

**Whatcom County
Planning & Development Services
Staff Report**

**Preemptive State Standards on
Accessory Dwelling Units & Co-Living Housing in Urban
Growth Areas**

I. File Information

File # PLN2025-00004, SEPA2025-00058

File Name: Preemptive State WCC Amendments – Accessory Dwelling Units & Co-Living Housing in Urban Growth Areas

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to Whatcom County Code Title 20 (Zoning) to comply with preemptive State regulations for Accessory Dwelling Units and Co-living standards affecting residential zoning districts in Urban Growth Areas per RCW [36.70A.680/.681](#) and [RCW 36.70A.535](#).

Every ten years, as part of the periodic update, RCW [36.70A.130](#)(1) requires Whatcom County to take legislative action to review and, if needed, revise its comprehensive plan and development regulations to comply with the requirements of the Growth Management Act codified under RCW [36.70A](#). These amendments to Title 20 are part of the periodic review under the Growth Management Act.

Location: Urban Residential (UR), Urban Residential-Medium (URM), Urban Residential-Mixed (UR-MX), and Resort Commercial (RC) Zoning Districts; excluding Urban Growth Areas within Lake Whatcom Watershed Overlay (LWWO) District, General Commercial (GC), Agriculture (AG), Rural (R), and Rural Forestry (RF) Zoning Districts

Recommendation: Planning and Development Services recommends that the County Council review the Exhibit, and after holding a public hearing adopt code amendments as recommended by staff; as shown Exhibit A.

II. Background

State Law and Requirements for Adoption of ADU Regulations

Under House Bill (HB) [1337](#), the Washington State legislature adopted preemptive development regulations for Accessory Dwelling Units (ADUs) within Urban Growth Areas (UGAs) requiring Counties to, “allow at least two accessory dwelling units on all lots that are located in all zoning districts within an urban growth area that allow for single-family...” along with other development standards as discussed in Section III below; RCW [36.70A.681](#)(1)(c).

The full preemptive ADU regulations are codified in RCW [36.70A.680/.681](#). Exceptions to the standards are codified within RCW [36.70A.680](#)(4)/(5) and RCW [36.70A.681](#)(3)/(4). Applicability to Whatcom County is discussed in Section III as well.

The purpose of the preemptive standards is to *“promote and encourage the creation of ADUs as a means to address the need for additional affordable housing options”*; RCW [36.70A.680](#).

Whatcom County is required to amend existing code, and adopt new regulations as applicable, by December 31, 2025 or the standard State regulations of RCW [36.70A.680/.681](#) will take effect and supersede existing regulations for ADUs per RCW [36.70A.682](#).

State Law and Requirements for Adoption of Co-Living Housing Regulations

Under Engrossed Substitute House Bill (ESHB) [1998](#) the Washington State legislature adopted preemptive development regulations for Co-living housing within Urban Growth Areas (UGAs) for fully planning Cities and Counties. These regulations are codified in [RCW 36.70A.535](#) (Co-living housing regulation). Co-living is defined by the RCW as, *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. Local governments may use other names to refer to co-living housing including, but not limited to, congregate living facilities, single room occupancy, rooming house, boarding house, lodging house, and residential suites.*

Whatcom County is required to amend existing code, and adopt new regulations as applicable, by December 31, 2025 or the standard State regulations of [RCW 36.70A.535](#) will take effect and supersede existing regulations.

To clarify applicability of preemptive Co-living housing standards, the State included section [RCW 36.70A.535\(1\)](#) which states, "Cities and counties planning under this chapter must allow co-living housing as a permitted use on any lot located within an urban growth area that allows at least six multifamily residential units, including on a lot zoned for mixed-use development."

As such, recommended code amendments are limited to eligible lots within UGAs as detailed below.

III. Explanation of Preemptive Regulations for ADUs

Applicable State Regulations

Below is a summarized list of the pre-emptive regulations with staff comment on applicability to Whatcom County ADU standards; see [RCW 36.70A.680/.681](#)

RCW 36.70A.681(1)(a): May not assess impact fees on the construction of accessory dwelling units that are greater than 50 percent of the impact fees that would be imposed on the principal unit.

Staff Comment: Whatcom County currently does not assess impact fees for construction of ADUs, and therefore this requirement does not apply.

RCW 36.70A.681(1)(b): May not require the owner of a lot on which there is an accessory dwelling unit to reside in or occupy the accessory dwelling unit or another housing unit on the same lot.

