



# CITY OF MEDINA

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**Date:** October 9, 2023  
**To:** Honorable Mayor and City Council  
**Via:** Stephen R. Burns, City Manager  
**From:** Steven R. Wilcox, Development Services Department Director  
**Subject:** Development Services Department Monthly Report

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## Permit Activity and Budgeting

Please see the two permit reports provided. Permit value for year to date through September 2023 is now more than double that of the same time in 2022. We have actually had less overall volume than last year, the same number of new construction projects, and more alterations and additions this year over last.

Budgeting for 2023 was conservative and based on what was slow permit activity in 2022. The 2024 Development Services Fund budget considers 2023 activity level through August, but with a conservative view of the remainder of the year. Basically, I am assuming that work will slow in the Fall through the end of the year, although September continued to be busy.

During September we conducted 2 Construction Activity Permit open houses. CAP open houses are associated with projects of \$500,000 and greater. The relevance of this information is that it shows the variations in monthly activity level and size of projects from a different perspective. Open houses more closely follow permit application dates as opposed to issuance timing.

For comparison in 2023:

- January – 0 open houses
- February - 0 open houses
- March – 5 open houses
- April – 1 open house
- May – 4 open houses
- June - 7 open houses
- July – 2 open houses
- August – 2 open houses
- September - 2 open houses

I hope to soon have a new graph which compares all CAP open houses from the beginning in 2019 through current. The more information we have to understand our activity levels and trend, the better our annual budget forecasting will be.

## **Proposed Violations Section to MMC 16.52 – Tree Management Code**

The proposed new tree removal violations code section that was presented to you in September is now with the Washington State Department of Commerce for a 60-day review. We have considerable work to complete in amending our Municipal Code for concurrency with the proposed new violations section. My goal is to have the concurrency work completed in October.

Following the September 11<sup>th</sup> Council presentation, I received two requests to revise the proposal to lessen the potential financial impact of fines on Medina residents. There certainly is merit to the suggestions. There is already a significant difference within the proposal between city tree removal and private resident tree removal violations. There was effort within the proposal to limit financial impact on Medina residents who violate the Tree Management Code. Here is how the new MMC 16.52 Violations section proposal currently mitigates impacts of fines on Medina residents:

- Exempts all fines for a one-time, one-tree removal.
- Limits the maximum fine per tree to \$25,000.
- Provides a hardship petition provision for the hearing examiner to consider potential reduction in fines to 25% of those calculated.

Fines, fees, possible remediation, cost for the hearing examiner, and code enforcement cost reimbursement will be expensive even with the mitigations listed above. I would like to propose an amendment to the draft violations section to allow the hearing examiner to potentially reduce the fines to 10% of those calculated under a hardship petition. This would change the 25% currently proposed to a minimum of 10% which means a potential reduction of fines per tree to \$2,500 as may be determined by the hearing examiner under certain criteria.

A resident made an excellent observation and suggestion. I would like for Council to consider the addition of an amendment to the proposal regarding private property trees removed by others. There have been occasions when a tree is removed from private property by a neighbor without consent. Development Services must issue a violation against the property owner where the tree was removed, not against the actual person who removed the tree. I would like to consult our city attorney and possibly amend the proposed violations section proposal to clarify whom the city action is addressed to.

Additionally, I would like to consider further softening of potential financial impacts on Medina residents who violate the code. Private property tree removal violations require a permit after the fact. This permit is for use in determining if there are supplemental trees required and may help with any location issues through a boundary survey for example. A suggested amendment is that if it is discovered through the after the fact permit review that there are no supplemental trees required, then there should be no fine. Exemptions to this however should include, as already stated in the proposal, legacy and landmark tree removals, and tree removal occurring within a critical area.

On October 2<sup>nd</sup> a hearing was conducted regarding the two trees removed within the public ROW adjacent to 227 Upland Road. The hearing remains open pending additional submissions to the hearing examiner. Based upon this hearing there may need to be additional amendments to the proposed violations section.

To help with what I wrote above regarding amendments that I would like for Council to consider, I am providing a summary:

- Under a hardship petition to the hearing examiner, the examiner may reduce the fine per tree to 10% of the total calculated. The proposal currently says the hearing examiner may reduce the fines to 25% of the total fine assessment under certain conditions.
- Add a section which clarifies that code enforcement action for trees removed from private property without permission of the property owner will have the city action directed at the person who actually performed the removal.
- Fines will be exempt for private property tree removal if it is found under permit application that there are no supplemental trees required. This would have conditions associated with tree removals in critical areas, and landmark/legacy tree removals as already drafted into the proposal.

Drafting an ordinance comprehensively without need for later amendment is difficult, and in particular with a complex new proposed ordinance such as this one. Consistency is critical, but there needs to be some level of discretion involved due to the various conditions that cannot all be addressed in code language. Based on what the results of the 227 Upland hearing there may be amendments needed to the city tree removal portions of the proposed violations section, and there may need to be inclusion of some level of Director discretion in city tree removal violations.

