

# Whatcom County Planning & Development Services Staff Report

## Amendments to WCC Title 20 (Zoning) Regarding Home-Based Businesses

### I. Project Information

**File #** PLN2014-00016

**File Name:** Home-Based Businesses

**Applicants:** Whatcom County Planning and Development Services (PDS)

**Summary of Request:** Proposed amendments to WCC Title 20 (Zoning) regarding Home-Based Businesses and agritourism activities. The amendments aim to consolidate the existing regulations for home occupations, cottage industries, agritourism activities, and occasional commercial use of noncommercial properties for hosting special events.

**Location:** Countywide.

**Recommendations:** The Planning Commission recommends that the Council approve the amendments as shown in Exhibit A. Planning and Development Services concurs.

### II. Background

Over the years, Planning & Development Services (PDS) has received numerous inquiries from the public about whether commercially hosting weddings and receptions, social and business retreats, seasonal farm events, and similar events is allowed on otherwise residential or resource properties.

Currently the zoning code does not specifically provide for these uses (events), but it does allow for small-scale home occupations and cottage industries in the County's residential, rural, rural forestry and agricultural districts. As an interim measure, commercially hosting weddings, receptions, and other similar special events have been permitted through the conditional use permit process as a cottage industry or as part of a bed and breakfast operation, even though the code doesn't specifically list them as a permissible use.

Existing code does not clearly communicate to the public that there is a way to gain approval or authorization for event hosting. Generally, when contemplating this type of business, the public doesn't automatically associate weddings or special events with "cottage industry" or "bed and breakfast" operation.

Thus, in 2014 Council placed on the docket item PLN2014-00016, "Amend the Whatcom County Zoning Ordinance to allow "Weddings and Special Events" in specific zone districts through a conditional use permit, to amend WCC 20.97 to define "Special Events," and amend the parking requirements in WCC 20.80.580."

Working with the Planning Commission in 2014 and 2015, staff prepared some draft regulations that would specifically allow for event hosting as a Home-Based Business, as well as consolidate the Home-Based Business rules into one place (they are currently spread throughout the code). This direction became the basis for the structure of the currently proposed amendments.

In 2023, PDS presented the draft amendments to Council’s Planning & Development Committee, which directed staff to work on some specific sections of the Code. Council then held a public hearing on September 12, 2023, but again sent it back to PDS to work on additional issues. In doing so, staff worked with CM Elenbaas and Hearing Examiner Majumdar to fine tune the proposal, in particular those related to agritourism events.

(Note: A 10/13/23 PDS memo to Council explaining the finer points of Home-Based Businesses v. Agritourism is attached as a reminder of our previous conversations on this matter.)

### III. Code Amendments

The proposed code amendments are shown in Exhibit A. Please refer to that attachment; explanations are provided therein. Major changes include:

#### 1. Eliminating “Home Occupations” and “Cottage Industries” and redefining and consolidating them under the umbrella of “Home-Based Businesses”

PDS proposes to eliminate the terms “Home Occupations” and “Cottage Industries,” and, along with incorporating “events” as an HBB, use them as the basis for a 4-tiered system of HBBs.

The proposal is to eliminate the definitions of “Home Occupations” and “Cottage Industries,” and add a new definition of “Home-Based Business” (see Exhibit A, Chapter 20.97).

Additionally, PDS proposes to replace §20.80.970 (Home Occupations) with a new §20.80.970 (Home-Based Businesses) that would define four types or levels of HBBs based on potential impacts. HBB Type 1 correlates to the current “home occupation” classification, HBB Types 2 and 3 to the current “cottage industry” classifications, and HBB Type IV would be the new allowance for “event facilities,” as shown in Table 1.

Table 1. Comparison of Existing Allowances to Proposed Allowances by Zone

Zone Allowed in	Existing Designations			Proposed HBB Designations				
	Home Occupation	Cottage Industry (by max # of employees)			Type I	Type II	Type III	Type IV
		2	4	10				
Urban Residential (UR)	AU				AU	AAU		
Urban Residential – Medium Density (URM)	AU				AU	AAU		
Urban Residential Mixed (UR-MX)	AU				AU	AAU		
Residential Rural (RR)	AU	AAU			AU	AAU		
Rural Residential-Island (RR-I)	AU	AAU			AU	AAU		
Eliza Island (EI)	AU	AAU			AU	AAU		
Rural (R)	AU	AAU	CUP		AU	AAU	CUP	CUP
Point Roberts Transitional Zone (TZ)	AU	CU			AU	AAU	CUP	
Agriculture Protection Overlay (APO)								
Agriculture (AG)	AU	AAU	CUP		AU	AAU	CUP	CUP
Rural Forestry (RF)	AU	AAU	CUP	AAU*	AU	AAU	CUP	CUP
Commercial Forestry (CF)								
Recreation and Open Space (ROS)								
Lake Whatcom Watershed Overlay								
Rural General Commercial (RGC)								
Neighborhood Commercial Center (NC)								