Staff Comment: While this is a current ADU Code requirement under WCC [20.80.910\(6\)](#), staff recommends establishing a separate set of standards for ADUs within UGAs where owner occupancy will not be required in order to comply with this preemptive standard.

RCW 36.70A.681(1)(c): Must allow at least two (2) ADUs on all lots that are located in all zoning districts within a UGA that allows for single-family homes in the following configurations:

- o One attached accessory dwelling unit and one detached accessory dwelling unit;
- o Two attached accessory dwelling units; or
- o Two detached accessory dwelling units, which may be comprised of either one or two detached structures;

Staff Comment: The zoning districts allowing for development of single-family homes in UGAs include: Urban Residential (UR), Urban Residential Medium (URM), Urban Residential – Mixed (UR-MX), Resort Commercial (RC), General Commercial (GC), Agriculture (AG), Rural (R), and Rural Forestry (RF) zoning districts.

The legislature included exclusions to the preemptive standards to address potential conflict in application with existing land use conditions and regulations; see below.

RCW 36.70A.680 – Accessory dwelling units – Location regulation.

(4) Nothing in this section or RCW [36.70A.681](#) requires or authorizes a city or county to authorize the construction of an accessory dwelling unit in a location where development is restricted under other laws, rules, or ordinances as a result of physical proximity to on-site sewage system infrastructure, critical areas, or other unsuitable physical characteristics of a property.

(5) Nothing in this section or in RCW [36.70A.681](#) prohibits a city or county from:

(a) Restricting the use of accessory dwelling units for short-term rentals;

(b) Applying public health, safety, building code, and environmental permitting requirements to an accessory dwelling unit that would be applicable to the principal unit, including regulations to protect ground and surface waters from on-site wastewater;

(c) Applying generally applicable development regulations to the construction of an accessory unit, except when the application of such regulations would be contrary to this section or to RCW [36.70A.681](#);

(d) Prohibiting the construction of accessory dwelling units on lots that are not connected to or served by public sewers; or

(e) Prohibiting or restricting the construction of accessory dwelling units in residential zones with a density of one dwelling unit per acre or less that are within areas designated as wetlands, fish and wildlife habitats, flood plains, or geologically hazardous areas.

RCW 36.70A.681 – Limitations on local regulation.

(4) The provisions of this section do not apply to lots designated with critical areas or their buffers as designated in RCW [36.70A.060](#), or to a watershed serving a reservoir for potable water if that watershed is or was listed, as of July 23, 2023, as impaired or threatened under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1313(d)).

To comply with the preemptive standards, while meeting the goals and policies of the Comprehensive Plan, staff recommends amending only the UR, URM, UR-MX, and RC zoning districts to allow for construction of up to two (2) ADUs on eligible lots with public sewer service within UGAs as a “Permitted” use; outside of UGAs to remain an “Administrative” use; see section V below for further explanation of recommendation.

RCW 36.70A.681(1)(d): Must permit accessory dwelling units in structures detached from the principal unit.

Staff Comment: Current ADU regulations allow for this already per WCC [20.80.910](#)(3), as there is no minimum lot size for attached or detached ADUs within the UR, URM, and UR-MX zoning districts.

RCW 36.70A.681(1)(e): Must allow an accessory dwelling unit on any lot that meets the minimum lot size required for the principal unit.

Staff Comment: This preemptive standard does not exactly apply to how PDS reviews development applications for residences, as subject properties are reviewed to ensure the development is occurring on an established “Lot of Record”. Per WCC [20.97.120](#): “Lot of record” means a lot which is described by final plat, short plat, or metes and bounds, and is established pursuant to applicable local and state regulations at the date a legal instrument creating the lot is recorded at the Whatcom County auditor’s office.

The Whatcom County Subdivision Regulations were only adopted in 1972, and therefore there are many lots throughout the county which may not meet current minimum lot size standards as they were created prior to this date. However, regardless of size the development is required to comply with all applicable development requirements (e.g. setbacks, lot coverage, height requirements, etc.). Therefore, the proposed amendment meets this preemptive standard.

RCW 36.70A.681(1)(f): May not establish a maximum gross floor area requirement for accessory dwelling units that is less than 1,000 square feet.

