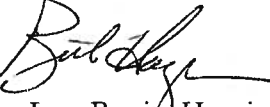




## MEMORANDUM

To: Railroad Urban Village Group Date: February 16, 2018  
From: Bill Hager, Senior Planner Project: 0603.14.01  
RE:  Low Barrier Housing at 211 E. Champion

The Railroad Urban Village Group has requested an opinion from Maul Foster & Alongi, Inc. (MFA) as to the appropriateness of a “Low Barrier Housing Facility” at 211 E. Champion Street in Bellingham, WA.

It is our professional opinion that such a facility at this location not only is inappropriate, but also is not a permitted or conditional use under Title 20 of the Bellingham Municipal Code (BMC), especially when considered at this location.

Low Barrier Housing is a recently developed approach, one of several that a government or service agency may employ to address one of the most challenging aspects of the homeless issue. Other tactics include outreach, prevention and counseling, temporary sheltering, work training, rapid rehousing, transitional housing, and construction of more affordable housing units.

Our understanding is that the Bellingham Low Barrier Housing Facility will provide temporary, emergency sheltering for anyone who needs to get in out of the weather. Generally, “low barrier” is synonymous with “easy access,” meaning that users of the facility are not required to show identification or take sobriety or drug tests. These facilities do maintain minimal rules relating to safety of the guests, generally prohibiting weapons and excluding guests who engage in unsafe or disruptive conduct. While a local governmental agency will own the facility, it is our understanding that a local service agency (the Light House Mission [LMM]) will provide supervision. In addition, we understand that no licensing of the facility is required, and it is unclear who will retain responsibility and liability for incidents related to use of the facility. Low Barrier Housing is considered part of the temporary sheltering approach; however, because it is a new strategy, its use has not been formally defined in BMC Title 20.

As currently proposed, a low-cost, one-story facility would be constructed to accommodate occupation of between 100 and 200 people and their pets. In addition to the beds, the facility would provide storage for personal items, restrooms and showers, a common area both indoors and outdoors, and an office for those supervising the guests. It is not known if the outdoor common area would be available for camping.

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Of legitimate concern for government officials locating the Low Barrier Housing Facility is the likely negative impact on the surrounding area. Since the Low Barrier Housing Facility has few or no barriers to entry, one can and should assume that a number of the guests will migrate into the surrounding area to engage in behaviors necessary to support drug or alcohol addictions and/or behaviors driven by psychiatric problems. One goal for these type of facility is to provide service to these individuals in the hope of moving some from the street to other homeless solutions. However, objectively these types of documented behaviors can be very problematic to the surrounding area and present the challenge in locating these facilities.

### **211 E. CHAMPION STREET**

The site at 211 E. Champion Street is flat; relatively long (440 feet), stretching from Champion to York Streets; and narrow (96 feet). As it is in the city center, it has ready availability to public utilities. The property is in the Central Business Core area of Downtown Bellingham. The property is currently used for parking. Some of the parking spaces are reserved (required by zoning) for use of the tenants and employees of the county's Health Department Annex building at 1500 N. State Street; if this site is selected, those required parking spaces would have to be relocated to another area that satisfies code requirements.

The main downtown transit station is located across Champion Street. Immediately east and adjacent to the proposed site is the newly completed, 90-unit, mixed-use residential facility for low- and moderate-income families, which is owned by the Bellingham/Whatcom County Housing Authority. Northeast of this site and across York Street is a branch of a regional bank. To the west is a professional office. Clearly, the immediate area has experienced a renewal of energy and private investment in recent years.

### **ZONING ANALYSIS**

Property in the city is subject to land use regulations approved by the legislative authority of the city. Every use must be listed as a permitted use within the underlying land use designation for that particular location. In some instances, the use might be listed as a conditional use. The Downtown Bellingham Plan, adopted by the city in 2014, designates the land use of the proposed low barrier housing site at 211 E. Champion Street as *Commercial Core*. See Appendix A of BMC Title 20.37.510 - 20.37.520 for District Boundaries, Intent and Permitted Uses.