Zone Allowed in	Existing Designations			Proposed HBB Designations				
	Home Occupation	Cottage Industry (by max # of employees)			Type I	Type II	Type III	Type IV
		2	4	10				
Small Town Commercial (STC)	AU**							
General Commercial (GC)								
Tourist Commercial (TC)								
Resort Commercial (RC)	AU**							
Light Impact Industrial (LII)								
General Manufacturing (GM)								
Heavy Impact Industrial (HII)								
Rural Industrial and Manufacturing (RIM)								
Airport Operations (AO)								
Water Resource Protection Overlay								
Point Roberts Special								
Mineral Resource Lands Special (MRL)								
Cherry Point Industrial (CP)								

AU = Accessory Use; AAU = Administrative Authorization Use Permit; CUP = Conditional Use Permit

\* Must be forestry related/wood based

\*\* Though code currently says HO's are allowed in commercial zones, there's no need to, since commercial uses are allowed by definition. Thus, not showing HBB allowances for any of the commercial or industrial zones.

## 2. Normalizing the performance standards

The new section Home-Based Business code (20.80.970) also lists the performance standards for each type of HBB. Each district wherein they're currently allowed has rules for "Home Occupations" and "Cottage Industries," but they differ slightly in different zones. PDS is proposing to eliminate these zone-specific rules and put them into §20.80.970, taken from each of the district rules but standardized. Table 2 shows which standards would apply to which type of HBB.

Table 2. Comparison of Standards Per HBB Type

Standards	HBB Type			
	I	II	III	IV
<b>APPLICABLE TO ALL TYPES</b>				
The use of the property shall be clearly incidental to its use as a residence.	√	√	√	√
The size and scale of the operation shall be compatible with the character of the surrounding neighborhood, and any impacts may not exceed the intensity to those generated by other uses allowed in the zone.	√	√	√	√
There shall be no change in the outside appearance of the building(s) or premises or other visible evidence of a home-based business inconsistent with the character of the dwelling or neighborhood.	√	√	√	√
Can be conducted in primary structure or accessory structures. No limit on number of HBBs per lot.	√	√	√	√
Shall generally comply with the off-street parking requirements of WCC 20.80.500	√	√	√	√
Customers/clients are prohibited on the premises prior to 7:00 a.m. and after 8:00 p.m. (unless an exception is specifically granted by the Director).	√	√	√	√
The home-based business shall be conducted so that noise, fumes,	√	√	√	√

Standards	HBB Type			
	I	II	III	IV
odor, smoke, dust, light, glare, vibration, electrical interference, and other similar impacts are not detectable by sensory perception at or beyond the property line of the lot where the home occupation is located.				
On site sales in connection with home-based businesses are limited to merchandise handcrafted on site or items accessory to a service (i.e., hair care products for a beauty salon). In no case shall home-based businesses consist only of on-site retail sales.	√	√	√	√
Commercial deliveries and pickups to the dwelling unit are limited to one per day Monday through Friday. No commercial deliveries or pickups are permitted on Saturday, Sunday or federal holidays.	√	√	√	√
Home-based businesses engaged in manufacturing shall be limited to the manufacture and assembly of finished products and shall not include the primary manufacture of petroleum products, rubber, plastics, chemicals, asbestos products, or primary metal industries.	√	√	√	√
The portion of the structure(s) housing the home-based business shall comply with applicable life/safety building code regulations.	√	√	√	√
Signage for home-based businesses shall comply with WCC 20.80.470(7).	√	√	√	√
Seasonal employees working less than 21 days per year will not be counted as employees if they are engaged in work directly related to agriculture or forestry.	√	√	√	√
<b>VARIES WITH TYPE</b>				
No more than <u>  X  </u> people at any one time, other than household members residing on the premises, shall be engaged in the businesses.	2	2	4	
Shall not exceed a total of <u>  X  </u> SF of building floor area	500 in Eliza, UR, URM, & URM-X; 1,250 in all others	1,750	2,500	
The maximum nameplate horsepower rating of the electrical motors of any single piece of machinery operating shall be <u>  X  </u> horsepower. The electrical service for home-based businesses shall not exceed <u>  X  </u> amps.	5/200			
Minimum parcel size		1	5	10
<u>  X  </u> vehicle(s) up to 18,000 pounds gross vehicle weight is allowed.	1	2	3	
Outside display or storage of materials, merchandise, or equipment	Prohibited	Allowed with screening	Allowed with screening	
Clients are limited to one at any one time, not to exceed <u>  X  </u> clients per day	5	10	20	
The number of trips related to the business shall not exceed <u>  X  </u> per day.	5	10	20	
<b>SPECIFIC TO TYPE IV</b>				
Limited to 24 outdoor events per year				√
A maximum of 200 guests shall be permitted for any one event.				√
Amplified music for events shall comply with the Class A Residential source to Residential Receiving Property Standards of WAC 173-60-040. Amplified music is permitted for a one-hour duration. More than one-hour of amplified music may be permitted if requested, however; a noise study may be required.				√
Events are prohibited prior to 12:00 PM and after 9:00 PM.				√