Staff Comment: The current maximum floor area requirement for ADUs is 1,248 square feet in floor area, with the option of increasing the floor area up to 1,748 square feet if applicant agrees to participate in WC Density Credit Program per WCC [20.80.910](#)(5)(b). To maintain consistency in floor area standards for ADUs countywide, staff recommends maintaining current allowance.

RCW 36.70A.681(1)(g): May not establish roof height limits on an accessory dwelling unit of less than 24 feet.

Staff Comment: The maximum height of a structure allowed within the UR, URM, and UR-MX zoning districts are all above 24 feet (WCC [20.20.400](#), WCC [20.22.400](#), WCC [20.24.400](#)). Therefore, no amendments are required to meet this preemptive standard.

RCW 36.70A.681(1)(h): May not impose setback requirements, yard coverage limits, tree retention mandates, restrictions on entry door locations, aesthetic requirements, or requirements for design review for accessory dwelling units that are more restrictive than those for principal units.

Staff Comment: The current ADU code does include some aesthetic requirements relating to this preemptive standard under WCC [20.80.910](#)(5). As such, staff recommends establishing a separate set of standards for ADUs within UGAs where these restrictions will not be required in order to comply with this preemptive standard.

RCW 36.70A.681(1)(i): Must allow detached accessory dwelling units to be sited at a lot line if the lot line abuts a public alley, unless the city or county routinely plows snow on the public alley.

Staff Comment: Staff has reviewed each of the applicable UGAs and while many of the neighborhoods within these areas were established through plats, very few include public alley dedications. In addition, PDS is not aware of a maintained list of alleys routinely plowed. As such, while we have included language in the proposed code to meet this preemptive standard, which we do not anticipate to result in significant impact.

RCW 36.70A.681(1)(j): Must allow accessory dwelling units to be converted from existing structures, including but not limited to detached garages, even if they violate current code requirements for setbacks or lot coverage.

Staff Comment: The proposed amendment includes language to meet this preemptive standard. While the standard setback or lot coverage requirements of the zone may not apply, the structure will still be required to meet Building and Fire code requirements per Title 15 of the WCC as allowed under RCW [36.70A.680](#)(5)(b) protecting public health and safety.

RCW 36.70A.681(1)(k): May not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an accessory dwelling unit.

Staff Comment: The proposed amendment includes a statement to meet this preemptive

requirement. This requirement is in relation to new State law established under RCW [58.17.060](#)(3) creating a new short subdivision standard called “Unit Lot Subdivision”. Whatcom County is required to address this change in State law after adoption of the Comprehensive Plan update. Due to budget and staff capacity limitations, we are proposing to address “Unit Lot Subdivision” code in the new year since the regulations are not preemptive.

RCW 36.70A.681(1)(I): May not require public street improvements as a condition of permitting accessory dwelling units.

Staff Comment: Whatcom County currently does not require public street improvements for permitting of an ADU, and therefore this preemptive requirement does not apply.

RCW 36.70A.681(2)(a)(i): May not require off-street parking as a condition of permitting development of accessory dwelling units within one-half mile walking distance of a major transit stop.

Staff Comment: There are currently no “Major Transit Stops”, as defined within RCW [43.21C.420](#)(3), within the County. In addition, PDS does not anticipate development of one within the next planning period. Therefore, this preemptive standard does not currently apply.

RCW 36.70A.681(2)(a)(ii): May not require more than one off-street parking space per unit as a condition of permitting development of accessory dwelling units on lots smaller than 6,000 square feet before any zero lot line subdivisions or lot splits.

Staff Comment: As noted above, staff is recommending creating a new parking category within WCC [20.80.580](#) to meet this requirement.

RCW 36.70A.681(2)(a)(iii): May not require more than two off-street parking spaces per unit as a condition of permitting development of accessory dwelling units on lots greater than 6,000 square feet before any zero lot line subdivisions or lot splits.

Staff Comment: The proposed amendment includes a change to parking standards for ADUs within WCC [20.80.580](#) to meet this preemptive requirement. The current standard is two parking stalls per ADU, which is clarified in recommended new parking category for ADUs.

IV. Explanation of Preemptive Regulations for Co-living

Applicable State Regulations

Many of the new regulations only apply to Cities, and of those that apply to Counties many are not applicable to Whatcom County. Below is a summarized list of only those pre-emptive regulations which apply to Whatcom County; derived from [RCW 36.70A.535](#).