Analysis: MFA review finds that a "low barrier housing facility" is not specifically listed as either a permitted or conditional use. It is MFA's opinion that this use is fundamentally different from other uses permitted outright or conditionally in the district. There is no similar, analogous use. A low barrier housing facility:

- a. Does not meet the standards constituting a housing unit
- b. Is not licensed by the state or a local authority
- c. Has a proposed occupancy that exceeds the maximum allowed for other defined uses
- d. Permits unregulated overnight stays of unknown duration

Our opinion is bolstered in that many cities across Washington State and Oregon have used the tactic of amending their land use codes to allow for such facilities rather than allowing the use through the discretionary interpretation process. See <http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Homeless-Housing.aspx>.

In instances where a use is not specifically listed, the city director of planning does have the authority to allow the use under their discretionary authority after **a finding is made that the use is similar to a permitted use**. In making the interpretation, the director must also follow specific criteria in BMC 20.37.520 (5)], subject to compliance with procedures established in BMC 21.10.270.

In addition to making a finding that the use is similar to a permitted or conditional use in the Commercial Core (a finding with which MFA disagrees), the director must find that the following four additional criteria are met:

1. The proposed use must be consistent with the purpose and intent of the district in which it is to be located.

*Analysis: The intent of the area is as follows: "The downtown district is divided into various residential, commercial, and industrial land use areas. The purpose of these areas is to establish goals, policies, zoning and development regulations that require development to respond to the desired intensity, physical and aesthetic characteristics, and neighborhood scale in each area. These areas are intended to ensure development is appropriately scaled and designed, and to encourage uses that are compatible with each other and the surrounding neighborhoods. Emphasis in this area is on the pedestrian environment, the preservation of historic buildings, and the compatibility of new development."*

Allowing a one-story facility in what is intended to be the most densely developed area would be inconsistent with the existing and planned scale of development in the Commercial Core. The use would be counterproductive to the enhancement of retail sales and tourism and maybe the desirability of pedestrian movement through downtown. MFA believes the use to be inconsistent with the stated purpose and intent.

2. The proposed use must be consistent with the goals and policies of the comprehensive plan and stated goals.

*Analysis: Plan goal and policy statements provide a context for the purpose and intent. Therefore, MFA is of the opinion that this criterion is not met.*

Plan goals encourage new investment in downtown to increase jobs, retail sales, and tourism activities in a safe and welcoming area (Goal 3.1 and underlying Policies, Goal 3.8 and Policy 4.3). The Low Barrier Housing Facility will add minimal jobs. The potential for an increased homeless concentration during the day and evenings may come at the expense of harming retail sales and tourism in the immediate area.

Design review standards apply in the core area. The standards seek to encourage new, multilevel construction appropriate for the area and historic resources and encourage ground floor retail with residential situated on upper floors (Policy 4.1). As proposed, this facility will be low-cost, likely metal-clad exterior, and limited to a single story to reduce supervisory costs. These elements are inconsistent with the stated goals of the urban design guidelines and may discourage further investment in the area surrounding the facility.

3. The proposed use must be in the public interest.

Analysis: While it can be argued that a low barrier housing facility is in the public interest, such a facility may unfortunately increase crime and discourage private investment in the immediate area.

4. The proposed use must not generate greater impacts than the other, similar, uses.

Analysis: The use would undoubtedly cause associated impacts greater than those of other permitted uses, including:

- a. Loss of property value
- b. Reduction in retail sales and tourism dollars
- c. Reduction in future construction projects in the immediate area
- d. The potential for an increase in crime
- e. A reduction in the overall feeling that downtown Bellingham is a “safe and welcoming area” for visitors, residents and employees

MFA is willing to provide a detailed statistical analysis of issues, but for brevity it may be best to save those detailed technical arguments for discussion with the planning director and, if an appeal is necessary, to the hearing examiner and Superior Court.

### **LOCATIONAL ANALYSIS**

The city has established the Homeless Strategies Workgroup (HSW) to assist in development of possible approaches to homeless needs and specifically to locate a Low Barrier Housing facility.