Standards	HBB Type			
	I	II	III	IV
The operator shall be present during all events.				√
Off-site parking may be permitted if an off-site parking and shuttle plan is approved.				√
Minimum buffering shall be required as established in WCC 20.80.345; provided, that minimum side and rear yard buffers are at least 50 feet.				√

**3. Changing all instances of “Home Occupations” and “Cottage Industries” to “Home-Based Business” and identifying what type of permit (if any) is required for each type.**

The rest of the amendments are solely replacing the terms “Home Occupations” and “Cottage Industries” with “Home-Based Business Type I, II, III, or IV and listing them in the appropriate zones under what permit (if any) is required for each type. Additionally, this text refers readers to WCC 20.80.970 for the standards.

**IV. Comprehensive Plan Evaluation**

Whatcom County Comprehensive Plan goals and policies that may be applicable to the proposed amendments are:

**GOAL 2DD: Retain the character and lifestyle of rural Whatcom County.**

**GOAL 2D: Refine the regulatory system to ensure accomplishment of desired land use goal in a fair and equitable manner.**

**Policy 2D-3:** Streamline development regulations to eliminate unnecessary time delays.

**Goal 2FF: Provide employment opportunities in the rural parts of Whatcom County.**

**Policy 2FF-1:** Support small businesses, cottage industries, home occupations, resource-based, tourist, recreational, and other appropriate industries in the rural areas of Whatcom County. New rural commercial and industrial uses that are more intensive than those permitted within rural zones as home occupations or cottage industries should be located within designated Rural Communities and Rural Business areas.

**GOAL 7A: Promote a healthy economy providing ample opportunity for family-wage jobs for diverse segments of the community, which is essential to the quality of life in the area.**

**Policy 7A-2:** Foster a diverse, private-sector job base, which will provide family-wage jobs at the state median income level or greater, and facilitate the retention and expansion of existing businesses.

**Chapter 8: Resource Lands**

Resource Lands in the Whatcom County Comprehensive Plan Goals & Policies emphasize the importance of “Agriculture Related Heritage.” Chapter Eight Goals and Policies in the Comprehensive Plan have been developed to promote the expansion and stability of local and regional agricultural economies; and:

- To be consistent with and help achieve the state-wide GMA goals to "maintain and enhance" natural resource-based industries
- To implement County-Wide Planning Policies which express the desire for the county to become a government of rural lands and sustainable resource-based industries

- To fulfill the citizens' vision of Whatcom County where resource-based industries are widely practiced and encouraged

**Goal 8B: Maintain and enhance Whatcom County's agricultural products industry as a long-term and sustainable industry.**

**Policy 8B-1:** Promote the expansion and stability of local and regional agricultural economies.

**Policy 8B-3:** Support agricultural product processing facilities through appropriate planning, zoning, and land use regulations.

**Policy 8B-4:** Support methods and strategies to market Whatcom County agriculture in ways which ensure that agricultural activities (such as dairying) and entities (such as processors) will remain here in the long term.

**Goal 8C: Preserve and enhance the cultural heritage that is related to agriculture.**

**Policy 8C-1:** Identify, preserve, and enhance community character, landscape and buildings associated with agricultural activity.

**Policy 8C-3:** Support the continuation of owner occupied/family owned farms.

**Whatcom County County-Wide Planning Policies:**

**Goal I.8** – Economic development should be encouraged that: a) does not adversely impact the environment; b) is consistent with community values; c) encourages development that provides jobs to county residents d) addresses industries for a more diversified economic base; e) promotes reinvestment in the local economy; and f) supports retention and expansion of existing businesses.

