subject to cumulative civil penalty in an amount not to exceed \$100.00 per day from the date set for compliance till such order is complied with. Such civil penalty shall be collected by civil action brought in the name of the city. The affected body shall notify the city attorney in writing the name of any such person subject to such penalty in the amount thereof; such officer shall take appropriate action to collect the same.~~

A. Permit or hearing examiner condition violation. Any person failing to comply with a condition of a permit or hearing examiner decision issued under BMC Titles 16, 17, 20, 21, 22, or 23 shall be in violation of this chapter and subject to the penalties in this chapter, or in the alternative, the applicable penalties in BMC Titles 16, 17, 20, 21, 22, or 23.

B. Illegal dwelling unit. Any person constructing, operating, or living in an illegal dwelling unit shall be in violation of this section and subject to the penalties in this chapter.

C. Unpermitted use. Use of property that is neither an outright permitted use under the zoning classification for the property nor a use for which the City has issued a conditional use permit shall be a violation of this section and subject to the penalties in this chapter.

**Section 8: A new section BMC 20.52.030 is adopted as follows:**

**20.52.030 Notice of Violation.**

A. For purposes of BMC 20.52.030, “responsible party” means any individual or entity that controls or possesses the property or may have a duty to remedy the alleged violation of BMC Titles 16, 17, 20, 21, 22, or 23 or applicable state law. A “responsible party” may include, but is not limited to, the property owner, lessor, lessee, landlord, tenant, occupant, or financial institution with an interest in the property.

B. Notice of Violation. Whenever the Director determines that a property is in violation of the BMC Titles 16, 17, 20, 21, 22, or 23 or applicable state law, the Director may issue a notice of violation to a responsible party which may include the property owner and/or a financial institution with an interest in the property. The notice of violation shall include the following information:

1. The street address or assessor’s parcel number of the property;
2. The name of the property’s owner of record;
3. The code sections in violation;
4. A description of the property’s condition which violates the applicable codes;
5. A list of necessary corrections to bring the property into compliance;
6. A deadline or specific date to correct the violations listed in the notice of violation;
7. Reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline including, but not limited to, administrative abatement, civil penalties and infractions, revocation of permits, recordation of the notice of violation, the withholding of future municipal permits, criminal prosecution, and civil injunction.

C. Once the Director has issued a notice of violation to a responsible party and the property remains in violation after the deadline established in the notice of violation, the Director may record a notice of violation with the Auditor of Whatcom County.

1. Before recordation, the Director shall provide to the responsible party and the property owner a letter stating that a notice of violation will be recorded, unless a written request to appeal pursuant to the procedures outlined in subsection E is filed. The letter shall be served pursuant to any of the methods of service set forth in subsection D. The Director may also send a courtesy copy of the letter to any applicable financial institution.
2. If the Director does not receive a timely written request to appeal pursuant to the procedures set forth below, the Director may record the notice of violation if the violation remains.

3. The recorded notice of violation shall include the name of the property owner, the property's assessor's parcel number, the parcel's legal description, and a copy of the latest notice of violation.

D. A copy of the recorded notice of violation shall be served on the responsible party and property owner by posting a notice in a conspicuous place on or in front of the property in question and by either one of the following methods:

1. By personal service on the owner(s); or
2. By registered or certified mail addressed to the owner(s) of the property at their last-known address. If there is no known address for the owner, the notice shall be sent to the property address. Service shall be completed at the time of deposit into the United States mail.

E. Appeal to the Hearing Examiner.

1. The Director's letter to record the notice of violation may be appealed in accordance with the procedures set forth in BMC 21.10.250. The failure of any responsible party or property owner to file a timely appeal shall constitute a waiver of the right to an administrative hearing and shall not affect the validity of the recorded notice of violation.
2. If the hearing examiner affirms the Director's decision, the Director may proceed to record the notice of violation.
3. If the hearing examiner reverses the Director's decision that the property is in violation of City Codes or applicable State Codes, the hearing examiner shall invalidate the Director's decision to record the notice of violation.

F. Notice of Compliance.

1. When the violations listed on the notice of violation have been corrected, the responsible party or property owner may file with the Director a written request for a notice of compliance.
2. Once the Director receives this request, the Director shall re-inspect the property within thirty (30) calendar days to determine whether the violations listed in the notice of violation have been corrected and whether all necessary permits have been issued and final inspections have been performed and approved.
3. The Director shall serve a notice of compliance on the responsible party or property owner in the manner provided in subsection D of this chapter if the Director determines that:
  - a. All violations listed in the recorded notice of violation have been corrected;
  - b. All necessary permits have been issued and finalized; and
  - c. The responsible party or property owner requesting the notice of compliance has reimbursed the city for all administrative costs including all costs incurred in the investigation, inspection, re-inspection, title search,

appeal hearing, and any other processing costs associated with the violations specified on the notice of violation.

- G. If the Director denies a request to issue a notice of compliance, the Director shall serve the responsible party or property owner with a written explanation setting forth the reasons for the denial. The written explanation shall be served by any of the methods of service set forth in subsection D of this section. The Director's decision denying a request to issue a notice of compliance constitutes the final decision in the matter and is not appealable to the hearing examiner.
- H. If a request to appeal has not been timely filed or after the hearing examiner affirms the Director's decision to record a notice of violation, the city may withhold land use permits or permits for any alteration, repair or construction pertaining to any existing or new structures or signs on the property identified in the notice of violation or any permits pertaining to the use and development of the real property or the structure. The city may withhold permits until a notice of compliance has been issued by the Director. The city may not withhold permits which are necessary to obtain a notice of compliance or which are necessary to correct serious health and safety violations.
- I. The Director shall issue a signed notice of compliance stating that it cancels the notice of violation once all violations have been corrected, all necessary permits have been issued and finalized, and all administrative costs have been paid. The notice of compliance shall be recorded by the property owner at the property owner's expense. The recordation of the notice of compliance shall have the effect of canceling the recorded notice of violation.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor

**ATTEST:** \_\_\_\_\_  
Finance Director

6-23-20 Draft  
Ordinance (6)

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

**APPROVED AS TO FORM:**

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Office of the City Attorney

Published:

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6-23-20 Draft  
Ordinance (7)

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



# City Council Agenda Bill

23184

Bill Number

**Subject: A Resolution Establishing Juneteenth as a City Holiday and Setting Forth the Revised City Holiday Schedule**

Summary Statement: Juneteenth is the oldest nationally celebrated commemoration of the emancipation of those who have been enslaved in the United States. Juneteenth became a federal holiday and a Washington State legal holiday earlier this year. The attached resolution adopts Juneteenth as an official City holiday and also establishes Juneteenth as a paid holiday for City employees starting in 2022. Establishing Juneteenth as an official City holiday will bring awareness and consciousness to a crucial day in history. It also designates a day not just to reflect on the harms of the past, but to actively work towards dismantling discriminatory systems and creating an antiracist future in our city and country.

Previous Council Action: **N/A**

Fiscal Impact: **\$130,000 included in the Mid-Biennium Budget**

Funding Source: **Multiple Funds**

Attachments: 1. JUNETEENTH HOLIDAY RESOLUTION

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Committee Briefing - Vote Requested	12/06/2021	Pass Resolution	Mayor Seth Fleetwood	5 minutes

**Recommended Motion:**

**Council Committee:**  
Committee Of The Whole

**Agenda Bill Contact:**  
Sarah Chaplin, Senior Assistant City Attorney, 360-778-8270

**Council Action:**

Reviewed By	Department	Date
<i>Alan A. Marriner</i>	Legal	11/30/2021
<i>Sarah W. Chaplin</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION ESTABLISHING JUNETEENTH AS A CITY HOLIDAY AND  
SETTING FORTH THE REVISED CITY HOLIDAY SCHEDULE**

**WHEREAS**, on January 1, 1863, the Emancipation Proclamation legally ended slavery in the Confederate states, but the low presence of Union troops and refusal of white slaveowners to comply with the proclamation prolonged slavery in Texas and in other states; and

**WHEREAS**, on June 19, 1865, two and one-half years after the Emancipation Proclamation, a Union general and 2,000 federal troops arrived in Galveston, Texas to enforce the emancipation of slaves and inform the last of those enslaved within the borders of the United States that they were free; and

**WHEREAS**, June 19 has been celebrated in smaller communities across the nation as Juneteenth and also is known as Freedom Day, Jubilee Day, Liberation Day, Emancipation Day, and Black Independence Day; and

**WHEREAS**, Juneteenth is the oldest nationally celebrated commemoration of the emancipation of those who had been enslaved in the United States; and

**WHEREAS**, while over 155 years have passed since chattel slavery was officially ended in the United States, slavery has left a catastrophic and unrelenting legacy of trauma for generations of Black Americans; and

**WHEREAS**, our country and our city continue to struggle with dismantling discriminatory systems and structural racism; and

**WHEREAS**, establishing Juneteenth as an official City holiday brings awareness and consciousness to a crucial day in history and is a distinct step toward achieving racial equity, working toward an antiracist future, and ending the historical and continued harms of slavery; and

**WHEREAS**, on May 13, 2021, Washington Governor Jay Inslee signed House Bill 1016 establishing Juneteenth as a legal holiday for state employees starting in 2022; and

**WHEREAS**, on June 17, 2021, United States President Joe Biden signed the Juneteenth National Independence Day Act into Law immediately establishing Juneteenth as a legal holiday for federal employees; and

**WHEREAS**, in order to recognize Juneteenth as an official City holiday, the City Council desires to amend any previous resolutions setting forth the City holiday schedule; and

**WHEREAS;** the budget impact of this resolution shall be reflected in the 2021 Mid-Biennium Budget Adjustment Ordinance;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM THAT:**

**Section 1.** The City of Bellingham will honor every nineteenth day of June as Juneteenth.

**Section 2.** Beginning in 2022, employees of the City of Bellingham shall be entitled to the following paid holidays during each calendar year unless otherwise provided in a valid applicable collective bargaining contract:

- The first day of January (New Year's Day),
- The third Monday of January (Martin Luther King, Jr.'s Birthday),
- The third Monday of February (President's Day),
- The nineteenth day of June (Juneteenth),
- The last Monday of May (Memorial Day),
- The fourth day of July (Independence Day),
- The first Monday in September (Labor Day),
- The eleventh day of November (Veterans Day),
- The fourth Thursday of November (Thanksgiving Day),
- The day immediately following Thanksgiving Day,
- The twenty-fifth day of December (Christmas Day),
- One day either immediately before or immediately after the Christmas holiday, as designated by the City.

**Section 3.** If a holiday falls on a weekend, the City shall follow its established policies and procedures for designating the normal workday closest to the holiday as the observed holiday.

**Section 4.** This resolution does not affect floating holidays or other paid days off provided by the City.

**Section 5.** The holiday schedule set forth in Section 2 of this resolution hereby supersedes any previous versions of the City holiday schedule set forth in any resolutions, amendments, or other enactments setting forth a holiday schedule or changes to such schedule.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Office of the City Attorney



# City Council Agenda Bill

23145

Bill Number

**Subject: An Ordinance Amending the 2021-2022 Biennial Budget, Providing for Adoption of the Mid-Biennium Adjustments to the Biennial Budget Pursuant to the Terms of RCW 35.34.130**

Summary Statement: The attached ordinance is the culmination of the 2021-2022 Mid-Biennium Budget adjustment process that began in early October. It adds new Citywide revenues of \$64.9M, including \$12.6M in the General Fund, and Citywide expenditures of \$66M, including \$8.9M in the General Fund. It also adds, removes and changes budgeted positions throughout the City for a net increase of 49.5 full time equivalents.