The HSW will send a list of the most promising sites to the Bellingham City Council for their consideration. The site at 211 E. Champion Street is one of the sites currently under consideration.

The HSW has established the following criteria for its site selection process. The preferred location for the proposed facility is constrained by the following criteria:

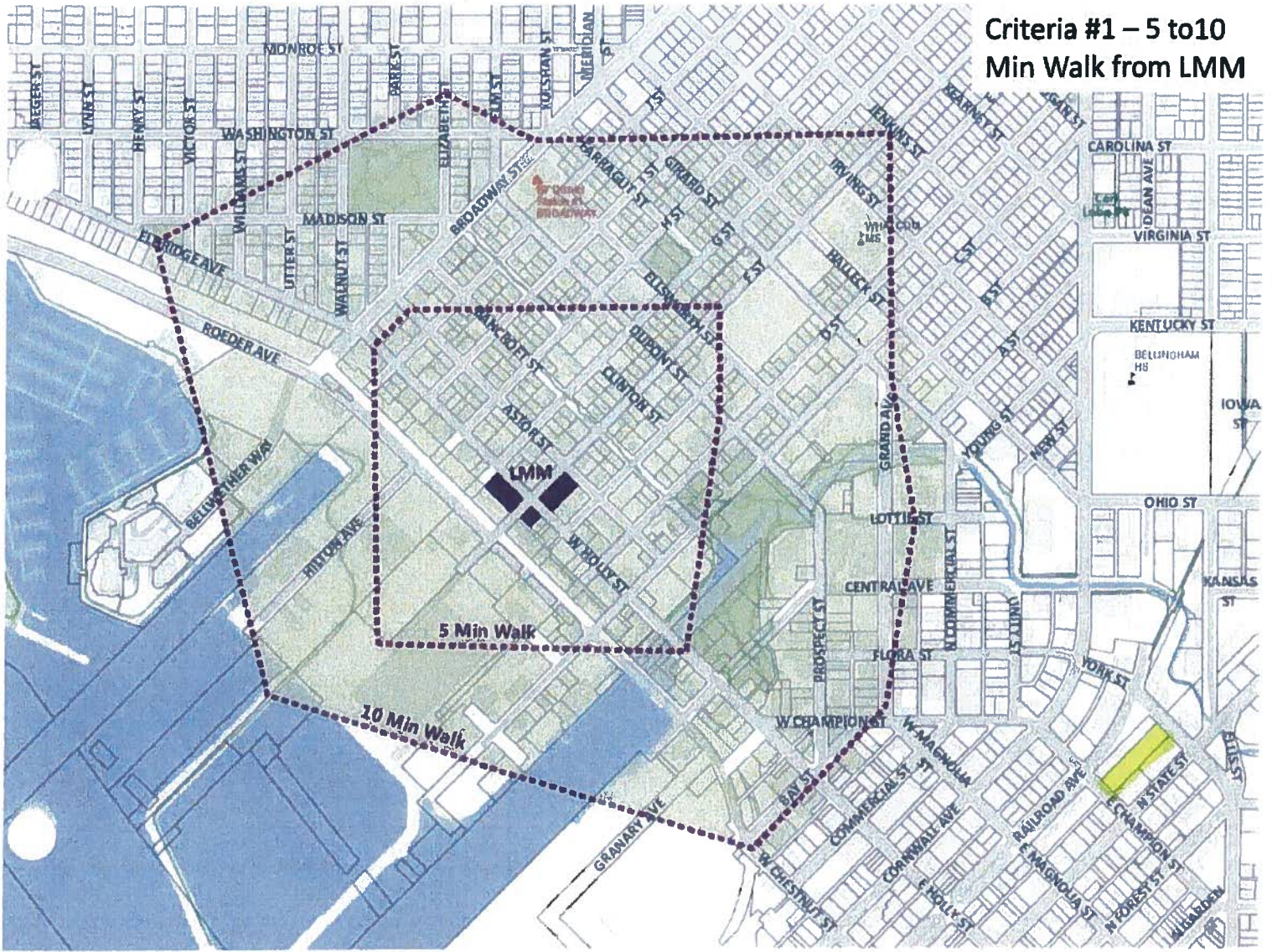
1. The use should be permitted by local zoning regulations and be consistent with local plans.