## V. Findings of Fact and Reasons for Action

PDS recommends the Planning Commission 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 WCC Title 20 (Zoning) regarding home-based businesses.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on May 1, 2023.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on April 19, 2023, for their 60-day review. No comments were received.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on May 25, 2023.
5. The County Council held a duly noticed public hearing on the proposed amendments on September 12, 2023, and another on [REDACTED], 2025.
6. The amendments are consistent with Comprehensive Plan goals and policies listed in section IV of this staff report.
7. In addition, many of the amendments shown in Exhibit A are solely to fix grammar and have more concise language.

## VI. Conclusions

1. The amendments are in the public interest.

2. The amendments are consistent with the Whatcom County Comprehensive Plan.

## **VII. Recommendations**

The Planning Commission recommends that the Council approve the amendments as shown in Exhibit A. Planning and Development Services concurs. Planning and Development Services concurs.

## **Attachments**

1. 10/13/23 PDS memo to Council explaining the finer points of Home-Based Businesses v. Agritourism
2. Draft ordinance and Exhibit A – Proposed Home-Based Business Code Amendments

**WHATCOM COUNTY**

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**Mark Personius, AICP**

Director

**DRAFT Memorandum**

TO: County Council  
FROM: Cliff Strong, Senior Planner, Planning and Development Services  
THROUGH: Steve Roberge, Asst. Director  
DATE: October 13, 2023  
SUBJECT: Home-Based Businesses v. Agritourism

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On September 12, 2023, Council held a public hearing on the proposed Home-Based Business (HBB) regulations. However, Council remanded the issue to the Planning & Development Committee, as Councilmembers had concerns that the proposed regulations, in particular those for Type IV HBBs (event facilities) could limit farmers’ ability to conduct agritourism activities, such as farm stands, corn mazes, etc. This memo explores the differences between event facilities and agritourism activities, and explains additional proposed amendments to clarify those differences and how the County might regulate them differently.

**Existing Whatcom County Rules** (see Attachment A)

**Home Occupations and Cottage Industries** – Whatcom County has rules for Home Occupations and Cottage Industries, and the proposed rules for HBB Types I – III are the same, just renamed, consolidated, and standardized. Staff has heard no concerns from Council on these.

**Agritourism** – Whatcom County has no specific rules for agritourism in general, except that under current code farm stands are expressly allowed as an accessory use (no permits required) in the Rural, Agriculture, and Rural Forestry districts with only a few performance standards addressing size, setbacks, and parking. In general, the County has not enforced any rules to those providing small, limited agritourism activities, and originally when working on these HBB amendments, there was no intent to address agritourism activities. However, Council was concerned that the proposed HBB regulations could be interpreted to include agritourism activities, so the proposed code has been revised to make a clear distinction between the two.

**Concerts** – For large, live music events (i.e., concerts), the County has regulations in WCC Title 5 (Business Licenses and Regulations), Chapter 5.4 (Outdoor Musical Entertainment, Amusements, and Assemblies) (also shown in Attachment A). Such events would not be considered an HBB, and would be, in fact, administered through the County Executive’s office. To PDS’s knowledge no one has ever applied for such a license.



**Unanticipated Events** – It should also be acknowledged that occasionally there may be a large, non-recurring community event that cannot be anticipated, such as a wake for a beloved community member. It is not PDS' intent to regulate these, as they are very infrequent and generally self-policed.

## Purpose of the Proposed HBB Type IV Rules

For large, recurring commercial events on residential or resource lands, Whatcom County has no rules, which is why Council placed on the docket:

“Amend the Whatcom County Zoning Ordinance to allow “Weddings and Special Events” in specific zone districts through a conditional use permit. Amend WCC 20.97 to define “Special Events” and amend the parking space requirements in WCC 20.80.580.”

The introduction of HBB Type IV is an attempt to add regulations *to allow* event venues at one's home as a way for people to use their resource or residential property to generate income, while making sure health and safety issues and impacts to neighbors are addressed.

## How PDS Has Addressed Event Facilities So Far

Absent any specific rules, PDS has been interpreting the code to require those who wish to operate an event facility obtain a Conditional Use Permit (CUP) so that the proposed activities are reviewed, impacts mitigated, and health and safety requirements addressed. If hundreds, or even thousands of people are coming to a property numerous times a year, it is incumbent on the County to make sure that adequate toilets and water are available, that traffic congestion is kept to a minimum, that fire prevention measures are in place, that neighbors aren't being disturbed by loud music at 1 AM, etc.

For background, attached are four such CUP decisions issued by the Hearing Examiner; Table 1 provides a synopsis of the parameters of these permits and some of the conditions applied (though there are many others covering water, sewer, fire, traffic, screening, lighting, signage, etc.)

