

## **CITY COUNCIL AGENDA MEMORANDUM**

### **SUBJECT**

Proposed ordinance imposing a moratorium on acceptance or processing of Conditional Use Permit applications to establish helicopter landing facilities for non-emergency uses.

### **FISCAL IMPACT**

The moratorium may have a fiscal impact, in that in its current form, it precludes certain types of development otherwise permitted in the Land Use Code from moving forward during the moratorium period.

### **STAFF CONTACT**

Lori Riordan, City Attorney  
Mike Brennan, Director, Development Services Department  
Matt Terry, Director, Planning & Community Development

### **POLICY CONSIDERATION**

Should a moratorium on acceptance and processing of Conditional Use Permit applications for helicopter landing facilities be initiated?

### **BACKGROUND**

On October 12, 2009 at its Study Session, Council approved a motion to consider a moratorium on acceptance and processing of Conditional Use Permit applications for heli-stop and heli-port facilities on the October 19 Regular Session agenda.

Heliports and helistops are regulated pursuant to land use code (LUC) general development requirements, and the charts governing transportation and utilities uses. In residential, professional office, and neighborhood business land use districts (R-1 – R-30, PO and NB), helicopter landing facilities are restricted to government heliports used only for emergency purposes. Helicopter landing facilities are prohibited outright in the Residential and Old Bellevue districts of the Downtown, and are prohibited outright in all but the Medical Office and Office Residential districts of Bel-Red. In the remaining land use districts, heliports may be approved through the conditional use permit process if performance criteria are met and impacts are adequately addressed.

Performance criteria applicable to helicopter landing facilities are contained in LUC 20.20.450. These criteria speak to noise mitigation, use of optimal aircraft technology, adverse impacts associated with helicopter approach and departure paths, safe clearance distances, and signage. The Federal Aviation Administration (FAA) also has a review responsibility that is described in the code.

Since the helicopter regulations were adopted in 1989, only two applications for permanent helicopter landing facilities have been received. The first was for a helistop that was recently established at Overlake Hospital to support its upgraded trauma facility. That facility is limited to emergency response use. The second facility is the one currently under consideration for a conditional use permit to establish a helistop use on the rooftop of the Bank of America building in downtown Bellevue. This facility is proposed for private use and is not limited to emergency response.

## **ANALYSIS**

The City's Hearing Examiner recently granted a Conditional Use Permit to Kemper Development Inc. for improvement and activation of a helistop facility on the Bank of America building in downtown. The question of whether a moratorium could be enacted arose as a result of citizen interest in this permit application.

The Examiner's decision is currently on appeal to the City Council, set for hearing on November 2, 2009. Should Council conclude that a moratorium is appropriate for new permit applications, it is important to note that the Conditional Use Permit currently on appeal will not be impacted by the moratorium and Council will continue with the scheduled hearing and rule upon the appeal.

Whether or not to impose a moratorium addresses the separate question of the continuing effectiveness of the City's regulations and criteria for permitting heliports and helistops. These regulations were adopted in 1989; and, while they have been subject to amendment from time to time, they have not been substantively changed since their original adoption. Since 1989, land uses in the downtown area of Bellevue have undergone substantial changes in the density of residential development. Concerns have also been raised regarding the potential for multiple helistop or heliport facilities in the downtown core under existing regulations and impacts associated with those facilities such as public health and safety as well as noise and other environmental impacts.

A review of the buildings located in the downtown, indicates that there are limited opportunities to accommodate helicopter landing facilities. Mechanical equipment occupies substantial areas of available rooftop, and the equipment is not easily relocated due to system connections into the structure. Even if equipment could be moved to accommodate a landing area, there are no buildings in the downtown that are presently engineered to support a landing facility. In addition, many of the newer buildings are constructed to their maximum height limit, and engineering support structures to accommodate a landing area could not be added within the dimensional limits contained in the code. Area to accommodate ground landings is available, but it

is not clear that these locations could meet City Code and FAA requirements that the site be obstruction-free.

Staff in the Development Services Department (DSD) report that there are no additional helicopter landing facilities currently proposed in Bellevue, and the Department has received no requests for pre-application services in anticipation of any new permit applications. There are several steps that must be taken before an application could be filed for a conditional use permit. First, a pre-application conference would be required. These pre-application conferences must generally be scheduled 2-3 weeks in advance of the meeting, and applicants are required to provide plans with sufficient detail to show project scope. A pre-application letter is then issued by DSD that describes the requirements that must be met for a conditional use application to be submitted. Should Council conclude that a moratorium is necessary in order to address whether code changes are appropriate to address the concerns regarding cumulative impacts of helicopter landings in light of the increase in residential density in downtown, a public hearing must be held within 60 days of the effective date of the ordinance. Following that public hearing, if the Council keeps the moratorium in place, it will last for a period of six months. The moratorium could be extended if appropriate and necessary for additional periods based upon findings demonstrating the need for a continued moratorium.