Previous Council Action: Adoption of the 2021-2022 Biennial Budget; Mid-Biennium Adjustment Introduction October 11th; Work Sessions October 25th, November 8th and 22nd; Public Hearing November 8th and 22nd

Fiscal Impact: The Mid-Biennium Adjustment adds Citywide expenditures of \$66M, including \$8.9M in the General Fund

Funding Source: Citywide Funds

Attachments: 1. ORDINANCE

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Committee Briefing - Vote Requested	12/06/2021	Pass Ordinance	Forrest Longman, Deputy Finance Director	2 minutes

Recommended Motion:

Council Committee:  
Committee Of The Whole

Agenda Bill Contact:  
Forrest Longman, 360-778-8005

Council Action:

Reviewed By	Department	Date
<i>Andrew D. Asbjornsen</i>	Finance Department	11/30/2021
<i>Matthew T. Stamps</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE 2021-2022 BIENNIAL BUDGET, PROVIDING FOR ADOPTION OF THE MID-BIENNIUM ADJUSTMENTS TO THE BIENNIAL BUDGET PURSUANT TO THE TERMS OF RCW 35.345.130**

**WHEREAS**, proposals for adjusting the budget were compiled and presented to the Bellingham City Council on October 11, 2021; and

**WHEREAS**, the City Council has conducted work sessions to review and evaluate proposed budget adjustments; and

**WHEREAS**, a Public Hearing on the City of Bellingham's 2021-2022 Revenue Forecast was held on October 11, 2021: and

**WHEREAS** Public Hearings on the City of Bellingham's 2021-2022 Mid-Biennium Adjustments were held on November 8 and November 22, 2021.

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1** – The City of Bellingham's 2021-2022 Biennial Budget is hereby amended by the mid-biennium adjustment on file with the City Clerk totaling \$66,021,979 for an amended total budget of \$ 780,364,311 over the biennium.

**Section 2** – The estimated revenues and appropriations for the following funds are adjusted by increasing the estimated revenues and appropriations by the amounts below:

<b>Fund or Department</b>	<b>Estimated Beginning Reserve</b>	<b>Change In Revenue</b>	<b>New 2021- 2022 Revised Revenue</b>	<b>Changes In Expenditure</b>	<b>New 2021- 2022 Revised Expenditure</b>	<b>Estimated Ending Reserve</b>
GF - Non-Departmental		9,507,483	160,353,995	3,813,739	10,994,694	
GF - Mayor			1,137,218	260,432	2,587,207	
GF - City Council			672,665	11,236	1,328,070	
GF - Hearing Examiner			44,000	5,237	270,581	
GF - Museum			10,000	12,892	2,785,448	
GF - Library			134,200	152,546	11,453,138	
GF - Finance Department			2,954,896	290,861	5,430,925	
GF - Human Resources			1,579,181	161,044	4,636,790	
GF - ITSD			2,612,377	386,406	6,852,555	
GF - Legal			1,866,719	360,651	4,371,365	
GF - Municipal Court		(300,000)	2,196,900	131,049	5,191,670	
GF - Parks and Rec.			2,578,235	664,301	18,339,288	

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GF – Planning & CD			218,000	287,310	10,002,026	
GF - Fire	2,600,000		13,657,083	1,782,523	48,233,684	
GF - Police	776,797		7,087,263	593,713	59,419,819	
<b>001 General Fund Subtotal</b>	<b>32,233,376</b>	<b>12,584,280</b>	<b>197,102,732</b>	<b>8,913,940</b>	<b>191,897,262</b>	<b>37,438,846</b>
111 Street	12,050,372	3,165,304	44,366,522	2,233,819	46,976,963	9,439,932
126 Library Gift	217,692	100,000	200,000	100,000	373,328	44,365
136 Environ. Remediation	6,945,492	1,400,000	4,971,830	544,938	5,588,727	6,328,595
141 1st 1/4% REET	8,084,229		3,369,396	350,000	9,388,333	2,065,292
142 2nd 1/4% REET	9,279,451		3,476,790	250,000	4,579,164	8,177,076
151 Police Federal Equit.	111,739		72,998		66,921	117,815
152 Asset Forfeiture	105,116		2,077		14,408	92,785
153 Criminal Justice	121,394		783,560		744,413	160,541
160 Public Safety Dispatch	1,464,497	253,147	16,676,185	508,284	17,340,958	799,725
161 Transportation Fund	7,926,806	1,058,490	26,190,542		27,893,047	6,224,301
162 Pub. Educ & Gov Acc TV	290,258		556,202		767,683	78,777
163 PEG Fund	692,552		267,986		224,736	735,802
173 Greenways III	9,166,994		12,084,297	(1,638,000)	11,825,886	9,425,406
177 Park Impact	9,273,889		3,869,764	2,375,000	11,223,346	1,920,308
178 Sportsplex	57,604		1,542		0	59,145
180 Tourism	676,007	750,700	3,404,963	500,000	2,851,770	1,229,200
181 Low Income Housing	8,479,887		8,329,706	(800,000)	16,785,790	23,803
182 Aff. Housing Sales Tax			4,497,710	50,625	3,050,625	1,447,085
190 CDBG		1,750,000	5,466,181	1,750,000	5,466,181	
191 HOME		750,000	4,543,363	750,000	4,543,363	
224 2004 Sportsplex Acq. LTGO			580,000		559,225	20,775
225 2004 PFD/Civic Field LTGO			1,548,239		1,548,239	
226 2011 QEC Bond	4,113,552		854,613			4,968,165
227 2016 PFD Ref. Bonds			2,148,963		2,148,963	
228 2014 Solid Waste LTGO			1,315,146		1,315,146	
235 Debt Service			1,234,443		1,234,443	
245 LID Guaranty Fund	78,145		2,026			80,172
371 Waterfront Const.	8,526,591		2,293,482			10,820,073
410 Water Fund	12,714,850		46,379,370	208,613	57,049,426	2,044,795
411 Watershed Fund	11,881,653		11,413,587	5,000,000	15,706,537	7,588,703
420 Wastewater Fund	50,836,297	38,006,427	86,221,049	38,645,098	130,743,712	6,313,634
430 Storm Water	7,018,962	300,000	24,830,073	57,183	29,467,087	2,381,948
456 Cemetery	314,788		721,949	3,661	905,495	131,242
460 Golf Course	47,803	310,000	3,073,940	326,987	3,118,196	3,546

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465 Parking Services	2,344,527		4,697,972	9,021	5,661,342	1,381,157
470 Medic One	140,570	2,627,110	19,793,863	2,546,671	19,759,832	174,600
475 Development Services	7,350,970		6,941,050	54,918	8,742,716	5,549,304
510 Fleet Administration	8,704,661	111,000	9,738,267	348,434	14,073,647	4,369,281
511 Radio Comm.	1,205,955		2,640,825	120,211	2,178,332	1,668,448
520 Purchasing	502,877		7,112,321	(94,929)	6,736,314	878,884
530 Facilities	1,531,347	700,000	36,090,877	712,419	37,524,735	97,489
540 Tech and Telecom	439,861		1,408,585		1,067,579	780,866
541 Technology Repl	2,168,341		693,203		2,695,255	166,289
542 CIRF	816,647		3,627,999	125,000	4,157,737	286,909
543 GIS Fund	43,358		915,137		906,284	52,210
550 Claims & Litigation	3,797,592	1,000,000	4,102,938	1,480,000	4,389,302	3,511,228
561 Unemployment	586,077		298,915		351,145	533,848
562 Workers Comp	1,177,770		1,130,325		1,683,142	624,953
565 Health Benefits Fund	4,008,964		32,160,740	24,215	36,089,339	80,366
570 PW Administration	2,403,603		15,918,423	263,401	17,141,450	1,180,576
612 Firefighter's Pensions	17,265,866		4,559,236	1,235	3,680,429	18,144,673
613 Police Off. Pensions	10,373,314		333,794	1,235	2,114,076	8,593,032
701 Greenways Endowment	5,274,666		1,867,047		1,483,432	5,658,281
702 Nat Res Protect & Restore	3,943,732		412,063	300,000	571,518	3,784,277
965 Public Facilities District	1,912,714		3,103,240		3,957,330	1,058,625
<b>Grand Total</b>	<b>278,703,410</b>	<b>64,866,458</b>	<b>680,398,048</b>	<b>66,021,979</b>	<b>780,364,311</b>	<b>178,737,147</b>

**Section 3** – The mid-biennium budget adjustment net increases the City of Bellingham’s full time equivalent (FTE) positions by 49.5, for a total of 997.8.

**Section 4** – Changes to FTE count and classifications by department are shown below:

Classification	FTE Change	Comments
<b>Finance Department</b>		
Office Assistant 2	(1.00)	Reclassified
Accounting Assistant 2	1.00	
<b>Finance - Total FTE Change</b>	<b>0.00</b>	
<b>Legal Department</b>		
Office Technician	(0.50)	Reclassified
Legal Assistant	0.50	
Assist. City Attorney Sr.	0.25	Increased 0.8 to 1.0
<b>Legal - Total FTE Change</b>	<b>0.25</b>	
<b>Fire Department</b>		
Captain	0.00	Term Limit Removed
Dispatch Supervisor	1.00	New

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Firefighter	13.00	New
Paramedic	10.00	New
<b>Fire - Total FTE Change</b>	<b>24.00</b>	
<b>Human Resources Department</b>		
Financial Technician 1	(0.80)	
Payroll Assistant	1.00	Reclassified
Financial Technician 2	(1.00)	
Payroll Assistant	0.80	Reclassified
Program Manager 2	(1.00)	
HR Generalist	1.00	Reclassified
Program Manager 2	(1.00)	
Program Manager 1	1.00	Reclassified
HR Analyst	1.00	New - 3-year term
<b>Human Resources - Total FTE Change</b>	<b>1.00</b>	
<b>Information Technology Services</b>		
Office Assistant 2	(1.00)	
Office Assistant 3	1.00	Reclassified
IT Specialist	1.00	New
Sr. Network Analyst	1.00	New
System Process Analyst	1.00	New
<b>Information Tech. Svcs. - Total FTE Change</b>	<b>3.00</b>	
<b>Library</b>		
Library Specialist 2	(1.00)	
Education Program Activities Coord.	1.00	Reclassified
Library Assistant	0.625	New
Library Assistant	0.625	New
Library Assistant	0.625	New
Library Assistant	0.625	New
Library Clerk	(1.00)	
Library Clerk	0.625	New increase
Library Clerk	0.625	
<b>Library - Total FTE Change</b>	<b>2.75</b>	
<b>Mayor's Office</b>		
Assistant Communications Director	1.00	New
<b>Mayor's Office - Total FTE Change</b>	<b>1.00</b>	
<b>Planning and Community Development Department</b>		
Planner 1	(1.00)	
Planner 2	1.00	Reclassified
Communications Coordinator	1.00	New
<b>Planning and Comm. Dev. - Total FTE Change</b>	<b>1.00</b>	
<b>Police Department</b>		
Dispatcher	3.00	New
IT Specialist	1.00	New
Public Information Officer	1.00	New
<b>Police - Total FTE Change</b>	<b>5.00</b>	
<b>Parks and Recreation Department</b>		
Volunteer Coordinator	(1.00)	Reclassified

