

PROPOSED BY: PLANNING AND DEVELOPMENT SERVICES
INTRODUCED: NOVEMBER 18, 2025

ORDINANCE NO. _____

AMENDING WHATCOM COUNTY CODE TITLE 20 (ZONING) AND TITLE 22 (LAND USE)

WHEREAS, The Council's 2025 docket includes item PLN2025-00004, "Review and revise the Whatcom County Zoning Code and other sections of the County Code to implement Comprehensive Plan policies and/or address issues identified in the administration of the codes. Revisions needed to achieve consistency with the Growth Management Act may also be considered."

WHEREAS, Whatcom County Planning and Development Services has proposed amendments to Whatcom County Code Title 20 and Title 22 to fulfill this directive; and

WHEREAS, The Whatcom County Council reviewed and considered the Planning Commission recommendation, staff recommendation, and public comments on the proposed amendments; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to Title 20 (Zoning) and Title 22 (Land Use and Development) of Whatcom County Code (WCC) to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) under case number SEPA2025-00060 on October 17th, 2025. No comments or appeals were received.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on October 17th, 2025 for their 10-day expedited review. No comments were 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 all 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 Comprehensive Plan Policy Goal 2D to "*refine the regulatory*

system to ensure accomplishment of desired land use goals in a fair and equitable manner,” and there are no policies with which these amendments would be inconsistent.

8. In reference to Exhibit A, Amendment No. 1: This amendment is to revise Chapter 20.71 WATER RESOURCE PROTECTION OVERLAY DISTRICT (WCC 20.71.302), by removing the impervious surface limitations as it relates to public schools.
9. In reference to Exhibit A, Amendment No. 2: This amendment is to update existing “Day Care Home” definition within WCC 20.97.040 to comply with State Child Care Facilities Standards.
10. In reference to Exhibit A, Amendment No. 3: This amendment is to clarifying well buffer distance standards within WCC 20.38.060(6) for clustered lots within a subdivision.
11. In reference to Exhibit A, Amendment No. 4: This amendment is to update open space standards within WCC 20.80.220(2) for structures located within rear yard setback areas to conform with current Washington State building code standards.
12. In reference to Exhibit A, Amendment No. 5: This amendment is to clarify establishment of electronic vehicle charging stations within front yard, side yard, and rear yard setback areas within WCC 20.80.220(1)(a).
13. In reference to Exhibit A, Amendment No. 6: This amendment is to clarify density requirements within the Resort Commercial zoning district within WCC 20.64.260.
14. In reference to Exhibit A, Amendment No. 7: This amendment is to language within WCC 22.05.160(d) regarding Hearing Examiner standards to align with changes made by County Council under AB2025-539.
15. In reference to Exhibit A, Amendment No. 8: This amendment is to amend pre-application refund policy within WCC 22.05.040(2).
16. In reference to Exhibit A, Amendment No. 9: This amendment is to amend reduced application fees policy within WCC 22.25.030.
17. In reference to Exhibit A, Amendment No. 10: This amendment is to clarify standards for transfer of Conditional Use Permits within WCC 22.05.026(2).
18. In reference to Exhibit A, Amendment No. 11: This amendment is to clarify standards for transfer of Administrative Approval Use Permits within WCC 22.05.028(5).

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that amendments to the Whatcom County Code Title 20 (Zoning) and are hereby adopted as shown in Exhibit A of the Staff Report; and

BE IT FURTHER ORDAINED by the Whatcom County Council Amendments to the Whatcom County Code Title 22 (Land Use) and are hereby adopted as shown in Exhibit A of the Staff Report; and

BE IT FURTHER ORDAINED by the Whatcom County Council that staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments; and

BE IT FINALLY ORDAINED by the Whatcom County Council should any part of this regulation be held to be illegal, unconstitutional, or otherwise unenforceable, the remainder of the regulation shall still apply.

ADOPTED this ____ day of _____, 2025

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Cathy Halka, Clerk of the Council

Kaylee Galloway, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Greg Greenan by email (11.05.2025/lc)
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____

Exhibit A: 2025 Miscellaneous Code Amendments

1) Revise Chapter 20.71 WATER RESOURCE PROTECTION OVERLAY DISTRICT, 20.71.302 WCC by removing the impervious surface limitations as it relates to public schools.

Wade King Elementary School has been developed for many years at its current location. This property has been fully developed with a school building, paved outdoor play areas, parking areas, drop-off lanes, and landscaped areas. The site was originally within the Urban Growth Area and later removed. Due to changes in Department of Ecology Guidance (DOE) and National Pollutant Discharge Elimination System (NPDES) and in the NPDES requirements, any public school in the Lake Padden Water Resource Protection Overlay District will be required to have a drainage plan. The overlay district was created before the NPDES and DOE regulations existed. If Wade King Elementary School was removed from this requirement NPDES and DOE requirements would still apply. Any new projects larger than 2000 sq. ft of impervious surface will require a drainage plan, which will mitigate any impacts to the Lake Padden Watershed. Wade King Elementary School is the only public school that is located in the Overlay.

POLICY CHANGE

TITLE 20 ZONING

Chapter 20.71 Water Resource Protection Overlay District

20.71.302 Impervious surface limitations shall be as follows:

(...)

(9) Alternative surface methods described in WCC [20.71.603](#) may be used.

(10) Public schools are exempt from the Water Resource Protection Overlay District limitations related to impervious surfaces.

2) Update Child Care Facilities Standards to Comply with State Code.

