

DRAFT ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, RELATING TO STORMWATER MANAGEMENT REQUIREMENTS IN MULTI-FAMILY ZONES IN THE SILVER BEACH NEIGHBORHOOD AMENDING BELLINGHAM MUNICIPAL CODE CHAPTER 16.80, THE LAKE WHATCOM RESERVOIR REGULATORY CHAPTER

WHEREAS, Lake Whatcom is the drinking water reservoir and resource for approximately 100,000 residents in Bellingham and Whatcom County; and

WHEREAS, Lake Whatcom has been listed as an impaired water body under section 303(d) of the Federal Clean Water Act for low levels of dissolved oxygen, total phosphorus, dieldrin, mercury, and total PCB's; and

WHEREAS, the City, Whatcom County and the Lake Whatcom Water and Sewer District have adopted plans, enacted regulations, programs, and multi-agency coordination that are intended to protect and improve the water quality of Lake Whatcom; and

WHEREAS, the City's efforts to protect the water quality of Lake Whatcom are consistent with a variety of goals and policies in the City's Comprehensive Plan; and

WHEREAS, most properties that are within the City limits and the Lake Whatcom watershed are within Basin 1 and in the Silver Beach Neighborhood; and

WHEREAS, the City recently enacted changes to residential multi-family zoning and density requirements to facilitate more dense development in urban areas to increase the supply of housing within proximity to goods, services, and jobs that would be accessible via multi-modal forms of transportation; and

WHEREAS, these recent changes to the City's multi-family zoning and densities are consistent with a variety of goals and policies in the City's Comprehensive Plan aimed at providing a variety of housing options and forms; and

WHEREAS, there may be an inherent conflict between the high-density zoned areas in the Silver Beach Neighborhood and the Comprehensive Plan goals and policies calling for the protection of Lake Whatcom's water quality; and

WHEREAS, there are four residential multi-family zones in the Silver Beach Neighborhood; and

WHEREAS, three of these multi-family zones have a specified density of "high" that would allow for significant additional development in the Lake Whatcom watershed, which could negatively impact Lake Whatcom water quality; and

48 **WHEREAS**, the City Council has not adopted stormwater standards that are specific to multi-
49 family development in the watershed; and

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51 **WHEREAS**, for these reasons the City Council adopted a moratorium on accepting
52 development applications for new units in the four Silver Beach multi-family zones on
53 December 4, 2023, which is set to expire on July 10, 2024; and

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55 **WHEREAS**, the City Council provided direction to City staff to initiate a
56 Type VI legislative process to amend the Silver Beach Neighborhood Plan and the Lake
57 Whatcom Reservoir Regulatory Chapter, BMC 16.80 to ensure that any future development in
58 the four multi-family zones of the Silver Beach Neighborhood is as at least as protective as the
59 standards for single-family development in the watershed and added this legislative change to
60 the annual review docket; and

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62 **WHEREAS**, the responsible official reviewed the proposed comprehensive plan and
63 development regulation amendments under the procedures of the SEPA, and a non-project
64 Determination of Non-Significance was issued on February 23, 2024; and

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66 **WHEREAS**, after notice was posted, mailed, and published as required by BMC 21.10, the
67 Planning Commission held a public hearing on the proposed comprehensive plan and
68 development regulation amendments on March 21, 2024; and

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70 **WHEREAS**, on March 21, 2024, the Planning Commission held a public hearing on the
71 proposed amendments and took testimony from City staff and the general public; and

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73 **WHEREAS**, on April 11, 2024, the Planning Commission held a work session and adopted
74 revised Findings of Fact, Conclusions and Recommendations by a vote of 6-0 (one member
75 absent) ; and

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77 **WHEREAS**, the City Council held a properly noticed public hearing on the proposed
78 comprehensive plan and development regulation amendments on May 20, 2024; and

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80 **WHEREAS**, the City Council considered the recommendation of the Planning Commission,
81 the staff report, and the public comment and hereby adopts the Findings, Conclusions and
82 Recommendations of the Planning Commission; and

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84 **WHEREAS**, the City Council finds that the proposed amendments are consistent with the 2016
85 Bellingham Comprehensive Plan and the amendments will protect the water quality of Lake
86 Whatcom.

