Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226
PDS@co.whatcom.wa.us
360-778-5900

Memorandum

TO: Whatcom County Council

FROM: Maddie Schacht, Senior Planner and Lucas Clark, Planner II

THROUGH: Mark Personius, Director

DATE: December 5, 2025

SUBJECT: Response to Proposed Substitute Ordinance AB2025-838

In response to the proposed Substitute Ordinance AB2025-838 introduced by Council regarding Accessory Dwelling Unit (ADU) and Co-Living Housing Code amendments, please see the following analysis from Whatcom County Planning and Development Services (PDS). We want to provide some background context for Council of some of the issues and concerns involved with these proposed amendments.

Analysis on Substitute Accessory Dwelling Unit (ADU) Code
The Substitute Ordinance would adopt the Planning Commission's recommendations to:

1. Remove the public sewer service requirement for development of a second ADU:
   a. Allowing for up to two (2) ADUs per lot, both served by on-site sewage systems.

2. Adding language expanding the types of structures which can be converted into an ADU:
   a. Specifically listing barns and "any other accessory building" as eligible for conversion.

Item #1 – Public Sewer Service Requirement:
The State recognized that issues may arise from the implementation of the preemptive ADU development standards, and therefore codified several exceptions including RCW 36.70A.680(5)(d) which states, "*Nothing in this section or in RCW 36.70A.681 prohibits a city or county from… Prohibiting the construction of accessory dwelling units on lots that are not connected to or served by public sewers…*". This exception was created in order to avoid low density development from occurring within UGAs, which could prevent higher density from occurring in the future; once public services are provided.

Whatcom County Code already allow for one (1) ADU per lot within UGAs as codified under WCC 20.80.910, regardless of connection to public sewer service. Lots within UGAs are typically much smaller compared to those within rural areas. By allowing for two (2) ADUs per lot, both of which are connected to one or more septic systems, there may be little or no room left for future development.

Delayed development in order to achieve higher densities in UGAs is also a guiding principle of the Growth Management Act and Whatcom County's Comprehensive Plan.

WA State Department of Commerce noted in their draft 2025 Urban Growth Areas Guidebook that, "*UGAs should support efficient, cost-effective urban services. Growth is phased, with short-term development prioritized near existing infrastructure (e.g., sewer, water, transportation, schools and parks), while other areas are reserved for growth later in the 20-year comprehensive plan timeframe.*" RCW 36.70A.030.

In addition, the updated 2025 County Wide Planning Policies adopted by County Council Ordinance Number 2025-049, the following is states under Section F (Contiguous, Orderly Development and Planning in Urban Growth Areas):

- #4: *Within Urban Growth Areas, cities shall not extend water and sewer utilities without an adopted program for annexation and an adopted Capital Facilities Plan. Exceptions may be made in cases where human health is threatened as determined by the County Health Department. If water extensions are made, they shall be consistent with the service area boundaries and other provisions within the adopted Coordinated Water System Plan.*

- #11: *To encourage contiguous, orderly development and annexation of residential lands in Urban Growth Areas around cities, the County shall designate Urban Residential or other zones limiting density to a maximum of one dwelling unit per ten acres until public water and sewer are provided:*
    - This section was amended in the 2025 updated to only allow one dwelling/ten acres in the UR zone when public water and sewer are not provided, to ensure more efficient urban development when such services become available (typically upon annexation).

Item #2 – Expansion of Structures Eligible for Conversion to an ADU:
PDS does not recommend adding language expanding the types of structures which can be converted into an ADU beyond the State's prescriptive language in order to prevent potential future conflict or misunderstanding with property owners and developers once they reach the Building Permit stage of the permitting process with Whatcom County.

While zoning code may allow for conversion, all structures will still need to meet Building Code requirements; which may be difficult or infeasible for certain types of barns or large accessory structures which were not initially intended for human habitation; please see attached information from PDS Building Official Curtis Metz detailing these potential issues. The state enabling legislation and PDS proposed language already allows "*existing detached structures"* on such eligible UGA parcels to be converted to an ADU—which would include garages, barns or sheds. However, converting a portion of a large barn to an ADU requires much higher fire flow requirements for the entire barn which may likely make it infeasible to develop. We wouldn't want the public to read "barns" as an outright permitted use for an ADU without first understanding the potential cost implications of providing significantly higher fire flow for such a conversion when they apply for a building permit.

Analysis on Substitute Co-Living Housing Code

The Washington State legislature passed House Bill (HB) 1998, codified as RCW 36.70A.535, which requires a fully planning county to adopt development regulations allowing co-living housing on any lot located within a UGA that allows at least six multifamily residential units, including on a lot zoned for mixed use development. This must be reflected in local regulations by December 31, 2025, or be preempted by state law. Co-living housing is a form of housing intended for urban infill development with public transportation access. It is intended to reduce sprawl and vehicle miles traveled through density and may not be wholly appropriate for rural residential-type areas.