### **Washington State Building Code Update**

The 2021 Washington State Building Code was scheduled for implementation by all jurisdictions including Medina on July 1, 2023. In early May the State Building Code Council (SBCC) extended the implementation date for an additional 120-days.

There has been a conflict regarding the Energy Code which is being resolved.

As expected, the SBCC again extended the implementation date for the 2021 Washington State Building Code. The 2021 code is now scheduled for implementation on March 15, 2023.

### **King County Wastewater Pump Station Maintenance Project**

The wastewater pump station work to replace the aging pumps is on-going.

The nightwork originally planned to be one night turned into one night and half of one night for practice. Then, the work did not get completed so another night of work is required.

King County worked through a portion of the night on October 5-6. We have required that King County provide new noticing to affected residents each time they work at night.

### **Tree Code Enforcement**

On October 2<sup>nd</sup> a hearing was held regarding the two trees that were removed from the public right of way adjacent to 227 Upland Road without permit to do so.

The hearing was not closed pending the submittal of additional documents to the hearing examiner.

The decision should be made and available for me to inform Council in my November staff report.

Considering the proposed tree code violations section there is much to be learned from the experience with the 227 Upland ROW tree removal. Process changes, and staff training will be needed to assure that code enforcement actions in these complex matters can be successful.

### **Permit Tracking – My Building Permit**

We have been involved with about 30-local jurisdictions for nearly a year discussing the possibility of jointly creating and owning new permitting software. Our Development Services Coordinator Rebecca Bennett has been on a 10-member steering committee.

Several options were evaluated and on October 4<sup>th</sup> a vote was taken. The steering committee voted 8/2 to move forward with recommendation to the My Building Permit Executive Committee for the creation of a new permit tracking and public portal system.

What this means is that the existing My Building Permit organization, which was created by, and is operated through the City of Bellevue will now lead the creation of an entirely new and comprehensive permitting system. Medina has not committed to joining this yet and would eventually require Council approval due to the costs involved.

Our existing permit system called SmartGov is owned by a company named Brightly. Medina has owned SmartGov since 2011. SmartGov has been sold two times in the past several years. We started with using the permit tracking portion of SmartGov then added the public portal and ability to process permits electronically in 2020. We are now fully transitioned from paper permitting and we have a public portal on-line.

Medina is not dissimilar from other jurisdictions in that we have technical and support issues with our permit system. Lack of control and increasing costs without added benefit became so acute that the effort was started to look into a new system. My Building Permit has been successful and well-liked by public users and government owners for over 20-years. My Building Permit has only been a permit tracking system to date without ability to process permits on-line. The new system through My Building Permit would be complete tracking and electronic processing. Medina did not join My Building Permit in the past because it was not a complete system.

Costs of the new system are anticipated to be proportional to the jurisdictional population. Early estimates show that annual maintenance costs to Medina would be similar to what we have paid to SmartGov. There will be costs to establish the system, and at some point in the near future Medina will be asked to contribute.

There is no money in the 2024 Development Services Fund designated for this project. The need to seriously consider funding the project was not known until October 4<sup>th</sup> and the amount will not be known for some time.

## **2024 WSDOT 520 Bridge Maintenance Project**

We had another meeting with WSDOT staff in September regarding their work to seal the bridge concrete and soffits. An administrative noise variance is required for the work due to the need to work through the night on the bridge in the areas within Medina city limits. The variance asks for 10-nights between March 1<sup>st</sup> and December 31<sup>st</sup> with probability that only 4-nights will actually be needed and those may be in the summer of 2024.

We came to an agreement regarding conditions for the noise variance. Our Municipal Code allows for the Development Services Director to apply conditions to administrative noise variances. Basically, excessive noises will be limited through the conditions. Workers will not be allowed to park vehicles outside of the Evergreen Point lid, there will be non-vehicle back-up warning sounds, no vehicle idling, no congregating workers and talk or other noises in the Medina work area, no portable toilets in the Medina work area, and an agreement about the operation process itself. A noise study by WSDOT showed that the noises made, as heard by Medina residents, during the night work should not exceed the ambient nighttime traffic noise. With conditions addressing noise spikes the project impacts should be minimal on Medina residents.

I continue to work with WSDOT on discovery of the methods of applying the concrete sealant spray that they will be allowing their general contractor to use on the bridge. The material is known, and the generally accepted methods of application are also known. What is not known is the agreement between WSDOT and their general contractor with the project specifications which detail the work. WSDOT has been reluctant to provide me with the agreement template. I have told WSDOT that if they do not produce the template or the actual agreement that I will file a records request with the state. I have also told WSDOT that while the sealant material and its application on the 520 bridge may be nationally accepted, without my being given the contract documents this is beginning to appear as if they are hiding something.

WSDOT has stated that they agree to provide me with the contractor's specifications by early to mid-October.

The sealant questions are not a part of the noise variance or the conditions the Development Services Director may apply. The sealant questions I am asking are in the interest of Medina residents and not something I have authority over through the Medina Municipal Code, however I will continue to pursue answers.