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Parks Technician	1.00	
Office Assistant 3	(2.00)	Reclassified
Administrative Secretary	2.00	
Park Worker	(1.00)	Reclassified
Parks Technician	1.00	
Custodial Maintenance Worker	(1.00)	Reclassified
Park Worker	1.00	
Accounting Tech	1.00	New
Volunteer Coordinator	1.00	New
Maintenance Aide III	(0.75)	New increase/reclassification
Park Worker	1.00	
Maintenance Aide III	(0.75)	New increase/reclassification
Park Worker	1.00	
Maintenance Aide III	(0.75)	New increase/reclassification
Park Technician	1.00	
Maintenance Aide III	(0.75)	New increase/reclassification
Park Worker	1.00	
Maintenance Aide III	(0.75)	New increase/reclassification
Park Worker	1.00	
Maintenance Aide III	(0.75)	New increase/reclassification
Park Worker	1.00	
Maintenance Aide III	(0.75)	New increase/reclassification
Park Worker	1.00	
<b>Parks and Recreation - Total FTE Change</b>		<b>3.75</b>
<b>Public Works</b>		
Accounting Assistant 2	(1.00)	
Accounting Technician	1.00	Reclassified
Maintenance Worker 3	(7.00)	
Facilities Maintenance Worker	7.00	Reclassified
Custodial Maintenance Worker 1	(2.00)	
Custodial Maintenance Lead	2.00	Reclassified
Warehouse Worker	(1.00)	
Fleet Service Specialist	1.00	Reclassified
Facilities Maintenance Worker	(2.00)	
Facilities Maintenance Technician	2.00	Reclassified
Service Writer	(1.00)	
Fleet Service Specialist	1.00	Reclassified
Office Assistant 3	(1.00)	
Administrative Secretary	1.00	Reclassified
Natural Resources Prog. Tech 1	(1.00)	
Natural Resources Prog. Tech 2	1.00	Reclassified
NPDES Coordinator	(1.00)	
Program Coordinator	1.00	Reclassified
AIS Program Staff	(1.50)	
AIS Program Lead	1.50	Reclassified
Plant Operator	2.00	New
Education Prog. Coordinator	0.25	Increase 0.5 to 0.75 FTE
Education Prog. Coordinator	0.25	Increase 0.5 to 0.75 FTE
Education Prog. Coordinator	0.25	Increase 0.75 to 1.0 FTE
Solid Waste Manager	1.00	New
Fiber Engineer	1.00	New
Sr. Project Engineer	1.00	New

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Ordinance - 2021-2022 Mid-Biennium Budget Adjustment.docx (5)

Utility Worker	2.00	New
<b>Public Works - Total FTE Change</b>	<b>7.75</b>	
<b>CITYWIDE FTE CHANGE</b>	<b>49.50</b>	

**Section 3** – The related pay plans for the City of Bellingham, adjusting employees’ pay rates to reflect annual cost of living increases, are hereby adopted.

**Section 4** – All employees who are members of a bargaining unit shall receive such pay and benefits as are provided for in the appropriate collective bargaining agreement.

**Section 5** – The budget adjustment amends the Capital Facilities Plan to include capital projects included in this budget adjustment, as well projects approved by ordinance during the year and amends the Bellingham Comprehensive Plan. The list of projects contained in the Capital Facilities Plan shall be considered a part of the Capital Facilities Element of the Comprehensive Plan.

**Section 6** – If and provision of this ordinance or the application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor

**ATTEST:** \_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

\_\_\_\_\_

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Office of the City Attorney

Published:

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# City Council Agenda Bill

23185

Bill Number

Subject: **Council 2022 Work Plan Priorities**

Summary Statement: During the Committee of the Whole, the full Council will discuss its work plan priorities for the upcoming year (2022). This will also be an opportunity for Council members to identify shared priorities and work plan items that they want to see advanced in 2022. The Council will provide direction to the Administration and Council staff as appropriate.

Previous Council Action: **N/A**

Fiscal Impact: **N/A**

Funding Source: **N/A**

Attachments:

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Committee Briefing - Direction Requested	12/06/2021	Provide Direction	Council President Hannah Stone	45 minutes

**Recommended Motion:**

**Council Committee:**  
Committee Of The Whole

**Agenda Bill Contact:**  
Mark Gardner, 778-8204

**Council Action:**

Reviewed By	Department	Date
<i>Mark J. Gardner</i>	Council Administration	11/29/2021
<i>Alan A. Marriner</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021



# City Council Agenda Bill

23186

Bill Number

Subject: **Authorization of A/P Transactions Issued November 05, 2021 through November 12, 2021**

Summary Statement: In accordance with state law, approval is requested for the payments issued for City goods and services received.

A/P EFT and EDI transactions, and check(s) #556960 through #557049, were issued during the pay period of November 05, 2021 through November 12, 2021, in the amount of \$2,275,999.95.

Previous Council Action: **2021-2022 Adopted Budget**

Fiscal Impact: **Payments issued for amounts shown above are within legally appropriated budget.**

Funding Source: **Citywide Funds**

Attachments:

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Consent Agenda	12/06/2021	Authorize Accounts Payable	N/A	0 minutes

Recommended Motion:

Council Committee:

Agenda Bill Contact:  
Karla Stave

Council Action:

Reviewed By	Department	Date
<i>Andrew D. Asbjornsen</i>	Finance Department	11/16/2021
<i>Matthew T. Stamps</i>	Legal	11/16/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021



# City Council Agenda Bill

23187

Bill Number

Subject: **Authorization of A/P Transactions Issued November 13, 2021 through November 18, 2021**

Summary Statement: In accordance with state law, approval is requested for the payments issued for City goods and services received.

A/P EFT and EDI transactions, and check(s) #557050 through #557094, were issued during the pay period of November 13, 2021 through November 18, 2021, in the amount of \$1,016,964.89.

Previous Council Action: **2021-2022 Adopted Budget**

Fiscal Impact: **Payments issued for amounts shown above are within legally appropriated budget.**

Funding Source: **Citywide Funds**

Attachments:

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Consent Agenda	12/06/2021	Authorize Accounts Payable	N/A	0 minutes

**Recommended Motion:**

**Council Committee:**

**Agenda Bill Contact:**  
Karla Stave

**Council Action:**

Reviewed By	Department	Date
<i>Andrew D. Asbjornsen</i>	Finance Department	11/30/2021
<i>Matthew T. Stamps</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021



# City Council Agenda Bill

23188

Bill Number

Subject: **Authorization of A/P Transactions Issued November 19, 2021 through November 24, 2021**

Summary Statement: In accordance with state law, approval is requested for the payments issued for City goods and services received.

A/P EFT and EDI transactions, and check(s) #557098 through #557213, were issued during the pay period of November 19, 2021 through November 24, 2021, in the amount of \$1,867,773.72.

Previous Council Action: **2021-2022 Adopted Budget**

Fiscal Impact: **Payments issued for amounts shown above are within legally appropriated budget.**

Funding Source: **Citywide Funds**

Attachments:

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Consent Agenda	12/06/2021	Authorize Accounts Payable	N/A	0 minutes

**Recommended Motion:**

**Council Committee:**

**Agenda Bill Contact:**  
Karla Stave

**Council Action:**

Reviewed By	Department	Date
<i>Andrew D. Asbjornsen</i>	Finance Department	11/30/2021
<i>Matthew T. Stamps</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021



# City Council Agenda Bill

23189

Bill Number

Subject: **Authorization of Payroll Labor Cost Payments Dated November 01, 2021 to November 15, 2021**

Summary Statement: For payroll payments related to the period of November 01, 2021 to November 15, 2021

Totals: \$3,853,796.19

Previous Council Action: **2021-2022 Adopted Budget**

Fiscal Impact: **Payroll labor costs payments issued for amounts shown above are within legally appropriated budget**

Funding Source: **Citywide Funds**

Attachments:

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Consent Agenda	12/06/2021	Authorize Payroll	N/A	0 minutes

**Recommended Motion:**

**Council Committee:**

**Agenda Bill Contact:**  
Sharon Martin, HR Payroll

**Council Action:**

Reviewed By	Department	Date
<i>Andrew D. Asbjornsen</i>	Finance Department	11/30/2021
<i>Matthew T. Stamps</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021



# City Council Agenda Bill

23190

Bill Number

Subject: **Resolution Authorizing Submittal of Four Brian Abbott Fish Barrier Removal Board Grant Applications**

Summary Statement: The Public Works Department is proposing to submit four grant applications for the 2023 Brian Abbott Fish Barrier Removal Board funding managed by the Washington State Recreation and Conservation Office (RCO). The grants will help fund fish passage improvement projects described in the Surface and Stormwater Comprehensive Plan along Padden Creek at 12th St, 14th St, and 30th St, and Squalicum Creek at Baker Creek. As part of the application process, the RCO requires a Council resolution authorizing submittal of application. The proposed resolution is attached, together with a sample RCO grant agreement.

Previous Council Action: **AB 22657 and Resolution 2020-18 authorizing RCO application for Padden Cr at 30th St (not funded)**

Fiscal Impact: **Estimated \$980,000 (Grant) \$175,000 (City)**

Funding Source: **Fund 430 (Storm), to be included in 2023-2024 Budget**

Attachments: 1. AUTHORIZING RESOLUTION\_RCO\_FBRB  
2. SAMPLE\_RCO\_AGREEMENT

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Consent Agenda	12/06/2021	Pass Resolution	Eric Johnston, PW Director	0 minutes

Recommended Motion:

Council Committee:

Agenda Bill Contact:

Analiese Burns, PW Habitat and Restoration Manager, 360-778-7968

Council Action:

Reviewed By	Department	Date
<i>Eric C. Johnston</i>	Public Works	11/30/2021
<i>Matthew T. Stamps</i>	Legal	11/30/2021
<i>Seth M. Fleetwood</i>	Executive	11/30/2021

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE CITY OF BELLINGHAM TO APPLY FOR AND ENTER INTO FOUR BRIAN ABBOTT FISH BARRIER REMOVAL BOARD GRANTS FOR FISH PASSAGE BARRIER IMPROVEMENTS IN PADDEN CREEK AND SQUALICUM CREEK**

**WHEREAS**, the City of Bellingham desires to apply to the Washington State Recreation and Conservation Office (“RCO”) for grant assistance for the following projects (collectively, the “Projects”):

- Padden Creek at 30th Street Fish Passage Improvement Project (Project No. 21-1404)
- Padden Creek at 14th Street Fish Passage Improvement Project (Project No. 21-1418)
- Padden Creek at 12th Street Fish Passage Improvement Project (Project No. 21-1419)
- Squalicum Creek at Baker Creek Fish Passage Improvement Project (Project No. 21-1420)

**WHEREAS**, this resolution authorizes the persons identified below in Section 2 to act as the City’s authorized representative/agent and to legally bind the City with respect to the above Projects for which the City seeks grant assistance managed through the RCO.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM THAT:**

1. The City has applied for or intends to apply for funding assistance managed by the RCO for the Projects.
2. The Bellingham City Council hereby authorizes the following persons or persons holding specified titles/positions (and subsequent holders of those titles/positions) to execute the following documents binding the City on the above projects:

<b>Grant Document</b>	<b>Name of Signatory or Title of Person Authorized to Sign</b>
Grant application (submission thereof)	Habitat and Restoration Manager
Project contact (day-to-day administering of the grant and communicating with the RCO)	Habitat and Restoration Manager
RCO Grant Agreement (Agreement)	Mayor
Agreement amendments	Mayor

Authorizing property and real estate documents (Notice of Grant, Deed of Right or Assignment of Rights if applicable). These are items that are typical recorded on the property with the county.	Mayor
---	-------

The above persons are considered an “authorized representative(s)/agent(s)” for purposes of the documents indicated. The City shall comply with a request from the RCO to provide documentation of persons who may be authorized to execute documents related to the grant.