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

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90 **Section 1:** BMC 16.80.060 C regarding permitted uses is hereby amended as follows:
91 C. Residential Multi Permitted Uses – Uses Permitted Outright. No building or land shall be
92 used within areas designed RM or RM-planned except as enumerated below:
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- 94 1. Single-family dwelling unit with less than 5,500 square feet of total floor area [pursuant to](#)
95 [BMC 20.32.010\(B\)](#).
96 2. Duplex and/or multiple attached dwelling units such as apartments or townhouses.
97 3. Publicly owned parks, trails and playgrounds.
98 4. Private recreational facilities, when approved as part of a subdivision.
99 5. Public utilities (when located within a public right-of-way).
100 6. Confidential shelters subject to the provisions of BMC 20.10.047.
101 7. Wireless communication facilities, subject to the provisions of Chapter 20.13 BMC.
102 8. Co-housing developments, subject to the requirements of BMC 20.10.048.

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105 **Section 2.** BMC 16.80.070 regarding minimum site area shall be amended as follows:
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107 16.80.070 Minimum site area for residential single [and residential multi](#) development.
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- 109 A. The minimum site area required for residential single [and residential multi](#) development
110 shall be as stated in the Silver Beach neighborhood plan land use classification system
111 under “density,” except in the following instances:

112 [No further changes]

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114 **Section 3.** A new Section titled: BMC 16.80.085 regarding development standards for
115 residential multi development shall be created as follows:

116 [16.80.085 Development Standards for residential multi development.](#)

117 [A. *Development Standards. Development on property with a residential multi general use*](#)
118 [type shall be as required under BMC Title 20.32, except as modified in this chapter.](#)

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121 [1. These are minimum standards and may be increased for a particular planned](#)
122 [proposal where more stringent standards are necessary to protect neighboring](#)
123 [properties, conform with existing development in the area, preserve natural resources](#)
124 [or sensitive environments, provide for orderly development or conform with the](#)
125 [comprehensive plan.](#)

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127 [A.B. *Open Space. A minimum of 30 percent of the site area shall be reserved as*](#)
128 [open space.](#)

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130 [B.C. *Residential multi development on individual lots shall be required to provide*](#)
131 [best management practice for stormwater quality treatment in accordance with BMC](#)
132 [15.42 and the DOE Manual in effect at the time of permitting.](#)

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134 [D. *Septic systems are prohibited in the Lake Whatcom watershed.*](#)

135 E. Native Vegetation Protection Area (NVPA) Requirements. The purpose of retaining
136 a “NVPA” (BMC 16.80.050) is to prevent phosphorus inputs to Lake Whatcom by the
137 interruption, infiltration, and evapotranspiration that forest cover provides. Areas in a
138 “natural forested condition” (BMC 16.80.050) are generally considered the optimum
139 natural condition for minimizing stormwater runoff, including strategies to control the
140 phosphorus leaving the site.
141

142 1. NVPA Minimum Area.

143 a. Fully Engineered Method.

144 i. At least 30 percent of the total site area shall meet the “natural
145 forested condition” (BMC 16.80.050) and retained as the NVPA;

146 ii. See full requirements in BMC 15.42.060(A)(3)

147 2. NVPA Standards.

148 a. A site analysis shall be conducted by an ISA-certified arborist, in
149 conjunction with the stormwater engineer and other professionals prior
150 to site design and building permit application submittal. At a minimum,
151 the analysis shall be done to determine the extent to which the NVPA
152 meets the definition of “natural forested condition” (BMC 16.80.050).

153 b. The following criteria shall be included in the site analysis report
154 submitted to the city:

155 i. The site analysis shall assess the soils for their capacity to
156 support the NVPA and their ability to provide stormwater
157 attenuation.

158 ii. The site analysis shall evaluate the health and long-term
159 viability of the trees within the NVPA, considering potential
160 changes to adjacent properties and the surrounding vicinity that
161 could impact the NVPA.

162 iii. The site analysis shall include recommendations on tree
163 preservation, tree removal to avoid hazards, and tree
164 replacements to promote long-term forest canopy viability based
165 on factors taken into account by the ISA-certified arborist.

166 iv. The site analysis shall include identification and protection
167 of the critical root zone of trees to be saved using the
168 methodology adopted in the city’s Parks and Trails Design
169 Standards Nos. 02950.06 and 02950.07.

170 v. A site visit prior to activities authorized to occur in the NVPA,
171 such as, but not limited to hazard tree removal, shall be

172 supervised by an ISA-certified arborist. The soil profile, including
173 the organic duff layer, within the NVPA shall not be disturbed
174 unless authorized by the city and in accordance with the ISA-
175 certified arborist recommendations. Subgrade soils may not be
176 placed within the NVPA.