RCW 36.70A.535(1): Cities and counties planning under this chapter must allow co-living housing as a permitted use on any lot located within an urban growth area that allows at least six multifamily residential units, including on a lot zoned for mixed-use development.

Staff Comment: Residential zoning districts located within Whatcom County UGAs that allow for at least six multifamily residential units include Urban Residential Medium (URM), Urban Residential – Mixed (UR-MX), Resort Commercial (RC), and General Commercial (GC). Staff recommends amending these zoning districts to allow for Co-living housing as a “Permitted” use.

RCW 36.70A.535(2) A city or county subject to the provisions of this section may not require co-living housing to:

- (a) Contain room dimensional standards larger than that required by the state building code, including dwelling unit size, sleeping unit size, room area, and habitable space;
- (b) Provide a mix of unit sizes or number of bedrooms; or
- (c) Include other uses.

Staff Comment: The proposed co-living housing regulations are imbedded with the existing multi-family regulations and do not contain any standards that are not required by state building code.

RCW 36.70A.535(3)(a): A city or county subject to the provisions of this section also may not require co-living housing to:

- (i) Provide off-street parking within one-half mile walking distance of a major transit stop; or
- (ii) Provide more than 0.25 off-street parking spaces per sleeping unit.

Staff Comment: The proposed co-living housing parking regulations conform to the RCW requirements.

RCW 36.70A.535(4): A city or county may not require through development regulations any standards for co-living housing that are more restrictive than those that are required for other types of multifamily residential uses in the same zone.