3. City staff have reviewed the sample RCO Grant Agreement on the Recreation and Conservation Office’s website at: <https://rco.wa.gov/wp-content/uploads/2019/06/SampleProjAgreement.pdf>. The City understands and acknowledges that if offered an agreement to sign in the future, it will contain an indemnification and legal venue stipulation and other terms and conditions substantially in the form contained in the sample Agreement and that such terms and conditions of any signed Agreement shall be legally binding on the City if the City’s representative/agent enters into an Agreement on the City’s behalf. The Office reserves the right to revise the Agreement prior to execution.
4. The City acknowledges and warrants, after conferring with its legal counsel, that its authorized representative(s)/agent(s) have full legal authority to act and sign on behalf of the organization for their assigned role/document.
5. Grant assistance is contingent on a signed Agreement. Entering into any Agreement with the Office is purely voluntary on the City’s part.
6. The City understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the Agreement, the characteristics of the project, and the characteristics of our organization.
7. The City further understands that prior to our authorized representative(s)/agent(s) executing any of the documents listed above, the RCO may make revisions to its sample Agreement and that such revisions could include the indemnification and the legal venue stipulation. Our organization accepts the legal obligation that we shall, prior to execution of the Agreement(s), confer with our authorized representative(s)/agent(s) as to any revisions to the project Agreement from that of the sample Agreement. We also acknowledge and accept that if our authorized representative(s)/agent(s) executes the Agreement(s) with any such revisions, all terms and conditions of the executed Agreement shall be conclusively deemed to be executed with our authorization.
8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.

9. The City acknowledges that if it receives grant funds managed by the RCO, the RCO will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the RCO after we incur grant eligible and allowable costs and pay them. The RCO may also determine an amount of retainage and hold that amount until all project deliverables, grant reports, or other responsibilities are complete.
10. The City acknowledges that any property owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity unless otherwise allowed by grant program policy, or RCO in writing and per the Agreement or an amendment thereto.
11. Our organization acknowledges that any property not owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant as required by grant program policies unless otherwise provided for per the Agreement or an amendment thereto.
12. This resolution is deemed to be part of the formal grant application to the RCO.
13. The City warrants and certifies that this resolution was properly and lawfully adopted following the requirements of the City and applicable laws and policies and that the City has full legal authority to commit to the warranties, certifications, promises and obligations set forth herein.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Finance Director

RESOLUTION - 3

**APPROVED AS TO FORM:**

---

Office of the City Attorney

RESOLUTION - 4

*This agreement template is used by the Recreation and Conservation Office (RCO) for the management of the grant and other programs it administers. This example is provided for review by applicants' and their counsel as they seek grant funding managed by RCO.*

*This grant agreement will contain changes at issuance based on the specifics of each funded project. For instance, changes will occur based on the applicant, funding program, fund source, project type, rule or law changes, and other factors. Applicants that receive funding from RCO are encouraged to thoroughly review their customized grant agreement prior to final signature.*

*RCO reserves the right to make updates to this template.*

## **RCO GRANT AGREEMENT**

**Project Name:** \_\_\_\_\_

**Project Number:** \_\_\_\_\_

**Issuance Date:** \_\_\_\_\_

### **A. PARTIES OF THE GRANT AGREEMENT.**

1. This Recreation and Conservation Office Grant Agreement (Agreement) is entered into between the State of Washington {FundingAgency} Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and {PrimarySponsorNameAddress} {SecondarySponsorNameAddress}, and shall be binding on the agents and all persons acting by or through the parties.
2. The Sponsor's Data Universal Numbering System (DUNS) Number is {DUNNSNumber}.
3. All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.
4. Prior to and During the Period of Performance, Per the Applicant Resolution/Authorizations submitted by all sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project, including but not limited to, full authority to: (1) sign a grant application for grant assistance, (2) enter into this project agreement on behalf of the Sponsor(s) including indemnification, as provided therein, (3) enter any amendments thereto on behalf of Sponsor(s), and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all Sponsors, unless otherwise allowed in the AMENDMENTS TO AGREEMENT Section.
  - a. During the Period of Performance, in order for a Sponsor to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization the Sponsor must provide the RCO a new Applicant

Resolution/Authorization signed by its governing body. Unless a new Applicant Resolution/Authorization has been provided, the RCO shall proceed on the basis that the person who is listed as the Authorized Representative in the last Resolution/Authorization that RCO has received is the person with authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.

- b. Amendments After the Period of Performance. RCO reserves the right to request and Sponsor has the obligation to provide, authorizations and documents that demonstrate any signatory to an amendment has the authority to legally bind the Sponsor as described in the above Sections A and J.
5. For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS Section).

**B. PURPOSE OF AGREEMENT.**

This Agreement sets out the terms and conditions by which a grant is made from the {AccountName} of the State of Washington. The grant is administered by the RCO.

**C. DESCRIPTION OF PROJECT.**

{ProjectDescription}

**D. PERIOD OF PERFORMANCE.**

1. The period of performance begins on {StartDate} (project start date) and ends on {EndDate} (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.
2. The RCO reserves the right to summarily dismiss any request to amend this Agreement if not made at least 60 days before the project end date.

**E. STANDARD TERMS AND CONDITIONS INCORPORATED.**

The RCO Standard Terms and Conditions of the Agreement are hereby incorporated by reference as part of this Agreement.

**F. LONG-TERM OBLIGATIONS.**

*(This is a custom section based on project, program, and sponsor type. See [attached spreadsheet of those that may apply.](#))*

**G. PROJECT FUNDING.**

The total grant award provided for this project shall not exceed {RCOAmount}. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

{FundingTable}

#### **H. FEDERAL FUND INFORMATION.**

*(This section only appears if there is federal funding nexus)*

{FederalFundingInfo}

This funding is not research and development (R&D).

If the Sponsor's total federal expenditures are \$750,000 or more during the Sponsor's fiscal-year, the Sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200, Sub Part F—Audit Requirements, Section 500 (2013). The Sponsor must provide a copy of the final audit report to RCO within nine months of the end of the Sponsor's fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

Sponsor shall comply with the federal "Omni-circular" (2 C.F.R. Part 200).

RCO may suspend all reimbursements if the Sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any and all RCO Agreement(s) with the Sponsor if such noncompliance is not promptly cured.

#### **I. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS.**

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved and/or amended as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with this Agreement, it shall not be used to vary the terms of the Agreement, unless the terms in the Agreement are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

The following Exhibits are attached as part of this Agreement:

*(This is a custom section listing things like "Expanded Scope of Work," "Milestones," and "Eligible Scope Items," which become part of this agreement.)*

If an exhibit is referenced in this Agreement as an exhibit or attached to this Agreement, regardless whether it is on this list, it shall still be considered part of this Agreement.

#### **J. AMENDMENTS TO AGREEMENT.**

1. Except as provided herein, no amendment (including without limitation, deletions) of this Agreement will be effective unless set forth in writing signed by all parties. Exception: extensions of the Period of Performance and minor scope adjustments need only be signed by

RCO's director or designee and consented to in writing (including email) by the Sponsor's Authorized Representative/Agent or Sponsor's designated point of contact for the implementation of the Agreement (who may be a person other than the Authorized Agent/Representative), unless otherwise provided for in an amendment. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

2. It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so.
3. Unless otherwise expressly stated in an amendment, any amendment to this Agreement shall be deemed to include all current federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone. However, any such amendment, unless expressly stated, shall not extend or reduce the long-term obligation term.

**K. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES.**

1. This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, Exhibits, and any applicable federal program and accounting rules effective as of the date of this Agreement or as of the effective date of an amendment, unless otherwise provided in the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone unless otherwise expressly stated in the amendment.
2. For the purpose of this Agreement, {WAC...} shall apply as terms of this Agreement.
3. For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

*{CustomApplicableManuals}*

Provided, where a manual refers to a funding board's responsibility and/or authority but the funding board is not involved with the grant or successor to an entity that was involved, the RCO director shall have that responsibility and/or authority if such responsibilities and/or authority falls within the RCO's statutory responsibilities and/or authority or within a lawful delegation by the board to the RCO.

**L. SPECIAL CONDITIONS.**

*{CustomSpecialConditionsAsMayApply}*

**M. AGREEMENT CONTACTS.**

The parties will provide all written communications and notices under this Agreement to either or both the mail address and/or the email address listed below:

{CustomProjectContacts}

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Unless otherwise provided for in this Agreement, decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

**N. ENTIRE AGREEMENT.**

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

**O. EFFECTIVE DATE.**

1. Unless otherwise provided for in this Agreement, this Agreement, for project {ProjectNumber}, shall not be effective and binding until the date signed by both the sponsor and the RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.
2. The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RCO GRANT AGREEMENT. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

---

Signatures:

---

Sponsor/Date

---

Recreation and Conservation Office/Date

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Example

## **STANDARD TERMS AND CONDITIONS OF THE RCO GRANT AGREEMENT**

Last Updated: February 12, 2020

### **1. CITATIONS, HEADINGS AND DEFINITIONS.**

- A)** Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B)** Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C)** Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

acquisition project – A project that purchases or receives a donation of a right to or in real property including, but not limited to, fee simple land acquisition, conservation easement, access/trail/recreational easements, covenants, leases, water rights, and mineral rights.

Agreement, terms of the Agreement, or project agreement – The document entitled “RCO GRANT AGREEMENT” accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the RCO Grant Agreement, all exhibits, attachments, addendums, amendments, and applicable manuals, and any intergovernmental agreements, and/or other documents that are incorporated into the Agreement subject to any limitations on their effect under this Agreement.

applicable manual(s), manual -- A manual designated in this Agreement to apply as terms of this Agreement, subject (if applicable) to substitution of the “RCO director” for the term “board” in those manuals where the project is not approved by or funded by the referenced board, or a predecessor to the board.

applicable WAC(s) -- Designated chapters or provisions of the Washington Administrative Code that apply by their terms to the type of grant in question or are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the “RCO director” for the term “board” or “agency” in those cases where the RCO has contracted to or been delegated to administer the grant program in question.

applicant – Any party, prior to becoming a Sponsor, who meets the qualifying standards/eligibility requirements for the grant application or request for funds in question.

application – The documents and other materials that an applicant submits to the RCO to support the applicant’s request for grant funds; this includes materials required for the “Application” in the RCO’s automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

archeological, cultural, and historic resources - Archeological sites and artifacts, and traditional areas or items of religious, ceremonial and/or social (significance to) (uses of) tribes affected by or interested in the project. This also refers to built environments and places with historical significance for the nation, state, or local area.

authorized representative/agent – A Sponsor’s agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor’s signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

C.F.R. – Code of Federal Regulations

completed project or project completion - The status of a project when all of the following have occurred:

1. The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily,
2. A final project report is submitted to and accepted by RCO,
3. Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO
4. A final reimbursement request has been paid by RCO.
5. Property rights (including RCO’s as may apply) have been recorded (as may apply)

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

compliance period, or long-term compliance period – The term of years, beginning on the end date of the agreement, when long-term obligations exist for the Sponsor. The start date and end date of the compliance period may also be prescribed by RCO per the Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

development project – A project that results in the construction of, or work resulting in, new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources. A development project may also involve activities that redevelop or renovate an existing facility, and these may occur exclusively in the project or in combination with new construction. For projects in the Boating Facilities Program, the term “development project” includes all of the above and may also include those activities that are defined as maintenance in 50 C.F.R 86.

director or Director – The chief executive officer of the Recreation and Conservation Office or that person’s designee.

education project – A project that provides information, education, and outreach programs and/or services for the benefit of outdoor recreationists. This project may involve limited amounts of capital construction or installation of tangible property.

education and enforcement project – A project that provides information, education, and outreach programs or services; encourages responsible recreational behavior, and may provide law enforcement for the benefit of outdoor recreationists. This project may involve limited amounts of capital construction or installation of tangible property, and equipment purchases.

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

enhancement project – A project that (i) supports hatchery reform to improve hatchery effectiveness to minimize impacts to wild fish populations, (ii) ensures compatibility between hatchery production and salmon recovery programs, or (iii) supports sustainable fisheries (WAC 420.04.010).

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. § 200.33 (2013)).

funding board or board – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board. Or both as may apply.