As stated previously, MFA's analysis indicates that a low barrier housing facility is not a permitted or conditional use, nor is it consistent with the goals and policies for the commercial core of the Downtown Bellingham Plan.

2. The facility site should be located within a ten-minute walking distance from the LMM, which provides other needed services for the homeless.

See the following map, produced by the city, incorporating both criteria 2 and 3.

Criteria #1 – 5 to10  
Min Walk from LMM



Analysis: The site at 211 E. Champion Street is situated outside the ten-minute walking distance to LMM. This would require long walking commutes to LMM through downtown to obtain other homeless-related services. Beyond being inefficient for the users of the facility, this may decrease the “pedestrian experience” in downtown and increase other potential adverse impacts.

3. To avoid an overconcentration of homeless facilities in one area, the facility should not be closer than a five-minute walk to the LMM.
4. The facility site should be located within a ten-minute walk to the downtown.

Analysis: Both criteria 3 and 4 are technically satisfied unless the intent of the criteria is to ensure that users of the facility have easy accessibility to the downtown without being in downtown itself.

5. The facility site should be located away from residential zones of the city.

Analysis: The intent of this criterion is unclear. Is it to avoid unintended impact to residential areas or uses? Housing is a desired and permitted use in the Commercial Core, as evidenced by the recently completed Walton Place I & II residential facility owned by the Bellingham/Whatcom County Housing Authority.

The attractive multilevel facility is an appropriate addition to the Commercial Core area, meeting the Downtown Design standards and the goals and policies of the Downtown Plan. Its patios are integral to the living areas and unfortunately will face west into the outdoor area of the Low Barrier Housing Facility.

Other housing has recently been completed in areas adjacent to the downtown core, including the new, 80-unit, low-income senior housing complex on North Forrest Street, east of this site.

## **CONCLUSION**

In conclusion, while a low barrier housing facility is badly needed in Bellingham, it is MFA's opinion that the site at 211 E. Champion Street fails to meet the established zoning and locational criteria and would not be an appropriate location for the Low Barrier Housing Facility.

It is important to note that HSW is still evaluating various sites and has not made a recommendation to the County Council or the City Council. Based on our experience, we anticipate that the HSW may reach the same conclusions we did with regard to 211 E. Champion. Should this site become subject to further consideration, MFA will be available to provide technical support to the Railroad Urban Village Group.