- (5) A city or county may only require a review, notice, or public meeting for co-living housing that is required for other types of residential uses in the same location, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW.
- (6) A city or county may not exclude co-living housing from participating in affordable housing incentive programs under RCW 36.70A.540.
- (7) A city or county may not treat a sleeping unit in co-living housing as more than one-quarter of a dwelling unit for purposes of calculating dwelling unit density.

Staff Comment: The proposed co-living housing development regulations conform to the RCW requirements and have no extra requirements associated with co-living housing that are not part of multifamily housing.

V. Recommended Amendments for ADUs

Explanation of Recommendations

To comply with the preemptive requirements of RCW [36.70A.680/.681](#), protect public health and safety as well as the environment, and comply with the Whatcom County Comprehensive Plan, staff is recommending only allowing for the development of a second ADU per lot within UGAs as a “Permitted” use, only under the following circumstances:

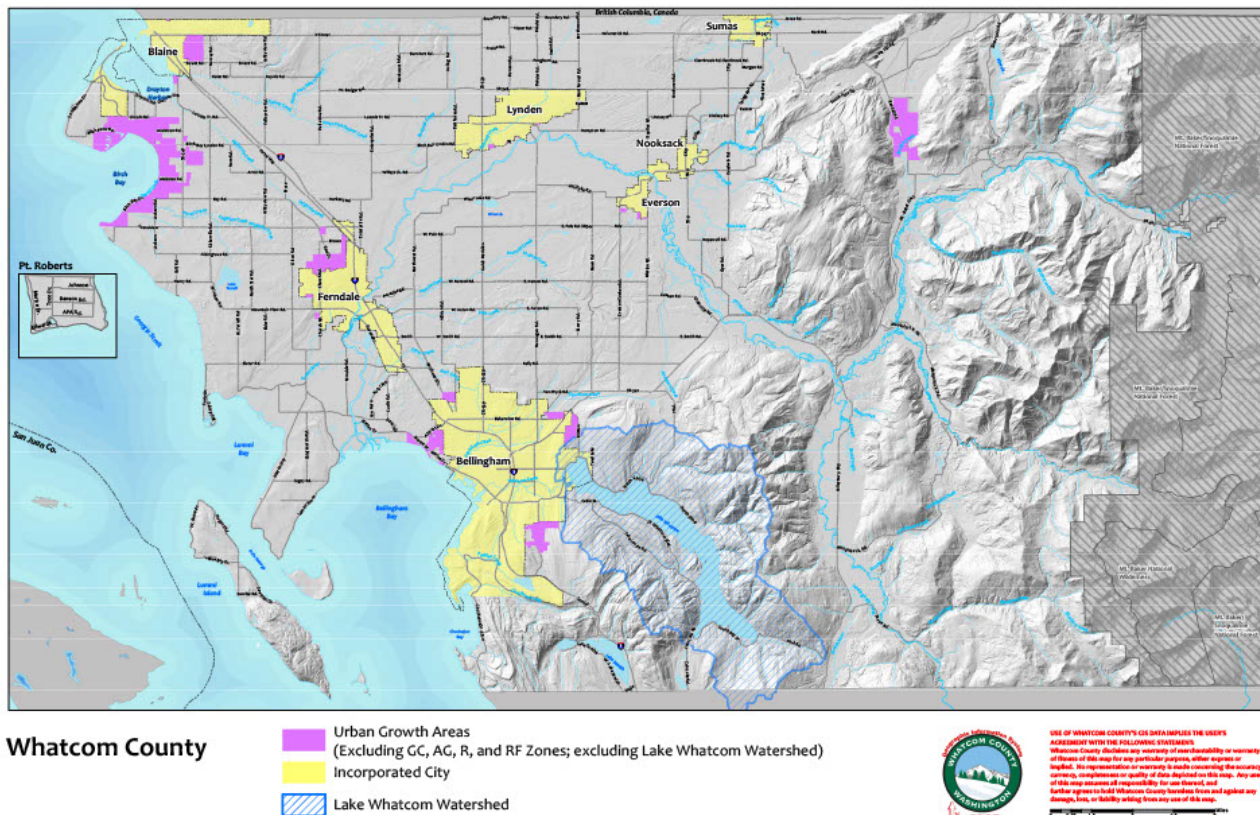
1. When the second unit is served by public sewer per RCW [36.70A.680\(5\)\(d\)](#); and
2. Only on residential lots within UGAs (UR, URM, UR-MX, RC) per RCW [36.70A.681\(1\)\(c\)](#);
 - a. Excluding lots within the Lake Whatcom Watershed Overlay District (LWWO); and
 - b. Excluding lots within the General Commercial (GC), Agriculture (AG), Rural (R), and Rural Forestry (RF) per RCW [36.70A.680\(5\)\(b\)](#), RCW [36.70A.680\(5\)\(e\)](#), and RCW [36.70A.681\(4\)](#).