Funding Entity – the entity that approves the project that is the subject to this Agreement.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

compliance period, or long-term compliance period – The term of years, beginning on the end date of the agreement, when long-term obligations exist for the Sponsor. The start date and end date of the compliance period may also be prescribed by RCO per the Agreement.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and manuals and other exhibits as may apply.

landowner agreement – An agreement that is required between a Sponsor and landowner for projects located on land not owned or otherwise controlled by the Sponsor.

maintenance project – A project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreation.

maintenance and operation project – A project that maintains and operates existing areas and facilities through repairs, upkeep, and routine services for the benefit of outdoor recreationists.

match or matching share – The portion of the total project cost provided by the Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

monitoring project – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

monitoring and research project – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

Office – Means the Recreation and Conservation Office or RCO.

notice of grant – As required by RCO or another authority, a document that has been legally recorded on the property title of the project area(s) in the county or counties where the project property is located, or with the United States Government, that describes the project area on the property, the funding sources, and agencies responsible for awarding the grant.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

planning project - A project that results in one or more of the following: 1) a study, a plan, assessment, project design, inventory, construction plans and specifications, and permits; or 2) a project that provides money to facilitate the work of an organization engaged in planning and coordination, or resource stewardship.

pre-agreement cost – A project cost incurred before the period of performance.

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. Administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – The undertaking that is funded by this Agreement either in whole or in part with funds administered by RCO.

project area - A geographic area that delineates a grant assisted site which is subject to project agreement requirements.

project area (for projects where WAC 420 is applied) - The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project (WAC 420.04.010).

completed project or project completion - The status of a project when all of the following have occurred:

1. The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily,
2. A final project report is submitted to and accepted by RCO,
3. Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO
4. A final reimbursement request has been paid by RCO.
5. Property rights (including RCO's as may apply) have been recorded (as may apply)

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. § 200.83 (2013) for federally funded projects).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

RCFB – Recreation and Conservation Funding Board

RCO – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

RCW – Revised Code of Washington

Recreational Trails Program (RTP) – A Federal Highways Administration grant program.

reimbursement – RCO's payment of funds to the Sponsor for eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

research project – Means a project that studies salmon and the effectiveness of recovery restoration efforts on the population or habitat condition.

restoration project – A project intended to bring a site back to its historic function as part of a natural ecosystem, or one intended to improve the ecological or habitat functionality or capacity of (or part of) a site, landscape, marine environment, or watershed.

restoration and enhancement project – A project intended to bring a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site or a larger ecosystem which improvement may include benefiting (or exclusively benefit) fish stocks.

secondary Sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor’s agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

SRFB – Salmon Recovery Funding Board

State. The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of Washington state government.

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the PROJECT FUNDING Section.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

tribal consultation – Outreach, and consultation with one or more federally recognized tribes (or a partnership or coalition or consortium of such tribes, or a private tribal enterprise) whose rights will or may be significantly affected by the proposed project. This includes sharing with potentially-affected tribes the scope of work in the grant and potential impacts to natural areas, natural resources, and the built environment by the project. It also includes responding to any tribal request from such tribes and considering tribal recommendations for project implementation which may include not proceeding with parts of the project, altering the project concept and design, or relocating the project or not implementing the project, all of which RCO shall have the final approval of.

useful service life – Period during which a built asset, equipment, or fixture is expected to be useable for the purpose it was acquired, installed, developed, and/or renovated, or restored per this Agreement.

WAC – Washington Administrative Code.

## **2. PERFORMANCE BY THE SPONSOR.**

- a. The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO (to include any RCO approved changes or amendments thereto). All submitted documents are incorporated by this reference as if fully set forth herein.
- b. Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

### **3. ASSIGNMENT.**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written approval of the RCO.

### **4. RESPONSIBILITY FOR PROJECT.**

- a. While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement.
- b. The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project has more than one Sponsor, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.
- c. The RCO, its employees, assigns, consultants and contractors, and members of any funding board or advisory committee or other RCO grant review individual or body, have no responsibility for reviewing, approving, overseeing or supervising design, construction, or safety of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO, its employees, assigns, consultants and contractors, and any funding board or advisory committee or other RCO grant review individual or body will act only to confirm at a general, lay person, and nontechnical level, solely for the purpose of project eligibility and payment and not for safety or suitability, that the project apparently is proceeding or has been completed as per the Agreement.

### **5. INDEMNIFICATION.**

- a. The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees,

contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

- b. Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.
- c. Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents or employees, and (b) the State, or its employees or agents the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or its agents, or employees.
- d. As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51. Sponsor's waiver of immunity under this provision extends only to claims against Sponsor by Indemnitee RCO, and does not include, or extend to, any claims by Sponsor's employees directly against Sponsor.
- e. Sponsor shall ensure that any agreement relating to this project involving any contractors, subcontractors and/or vendors of any tier shall require that the contracting entity indemnify, defend, waive RCW 51 immunity, and otherwise protect the State as provided herein as if it were the Sponsor. This shall not apply to a contractor or subcontractor is solely donating its services to the project without compensation or other substantial consideration.
- f. The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

- g. The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

#### **6. INDEPENDENT CAPACITY OF THE SPONSOR.**

- a. The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the RCO or Funding Entity. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of the RCO or the Funding Entity, or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06.
- b. The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

#### **7. CONFLICT OF INTEREST.**

- a. Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.
- b. In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

#### **8. COMPLIANCE WITH APPLICABLE LAW.**

- a. In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:
  - i. Nondiscrimination Laws. The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Employment Act (if applicable). In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for

construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

- ii. Secular Use of Funds. No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- iii. Wages and Job Safety. The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
  - Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or subcontractor intends to pay other than prevailing wages, it must provide the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the Sponsor is not required to investigate a statement regarding prevailing wage provided by a contractor or subcontractor.
- iv. Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130). If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.
- b. Restrictions on Grant Use. No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or

propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

- c. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.
- d. Debarment and Certification. By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."
- e. Requirements for RTP Subawards.
  - i. The subrecipient (Sponsor) shall follow such policies and procedures prescribed by and allowed by the State, as well as federal law and federal rules issued by the Federal Highways Administration and 2 CFR 200.
  - ii. Sponsor may be required to pay prevailing wage rates as required by the Davis Bacon Act as amended.

## **9. ARCHAEOLOGICAL AND CULTURAL RESOURCES RESPONSIBILITIES**

RCO shall administratively review, and Sponsor shall assist RCO in such review, For all funded projects, including land acquisitions for the purpose of capital construction or renovation, not undergoing Section 106 review under the National Historic Preservation Act of 1966, RCO shall review and, if it deems appropriate, confer with the Washington State Department of Archeology and Historic Preservation, tribes, and with any other party/parties that have an interest in, or responsibility for, Project review and protection of archeological, cultural, and historical resources, to determine potential impacts to archeological, cultural and historic resources and plans for protection of such resources. The Sponsor shall cooperate in all such reviews.

1. Plans. Sponsor shall comply with all plans RCO or another state or federal agency may develop for the protection of archeological, cultural, and historical resources in the project area, and adjacent areas that may be impacted by the project. This subsection also applies to those projects where a categorical exclusion (subsection 5) may apply.

2. Authorities. At a minimum, review, management, and protection of archeological, cultural, and historic resources, and tribal consultation, shall be performed in the project area and adjacent areas impacted by the project for compliance with the following authorities (as may apply and as in effect at the time of the review):
  - i. Washington State Department of Archeology and Historic Preservation policies and procedures and rule,
  - ii. Sponsor, RCO, and landowners' plans, policies and procedures, directives, laws and rules,
  - iii. State Environmental Policy Act,
  - iv. National Environmental Policy Act,
  - v. National Historic Preservation Act of 1966,
  - vi. Governor's Executive Order 05-05,
3. Scope of Archeological, Cultural, and Historic Resources Review. RCO recognizes that the project area may include multiple parcels with multiple landowners, and additional parties with property rights in the project area. The Sponsor shall apply this section independently to each separately owned property, provided that reviews undertaken must include impacts to individual parcels and cumulative impacts.
4. Compliance. At all times, the Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological, cultural, and historic resources in the project area, and adjacent areas that may be impacted by the project, and comply with any RCO direction for such avoidance, minimization, and mitigation, and reporting and notification thereof.
5. Categorical Exemption. If the Sponsor has reviewed the activities in this grant for impacts to archeological, cultural, and historical resources, and the same for any planned projects in any land acquired with this grant, and determined the project is categorically exempt from further archaeological, historical and cultural resources review, as well as tribal consultation, Sponsor shall notify the RCO in writing prior to beginning the project describing 1) the specific statutory or regulatory exemptions that apply, and 2) their applicability to the specific project. Alternatively, the RCO may determine the project is covered by a categorical exemption, in whole or in part, and notify the Sponsor of such determination.

However, any categorical exemption must meet the standards of and be consistent and allowable by ALL of the following:

1. the project area landowner(s) legal documents and governing documents (if applicable),
2. Sponsor's own policies and procedures and rules,
3. All applicable laws,
4. RCO applicable policies, manuals and/or other guidance, and
5. Washington Department of Archaeology and Historic Preservation's rules and policies.

Alternatively, the RCO may assign a categorical exemption to the project based on its own review.

Regardless of the applicability of any categorical exemption, the RCO reserves the right at any time to require Sponsor to comply with any and all of the provisions of this section.

6. Project Areas Reviewed by a Permitting Authority. For those project areas where a permitting authority for the project conducts an archeological, cultural, and historical resources review and tribal consultation under section 106 of the Historic Preservation Act, NEPA, SEPA, or Governor's Executive Order 05-05, such review and consultation shall substitute for the land owner's, provided that such substitution is allowed only if (a) the permitting authority and landowner are not the same, and (b) the RCO determines that the review and consultation performed by the permitting authority meets RCO standards. When a permitting authority conducts such reviews and tribal consultation, all other subsections herein shall still apply to the Sponsor(s).
7. Project Areas on Sponsor-Owned Property. Unless a categorical exemption applies as stated above, the Sponsor shall perform and be bound by the following:
  - a. Project Review. For project areas not reviewed by a permitting authority (see above), prior to implementing in the project area any ground disturbance, altering or demolishing structures or other property appurtenances, removing or altering vegetation, geologic elements, or waterways, or impacting wildlife, in and adjacent to the project area, areas where project mitigation shall occur, or any other areas that may be affected by project implementation, the Sponsor shall review the project for its potential and actual impacts, including any planned projects on lands acquired as part of the project, to any and all archaeological, cultural and historical resources in and adjacent to the project area, in areas where project mitigation shall occur, or other areas that may be affected by project implementation. In this review, Sponsor shall follow its policies and procedures, plans, guidance, rules, and directives, as well as act in compliance with Governor's Executive Order 05-05, the National Historic Preservation Act, the State Environmental Policy Act, the National Environmental Policy Act, and any local laws as may apply. If another governmental agency is responsible in whole or in part for this review the Sponsor shall assist with such review.
  - b. Tribal Consultation. For project areas not reviewed by a permitting authority (see above), prior to implementing in the project area any ground disturbance, altering or demolishing structures or other property appurtenances, removing or altering vegetation, geologic elements, or waterways, or impacting wildlife, in and adjacent to the project area, areas where project mitigation shall occur, or any other areas that may be affected by project implementation, Sponsor shall conduct tribal consultation with any interested or affected tribes as defined above. .
  - c. Reporting to RCO and Approval of Project Activities. Sponsor shall provide RCO evidence (which RCO shall prescribe) that it has conducted project review and tribal consultation as described and receive written approval of such review and consultation from RCO prior to Sponsor implementing in the project area any ground disturbance, altering or demolishing structures or other property appurtenances, removing or altering vegetation, geologic elements, or waterways, or impacting wildlife, in and adjacent to the project area, areas

where project mitigation shall occur, or any other areas that may be affected by project implementation.