Table 1. Example CUPs Issued for Event Facilities

CUP #	Zone	Parcel Size (ac)	Use (in addition to the farm)	No.	No. of participants	Hours	Max. Vehicles/ No. of Parking Spaces	Noise
2011-0007	AG	37.6	Event Facility for:					Comply with WAC 173-60-040 (Class A Residential Source to Residential Receiving Property Standards)
			• Weddings	12/yr and no more than 3/mo. or 1/wk.	150	11 AM – 10 PM	50/1 stall per 3 guests	
			• Special Events	2	350	12 PM – 10 PM	117/1 stall per 3 guests	
2013-0003	R-5A	19.5	Ag Educational Center w/					
			• Farm Worker Internship Program	Year-round	10	Fulltime	1 sp./intern	
			• Outdoor Farm Workshops	24/yr.	25	2 hrs.		
			• Fall Festival	1/yr	1,500	1 Weekend during day-light hrs.	1 sp./3 participants present	Live music allowed for 3 hrs. each of 2 days
2016-0014	R-10A	40	• Event Facility for weddings, receptions, and other special events	10/yr, max 2/wk	120	• F/S – 10 AM-9 PM • Sun – 11 AM-7 PM	Comply with WAC 173-60-040; Amplified music allowed for 1 hr. during wedding ceremony; recorded music for 2 add'l hrs.	
2017-0005	R-5A	7.37	• Event Facility for weddings, receptions, and other special events	1/wknd May 1 – Sept 30	200	• F/S – 10 AM-9 PM • Sun – 11 AM-7 PM	Comply with WAC 173-60-040; Amplified music allowed for 1 hr. during wedding ceremony;	

### State Agritourism Rules (see Attachment B)

Attachment B contains the RCWs regarding agritourism. These are the only state laws covering these activities; staff finds no WACs on the subject. These laws are embodied in the state’s rules on civil matters, specifically those regarding special immunities. Succinctly, these rules limit those farmers providing agritourism activities from liability for injury, loss, damage, or death of a participant resulting exclusively from any of the inherent risks of agritourism activities. These rules do not address land use or regulate how farmers conduct these activities. Most jurisdictions can (and generally do) have rules so as to minimize the impacts of these activities on neighbors and the general public, at least if they get too big or too frequent or jeopardize the viability of long-term agriculture.

Nonetheless, the state’s definition of agritourism activities is a good starting point to understanding what might fall under the umbrella of “agritourism activities:”

"Agritourism activity" means any activity carried out on a farm or ranch whose primary business activity is agriculture or ranching and that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities including, but not limited to: Farming; ranching; historic, cultural, and on-site educational programs; recreational farming programs that may include on-site hospitality services; guided and self-guided tours; petting zoos; farm festivals; corn mazes; harvest-your-own operations; hayrides; barn parties; horseback riding; fishing; and camping.

## Distinctions Between Event Facilities and Agritourism Activities

Councilmembers had concerns that the proposed regulations could limit farmers’ ability to conduct agritourism activities, as the proposed Type IV HBB regulations could be interpreted to include some of the activities listed in the state’s definition, even though the original intent was to address only event facilities. This has led staff to think about the differences between these uses so that they can be addressed differently in code (Table 2 shows the most notable of those distinctions).

*Table 2. Differences in Characteristics between Event Facilities & Agritourism Activities*

Characteristic	Event Facilities	Agritourism Activities
Frequency/Duration	Operate most of the year, and generally every weekend (at least from May to Oct), lasting until 10 PM	Usually limited to 1 month, and primarily during daylight hours, e.g., <ul style="list-style-type: none"> <li>• Christmas tree sales in Nov/Dec</li> <li>• Pumpkin patches/corn mazes in Oct</li> <li>• U-pick operations and farm stands, with times related to the produce being sold but still rather limited in duration</li> </ul>
No. of Guests/Customers	100 – 1,500, arriving and leaving at roughly the same time	Maybe up to 200/day, but generally no more than 20-30 at any given 30-minute period
Noise	usually have amplified music	usually no amplified music
Parking/Traffic	<ul style="list-style-type: none"> <li>• Need parking for all guests all at once (est. 1 vehicle/3 guests)</li> <li>• Need traffic control for entering/leaving public road</li> </ul>	People come and go all day, so only a few (7-10) parking spaces needed, which easily can be accommodated on a typical farm
Sanitation/Water	Enough facilities to accommodate a large group of people	For small-scale operations, generally not needed, though for larger operations, they may be (further addressed below).
Indoor/Outdoor	Often a mix, though generally have structures in which large groups of people congregate.	Generally outdoors, though some uses might have structures in which large groups of people congregate (further addressed below).

Based on these distinctions, agritourism could be addressed differently than event facilities. To do so, staff proposes to add a definition of agritourism activities to Title 20, and to more specifically list agritourism activities (not just farm stands) as a specific use in certain zones, as described below.