## APPENDIX 1 Excerpts from BMC Title 20

### 20.37.510 Downtown district urban village – Establishment of boundaries and land use areas.

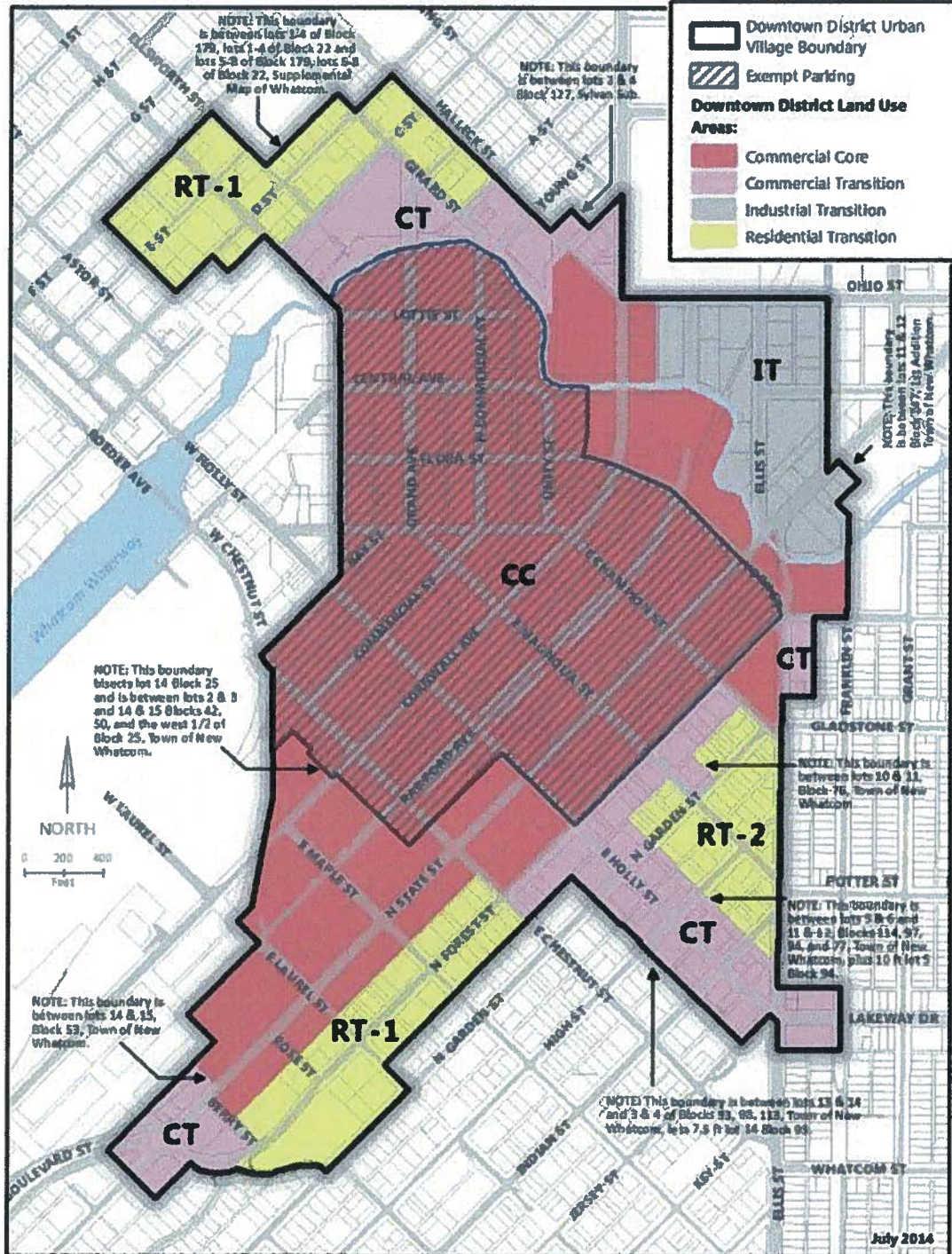


- A. The boundaries of the downtown district and associated land use areas are hereby delineated as shown in Figure 20.37.510.
- 
- B. The downtown district is divided into various residential, commercial, and industrial land use areas. The purpose of these areas is to establish goals, policies, zoning and development regulations that require development to respond to the desired intensity, physical and aesthetic characteristics, and neighborhood scale in each area. These areas are intended to ensure development is appropriately scaled and designed, and to encourage uses that are compatible with each other and the surrounding neighborhoods. Emphasis in this area is on the pedestrian environment, the preservation of historic buildings, and the compatibility of new development.
1. Commercial Core (CC). The commercial core area is intended to be the most densely developed area within the downtown district with the highest concentration of employment, services, entertainment and housing. The wide range of supportive land uses including retail, office, recreation, public facilities, parks and open space are supported by well-developed transit and pedestrian facilities.