- d. **Changes to Project.** RCO reserves the right to request Sponsor change its scope of work and project outcomes to avoid, mitigate, or minimize impacts to archeological, cultural, and historic resources.
- e. **Termination.** RCO retains the right at any time to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.
- f. **Monitoring.** RCO may require on-site monitoring for impacts to archeology, cultural, and historic resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology, cultural, and historical resource impacts or concerns.
- g. **Inadvertent Discovery Plan.** The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan (IDP), and keep the IDP at the project site, make the IDP readily available to anyone working at the project site, discuss the IDP with staff and contractors working at the project site, and Implement the IDP when cultural resources or human remains are found at the project site.
- h. **Discovery.** If any archeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify the property owner, RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources until such time as the reviewing authority with jurisdiction over the found object(s) and areas notifies Sponsor and RCO that work can resume.
- i. **Human Remains.** If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the RCO provides a new notice to proceed on the project. Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP). The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with

the affected parties as to the future preservation, excavation, and disposition of the remains and the resumption of work.

8. Project Areas on State or Federal Property Not Owned By Sponsor.

Categorical Exemption. For project area(s) owned by a state or federal agency, and not under review via a permitting nexus (see above), the state or federal agency landowner performing archeological, cultural, and historic resources review and tribal consultation shall make the determination that the project, in whole or in part, is covered by a categorical exemption, and may notify and report such to the Sponsor, or to RCO on behalf of Sponsor.

Project Review and Tribal Consolation. If the project is not categorical exception to archeological, cultural, and historical resources review and tribal consultation, and the project area is located on property owned by the State of Washington or a federal agency, Sponsor shall:

- a. Follow its own policies and procedures, rules, and any applicable laws, for the review, protection, and management of archaeological, cultural, and historic resources, and tribal consultation and other consultations as may apply.
- b. Assist the land owner and other applicable agencies, and the RCO, with its/their review of archaeological, cultural and historic resources, and tribal consultation for the project area.
  - i. RCO may consult directly with the landowner to complete land owner project review and tribal consultation.
- c. Provide RCO evidence that the landowner has 1) conducted archeological, cultural and historic resources review and tribal consultation according to its policies and procedures and applicable laws, and 2) provided Sponsor with permission to begin project implementation in the project area owned by the state or federal agency.
- d. Changes to Project. RCO reserves the right to request Sponsor change its scope of work and project outcomes to avoid, mitigate, or minimize impacts to archeological, cultural, and historic resources.
- e. Termination. RCO retains the right at any time to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.
- f. Monitoring. RCO or the federal or state landowner may require on-site monitoring for impacts to archeology and cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns.
- g. Inadvertent Discovery Plan. The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan (IDP), and keep the IDP at the project site, make the IDP readily available to anyone working at the project site, discuss the IDP with staff and contractors

working at the project site, and Implement the IDP when cultural resources or human remains are found at the project site.

- h. Discovery. If any archeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify the property owner, RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.

- i. Human Remains. If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the RCO provides a new notice to proceed on the project. Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP). The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

- 9. Costs. Costs associated with Sponsor's responsibilities under this section of the Agreement are eligible for reimbursement under this Agreement. Costs that exceed the budget grant amount shall be the responsibility of the Sponsor.

## **10. RECORDS.**

- a. Digital Records. If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- b. Maintenance and Retention. The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the nine (9) year period, the records

shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- c. In order to satisfy 15 CFR 24.42(b) & (c) and 2 CFR 200.333, for projects that contain Pacific Coast Salmon Recovery Funds or are used as match to Pacific Coast Salmon Recovery Funds the sponsor shall retain records for a period of nine years from the date RCO deems the project complete as defined in the PROJECT REIMBURSEMENTS Section.
- d. Access to Records and Data. At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- e. Public Records. Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

## **11. PROJECT FUNDING.**

- a. Authority. This Agreement and funding is made available to Sponsor through the RCO.
- b. Additional Amounts. The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement .
- c. Before the Agreement. No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

- d. Requirements for Federal Subawards. Pre-Agreement costs before the federal award date in the FEDERAL FUND INFORMATION Section are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- e. After the Period of Performance. No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

## **12. PROJECT REIMBURSEMENTS.**

- a. Reimbursement Basis. This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- b. Reimbursement Request Frequency. The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- c. Compliance and Payment. The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- d. Conditions for Payment of Retainage. RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the following has occurred:
  - i. RCO has accepted the project as a completed project, which acceptance shall not be unreasonably withheld.
  - ii. On-site signs are in place (if applicable); Any other required documents and media are complete and submitted to RCO; Grant related fiscal transactions are complete, and
  - iii. RCO has accepted a final boundary map of the project area for which the Agreement terms will apply in the future.

- iv. A Notice of Grant for any property rights acquired or donated (if applicable) have been filed with the county lands records office (or United State Government) and a stamped copy received by RCO, and any property rights owned to RCO have been likewise recorded.
- e. Requirements for Federal Subawards: Match. The Sponsor's matching share must comply with 2 C.F.R. § 200.306 (2013). Any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, can be accepted as part of the Sponsor's matching share when such contributions meet all of the following criteria:
  - i. Are verifiable from the non-Federal entity's (Sponsor's) records;
  - ii. Are not included as contributions for any other Federal award;
  - iii. Are necessary and reasonable for accomplishment of project or program objectives;
  - iv. Are allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles (2013);
  - v. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
  - vi. Are provided for in the approved budget when required by the Federal awarding agency identified in the FEDERAL FUND INFORMATION Section of this Agreement; and
  - vii. Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.
- f. Requirements for Federal Subawards: Close out. Per 2 C.F.R § 200.343 (2013), the non-Federal entity (Sponsor) must:
  - i. Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.
  - ii. Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
  - iii. Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.
  - iv. Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property (2013).

### **13. ADVANCE PAYMENTS.**

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements.

### **14. RECOVERY OF PAYMENTS.**

- a. Recovery for Noncompliance. In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- b. Return of Overpayments. The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that the Sponsor receives the overpayment from the RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.
- c. Requirements for Federal Subawards. RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

### **15. COVENANT AGAINST CONTINGENT FEES.**

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

### **16. INCOME (AND FEES) AND USE OF INCOME.**

See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

Income.

- a. Farm and Forest Account (Farmland and Forestland Preservation Grants). Excepted from this section is income generated and fees paid on/for properties which received funds from the Farm and Forest Account (RCW 79A.15.130).
- b. Firearms and Archery Range Recreation Projects. Excepted from this section are safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).

- c. Compatible source. The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- d. Use of Income. Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
  - i. The Sponsor's matching resources;
  - ii. The project's total cost;
  - iii. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;
  - iv. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
  - v. Capital expenses for similar acquisition and/or development and renovation; and/or
  - vi. Other purposes explicitly approved by RCO.
- e. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:
  - i. Grant program laws, rules, and applicable manuals;
  - ii. Value of any service(s) furnished;
  - iii. Value of any opportunities furnished; and
  - iv. Prevailing range of public fees in the state for the activity involved.
- f. Requirements for Federal Subawards. Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013).

## **17. PROCUREMENT REQUIREMENTS.**

- a. Procurement Requirements. If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists the Sponsor must follow these minimum procedures:
  - i. Publish a notice to the public requesting bids/proposals for the project;
  - ii. Specify in the notice the date for submittal of bids/proposals;
  - iii. Specify in the notice the general procedure and criteria for selection; and
  - iv. Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
  - v. Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer. Alternatively, Sponsor may choose a bid from a bidding

cooperative if authorized to do so. This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

b. Requirements for Federal Subawards.

- i. For all Federal subawards, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).
- ii. For RTP subawards, Sponsors shall follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)).

**18. TREATMENT OF EQUIPMENT AND ASSETS.**

- a. Equipment shall be used and managed only for the purpose of this Agreement , unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.
- b. Discontinued Use. Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.
- c. Loss or Damage. The Sponsor shall be responsible for any loss or damage to equipment.
- d. Requirements for Federal Subawards. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013)):
  - i. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
  - ii. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
  - iii. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
  - iv. Adequate maintenance procedures must be developed to keep the property in good condition.

- v. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- e. Requirements for RTP Subawards.
  - i. The subrecipient (Sponsor) shall follow such policies and procedures prescribed by and allowed by the State, as well as federal law and federal rules issued by the Federal Highways Administration and 2 CFR 200.

## **19. RIGHT OF INSPECTION.**

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure limits access to the project area, it must include (or be amended to include) the RCO's right to inspect and access lands acquired or developed with this funding assistance.

## **20. STEWARDSHIP AND MONITORING.**

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

## **21. PREFERENCES FOR RESIDENTS.**

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents, but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

## **22. ACKNOWLEDGMENT AND SIGNS.**

- a. Publications. The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- b. Signs.
  - i. During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and

- ii. During the period of long-term obligations, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.
- c. Ceremonies. The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies and in all advertisements and mailings thereof, and any and all of its related digital media publications.
- d. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:
  - i. The fund source;
  - ii. The percentage of the total costs of the project that is financed with federal money;
  - iii. The dollar amount of federal funds for the project; and
  - iv. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

**23. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS.**

- a. The following provisions shall be in force:
  - i. Operations and Maintenance. Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
  - ii. Document Review and Approval. Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.
- b. Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.

- c. Control and Tenure. The Sponsor must provide documentation that shows appropriate tenure and term (such as long-term lease, perpetual or long-term easement, or perpetual or long-term fee simple ownership, or landowner agreement or interagency agreement for the land proposed for construction, renovation, or restoration. The documentation must meet current RCO requirements identified in this Agreement as of the effective date of this Agreement unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.
- d. Use of Best Management Practices. Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include “Integrated Streambank Protection Guidelines”, 2002; “Land Use Planning for Salmon, Steelhead and Trout: A land use planner’s guide to salmonid habitat protection and recovery”, 2009”, “Protecting Nearshore Habitat and Functions in Puget Sound”, 2010; “Stream Habitat Restoration Guidelines”, 2012; “Water Crossing Design Guidelines”, 2013; and “Marine Shoreline Design Guidelines”, 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in “Reducing Accidental Introductions of Invasive Species” which is available on the WISC Web site.
- e. At no time shall the Sponsor design, construct, or operate this grant funded project in a way that unreasonably puts the public, itself, or others at risk of injury or property damage. The Sponsor agrees and acknowledges that the Sponsor is solely responsible for safety and risk associated with the project, that RCO does not have expertise, capacity, or a mission to review, monitor, or inspect for safety and risk, that no expectation exists that RCO will do so, and that RCO is in no way responsible for any risks associated with the project.