## **COUNCIL OPTIONS**

1. Adopt a moratorium and evaluate helicopter landing facility location issues as a standalone work program. Moratorium timing is dictated by statute. Following the initial public hearing, a moratorium could be imposed for a period of six months. Extension would require additional action by the Council. Pursuit of this option could have timing implications for other code development work programs that are currently underway.
2. Initiate a targeted code amendment to prohibit all but emergency helicopter landing facilities City-wide. This approach could be accomplished within approximately 60 days (before any applicant could likely submit an application for a helicopter landing facility). This approach would allow staff to review the helicopter landing provisions as a component of the Downtown neighborhood character review that is scheduled for 2010 without the timing constraints dictated by a moratorium. At the end of the process, Council would have the information necessary to decide if helicopter landings should remain restricted to emergency use, expanded to areas where residential uses are not otherwise permitted, or allowed more broadly subject to enhanced performance criteria. This option would allow the helicopter landing issue to be included in a previously identified work program that will be raising and addressing complementary neighborhood character issues.
3. Undertake a work program to evaluate helicopter landing facility location issues in the absence of a moratorium or code amendment. This approach would allow the helicopter landing issue to be addressed as a standalone work program or as

part of a work program that is already underway. The helicopter landing issue would be considered vis-à-vis other code drafting work that is currently underway and would take into account other competing Council priorities when being scheduled.

## **EFFECTIVE DATE**

The effective dates differ depending on the option chosen.

## **ALTERNATIVES**

1. Adopt the moratorium. A public hearing would be required within 60 days of the effective date of the moratorium in order to extend the moratorium for a period of six months.
2. Do not adopt the moratorium but initiate a code amendment to prohibit all but emergency heliport or helistop facilities city-wide.
3. Do not adopt the moratorium and give other direction to staff.

## **ATTACHMENTS**

Proposed Ordinance No. 5913

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5913

AN ORDINANCE imposing a moratorium on the acceptance of applications for the review and/or issuance of Conditional Use Permits for any new heliport or helistop facilities; declaring a public emergency; and establishing an immediate effective date.

WHEREAS, the Bellevue City Council adopted Land Use Code regulations governing the development of heliport and helistop facilities in 1989, and amended those regulations in 2003 and 2006; and

WHEREAS, since that time, land uses patterns in and around downtown Bellevue have changed to include greater density in a variety of residential uses; and

WHEREAS, it is reasonable to believe that as regional and local traffic increases, the City may receive a number of applications for establishment and activation of heliport or helistop facilities; and

WHEREAS, additional planning is necessary to determine the appropriate policy and regulatory framework for consideration and approval of heliport and helistop permits; and

WHEREAS, the City Council finds that impacts associated with multiple heliport or helistop locations could compromise the health, safety and quality of life for residents of Bellevue; and

WHEREAS, the applicable provisions of the Comprehensive Plan, Bellevue Land Use Code, and other City Codes do not adequately address the possibility of multiple, private non-emergency helistop and heliport locations; and

WHEREAS, the City has a compelling interest in the protection of the health and safety of all of its residents, as well as a compelling interest in ensuring that the goals and policies contained within the Comprehensive Plan and other policy/planning documents are fulfilled; and

WHEREAS, without a moratorium the City could, in the near future, receive applications for development and activation of private non-emergency helistop or heliport facilities that would undermine the City's ability to comprehensively consider the impacts of and appropriate regulations for multiple private non-emergency helistop and heliport facilities; and

WHEREAS, a moratorium on new applications and Conditional Use Permits for heliport and helistop facilities is required in order to allow sufficient time to review and if necessary draft Comprehensive Plan and Bellevue Land Use Code and other City Code amendments that provide a balance between mobility and public health, safety and quality of life for residents, and to present such amendments to the Planning Commission and City Council through the City's amendment processes; and

WHEREAS, Washington state law, including RCW 35A.63.220 and RCW 36.70A.390, authorizes Washington cities to adopt moratoria and provides a process for a public hearing that must be held within sixty days of the date of the adoption of a moratorium; now, therefore

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Imposition of Moratorium. A moratorium is hereby imposed on the application for, intake of, review of, or issuance of any Conditional Use Permits for construction, improvement, alteration or activation of a helistop or heliport; provided, that the City may continue to accept and issue permits necessary to correct existing life/safety issues that would otherwise pose a threat to property or residents or occupants of an existing structure; and further provided that the City may continue to process and issue those individual Permits that became vested prior to the effective date of this moratorium.

Section 2. Duration and Scope of Moratorium. The moratorium imposed by this ordinance shall become effective on the date hereof, and shall continue in effect for an initial period of sixty (60) days, unless repealed, extended or modified by the City Council after subsequent public hearings and the entry of additional findings of fact pursuant to RCW 35A.63.220. PROVIDED, that this moratorium shall not affect the status of any Conditional Use Permit application or any existing Permit that vested prior to the effective date of this Ordinance. PROVIDED FURTHER, that this moratorium shall not apply to any Conditional Use Permit application or existing Permit for construction and operation of a helistop or heliport for emergency or medical transport.

Section 3. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or no later than \_\_\_\_\_, so as to hear and consider public comment and testimony regarding this moratorium. Following such hearing, the City Council may adopt additional findings of fact, and may extend the moratorium for a period of up to six (6) months. If a period of more than six months is required to complete consideration of any changes to the Comprehensive Plan or Bellevue City Codes, the Council may adopt additional extensions after any required public hearing, pursuant to RCW 35A.63.220 and RCW 36.70A.390.

Section 4. Severability. Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 5. Public Emergency. The City Council hereby finds and declares that a public emergency exists, and that this ordinance is a public emergency ordinance necessary for the protection of the public health and safety and should, therefore, take effect upon adoption. The facts upon which this public emergency are based include all recitals set out in this ordinance as well as those facts contained in the legislative record.

Section 6. Effective Date. In accordance with RCW 35A.13.190, this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption.

Passed by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2009, and signed in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

(SEAL)

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Grant S. Degginger, Mayor

Approved as to Form:

By: \_\_\_\_\_  
Lori M. Riordan, City Attorney

Attest:

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Myrna L. Basich, City Clerk

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