Figure 20.37.510

Figure 20.37.510 - Downtown District Urban Village Boundaries, Land Use Areas & Exempt Parking District



### 20.37.520 Downtown district urban village – Uses.



- A. Uses are established in Table 20.37.520, below. Land use classifications are listed on the horizontal axis. Downtown district land use areas are shown on the vertical axis.
1. If the symbol “P” appears in the box at the intersection of the column and row, the use is permitted subject to general requirements for the use and the use area.
  2. If the symbol “C” appears in the box at the intersection of the column and the row, the use is permitted subject to the conditional use provisions specified in Chapter [20.16](#) BMC, and to general requirements for the use and the use area.
  3. If the symbol “N” appears in the box at the intersection of the column and the row, the use is not allowed in that area, except for certain short-term uses (see BMC [20.10.040](#), Temporary uses).
  4. If a (number) appears in the box at the intersection of the column and the row, the use may be permitted in the use area subject to the special limitations indicated in the corresponding “Note” at the end of the table.
  5. Use Determination. In the case of a question as to the inclusion or exclusion of a particular proposed use in a particular use category, the planning and community development director shall have the authority to make the final determination. The director shall make the determination according to the characteristics of the operation of the proposed use as they relate to similar allowed uses within the use area, and the intent of the downtown district subarea plan.

**Table 20.37.520 – Permitted Uses**

<p><b>P = Permitted C = Conditional Use N = Not allowed (#) = See Notes</b></p> <p><b>When multiple symbols and notes appear in a box such as P(2) or (4), C, they are interpreted as (P) Permitted (2) when located in a main building(s) on a site existing as of September 23, 2014 OR (4) on corner lots; (C) conditional elsewhere.</b></p>				
<p><b>LAND USE CLASSIFICATION</b></p>	<p><b>AREA</b></p>			
	<p><b>CC (1) CT (1)</b></p>	<p><b>RT-1</b></p>	<p><b>RT-2</b></p>	<p><b>IT</b></p>
A. Residential				
1. Attached Accessory Dwelling Unit per BMC <a href="#">20.10.035</a>	P	P	P	N
2. Detached Accessory Dwelling Unit existing prior to 1/1/1995, per BMC <a href="#">20.10.035</a>	P	P	P	N
3. Bed and Breakfast (There is no express limit on the number of bedrooms let as transient housing)	P	P	P(2), C	N
4. Boarding and Rooming Houses	P	P	C	P(3)
5. Co-housing Developments, per BMC <a href="#">20.10.048</a>	P	P	P	P(3)
6. Confidential Shelters, per BMC <a href="#">20.10.047</a>	P	P	P	N
7. Hotel, Motel, and Hostel	P	N	N	P
8. Infill Housing, per Chapter <a href="#">20.28</a> BMC	P	P	P	N
9. Manufactured Home Park	N	N	N	N
10. Multifamily	P	P	P	P(3)
11. Single-Family, Detached Dwelling Unit with less than 5,500 square feet of total floor area	P	P	P	N
12. Single-Family Residence with 5,500 square feet or more total floor area, subject to BMC <a href="#">20.16.020(L)(3)</a>	P	C	C	N

**Table 20.37.520 – Permitted Uses**

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<p><b>LAND USE CLASSIFICATION</b></p>	<p><b>AREA</b></p>			
	<p><b>CC (1) CT (1)</b></p>	<p><b>RT-1</b></p>	<p><b>RT-2</b></p>	<p><b>IT</b></p>
B. Commercial				
1. Adult Entertainment	N	N	N	N
2. Commercial Recreation	P	N	N	P
3. Crematory	N	N	N	C
4. Day Care	P	C	C	N
5. Day Treatment Center	P	C	C	C
6. Drinking Establishment	P	N	N	P
7. Drive-Up Facilities such as bank tellers, food and beverage services, laundry pick up, and car washes	N	N	N	P
8. Eating Establishment, including sale and on-premises consumption of alcoholic beverages as an accessory use	P	P	P(2) or (4), C	P
9. Food Membership Distribution, including Community Supported Agriculture (CSAs) and Food Buying Clubs	P	N	N	P
10. Live/Work Unit	P(5)	P(5)	P(5)	P(5)
11. Motor Vehicles Sales, limited to automobiles, motorcycles, scooters and recreational vehicles	P(6)	N	N	P
12. Offices	P	P	P	P