#### **24. PROVISIONS APPLYING TO ACQUISITION PROJECTS.**

- a. The following provisions shall be in force:
  - i. Evidence of Land Value. Before disbursement of funds by RCO as provided under this Agreement, the Sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to all applicable manuals and RCWs or WACs.
  - ii. Evidence of Title. The Sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
  - iii. Legal Description of Real Property Rights Acquired. The legal description of any real property rights purchased with funding assistance provided through this Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be delivered to RCO before final payment.
  - iv. Conveyance of Rights to the State of Washington. When real property rights (both fee simple and lesser interests) are acquired, the Sponsor agrees to execute an appropriate document (provided or approved by RCO) conveying certain rights and responsibilities to RCO or the Funding Entity on behalf of the State of Washington or another agency of the

- state, or federal agency, or other organization. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The Sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
- v. Deed of Right. The Deed of Right as described in RCO Manual #3 conveys to the people of the state of Washington the right to preserve, protect, access, and/or use the property for public purposes consistent with the funding source and project agreement. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the Sponsor has acquired a perpetual easement for public purposes.
  - vi. Assignment of Rights. The Assignment of Rights as described in RCO Manual #3 document transfers certain rights to RCO and the state such as public access, access for compliance, and enforcement. Sponsors shall use this document when an easement or lease is being acquired under this Agreement. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
  - vii. Easements and Leases. The Sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; Sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.
  - viii. Real Property Acquisition and Relocation Assistance. In the event that housing and relocation costs and procedures are required by local, state, tribal, or federal law, or rule; the Sponsor agrees to provide such housing and relocation assistance as a condition of the Agreement and receiving grant funds.
- b. Buildings and Structures. In general, grant funds are to be used for outdoor recreation, conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsor must consult with RCO regarding treatment of such structures and compliance with COMPLIANCE WITH APPLICABLE LAW SECTION, Archeological and Cultural Resources paragraph.
- c. Hazardous Substances.
- i. Certification. The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(13), and certify:
  - ii. No hazardous substances were found on the site, or
  - iii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
  - iv. Responsibility. Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
  - v. Hold Harmless. The Sponsor will defend, protect and hold harmless the State and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss

of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the Sponsor is acquiring, except to the extent, if any, that the State, its officers and agents caused or contributed to the release. The Funding Entity and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

- d. Requirements for Federal Subawards. The non-federal entity (Sponsor) must submit reports the federal funding agency, through RCO, at least annually on the status of real property in which the federal government retains an interest, unless the federal interest in the real property extends 15 years or longer. In those instances where the federal interest attached is for a period of 15 years or more, the federal awarding agency or the pass-through entity (RCO), at its option, may require the Sponsor to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a federal awarding agency or RCO may require annual reporting for the first three years of a federal award and thereafter require reporting every five years) (2 C.F.R § 200.329 (2013)).
- e. Developing and Restoring Purchased Property. If the Sponsor intends to develop or restore the property acquired it shall do so within the timeline and deadline provided by the funding program or board policies that apply to the grant funded project, or as provided for in this Agreement.

## **25. LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS.**

- a. Long-Term Obligations. This section applies to completed projects only.
- b. Perpetuity. For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. The RCO requires that the project area continue to function for the purposes for which these grant funds were approved, in perpetuity.
- c. Conversion. The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, renovated, and/ or restored pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property (or a portion of it) to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired, developed, renovated, and/or restored with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policies or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon all terms of the Agreement, and all applicable state or federal laws or regulation.

- i. For acquisition projects that are expressly term-limited in the Agreement, the restriction on conversion shall apply only for the length of the term, unless otherwise provided by this Agreement and incorporated documents, WACs, or any applicable state or federal law or regulation.
- ii. When a conversion has been determined to have occurred, the Sponsor shall remedy the conversion as set forth in this Agreement (with incorporated documents) and as required by all applicable policies, manuals, WACs and laws that exist at the time the remedy is implemented or the right to the remedy is established by a court or other decision-making body, and the RCO may pursue all remedies as allowed by the Agreement or law.

## **26. CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS.**

- a. The following provisions shall be in force for this agreement:
  - i. Property and facility operation and maintenance. Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:
    - a. According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
    - b. In a reasonably safe condition for the project's intended use;
    - c. Throughout its estimated useful service life so as to prevent undue deterioration;
    - d. In compliance with all federal and state nondiscrimination laws, regulations and policies.
  - ii. Open to the public. Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:
    - a. Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
    - b. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
    - c. Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals or, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

## **27. RECORDED NOTICE OF GRANT.**

At the request of RCO, another state agency, or a federal agency, Sponsor shall record a notice of grant on property subject to this Agreement and shall submit to the RCO a recorded and registry stamped copy of such notice. The purpose of the notice of grant is to provide constructive notice of the grant and project and to ensure that the present and future use of the project area is and shall remain subject to the terms and conditions described in this Agreement. The notice of grant shall be in a format specified by RCO.

## **28. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS.**

- a. A corporate Sponsor, including any nonprofit Sponsor, shall:
  - i. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the Sponsor's obligation to the project as identified in the Agreement.
  - ii. Notify RCO before corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities, and transfer all property and assets to the successor. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the Sponsor's obligation to the qualified successor if requirements are met.
  - iii. Maintain sites or facilities open to the public and may not limit access to members.

## **29. PROVISIONS FOR FEDERAL SUBAWARDS.**

The following provisions shall be in force for this agreement:

- a. Sub-Recipient (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- b. Binding Official. Per 2 CFR 200.415, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."
- c. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319,

12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, paragraph C.

- d. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- e. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
- f. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in the Federal Fund Information Section. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: FEDERAL FUND INFORMATION.

- g. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- h. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- i. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: FEDERAL FUND INFORMATION and the Regional Office of the Environmental Protection Agency (EPA).
- j. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying

with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier-to-tier up to the non-federal award.

- k. **Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- l. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- m. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- n. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

### **30. PROVISIONS FOR BOATING INFRASTRUCTURE GRANTS.**

Use of Sport Fish Restoration Logo. Per 50 CFR 86 Sec 75 and 76, the user of the logo must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from; any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the logo, or any other alleged action of the user; and any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the logo. No one may use any part of the logo in any other manner unless the United States Fish and Wildlife Service's Assistant Director for Wildlife and Sport Fish Restoration or Regional Director approves in writing.

### **31. PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS.**

The following provisions shall be in force for this agreement:

- a. **Liability Insurance.** The Sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it carries, or shall procure a new policy of liability insurance, in a total coverage amount the Sponsor deems adequate to ensure it will have resources to pay successful claims of people who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- b. **Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.
- c. **Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor's obligation to the project as identified in this Agreement.
- d. **Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.
- e. **Government Agencies.** The requirement of Subsection a through d above shall not apply if the Sponsor is a federal, state, or municipal government which has established an adequate program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy to the RCO.
- f. **Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does undertake to review, approve, or monitor the safety of the design, construction, or operation of the project and does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer as a result of the project which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

### **32. PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS.**

This project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), therefore the "Land and Water Conservation Fund General Provisions" are made part of this Agreement and incorporated herein. The Sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the Sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

### **33. PROVISIONS FOR FARMLAND AND FORESTLAND PRESERVATION PROJECTS.**

The following sections of this Agreement shall not apply if they are included and covered separately in a recorded RCO-approved Agricultural Conservation Easement, or Forest Conservation Easement (or other method):

- a. Income and Income Use; Stewardship and Monitoring; Acknowledgement and Signs; Provisions Applying To Acquisition Projects: Conveyance of Rights to the State of Washington, Building and Structures, and Hazardous Substances; Long-Term Obligations of the Projects and Sponsors: Perpetuity; and Construction, Operation, Use and Maintenance of Assisted Projects.

### **34. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS.**

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

### **35. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS.**

The following provisions shall be in force for this Agreement if the project is funded in part or wholly from the Puget Sound Acquisition and Restoration program. The Sponsor agrees to the following terms and conditions:

- a. Cost Principles/Indirect Costs For State Agencies. GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award. In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements," if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.
- b. Credit and Acknowledgement. In addition to the ACKNOWLEDGEMENT AND SIGNS section, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.
- c. Hotel Motel Fire Safety Act. Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance or to find other information about the Act.

- d. Drug Free Workplace Certification. Sub-recipient (Sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E.
- e. Management Fees. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs that are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except for the extent authorized as a direct cost of carrying out the scope of work.
- f. Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA). This provision applies only to a sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor), if any. Sub-recipient (Sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement: “You as the sub-recipient, your employees, sub-awardees under this award, and sub-awardees’ employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award.” The sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor) must inform RCO immediately of any information you receive from any source alleging a violation of this prohibition during the award term. The federal agency funding this Agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.
- g. Lobbying. The chief executive officer of this recipient agency (Sponsor) shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States, unless authorized under existing law. The recipient (Sponsor) shall abide by its respective Cost Principles (OMB Circulars A-21, A-87, and A-122), which generally prohibits the use of federal grant funds for litigation against the United States, or for lobbying or other political activities. The Sponsor agrees to comply with 40 C.F.R. Part 34, New Restrictions on Lobbying. Sponsor shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-awardees submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any Sponsor who makes a prohibited expenditure under 40 C.F.R. Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure. All contracts awarded by Sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at 40 C.F.R. Part 30. Pursuant to Section 18 of the Lobbying Disclosure Act, Sponsor

affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- h. Reimbursement Limitation. If the Sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the Sponsor for costs incurred in excess of the RCO approved budget.
- i. Disadvantaged Business Enterprise Requirements. The Sponsor agrees to comply with the requirements of EPA's Utilization of Small, Minority and Women's Business Enterprises in procurements made under this award.
- j. Minority and Women's Business Participation. Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.  
These goals are expressed as a percentage of the total dollars available for purchase or agreement and are as follows: Purchased Goods 8% MBE 4% WBE; Purchased Services 10% MBE 4% WBE; Professional Services 10% MBE 4% WBE. Meeting these goals is voluntary and no agreement award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and Sponsor and ALL prospective bidders or people submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:
  - i. Include qualified minority and women's businesses on solicitation lists.
  - ii. Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.
  - iii. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
  - iv. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
  - v. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.
- k. MBE/WBE Reporting. In accordance with the deviation from 40 C.F.R. §33.502, signed November 8, 2013, DBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:
  - l. There are any funds budgeted in the contractual/services, equipment or construction lines of the award; and/or \$3,000 or more is included for supplies; or there are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as described in items

(a) and (b). When completing the form, recipients (Sponsors) should disregard the quarterly and semi-annual boxes in the reporting period Section 1B of the form. For annual submissions, the reports are due by October 30th of each year or 90 days after the end of the project period, whichever comes first. The reporting requirement is based on planned procurements. Recipients (Sponsors) with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in Section 5B when completing the form. MBE/WBE reports should be sent to the DBE Coordinator in the Sponsor's region. Contact information can be found at <http://www.epa.gov/osbp/contactpage.htm>. The coordinators also can answer any questions. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. To be in compliance with regulations, the Sponsor must submit a final MBE/WBE report. Non-compliance may impact future competitive grant proposals. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm).

- m. Procurement involving an EPA Financial Assistance Agreement. Pursuant to 40 C.F.R. § 33.301, the Sponsor agrees to make the following six good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients (Sponsors), and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained.
- n. Ensure Disadvantaged Business Enterprise (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For State and Local and Government Sponsors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- o. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- p. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For State and local Government Sponsors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- q. Encourage contracting with a consortium of DBEs when an agreement is too large for one of these firms to handle individually.
- r. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development of the Department of Commerce.

- s. If the Sponsor awards subcontracts, require the Sponsor to take the steps in paragraphs (a) through (e) of this section.
- t. Lobbying & Litigation. By signing this Agreement, the Sponsor certifies that none of the funds received from this Agreement shall be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The chief executive officer of this Sponsor agency shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The Sponsor shall abide by its respective Attachment in 2 C.F.R. Part 200, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities. For subawards exceeding \$100,000, EPA requires the following certification and disclosure forms:
  - I. Certification Regarding Lobbying, EPA Form 6600-06:  
[http://www.epa.gov/ogd/AppKit/form/Lobbying\\_sec.pdf](http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf)
  - II. Disclosure of Lobbying Activities, SF LLL:  
[http://www.epa.gov/ogd/AppKit/form/sflllin\\_sec.pdf](http://www.epa.gov/ogd/AppKit/form/sflllin_sec.pdf)
- u. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.
- v. Payment to Consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients (Sponsors) or by a recipients' (Sponsor's) contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with his/her normal travel reimbursement practices). Subagreements with firms for services that are awarded using the procurement requirements in 40 C.F.R. Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient (Sponsor) with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 C.F.R. § 30.27(b) or 40 C.F.R. § 31.369(j), as applicable, for additional information. As of January 1, 2020, the limit is \$654.71 per day \$81.83 per hour.
- w. Peer Review. Where appropriate, prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.
- x. International Travel (Including Canada). All International Travel must be approved by the US Environmental Protection Agency's Office of International and Tribal Affairs (OITA) BEFORE

travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.

- y. Unliquidated Obligations (ULO). Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

- z. Light Refreshments And/Or Meals.