While some areas of the Lake Whatcom Watershed as well as GC, AG, R, and RF zoning districts are located within Urban Growth Areas, these are very small sections which staff believes would be inappropriate from a Comprehensive Plan and land use policy perspective to allow for up to two ADUs per lot in these areas. The primary intended purpose of these areas is not for residential development, and would negate efforts to either retain agricultural or forestry uses, or allow for more intense development once incorporated into a City; which is the purpose of UGAs. Lastly, development of one (1) ADU is already allowed for eligible lots within these zones.

It is also staff's recommendation that only preemptive regulations for ADUs in UGAs be addressed at this time based on Commerce and Municipal Research and Services Center (MRSC) guidance (Washington State Department of Commerce, 2024).

As such, the proposed code amendments in Exhibit A represent only those preemptive requirements, with exceptions as explained above. Adoption of our own Code will establish localized regulations which is tailored to the County's existing code structure, and prevent potential confusion or conflict in application of State standards.

Proposed Applicable Locations



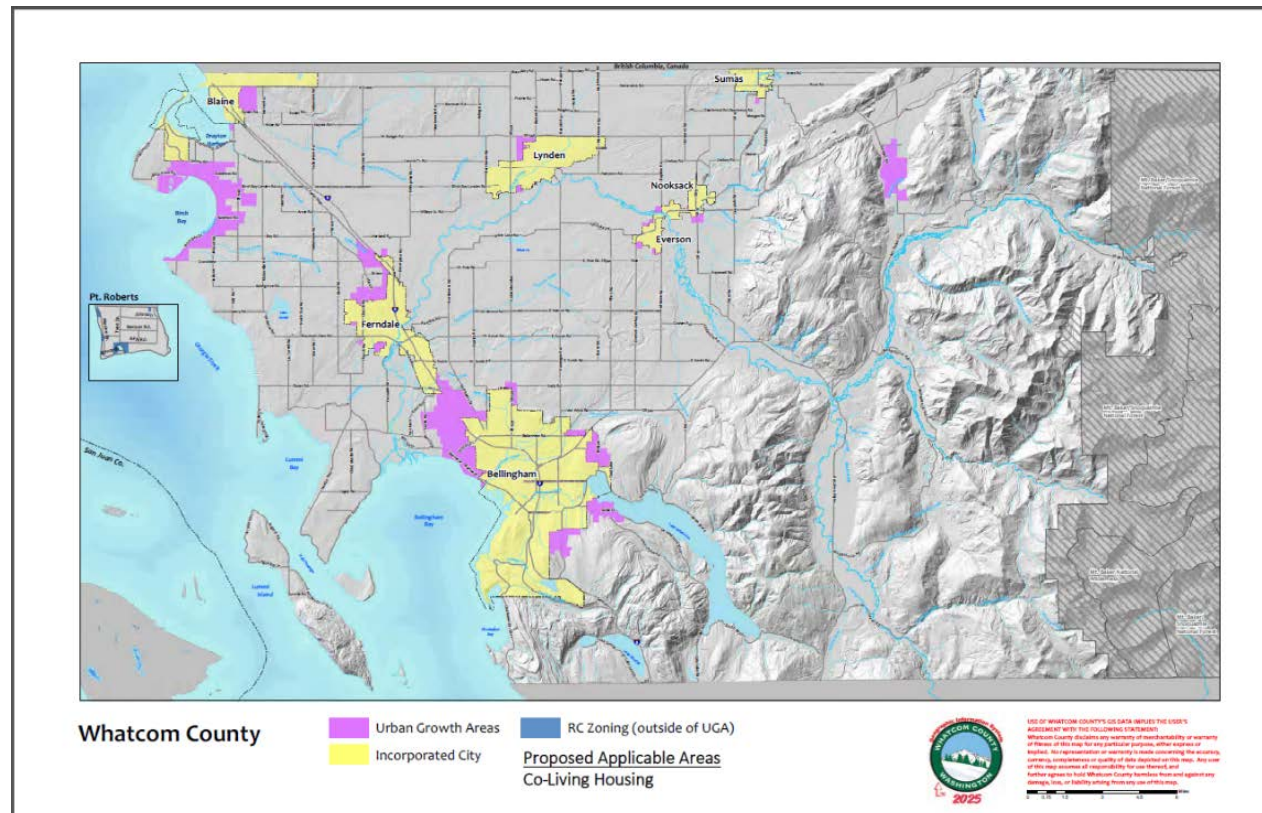
VI. Recommended Amendments for Co-living Housing

Explanation of Recommendations

To address the requirements of [RCW 36.70A.535](#) staff recommends allowing co-living housing:

- Only within multifamily zones (URM, UR-MX, RC, and GC) within Urban Growth Areas;
- Only require 0.25 off-street parking spaces per sleeping unit;
- Add the State definitions of co-living housing to “C” definitions of WCC [20.97.030](#); and
- Amend “Cooking Facility” definition within WCC [20.97.030](#) to reference the proposed Kitchen Facilities definition.

Proposed Applicable Locations



VII. Comprehensive Plan Evaluation for ADUs

Whatcom County Comprehensive Plan

There are several existing Comprehensive Plan Goals and Policies which supports the proposed Accessory Dwelling Unit amendments as detailed below.

Appendix C - Countywide Planning Policies

The following policies are applicable to the topic at hand:

C. Urban Growth Areas

1. Urban growth needs shall be met by a combination of in-fill within cities and by growth within designated municipal and non-municipal Urban Growth Areas.

G. Affordable Housing

2. The county and the cities shall plan for a range of housing types and costs commensurate with their affordable housing needs.
4. The county and the cities shall promote innovative techniques and develop strategies to provide for affordable housing with design, density, lot sizes and development standards that provide for a variety of housing types.
5. The county and the cities shall review existing regulations and policies that exclude or discourage affordable housing in their communities and shall not February 9, 2021 Appendix C – Countywide Planning Policies Whatcom County Comprehensive Plan C-7 adopt regulations and policies which do so. Mobile, modular, and manufactured homes on individual lots, mobile home parks, accessory units, inclusionary zoning, mixed use, and increased densities shall be reviewed as affordable housing alternatives.