**Table 20.37.520 – Permitted Uses**

<b>P = Permitted C = Conditional Use N = Not allowed (#) = See Notes</b> <b>When multiple symbols and notes appear in a box such as P(2) or (4), C, they are interpreted as (P) Permitted (2) when located in a main building(s) on a site existing as of September 23, 2014 OR (4) on corner lots; (C) conditional elsewhere.</b>				
LAND USE CLASSIFICATION	AREA			
	CC (1) CT (1)	RT-1	RT-2	IT
13. Repair of small equipment and items such as appliances, electronics, clocks, furniture, hand tools, and watches	P	N	N	P
14. Retail Sales, except as restricted in subsection (B)(11) above	P	P(4)	P(4)	P
15. Services, Personal	P	P	P(2) or (4)	P
16. Service Station and Gas Station	N	N	N	P
<b>C. Health Care</b>				
1. Doctor, Dentist, Medical, and Therapy Office and/or Laboratory	P	P	P	P
2. Medical Care Facility	P	C	C	N
3. Service Care	P	C	C	N
4. Veterinary Service, Animal Hospital and Small Animal Care Shop	P(6)	N	N	P(6)
<b>D. Public and Semi-Public Assembly</b>				
1. Interpretive Center, Library, and Museum	P	N	N	N
2. Art Gallery, Art School, and Commercial Art Studio	P	P	P(2)	N
3. Auditorium, Stadium, and Theater	P	N	N	P
4. Church and House of Worship	P	C	C	C
5. Community Center	P	C	C	N

**Table 20.37.520 – Permitted Uses**

<b>P = Permitted C = Conditional Use N = Not allowed (#) = See Notes</b> <b>When multiple symbols and notes appear in a box such as P(2) or (4), C, they are interpreted as (P) Permitted (2) when located in a main building(s) on a site existing as of September 23, 2014 OR (4) on corner lots; (C) conditional elsewhere.</b>				
LAND USE CLASSIFICATION	AREA			
	CC (1) CT (1)	RT-1	RT-2	IT
6. Convention Center	P	N	N	P
7. Institution of Higher Education and School	P	C	C	P
8. Neighborhood Club/Activity Center	P	C	C	P
9. Park, Trail, and Playground	P	P	P	P
10. Passenger Terminal	P	N	N	P
11. Private Club and Lodge	P	C	C	P
E. Industrial				
1. Automobile Services for the washing, lubrication, and minor repair of automotive vehicles	N	N	N	P
2. Automobile Wrecking	N	N	N	N
3. Commercial Electric Power Generation, per BMC <u>20.36.030(C)</u>	N	N	N	P
4. Construction and storage yards	N	N	N	P
5. Hazardous Waste Treatment and Storage Facility	N	N	N	N
6. Manufacturing and Assembly except as allowed in subsection (E)(7) below	P(6)(7)(8)	N	N	P(7)
7. Manufacture, bottling, and distribution of beverages, including breweries, distilleries, and wineries	P(8)	N	N	P

**Table 20.37.520 – Permitted Uses**

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<p><b>LAND USE CLASSIFICATION</b></p>	<p><b>AREA</b></p>			
	<p><b>CC (1) CT (1)</b></p>	<p><b>RT-1</b></p>	<p><b>RT-2</b></p>	<p><b>IT</b></p>
8. Mini Storage Facility	P(6)(9)	N	N	P
9. Monument and Stone Works	N	N	N	P(7)
10. Repair of large equipment such as vessels, vehicles, and floor-based tools	N	N	N	P
11. Warehousing, Wholesaling, and Freight Operation	N	N	N	P(10)
F. Miscellaneous Uses				
1. Adaptive Use for Historic Register Buildings, per BMC <a href="#">17.90.080</a> and <a href="#">20.16.020(A)(1)</a>	C	C	C	C
2. Community Gardens	P	P	P	P
3. Community Public Facilities, per BMC <a href="#">20.16.020(J)(4)</a>	P	C(11)	C(11)	P
4. Jail and Correctional Facilities, provided the location is limited to those properties bound by Prospect and Flora Streets, Grand Avenue, and Whatcom Creek	P	N	N	N
5. Parking Facility (Nonretail)	P	C(12)	C(12)	P
6. Parking Facility (Retail)	P	N(12)	N(12)	P
7. Public Utilities on private property	P(13)	C	C	P
8. Public Utilities when located within a public right-of-way	P	P	P	P