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- 1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- 2) A description of the purpose, agenda, location, length and timing for the event; and,
- 3) An estimated number of participants in the event and a description of their roles.

Cost for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

- aa. State grant cybersecurity.

- (a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.
- (b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.
- (2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the AGecy using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange.

### **36. ORDER OF PRECEDENCE.**

- a. This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

- i. Federal law and binding executive orders;

- ii. Code of federal regulations;
- iii. Terms and conditions of a grant award to the state from the federal government;
- iv. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- v. State Constitution, RCW, and WAC;
- vi. Agreement Terms and Conditions and Applicable Manuals
- vii. Applicable deed restrictions, and/or governing documents.

### **37. LIMITATION OF AUTHORITY.**

Only RCO's Director or RCO's delegate authorized in writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

### **38. WAIVER OF DEFAULT.**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

### **39. APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH.**

The Funding Entity (if different from RCO) and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

### **40. SPECIFIC PERFORMANCE.**

RCO may enforce this Agreement by the remedy of specific performance, which means Sponsors' completion of the project and/or its completion of long-term obligations as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

### **41. TERMINATION AND SUSPENSION.**

- a. The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.
- b. For Cause.

- i. The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
    - a. If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
    - b. If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
    - c. If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
    - d. Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
  - ii. RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.
- c. For Convenience. Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:
- i. The Sponsor was not in default; or
  - ii. Failure to perform was outside Sponsor's control, fault or negligence.
- d. Rights of Remedies of the RCO.
- i. The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
  - ii. In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.
  - iii. Non-Availability of Funds. The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation

is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

- iv. **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.
- v. **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

#### **42. DISPUTE HEARING.**

- a. Except as may otherwise be provided in this Agreement , when a dispute arises between the Sponsor and the RCO, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:
  - i. The disputed issues;
  - ii. The relative positions of the parties;
  - iii. The Sponsor's name, address, project title, and the assigned project number.
- b. In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.
- c. Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.
- d. The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

- e. Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.
- f. All costs associated with the implementation of this process shall be shared equally by the parties.

#### **43. ATTORNEYS' FEES.**

In the event of litigation or other action brought to enforce the terms of this Agreement each party agrees to bear its own attorney fees and costs.

#### **44. GOVERNING LAW/VENUE.**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

#### **45. SEVERABILITY.**

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

#### **46. END OF AGREEMENT.**

This is the end of the agreement.



# City Council Agenda Bill

23170

Bill Number

Subject: **An Ordinance Accepting the Donation of Lehigh Pier from the Lehigh Northwest Cement Company**

Summary Statement: Following extensive feasibility studies and negotiations, the City of Bellingham has secured a no-cost transfer of a portion of the industrial pier located at Little Squalicum Park from Lehigh Northwest to the City. This donation requires Council approval, and is supported by the Greenways Advisory Committee and the Parks & Recreation Board. The portion to be transferred, known as Tract A, is the section inside the Department of Natural Resources tidelands. Extensive improvements to support public access and improve the structural integrity, as well as environmental improvements are required. This project is listed as a priority in multiple City planning documents, and design is underway with construction anticipated in 2023 to 2024 depending on permits.

Previous Council Action: **Approval of the 2021-2022 Budget**

Fiscal Impact: **\$1.5M for Initial Phase**

Funding Source: **Greenways Fund**

Attachments: 1. ORDINANCE

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Committee Briefing - Direction Requested	11/22/2021	Pass Ordinance	Nicole Oliver, Parks & Recreation Director	10 minutes

**Recommended Motion:**

**Council Committee:**  
Parks and Recreation Committee

**Agenda Bill Contact:**  
Nicole Oliver, Parks & Recreation Director

**Council Action:** Knutson/Vargas Moved for  
1st & 2nd. MOTION CARRIED 6-0-1,  
Daniel Hammill excused. 11/22/2021

Reviewed By	Department	Date
<i>Nicole C. Oliver</i>	Parks & Recreation	11/16/2021
<i>Amy B. Kraham</i>	Legal	11/16/2021
<i>Seth M. Fleetwood</i>	Executive	11/16/2021

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ACCEPTING THE DONATION OF LEHIGH PIER FROM THE  
LEHIGH NORTHWEST CEMENT COMPANY**

**WHEREAS**, Bellingham Municipal Code ("BMC") 4.90.020 provides that City Council may, by ordinance, accept any real property donated, devised or bequeathed to the City of Bellingham (the "City"); and

**WHEREAS**, Lehigh Northwest Cement Company ("Lehigh"), are the owners of a pier and pilings adjacent to Little Squalicum Park formerly used for industrial purposes by Lehigh; and

**WHEREAS**, Lehigh has offered to donate the Property to the City for the purpose of creating a waterfront recreational amenity; and

**WHEREAS**, City Council has determined that acceptance of the Property is in the best interest of the City.

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES HEREBY ORDAIN AS  
FOLLOWS:**

Section 1:

Pursuant to BMC 4.90.020, the City hereby accepts the donation of the Property for recreation purposes. Said donation shall be by deed approved by the Office of the City Attorney.

Section 2:

The City thanks Lehigh for the donation of real property.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Council President, Daniel Hammill

**APPROVED** by me this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor, Seth Fleetwood

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

**ATTEST:**

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Finance Director, Andy Asbjornson

**APPROVED AS TO FORM:**

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Office of the City Attorney

Published:

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



# City Council Agenda Bill

23174

Bill Number

Subject: **An Ordinance Establishing an Independent Salary Commission to Review and Fix the Salaries for Members of the City Council of the City of Bellingham**

Summary Statement: The attached ordinance would create a Salary Commission for members of the City Council under RCW 35.21.015. The Commission will consist of seven members appointed by the Mayor and approved by City Council. The term for Commission members would not exceed one year and their decision on either a salary increase or salary decrease is binding. Salary increases would be effective regardless of term of office and salary decreases would be effective as to incumbent Councilmembers at the commencement of their next term of office.

Previous Council Action: **Discussion at the 11/8/21 Council Meeting**

Fiscal Impact: **Undetermined**

Funding Source: **General Fund**

Attachments: 1. ORDINANCE

Meeting Activity	Meeting Date	Recommendation	Presented By	Time
Committee Briefing - Vote Requested	11/22/2021	Vote to Approve	Brian Heinrich, Deputy Administrator	5 minutes

**Recommended Motion:**

**Council Committee:**  
Committee Of The Whole

**Agenda Bill Contact:**  
Brian Heinrich, Exec, x8117

**Council Action:** Stone/Vargas Moved for  
1st & 2nd. MOTION CARRIED 6-0-1,  
Daniel Hammill excused. 11/22/2021

Reviewed By	Department	Date
<i>Brian M. Heinrich</i>	Executive	11/09/2021
<i>Alan A. Marriner</i>	Legal	11/15/2021
<i>Seth M. Fleetwood</i>	Executive	11/16/2021

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ESTABLISHING AN INDEPENDENT SALARY COMMISSION TO  
REVIEW AND FIX THE SALARIES FOR MEMBERS OF THE CITY COUNCIL OF THE  
CITY OF BELLINGHAM**

**WHEREAS**, under RCW 35.21.015, cities are authorized to establish, by ordinance, independent salary commissions, to review and determine the salaries of members of the city council; and

**WHEREAS**, the City of Bellingham does not currently have an established public mechanism for adjusting or reviewing the salaries of its members of the city council, as would be provided by a salary review commission; and

**WHEREAS**, by establishing a salary commission, Bellingham Municipal Code Section 3.12.010 A. relating to City Council member salaries should be amended.

**NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1.** A new chapter is added to Title 2 of the Bellingham Municipal Code to read as follows:

**Chapter 2.98  
Salary Commission**

**2.98.010 Salary Commission Established — Purpose.**

The city hereby establishes an independent salary commission which shall meet to review and fix the salaries of members of the city council. The salary commission shall not be a standing commission. The commission shall be filled and members appointed in accordance with Section 2.98.020, once every 8 years commencing in 2022. The commission may be formed at any time in the interim years by council resolution.

**2.98.020 Membership — Term.**

- A. The commission shall consist of 7 members who shall be appointed by the Mayor with the approval of the City Council, in conformance with RCW 35.21.015 as codified and as amended hereafter.
- B. Each member shall be a registered voter and a resident of the city.
- C. The salary commission members shall serve a 180-day term which shall commence when all commission members have been appointed and shall serve without compensation. The term may be extended up to 60 days by the commission if it deems the extension necessary to complete its duties and provides notice of the extension to

council and the public. Further extensions may be granted by council resolution. One year shall be the maximum term inclusive of any extensions.

- D. Members of the commission may only be removed during their terms of office for cause of incapacity, incompetence, neglect of duty, or malfeasance in office or for a disqualifying change of residence.
- E. Any vacancy in the membership of the commission shall be filled in the same manner as the original appointment, with the replacement serving the remainder of the unexpired term.
- F. Members of the commission may not include any officer, official, or employee of the city or any of their immediate family members. "Immediate family member" as used in this subsection means the parents, spouse, siblings, children, or dependent relatives of the officer, official, or employee, whether or not living in the household of the officer, official, or employee. No member may be appointed to more than two terms.

#### **2.98.030 Organization — Meetings.**

- A. The commission shall elect a chair and vice-chair from among its members and shall adopt its own rules of procedure.
- B. The commission shall hold at least one regular meeting each calendar month until the commission's duties have been fulfilled. Additional meetings may be held as the commission deems necessary and shall be scheduled by the chair of the commission or by a majority vote of the commission.
- C. All meetings of the commission shall be public meetings and the commission shall hold at least one public hearing where it will receive public testimony and written comments before fixing the salaries of the elected officials.
- D. Written records of meetings and actions of the commission shall be kept. Such records shall be public.
- E. The city shall provide appropriate staff support to the commission.

#### **2.98.040 Duties.**

- A. The commission shall review and fix the salaries and, if appropriate, annual adjustments to salaries, of members of the city council of the City of Bellingham.
- B. All final actions and recommendations by the commission shall be by affirmative majority vote of 4 or more members.

#### **2.98.050 Commission Action.**

- A. Any change in salary shall be filed by the commission with the city finance director and shall become effective and incorporated into the city budget for the following calendar year without further action of the city council or salary commission.
- B. Salary increases established by the commission shall be effective as to those members of the city council designated in this section, regardless of their terms of office.
- C. Salary decreases established by the commission shall become effective as to incumbent members of the city council at the commencement of their next subsequent terms of office.
- D. The action fixing the salary by a commission established in conformity with this section shall supersede any other provision of state statute or city ordinance related to the city budget or to the fixing of salaries.

#### **2.98.60 Commission Action Subject to Referendum.**

- A. Salary increases and decreases shall be subject to referendum petition by the people of the city in the same manner as a city ordinance upon filing of such petition with the city clerk within thirty days after filing of the salary schedule. In the event of the filing of a valid referendum petition, the salary increase or decrease shall not go into effect until approved by vote of the people.
- B. Referendum measures under this section shall be submitted to the voters of the city at the next following general or municipal election occurring thirty days or more after the petition is filed and shall be otherwise governed by the provisions of the state Constitution, or city charter, or laws generally applicable to referendum measures.

#### **Section 2: Bellingham Municipal Code Section 3.12.010 A. is amended as follows:**

- A. Effective January 1, 2013, the annual salary for members of the city council shall be calculated as follows:
  - 1. January 1, 2013, \$1,893 per month;
  - 2. The annual salary for council members shall increase annually by three percent, beginning January 1, 2014.

This subsection related to the annual salary for members of city council shall be superseded by any action by the salary commission under BMC Chapter 2.98 fixing the salary of members of the city council.

**PASSED** by the Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Council President

**APPROVED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor

**ATTEST:** \_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Office of the City Attorney

Published:

\_\_\_\_\_