177 vi. If the site analysis results in a determination that the NVPA
178 does not meet the natural forested condition, a full restoration
179 plan to reestablish the site to a natural forested condition is
180 required for approval prior to building permit submittal. The
181 restoration plan shall include the following:

182 c. The restoration plan shall include all components and specifications
183 necessary to achieve a timely reestablishment of the NVPA to a natural
184 forested condition. The minimum monitoring period shall be five years.

185 d. The restoration plan shall be developed and implemented by an ISA-
186 certified arborist or a professional ecological restoration specialist with
187 at least five years of experience in designing and implementing
188 ecological restoration projects or qualified professional as determined
189 by the director.

190 e. The restoration plan shall include cost estimates for fully
191 implementing the restoration plan on which a surety can be based.

192 f. A financial surety for all required restoration work shall be submitted
193 and approved prior to building permit issuance.

194 3. NVPA Permanent Protection. The NVPA shall be protected during
195 construction and in perpetuity by covenants or conservation easements granted
196 to the city of Bellingham prior to building permit issuance.

197 **Section 4.** BMC 16.80.090 D. regarding impervious surface limits shall be amended as
198 follows:
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201 A. *Residential Single Development.* One of two development “methods” can be selected, as
202 described below and further detailed in BMC [15.42.060](#).

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204 1. *Fully Engineered Method.* See full requirements in BMC [15.42.060\(A\)\(3\)](#) and [\(B\)\(3\)](#); or

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206 2. *Forested Method.*

207 a. Impervious surface limits not to exceed 2,000 square feet or 20 percent of the gross lot
208 area, whichever is lesser.

209 b. Partially pervious surface limits not to exceed 1,000 square feet or 10 percent of the gross
210 lot area, whichever is the lesser.

211 c. Together, the total impervious surface and partially pervious surfaces shall not exceed 25
212 percent of the gross lot area nor exceed 2,500 square feet.

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d. See full requirements in BMC [15.42.060\(A\)\(3\)\(b\)](#) and [\(B\)\(3\)\(b\)](#).

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B. [Residential Multi Development. All redevelopment shall be done in accordance with the Fully Engineered Method in BMC 16.80.085 and BMC 15.42.060 B.](#)

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~~C.B.~~ Redevelopment of an existing nonconforming lot with regard to impervious and partially pervious surface area limits. When an owner of a lot that [is not developed according to the standardsexceeds the impervious limits expressed in](#) BMC [16.80.090\(A\)](#) desires to remodel or add on to an existing building or impervious area or partially pervious surface, they shall comply with BMC [15.42.060\(B\)\(3\)](#) or may:

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1. Add an additional story to any existing portion of the residential building that will not change the footprint, subject to height limitations in BMC Title [20](#).

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~~D.C.~~ Reconstruction of a building that is nonconforming with regard to impervious area limits is allowed on a like-for-like basis when damaged by earthquake, fire, vehicular collision or similar accidental causes. Owners of nonconforming lots with regard to impervious area may not rebuild buildings that have been abandoned or are more than 50 percent destroyed by reason of neglect unless they conform to impervious limits in BMC [16.80.090\(A\)](#).

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~~E.D.~~ Impervious Limits for ~~Residential Multi and~~ Commercial Development. The maximum impervious limit for ~~residential multi and~~ commercial development shall be determined during the SEPA review process. The SEPA process shall consider stormwater impacts, ambient water quality, contaminant and nutrient loading and the adopted goals and policies for the Lake Whatcom watershed in effect at the time of application. All ~~residential multi and~~ commercial development review shall emphasize best management practice prevention efforts over treatment strategies for the minimization of water quality impacts and a finding of fact must be made that no increase in phosphorus or fecal coliform loading will result from the approval of the development.

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Section 5. BMC 20.30.040 A. regarding applicability of residential standard development regulations shall be amended as follows:

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A. *Applicability.*

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1. The regulations of this section shall apply to the development of any main building in an area designated RS to be occupied by a principal use designated in BMC [20.30.030](#).

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2. The regulations of this section also apply to the development of a single-family home where permitted in other designations (residential multi, commercial, institutional or planned).

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3. The regulations of this section shall apply to the development of any permitted conditional use in an area designated RS unless other applicable regulations appear within Chapter [20.16](#) BMC.

253 4. Except where other applicable regulations appear within BMC [20.10.036](#) or [20.30.100](#), the
254 regulations of this section shall apply to the development of any accessory building in an area
255 designated RS.