**Table 20.37.520 – Permitted Uses**

<b>P = Permitted C = Conditional Use N = Not allowed (#) = See Notes</b> <b>When multiple symbols and notes appear in a box such as P(2) or (4), C, they are interpreted as (P) Permitted (2) when located in a main building(s) on a site existing as of September 23, 2014 OR (4) on corner lots; (C) conditional elsewhere.</b>				
LAND USE CLASSIFICATION	AREA			
	CC (1) CT (1)	RT-1	RT-2	IT
9. Recreational Vehicle Park	N	N	N	N
10. Recycling and Refuse Collection Center	C	N	N	P
11. Wireless Communications Facility, per Chapter <u>20.13</u> BMC	P, C	P, C	P, C	P, C
<p><b>NOTES:</b></p> <p>(1) Ground floor commercial may be required in certain locations as shown in the city center design standards in BMC <u>20.25.040(C)</u>.</p> <p>(2) Permitted when located in a main building(s) on a site existing as of September 23, 2014.</p> <p>(3) Permitted when in conjunction with other permitted uses, provided the residential use is located on or above the 2nd floor.</p> <p>(4) Permitted on corner lots. The gross floor area of a corner store may not exceed 3,000 square feet unless approved by a conditional use permit. A corner store may not be approved within 600 feet of another corner store.</p> <p>(5) The “work” component in live/work is limited to those permitted and conditional uses listed under the applicable zoning subarea in Table 20.37.520.</p> <p>(6) When entirely enclosed within a structure.</p> <p>(7) The manufacture, compounding, processing, refining, and treatment of significant quantities of the following materials, products or operations is prohibited. For the purpose of this section “significant quantities” consists of a barrel or more at a single time. Acetylene, asphalt and tar, brick, tile, terra cotta, concrete, cement, lime, gypsum, and plaster of Paris, fats, oils and soap, fertilizer, garbage, offal, bones, and the reduction of dead animals, forging or smelting of metal, lampblack, stove and shoe polish, lumber and planing mills, oilcloth and linoleum, paint, shellac,</p>				



**Table 20.37.520 – Permitted Uses**

<p><b>P = Permitted C = Conditional Use N = Not allowed (#) = See Notes</b></p> <p><b>When multiple symbols and notes appear in a box such as P(2) or (4), C, they are interpreted as (P) Permitted (2) when located in a main building(s) on a site existing as of September 23, 2014 OR (4) on corner lots; (C) conditional elsewhere.</b></p>				
<p><b>LAND USE CLASSIFICATION</b></p>	<p><b>AREA</b></p>			
	<p><b>CC (1)</b> <b>CT (1)</b></p>	<p><b>RT-1</b></p>	<p><b>RT-2</b></p>	<p><b>IT</b></p>
<p>turpentine, lacquer and varnish, paper and pulp, petroleum processing and storage, any explosive or highly inflammable material, slaughtering and processing of meat or fish products, tannery and curing of raw hides, chemicals such as acid, ammonia, bleach, chlorine, dye stuff, glue, gelatin and size, automotive wrecking, or junk yards.</p> <p>(8) Permitted when in conjunction with retail sales of the same product on site.</p> <p>(9) Permitted when the floor area is less than 50 percent of the floor area of other permitted use(s) on site.</p> <p>(10) Excluding the storage and handling of explosives, ammonia, chlorine, and any other similarly dangerous or toxic substances.</p> <p>(11) Conditional except for those uses permitted in (D)(9) above.</p> <p>(12) Permitted as shared parking pursuant to BMC <u>20.37.540(D)(2)(e)</u>.</p> <p>(13) Exclusive of storage yards.</p>				