## Distinctions Between Different Types of Agritourism Activities

The state's definition of agritourism activities is fairly broad, crafted to apply to many types of farms and ranches across the state, many in very low-density areas. While many of the activities listed in the definition are fairly low-impact and/or limited in duration (i.e., only occur for a month once a year, and/or only attract a limited number of people at any one time), others might attract a large number of people numerous times a year, or have need for health and safety measures to be in place. Of note are farm festivals, barn parties, and camping: Were these occurring frequently they have the potential to cause negative impacts to a neighborhood.

Thus, staff is proposing to include in WCC Title 20 a modified definition, wherein we limit the three mentioned activities to twice a year (more than that and they'd been considered a Type IV HBB (event facility)), and further where we distinguish between small- and large-scale activities, as follows:

"Agritourism Activities." In general, agritourism activities are any activities carried out on a farm or ranch whose primary business activity is agriculture or ranching and that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities including, but not limited to: farming; ranching; historic, cultural, and on-site educational programs; recreational farming programs; guided and self-guided tours; petting zoos; corn mazes; harvest-your-own operations; hayrides; and horseback riding. Activities such as farm festivals, barn parties, and camping<sup>1</sup> may be considered agritourism activities only if limited to two weekends per year; otherwise it is a Type IV Home-Based Business.

For purposes of permitting, agritourism activities are split into two categories: Type I and Type II:

- Type I agritourism activities are those that: (1) are primarily outdoors, having no more than 500 square feet of building space used for the activity in the Rural or Rural Forestry districts or 1,000 square feet in the Agriculture district, and (2) cater to no more than 100 people at any one time.
- Type II agritourism activities are those that exceed the Type I thresholds.

We then propose that in the Rural, Rural Forestry, and Agriculture districts, Type 1 activities be classified as an accessory use (no permits needed) and Type II activities be classified as an Administrative Approval Use (requiring an administrative use permit that gets reviewed for code compliance and provides neighbors the opportunity to submit comments). We make the distinction of being primarily outdoors and limiting building size due to the fact that if numerous people are entertained in structures, those structures need to meet certain building and fire code requirements (the size limits shown are the existing ones for farm stands). Likewise, we propose to limit the number of guests at any one time to 100 (or roughly 30 vehicles), as any more and parking and traffic control become an issue.

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<sup>1</sup> Note that Whatcom County already has regulations for permanent campgrounds, and we don't want to allow them just anywhere as there are sanitation and other issues that need to be addressed. However, allowing small-scale camping on someone's farm twice a year shouldn't pose a problem.

This schema would allow farmers or wood product producers to conduct small-scale agritourism activities without a permit; or larger, non-recurring agritourism activities with a less expensive<sup>2</sup> permit while assuring the public's health and safety and providing neighbors an opportunity to raise concerns.

## Additional Proposed Amendments to Type IV HBBs (Event Facilities)

A few other issues have come up while preparing this memo:

**Minimum Parcel Size for Event Facilities** – During discussion with the Planning & Development Committee, CM Elenbaas raised a potential issue with the proposed 10-acre minimum parcel size for Type IV HBBs, his point being that agritourism activities such as farm stands often occur on multiple properties, some of which might be smaller, farmstead parcels, that are owned by different family members. By separately addressing agritourism activities we think that is no longer an issue, and recommend sticking with 10-acres as a minimum parcel size for event facilities. (Having read the Hearing Examiner decisions on those CUPs he issued, noise (or the potential for it) was the most raised concern from neighbors.)

**Accessing Off a Private Driveway/Road** – Another concern is allowing an event facility on property that is accessed off a shared private driveway/road. Whatcom County has no limits on the of homes that can access off a shared private driveway/road<sup>3</sup>, which is generally co-owned and maintained by all residents, through a road agreement. Were an event facility to use such a shared driveway/road, with hundreds of vehicles driving on it every weekend for 6-7 months of the year, it would pose traffic problems and degrade the road faster. Yet every homeowner sharing that road would be equally paying for its upkeep. To address this, staff has added to §20.80.970(5) a new subsection (i) “If access to the event facility is from a private, shared road or driveway, the applicant shall submit letters from all owners in interest stating that they approve of the use of the road for this purpose.”

**Parking Plans** – In each of the CUPs the Hearing Examiner issued, he included a condition that a parking and traffic control plan, including ADA compliance, be submitted so as to ensure parking is adequate and in some cases, leading to ingress/egress improvements. Staff thinks this a good idea, and has added to §20.80.970(5) a new subsection (j) A parking and traffic control plan shall be submitted for approval.”

**Sanitation and Potable Water Facilities** – Similarly, the Hearing Examiner included conditions requiring the applicant to address how adequate sanitation and potable water facilities are to be provided, so staff has added to §20.80.970(5) a new subsection (k) “Applicants shall submit plans describing how adequate sanitation and potable water facilities will be provided.”

**Amplified Music Hours** – Lastly, regarding the allowable hours for amplified music in §20.80.970(5)(d), Council changed the proposed hours from the originally proposed 12 PM to 9 PM to 9 AM to 10 PM. In his CUP decisions, the Hearing Examiner limited amplified music to 1 – 3 hours (slightly different for different permits). Staff still suggests that these hours be 12 PM to 9 PM. The proposed code still

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<sup>2</sup> ADM permits cost roughly \$3,000 while CUPs cost roughly \$5,500.

<sup>3</sup> Though above 12 and it has to be built to public road standards.

requires compliance with the Class A Residential Source to Residential Receiving Property Standards of WAC 173-60-040, but the cut-off time for louder noises under those rules is 10 PM, and we know that there is often a wind-down period to parties. Cutting the music off at 9 PM allows guests to say their congratulations and goodbyes and still vacate by 10 PM, greatly improving the odds of complying with WAC 173-60-040 (and avoiding calls to the Sheriff).

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## Attachment A: Whatcom County Code

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### TITLE 20 ZONING

#### Chapter 20.36 RURAL (R) DISTRICT

##### **20.36.100 Accessory uses.**

- .105** (1) The usual wholesale marketing activities associated with the agricultural, aquacultural, forestry, and mineral resource uses permitted in this district.
- (2) Retail marketing, by the operator, of Whatcom County products which originate from the permitted uses stated in WCC 20.36.052 and 20.36.055 provided:
- (a) Only one stand containing not more than 500 square feet of floor area shall be permitted;
  - (b) Such stand shall be subject to the setback requirements of WCC 20.80.200; and
  - (c) Such stand shall be provided with a sufficient area to permit at least five automobiles to park safely off the road right-of-way and to re-enter the traffic in a forward motion.

#### Chapter 20.40 AGRICULTURE (AG) DISTRICT

##### **20.40.100 Accessory uses.**

- .102** (1) Wholesale marketing activities provided the activity is accessory to the provisions of WCC 20.40.051.
- (2) Retail marketing, by the operator, of Whatcom County products which originate from the permitted uses stated in WCC 20.40.050 provided:
- (a) Only one retail sales facility containing not more than 1,000 square feet of floor area shall be permitted.
  - (b) Such retail sales facility shall be subject to the setback requirements of WCC 20.80.200.
  - (c) Such retail sales facility shall be provided with a sufficient area to permit at least five automobiles to park safely off the road right-of-way and to re-enter the traffic in a forward direction.

#### Chapter 20.42 RURAL FORESTRY (RF) DISTRICT

##### **20.42.100 Accessory uses.**

- .103** (1) The usual wholesale marketing activities associated with the agricultural, aquacultural, forestry, and mineral resource uses permitted in this district.
- (2) Retail marketing, by the operator, of Whatcom County products which originate from the permitted uses stated in WCC 20.42.050; provided:
- (a) Only one stand containing not more than 500 square feet of floor area shall be permitted;
  - (b) Such stand shall be subject to the setback requirements of WCC 20.80.200; and

- (c) Such stand shall be provided with a sufficient area to permit at least five automobiles to park safely off the road right-of-way and to re-enter the traffic in a forward direction.

## WCC TITLE 5 BUSINESS LICENSES AND REGULATIONS

### Chapter 5.4 Outdoor Musical Entertainment, Amusements and Assemblies

#### **5.40.010 Permit required.**

It is unlawful for any person, persons, organization, landowner, or lessor to allow, encourage, organize, promote, conduct, permit or cause to be advertised an entertainment, amusement, or assembly of persons wherein one of the primary purposes will be the presentation of outdoor, live, or recorded musical entertainment, which said person, persons, or corporation, organization, landowner or lessor believes or has reason to believe will attract 1,000 or more persons, and where a charge or contribution is required for admission, unless a valid county permit has been obtained for the operation of the assembly pursuant to RCW Chapter 70.108, Outdoor Music Festivals. (Prior code § 4.12.010).

#### **5.40.020 Cash bond and indemnification required.**

After the application for permit has been approved, the promoter shall deposit with the issuing authority, a cash deposit or surety bond in accordance with RCW 70.108.70. In addition to the uses for the bond or deposit listed in RCW 70.108.70 there shall be the following added uses:

- A. To save and protect the streets, pavements and bridges;
- B. Repair road signs;
- C. Repair all other property in the county from any and all damage that may be caused by vehicles, employees, or participants in such outdoor musical assembly. (Prior code § 4.12.020).

#### **5.40.030 Right to limit further admissions.**

If at any time during said event the size of the crowd exceeds by 20 percent the number of persons represented by the sponsors to be expected to be in attendance, the Whatcom County sheriff shall have the discretion to require the sponsor to limit further admissions. (Prior code § 4.12.030).

#### **5.40.040 Parking facilities.**

Application for a permit under this chapter shall be accompanied by a scale drawing showing adequate parking facilities have been made available within or adjacent to the location for which the permit is requested. Such parking facilities shall provide parking space for one vehicle for every four persons expected or reasonably to be expected. Adequate ingress and egress shall be provided to or from such parking area to facilitate the movement of any vehicle at any time to or from the parking area; provided, that, if any nonadjacent parking facilities be approved, shuttle buses shall be used to transport the public to said event on a no-charge basis. (Prior code § 4.12.040)

#### **5.40.050 Hours of operation.**

No outdoor musical assembly shall be conducted in the unincorporated areas of Whatcom County during the hours of one minute after 12:00 midnight and 9:00 a.m.; provided, that no license shall be issued for more than one 24-hour period ending at midnight. The participants shall be required to have



cleared the licensed area and its immediate environs no later than 1:00 a.m. on the day following the licensed event. (Prior code § 4.12.050).

**5.40.060 Violation a misdemeanor.**

Any person who violates or fails to comply with any provision of this chapter, who, having obtained a permit under this chapter, willfully fails to continue to comply with the terms and conditions hereunder, or who counsels, aids or abets such a violation or failure to comply, shall be deemed guilty of a misdemeanor.

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## Attachment B: Washington State Code

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### RCW Title 4 CIVIL PROCEDURE

#### Chapter 4.24 RCW SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES

##### **RCW 4.24.830 Agritourism—Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Agritourism activity" means any activity carried out on a farm or ranch whose primary business activity is agriculture or ranching and that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities including, but not limited to: Farming; ranching; historic, cultural, and on-site educational programs; recreational farming programs that may include on-site hospitality services; guided and self-guided tours; petting zoos; farm festivals; corn mazes; harvest-your-own operations; hayrides; barn parties; horseback riding; fishing; and camping.
- (2) "Agritourism professional" means any person in the business of providing one or more agritourism activities, whether or not for compensation.
- (3) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions, natural conditions of land, vegetation, waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity, unless the participant acting in a negligent manner is a minor or is under the influence of alcohol or drugs.
- (4) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.
- (5) "Person" means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

##### **RCW 4.24.835 Agritourism—Warning notice.**

- (2) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (2) of this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, must contain in clearly readable print the warning notice specified in subsection (2) of this section.

- (3) The sign and contracts described in subsection (1) of this section must contain the following notice of warning:

"WARNING

Under Washington state law, there is limited liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such an injury or death results exclusively from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. We are required to ensure that in any activity involving minor children, only age-appropriate access to activities, equipment, and animals is permitted. You are assuming the risk of participating in this agritourism activity."

- (4) Failure to comply with the requirements concerning warning signs and notices provided in this section prohibits an agritourism professional from invoking the privilege of immunity provided by this section, section 1, chapter 227, Laws of 2017, and RCW 4.24.830 and 4.24.832 and may be introduced as evidence in any claim for damages.

**RCW 4.24.832 Agritourism—Immunity.**

- (1) (a) Except as provided in subsection (2) of this section, an agritourism professional is not liable for injury, loss, damage, or death of a participant resulting exclusively from any of the inherent risks of agritourism activities.
- (b) Except as provided in subsection (2) of this section, no participant or participant's representative may pursue an action or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities.
- (c) In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.
- (2) Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:
- (a) Commits an act or omission that is grossly negligent or constitutes willful or wanton disregard for the safety of the participant and that act or omission proximately causes injury, damage, or death to the participant.
- (b) Has actual knowledge or reasonably should have known of an existing dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such an activity and does not make the danger known to the participant and the danger proximately causes injury, damage, or death to the participant.
- (c) Permits minor participants to use facilities or engage in agritourism activities that are not reasonably appropriate for their age. This provision shall not be interpreted to relieve a parent or guardian of a minor participant of the duty to reasonably supervise the minor's participation in agritourism activities, including assessing whether the minor's participation in an agritourism activity is reasonably appropriate for his or her age.

- (d) Knowingly permits participants to use facilities or engage in agritourism activities while under the influence of alcohol or drugs.
  - (e) Fails to warn participants as required by RCW 4.24.835.
- (3) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

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