256 [5. In addition to the requirements under subsection 20.30, all residential single development](#)
257 [that drains to basin one of the Lake Whatcom watershed, as shown in BMC Chapter 16.80,](#)
258 [Lake Whatcom Regulatory Provisions, shall provide for stormwater management as shown in](#)
259 [BMC Chapters 15.42 and 16.80.](#)

260 **Section 6.** BMC 20.32.010 D.3.c. regarding nonconforming buildings shall be amended as
261 follows:

262 c. A one-time expansion not to exceed 50 percent of the existing floor area, or 5,000 square
263 feet, whichever is less, for an existing use which is enumerated within the permitted uses listed
264 in BMC [20.38.050](#) corresponding to the applicable general use type. Such expansion must be
265 accomplished in conformance with the following regulations:

266 i. For property designated planned residential, all applicable regulations within the residential
267 multi chapter related to a “multiple” use qualifier, unless the use is a single-family residence in
268 which all applicable regulations within the residential single chapter shall apply.

269 ii. For property designated planned commercial, all applicable regulations within the
270 commercial chapter related to a neighborhood use qualifier.

271 iii. For property designated planned industrial, all applicable regulations within the industrial
272 chapter related to a “light” use qualifier.

273 iv. For wireless communication facilities, the provisions of Chapter [20.13](#) BMC shall apply.

274 [v. The property must not be located in basin one of the Lake Whatcom watershed.](#)

275 **Section 7.** BMC 20.32.030 C.1. regarding nonconforming buildings shall be amended as
276 follows:

277 C.

278 1. *Nonconforming, Planned.* Any existing building and/or existing use located upon property
279 designated as planned without having gained approval of a planned development permit shall
280 be deemed nonconforming subject to the limitations found within Chapter [20.14](#) BMC;
281 provided, however, that the following shall be permitted:

282 a. A change of occupancy to a use enumerated within the permitted uses listed in
283 BMC [20.32.030\(A\)](#) corresponding to the applicable general use type. For wireless
284 communication facilities, see Chapter [20.13](#) BMC for additional regulations pertaining to
285 properties designated as planned.

286 b. Interior renovations involving no exterior expansion, to a use enumerated within the
287 permitted uses listed in BMC [20.32.030\(A\)](#) corresponding to the applicable general use type.

288 c. A one-time expansion not to exceed 50 percent of the existing floor area, or 5,000 square
289 feet, whichever is less, for an existing use which is enumerated within the permitted uses listed
290 in BMC [20.32.030\(A\)](#) corresponding to the planned use qualifier. [Any expansion for buildings](#)
291 [that are located within basin one of the Lake Whatcom watershed shall be compliant with BMC](#)
292 [16.80 and 15.42 in regards to impervious and pervious surfaces.](#)

293 d. Construction of an accessory dwelling unit pursuant to BMC [20.10.036](#).

294 **Section 8.** BMC 20.32.040 A. regarding applicability of standard development regulations
295 shall be amended as follows:

296 A. *Applicability.*

297 1. Unless the optional regulations of BMC [20.32.050](#) are utilized, the regulations of this section
298 shall apply to all principal use development, including mixed uses and conditional uses, in all
299 areas designated with a residential multi general use type.

300 2. Development of a detached single-family dwelling unit permitted in this chapter shall comply
301 with the standard development regulations within Chapter [20.30](#) BMC.

302 3. Single-family attached units shall comply with standard development regulations found in
303 BMC [20.32.045](#).

304 [4. In addition to the requirements under subsection 20.32, all residential multi development](#)
305 [that drains to basin one of the Lake Whatcom watershed, as shown in BMC Chapter 16.80,](#)
306 [Lake Whatcom Regulatory Provisions, shall provide for stormwater management as shown in](#)
307 [BMC Chapters 15.42 and 16.80.](#)

308 **Section 9.** BMC 20.32.040 B. 5. Regarding density bonuses shall be amended as follows:

309 5. *Density Bonus.* As stipulated in Chapter [20.00](#) BMC, Zoning Tables, a density bonus may
310 be obtained for a multifamily development proposal that has not previously been granted a
311 density bonus under a different development proposal. A density bonus shall not establish a
312 density greater than the maximum specified density of the applicable subarea unless as
313 allowed under a separate code provision. [Density bonuses shall not be allowed for properties](#)
314 [that drain to basin one of the Lake Whatcom watershed.](#)

315 [No further changes]

316 **PASSED** by the Council this _____ day of _____, 2024.

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321 Council President

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324 **APPROVED** by me this _____ day of _____, 2024.

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Mayor

ATTEST: _____
Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Published:
