

**ORDINANCE NO. 2004-11-080**

**AN ORDINANCE OF THE CITY OF BELLINGHAM ADDING A NEW CHAPTER 20.27 TO THE BELLINGHAM MUNICIPAL CODE TITLE 20, CREATING A DEMONSTRATION PROGRAM FOR INNOVATIVE PERMANENTLY AFFORDABLE HOMEOWNERSHIP PROJECTS, AND SETTING FORTH THE CRITERIA FOR SUCH PROJECTS.**

**WHEREAS**, the City has a responsibility under State law to provide housing opportunities for all economic segments of the community; and

**WHEREAS**, The City's Comprehensive Plan calls for and supports revisions to the City's land use regulations to increase opportunities for affordable home ownership; and

**WHEREAS**, there is a shortage of affordable home ownership opportunities for those households whose annual income is 80% or less of the Bellingham (HUD) median income as adjusted by family size; and

**WHEREAS**, the City Council has found that providing earned increased density and regulatory modifications for affordable home ownership projects which meet appropriate criteria will help promote the development of affordable home ownership opportunities; and

**WHEREAS**, single family neighborhood character can be protected, maintained, and possibly enhanced by requiring affordable home ownership projects developed with earned increased density to be consistent with the City design review guidelines; and

**WHEREAS**, as required by RCW 36.70A, notice of the City's intent to adopt a new Affordable Housing Ordinance was filed with the Department of Community, Trade and Economic Development on September 10, 2004, and sent to other reviewing agencies at least 60 days prior to the effective date of this ordinance; and

**WHEREAS**, the City's SEPA Official has reviewed this Ordinance and related environmental checklist and has issued a Determination of Non-Significant (DNS) environmental impact (SEP2004-00082) under the State Environmental Policy Act; and

**WHEREAS**, after mailed and published notice the Planning Commission held a public hearing on the proposed ordinance on October 14, 2004; and

**WHEREAS**, the Planning Commission considered the staff report and public comment received and recommended that, with amendments, the ordinance be adopted; and

**WHEREAS**, after mailed and published notice, the City Council held a public hearing on the proposed ordinance on November 15, 2004; and

**WHEREAS**, the City Council considered the staff report, public comment received, and recommendations of the Planning Commission, and approved the ordinance with amendments;

**NOW THEREFORE, THE CITY OF BELLINGHAM, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1:** A new Bellingham Municipal Code Chapter "20.27 – Demonstration Program for Innovative Permanently Affordable Homeownership Projects" is hereby adopted as follows:

**20.27.010 Authority and Purpose.**

**A. Authority.** Both the Growth Management Act and the Housing Policy Act require the City to provide housing opportunities for all economic segments of the community. Similarly, the City's Comprehensive Plan encourages revisions to the City's development regulations to increase the supply of affordable housing.

This chapter will allow the use of alternative development standards and processes that are not currently allowed under existing land use regulations, while protecting residential character and maintaining overall consistency with the neighborhood plans and the goals and policies of the Bellingham Comprehensive Plan.

**B. Purpose.** In accordance with the directives of the Growth Management Act, Housing Policy Act, and the City's Comprehensive Plan, the purpose of this chapter is to facilitate, for a specified trial period of one (1) year, the construction of innovative owner-occupied affordable homes by organizations that can demonstrate, to the City Council's satisfaction, after review and approval by the Planning Director or his/her designee, an ability to finance, manage, and monitor affordable home sales to assure permanent affordability.

Within this one (1) year, the City Council shall conduct a public hearing and determine whether to:

1. Extend the specified time period for this chapter;
2. Extend the time period and make modifications to this chapter;
3. Permanently incorporate this chapter into the land use development code;  
or
4. Rescind this chapter.

### **20.27.020 Affordable Homeownership Defined**

Purchasers of affordable homes constructed under this chapter shall meet the following requirements:

- A. Annual Income.** All purchasers shall be from a household whose annual income, at the household's initial occupancy of the single-family residence, is 80 percent or less of the median income (determined by HUD) as adjusted by family size of the Bellingham Standard Metropolitan Statistical Area (SMSA), specifically defined as Whatcom County; and
- B. Housing Expenses.** The monthly expenditure by a purchaser, as described in subsection A above, for housing including mortgage repayment, insurance, taxes, and utilities (water and sewer) shall not exceed 38 percent of the gross household income at the time of purchase and the amount for mortgage shall not exceed 30 percent of gross household income. All other variable living expenses associated with the resident's occupancy shall not be a factor in the calculation of affordability.

### **20.27.030 Earned Increased Density Criteria.**

Earned increased density of up to 50% over the otherwise allowable density in the applicable residential zone may be granted to a project if 100% of dwelling units in the project are provided and retained as permanently affordable owner-occupied homes, subject to the following eligibility requirements:

#### **A. Project Applicant.**

1. The organization has as its purpose the creation and retention of owner-occupied, permanently affordable, income qualified home-ownership.
2. The organization can demonstrate experience in providing affordable housing. Notwithstanding this requirement, an organization that can demonstrate experience in providing housing and a mission statement of its intent to use that experience toward achieving the goal of providing permanently affordable housing shall be deemed to have met this requirement.
3. The organization can demonstrate the ability to employ a mechanism to retain all of the units as permanently affordable to income-qualified buyers as defined by BMC 20.27.020 and which specifically requires that the units be either owner-occupied or vacant.

4. The organization can demonstrate an ability and commitment to submit an annual report to the City Council documenting all residential units, past and pending sales, and ownership by qualified home-buyers.
- B. Single-Family Home Ownership.** The project must create single-family residences that are individually owned by their occupants. It must have controls in place, subject to approval by the Planning Director or his/her designee, to ensure that the residences remain owner-occupied.
- C. Guarantee of Permanent Affordability.** The project must have controls in place, subject to approval by the Planning Director or his/her designee, to ensure that the project's single-family residences remain permanently affordable in accordance with the definition of affordable homeownership in BMC 20.27.020. The controls shall include:
1. Continued ownership of the land by the project applicant with the owner occupants of the single-family residences leasing the land back from the project applicant;
  2. Purchase/Sale Agreements with the owner/occupants which require that the single-family residences be sold only to qualified purchasers who meet the requirements of BMC 20.27.020;
  3. A requirement that the project applicant can only transfer the land to another entity that meets the requirements of subsection A above; or
  4. Other methods approved by the Planning Director, or his/her designee, to ensure that the project's single-family residences remain permanently affordable in accordance with the definition of affordable homeownership.
- D. Project Location.** Affordable single family homes developed under this chapter must be located in a residential single-family or multi-family zone within the City of Bellingham, except within the Lake Whatcom Watershed.
- E. Design Review.** Single family housing projects receiving earned increased density under this chapter must comply with the design review process and site and location criteria for multifamily residential development in BMC Chapter 20.25 to protect, maintain, or enhance neighborhood character and compatibility.
- F. Request for Regulatory Modification.** Project applicants may request modification of the regulatory requirements listed below, provided that the project complies with applicable Washington State laws. Requests for modification must be accompanied by detailed supporting documentation regarding the appropriateness of, and the need for, the modification. Project applicants must meet all other applicable development regulations in the

Bellingham Municipal Code pertaining to single family detached or attached houses. Requests for regulatory modification must accompany the preliminary plat, short plat, or lot line adjustment application and must be noted on submitted site plans.

1. Minimum lot size;
2. Minimum street frontage;
3. Minimum front, side, and rear yard setbacks;
4. Minimum parking requirements;
5. Maximum lot coverage;
6. Minimum usable open space;
7. Other regulations to allow demonstration of innovative approaches to permanently affordable home ownership, energy conservation, low-impact development, and stormwater management.

**G. Recommendation for Regulatory Modifications.** The Planning and Community Development Director or his/her designee, may issue a recommendation to the Hearing Examiner for modification of regulatory requirements listed in 20.27.030 F., above, for projects applying under this chapter if the Planning Director or his/her designee, determines that approvals of requested regulatory modifications are necessary to facilitate the construction of as many affordable homes as allowable.

**H. Request for Exemption from Traffic and School Impact Fee and Stormwater Fee.** Project applicants may request exemption from the traffic impact fee (TIF) in accordance with BMC 13.60.030 E., the school impact fee in accordance with BMC 16.100.080 A.(1)d., and the stormwater fee in accordance with BMC 15.16.040 A. As per RCW 82.02.060 (2), exemptions granted for transportation or school impact fees attributable to the development must be paid from public funds other than impact fee accounts.

#### **20.27.040 Procedures.**

Projects applied for under this chapter shall follow the procedures listed below.

**A. Pre-Application Conference.** A pre-application conference with Planning and Community Development Department staff is required.

**B. Neighborhood Meeting.** An applicant is required to conduct a neighborhood meeting prior to the submittal of an application and after the pre-application conference. The Director may provide standard notice formats and guidelines for conducting the meeting. The notice shall include a brief description of the project, date, time and location of the neighborhood meeting and name and phone number of the applicant or their representative. The applicant shall post the notice of the neighborhood meeting on the project site at least 14 days prior to the meeting and shall mail the notice at least 14 days prior to the meeting to:

1. The Planning and Community Development Department with a copy of the mailing list;
2. The owner of the property as listed on the application;
3. Owners of property within 500 feet of the site boundary of the subject property as listed by the Whatcom County Assessor records;
4. The Mayor's Neighborhood Advisory Commission representative and any neighborhood association registered with the Planning and Community Development Department for the neighborhood in which the project is proposed, and for any neighborhood within 500 feet of the project site boundary; and
5. The local newspaper.

**C. Submittal Requirements**

The Director shall establish submittal requirements and forms to be used for applications. A complete application shall consist of the completed application form with all required information, a SEPA Environmental checklist, if applicable, and any filing fee as established by the City Council.

**D. Determination of Complete Application.** A complete application consists of a completed design review application form together with all required information listed in the submittal requirements, including those established by the Planning Director for applications under this chapter, and payment of the application fee as may be established by the City Council. If a subdivision of land is required, the preliminary plat, short plat, or lot line adjustment shall also be submitted. An application shall be reviewed to determine whether it is complete under the procedures in BMC Title 21.

**E. Concurrent Review.** The application for design review, subdivision, and project approval under this chapter shall be processed concurrently. The Director's decision regarding design review shall be forwarded to the Hearing Examiner with the staff recommendation for the application.

**F. Notice of Application.** A notice of application shall be provided under the procedures in BMC Title 21 by the following methods:

1. The Planning and Community Development Department shall mail notice of application to:
  - a. The applicant;
  - b. The owner of the property as listed on the application;

- c. Owners of property within 500 feet of the site boundary of the subject property as listed by the Whatcom County Assessor records;
  - d. The Mayor's Neighborhood Advisory Commission representative and any neighborhood association registered with the Planning and Community Development Department for the neighborhood in which the project is proposed, and for any neighborhood within 500 feet of the project site boundary;
  - e. Any person or organization that has filed a written request for notice with the Planning and Community Development Department; and
  - f. The local newspaper.
- G. Date of Notice.** The date of the notice of application shall be the date the notice is mailed.
- H. Posted Notice.** The applicant shall post one or more "notice of application" signs on the site or in a location immediately adjacent to the site that provides visibility from adjacent streets. The Director shall establish standards for size, color, layout, materials, placement and timing of installation and removal of the signs.
- I. Public Comment Period.** The minimum comment period shall be 14 days following the date of notice of application.
- J. Project Review.** Complete applications shall be reviewed by Planning and Community Development Department staff for consistency with the applicable Neighborhood Plan, the regulatory requirements of the BMC, requests for modifications to regulatory requirements of the BMC, and the residential multifamily design review guidelines. A written recommendation for approval, modification, or denial of the project will be made by the Planning and Community Development Department Director or his/her designee and forwarded to the Hearing Examiner.
- K. Notice of Public Hearing.** The public hearing shall be consolidated with the hearing on any preliminary application submitted for the project. Notice of Public Hearing shall meet the following requirements:
- 1. An open record public hearing before the Hearing Examiner shall be scheduled for a date no sooner than 15 days after the notice of application and no sooner than 15 days after the issuance of a SEPA determination. Staff recommendations and the SEPA decision shall not be issued until after the close of the minimum public comment period, provided that the optional DNS process may be used if authorized.