The Council's Substitute Ordinance proposes that Co-living housing be allowed in areas outside of the UGAs in Rural zoned lots where less than six multifamily residential units are permitted. The rationale for proposing to allow co-living in all rural residential zones (outside of UGAs) in the Substitute Ordinance appears to be consistency with the allowance of "boarding homes" as well as "mental health" and "substance abuse" facilities in those non-UGA zones. Boarding homes are defined in current code (WCC 20.97) below:

Boarding Home. *"Boarding home" means any home or other institution, however named, which provides board and domiciliary care to three or more children in the custody of the state, aged persons or infirm persons not related by blood or marriage to the operator and is licensed by the state. For the purpose of this definition, an "aged or infirm person" means a person of the age of 65 years or more, or a person less than 65 years who by reason of infirmity requires domiciliary care. "Infirmity" means a disability that materially limits normal activity without requiring inpatient medical or nursing care. An infirmity may be based on conditions, including but not limited to physical handicap, mental illness, developmental disability, mental confusion, disability or disturbance.*

That is a very different definition (and use) than "co-living" which is proposed in the PDS ordinance version as:

Co-living Housing. *"Co-living housing" means a residential development with sleeping units that are independently rented and lockable and provide living and sleeping space, and residents share kitchen facilities with other sleeping units in the building.* Refer to the definition of Co-living Housing Sleeping Unit.

Co-living Housing Sleeping Unit. *A residential development with independently rented and lockable sleeping. Residents share kitchen facilities with other sleeping units in the building. A co-living sleeping unit shall be calculated at ¼ of a dwelling unit for the purpose of density calculations.*

The term "rooming houses" is also defined in WCC 20.97 as:

Rooming House. *"Rooming house" means any dwelling in which, for compensation, three or more persons, either individually or as families, are housed or lodged, with or without meals. A boarding house, lodging house, tourist home or a furnished room house shall be deemed rooming houses. A rooming house with six or more sleeping units, occupied by transients, shall be deemed a hotel.*

Rooming houses are only allowed in two zones under the current code—the Urban Residential Medium (URM) and the Resort Commercial (RC) zone—whereas PDS recommends allowing co-living housing in the urban zoning districts that allow for six (6) or more multifamily units per state guidance. Those four zones include the URM, UR-MX, GC and RC districts. The definition of "rooming houses" clearly aligns much more closely to the definition of "co-living facilities" than "boarding homes" and yet the definition of rooming house also includes "boarding houses"! This is just one example of why our dated zoning code needs a ***comprehensive review and update*** (as opposed to our current resource-constrained annual code scrub "band-aid" approach). The dated and sometimes conflicting language can (and has) lead to confusion, requests for code interpretations, appeals and having to develop interim policies to clarify such definitions that just create more workload for staff and take-away from other more important duties. We don't recommend adding to the confusion by allowing "co-living" in non-UGA areas (in conflict with state guidance and potential liability if we were to be appealed for allowing "urban uses" outside of UGAs without clear statutory authority).

Due to the new "co-living" statutory requirement, we will have to review and revise the zoning code in 2026 to clarify and ensure consistency between the two different definitions and uses. We already also need to review and revise the "boarding home" definition and use in non-UGA zones because these types of facilities are now better known as "assisted living facilities" which are not currently defined in

our zoning code. Both “mental health” and “substance abuse” facilities are “essential public facilities” under the GMA with specific statutory authority (allowing jurisdictional discretion to locate such facilities outside of UGAs) whereas “co-living” facilities do not have that same classification. This is the challenging and constantly shifting ground we have to deal with when new state land use and housing laws (and/or GMHB or court decisions) mandate changes to our codes.

The legislature has also passed several other changes to state law that we will have to amend our codes in 2026 to comply with (as well as the recent Mercer Island GMHB case): including zoning text amendments to reflect proposed up-zones in UGAs and LAMIRDs to allow for increased housing densities proposed in the comp plan, identifying barriers to affordable housing and any necessary regulatory changes (HB 1220); and “essential public facilities” amendments. Staff has already identified these for our 2026 work program, including, at a minimum:

- Review and update Title 20 (Zoning) to incorporate text amendments to reflect proposed up-zones in UGAs and LAMIRDs to allow for increased affordable housing supply proposed in the comp plan update as recommended by the Planning Commission and County Council.

- Identify potential barriers to affordable housing (e.g., zoning, parking, setbacks, building heights, etc.) and whether any regulatory changes are needed to address those barriers.

- Review and update Title 20 (Zoning) to align co-living, rooming house, boarding homes and assisted living facilities definitions and use provisions to be internally consistent and externally consistent with updated state statutes.

- Recent updates to the GMA under RCW 36.70A.200, have added “Opioid Treatment Programs” and “Community Facilities” as Essential Public Facilities, and updated the term “Substance Abuse” to “Substance Use Disorder”. In addition, as documented under RCW 70.96A.420, the term “Opiate Substitution Treatment Program” was updated to “Opioid Treatment Program” as regulated under RCW 71.24.590.

- Potential Code Amendment to address changes under GMA regarding Essential Public Facilities:

    1. Add “Community Facilities” as a “Conditional Use” within the same zoning districts which allow for “Juvenile Rehabilitation Administration” facilities (UR, URM, UR-MX);
    2. Update the term **“**Opiate Substitution Treatment Clinic**”** to “Opioid Treatment Programs”, which are currently allowed as “Conditional Uses” within the following zoning districts (R, TZ, RGC, STC, GC, LII);
    3. Update of the term “Substance Abuse” to “Substance Use Disorder”; and
    4. Clarifying existing references to “Public Community Facility” as defined within WCC 20.97.160 to avoid confusion with new “Community Facilities” use.

We hope this helps provide some context for PDS’s proposed code changes, first to address the preemptive standards; and secondly to identify our next steps for continued code updates going forward in 2026.