Chapter 2 – Land Use

The following policies are applicable to the topic at hand:

- Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.
- Goal 2H: Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources.
- Policy 2P-3: Encourage infilling to occur in existing areas with urban characteristics in a manner which is more harmonious with existing neighborhood character.
- Policy 2P-4: Encourage housing to develop with the greatest possible mix of household incomes by utilizing such techniques as lot clustering, varied lot sizes, small scale multifamily dwellings, and responsible reductions in infrastructure requirements for subdivisions
- Policy 2U-10: The Geneva and Hillsdale areas, located within the Lake Whatcom Watershed, are designated urban growth areas in order to allow the City of Bellingham to annex these areas. The City has a long-term interest in the water quality of Lake Whatcom because the City is responsible for providing Bellingham with safe drinking water from the Lake. Whatcom County and the community also have long-term interests in the watershed based upon the special environmental sensitivity of the Lake Whatcom Watershed as a drinking water source and the Total Maximum Daily Load (TMDL) findings requiring a reduction of phosphorus inputs into the lake. Therefore, only non-urban densities should be allowed in that portion of the Urban Growth Area within the watershed.

Chapter 3 - Housing

The following policies are applicable to the topic at hand:

- Goal 3A: Minimize the time required for processing housing related development and construction permits in the interest of overall cost reduction.
- Goal 3B: Support residential housing near employment opportunities and transit.
- Goal 3C: Create opportunity for a broad range of housing types and encourage mixed affordability.
- Goal 3D: Encourage adequate housing types at every income level.
- Goal 3G: Identify and remove impediments to affordable housing.
- Goal 3H: Facilitate maintenance and rehabilitation of existing housing.

VIII. Comprehensive Plan Evaluation for Co-Living Housing

Chapter 2 – Land Use

The following policies are applicable to co-living housing:

- Policy 2A-1: Concentrate urban levels of development within designated urban growth areas.
- Policy 2P-3: Encourage infilling to occur in existing areas with urban characteristics in a manner which is more harmonious with existing neighborhood character.
- Policy 2P-4: Encourage housing to develop with the greatest possible mix of household incomes by utilizing such techniques as lot clustering, varied lot sizes, small scale multifamily dwellings, and responsible reductions in infrastructure requirements for subdivisions

Chapter 3 - Housing

The following policies are applicable to the topic at hand:

- Goal 3A: Minimize the time required for processing housing related development and construction permits in the interest of overall cost reduction.
- Goal 3B: Support residential housing near employment opportunities and transit.
- Goal 3C: Create opportunity for a broad range of housing types and encourage mixed affordability.
- Goal 3D: Encourage adequate housing types at every income level.
- Goal 3G: Identify and remove impediments to affordable housing.
- Goal 3H: Facilitate maintenance and rehabilitation of existing housing.

IX. Proposed Findings of Fact and Reasons for Action

It is recommended the County Council adopt the following findings of fact and reasons for action:

1. Whatcom County Planning and Development Services has submitted an application to make amendments to Title 20 (Zoning) of the Whatcom County Code as part of the 2025 Whatcom County periodic update to the Comprehensive Plan, as required under [RCW 36.70A.130](#), in order to comply with preemptive State regulations and standards for Accessory Dwelling Units in Urban Growth Areas as codified in RCW [36.70A.680/.681](#), and Co-living housing in [RCW 36.70A.535](#) in Urban Growth Areas that allow at least six multifamily residential units, including on a lot zoned for mixed-use development.
2. Notice of the subject amendment was submitted to the Washington State Department of Commerce on October 17, 2025, with a request for an expedited 10-day review period; allowed for proposed development regulations. No comments were received to date.
3. A Determination of Non-Significance (DNS) was issued under the State Environmental Policy Act (SEPA) under case number SEPA2025-00058 on October 20 2025. No comments have been received to date.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on October 30, 2025.
5. On October 30, 2025, the Whatcom County Planning Commission recommended approval, with amendments, of the proposed Zoning Code changes to the County Council as seen in Exhibit A.

6. The County Council held a duly noticed public hearing on the proposed amendments on _____.
7. The amendments are consistent with Countywide Planning Policies (Appendix C) as well as Chapter 2 (Land Use) and Chapter 3 (Housing) of the Whatcom County Comprehensive Plan. There are no policies with which these amendments would be inconsistent.

X. Proposed Conclusions

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

XI. Recommendation

The Planning Commission recommends that The County Council approve the proposed amendments and Findings of Fact.

XII. Exhibits

A) Proposed ADU & Co-Living Housing Code Amendments.

XIII. References

Washington State Department of Commerce. (2024, 06 01). *Guidance for Accessory Dwelling Units in Washington State*. (A. A. McCoy, Editor) Retrieved from Growth Management Services:
<https://mrsc.org/getmedia/54c058a5-4d57-4192-a214-15f2fa5ac123/Accessory-Dwelling-Units.pdf?ext=.pdf>