2. Notice of the public hearing for the application shall be published in a newspaper of general circulation at least 10 days prior to the hearing date.
3. Notice of the hearing shall be mailed at least 10 days prior to the hearing in the same manner as for the notice of application.
4. The notices shall contain a brief description and the general location of the proposal, the time, date and location of the hearing and information about the availability of the staff report.

**L. Public Hearing.** A Public Hearing shall be conducted as follows:

1. The Hearing Examiner shall conduct an open record public hearing on the proposal. Any person may participate in the hearing by submitting written comments to the Planning and Community Development Department prior to the hearing or by submitting written comments or making oral comments at the hearing.
2. The Planning and Community Development Department shall transmit to the Hearing Examiner a copy of the department file on the application including all written comments received prior to the hearing. The file shall also include the SEPA threshold decision and records regarding public notice of the application.
3. The Hearing Examiner shall create a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording of each hearing.

**M. Hearing Examiner Recommendation.** The Hearing Examiner shall make a written recommendation to approve, approve with modifications, or deny the application based on the compliance with the earned increased density criteria of BMC 20.27.030. The recommendation shall be transmitted to the City Council and shall be contingent on a final decision of approval by the City Council. The Hearing Examiner's decision on any preliminary plat shall be contingent on Council approval of the affordable home ownership project with earned increased density.

**N. City Council Decision.** The City Council shall conduct a closed record hearing on the application consistent with the procedures of BMC 1.26.040. The City Council's decision shall be based upon the record established in the Hearing Examiner's proceedings, written argument submitted by the parties, and such oral argument as City Council may allow at its discretion. The City Council shall accept the Hearing Examiner's recommendation, accept it with modifications, or reject it based on the criteria in BMC 20.27.030.

**O. Council Action.** The Council's action shall be in the form of an ordinance.

**P. Notice of Decision.** A notice of decision shall be issued as provided in BMC Title 21.

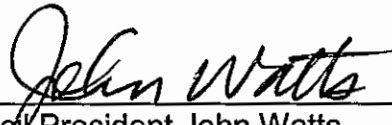
**20.27.050 Annual Reporting Requirements.**

The owner(s) of a project receiving earned increased density under this chapter must report annually to City Council regarding the status of the project. Information presented to City Council annually shall include:


- A. Total number of units in the project;
- B. Number of units that changed ownership during the past year;
- C. The purchase price of each unit that changed ownership; and
- D. The steps taken by the owner to ensure that each unit that changed ownership was transferred at an affordable price in accordance with BMC 20.27.020.

**Section 2:** This ordinance shall take effect on November 23, 2004 and shall expire on December 31, 2005, unless affirmatively renewed by City Council prior to that date.

**PASSED** by the Council this 22nd day of November, 2004.

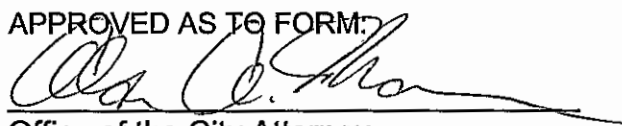
  
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Council President John Watts

**APPROVED** by me this 23rd day of November, 2004.

  
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Mayor Mark Asmundson

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**ATTEST:**   
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Finance Director Therese Holm

**APPROVED AS TO FORM:**  
  
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Office of the City Attorney

Published: November 26, 2004