In 2023 WC updated the Day Care Home and Day Care Center Definitions. Washington State RCW now includes an exception to the 12 child capacity limit as defined in RCW 43.216.692 — Family home providers — Capacity flexibility. The department may waive the limit, as established in RCW 43.216.010(1)(c), that restricts family home providers from serving not more than 12 children. The department must establish conditions for such waivers by rule and must assess, at a minimum, the provider's available square footage and staffing capabilities prior to issuing any waiver of the limit of 12 children. Recently updated WAC 110-300-0358(2) changed the limits to the waiver to not more than 16 children. Updating this will further support childcare services in Whatcom County.

POLICY CHANGE

Chapter 20.97 Definitions

(...)

20.97.040 “D” Definitions

Day Care Home.

“Family day care home” means an occupied dwelling unit regularly providing childcare services during part of the 24-hour day for ~~twelve~~sixteen or fewer children in the family abode of the person or persons under whose direct care the children are placed. Such care in a family day care home is limited to ~~twelve~~sixteen or fewer children, including those children living in the home or children of other close relatives cared for in the home.

(...)

3) Clarifying wells serving clustered lot language.

This code intends that there be no wells serving the clustered lots (rather than the entire ~~cluster~~ subdivision including reserve tract) on or within 100’ of the reserve tract or the property line of an existing farm or any parcel or portion thereof which is designated as the agricultural reserve tract. At present the language appears to say that no well serving any lot including the reserve tract can be served by a well located on the reserve tract or within 100’ AG.

TITLE 20 ZONING**Chapter 20.38 Agriculture Protection Overlay**

20.38.060 Development and use standards.

(...)

(6) All wells for potable water serving any cluster lot within the subdivision ~~within the cluster subdivision~~ shall be kept a minimum of 100 feet from the property line of an existing farm or any parcel or portion thereof which is designated as the agricultural reserve tract.

4) Update to conform with the current Washington State building code (IBC) code.

The open space maintained between the structures should be 10 feet.

TITLE 20 Zoning**Chapter 20.80 Supplementary Requirements**

20.80.220 Use of setback areas.

All setback measurements are minimum requirements. All front yard and rear yard setback areas shall be open from side-to-side of the lot except as otherwise provided by the following:

(1) Front Yards.

(...)

(2) Rear Yards. Uncovered patios, driveways, walkways, vegetation, pools, HVAC equipment placed adjacent to the primary structure and extending no more than three feet into the rear yard, recreation equipment, open parking spaces, fences and walls up to seven feet in height, and structures housing accessory uses in Urban Residential, Residential Rural, Rural and Agricultural Zone Districts may be placed in the rear yard; provided, that an open space of at least eight-ten feet is maintained between any structure housing such accessory use and any other building on that lot.

5) EV chargers as appurtenances.

EV Chargers are not specifically stated as an allowed use in the setback area, however PDS has allowed them under the umbrella of Utilities. EV Charging Stations have been treated as one of several possible "Utilities," similar to HVAC systems for the sake of permitting.

TITLE 20 Zoning

Chapter 20.80 Supplementary Requirements

20.80.220 Use of setback areas.

All setback measurements are minimum requirements. All front yard and rear yard setback areas shall be open from side-to-side of the lot except as otherwise provided by the following:

(1) Front Yards.

(a) Appurtenances, including but not limited to: uncovered patios and decks less than 30 inches in height; driveways and walkways; pools and other recreation equipment; utilities, including HVAC equipment, electric vehicle charging station, septic systems, and propane tanks with fuel capacities up to 500 gallons; and fences, walls, and vegetative hedges up to four feet in height may be placed in this front yard setback area subject to the limitations of WCC 20.80.210(3) (Vision Clearance); and provided, that:

(i) The location of propane tanks with fuel capacities up to 500 gallons is restricted to the rear 50 percent of front yard setbacks. All such propane tanks shall be:

(A) Inspected and approved by the Whatcom County fire marshal for compliance with the most currently adopted International Fire Code and, when required by the fire marshal, isolated from other uses by a noncombustible wall or fence; and

(B) Screening by a fence or with shrub vegetation planted to a minimum height of six inches above the top surface of the propane tank is encouraged.

(b) Signs approved for use in a front yard area shall be subject to the limitations of WCC 20.80.215 and/or 20.80.410 as applicable.

(c) Outside of urban growth areas fences, walls, and vegetative hedges up to a maximum of six feet in height may be located within the front yard setback area subject to the limitations of WCC 20.80.210(3) (Vision Clearance).

(2) Rear Yards. Uncovered patios, driveways, walkways, vegetation, pools, electric vehicle charging station, HVAC equipment placed adjacent to the primary structure and extending no more than three feet into the rear yard, recreation equipment, open parking spaces, fences and walls up to seven feet in height, and structures housing accessory uses in Urban Residential, Residential Rural, Rural and Agricultural Zone Districts may be placed in the rear yard; provided, that an open space of at least eight feet is maintained between any structure housing such accessory use and any other building on that lot.

(3) Side yards must be kept open; provided, that uncovered patios and decks less than 30 inches in height; driveways, walkways, and parking areas; pools, electric vehicle charging station and other recreational equipment; HVAC equipment placed adjacent to the primary structure and extending no more than three feet into the side yard; and fences, walls, and vegetative hedges up to seven feet in height may be placed in the side yard.

6) Resort Commercial and Floor Area Ratio (FAR).

The Resort Commercial (RC) zone density requirements refer to a unit equivalent as determined by the Whatcom County Health and Community Services (HCS), but HCS does not have a definition of dwelling unit equivalent. Other districts generally use a FAR for density requirements for non-single family residential type uses. If the HCS finds conditions that require lower density (such as septic or water availability) they can require a lower density during the permitting process utilizing Title 24. This change makes the code more uniform across zoning districts and removes a term not defined in the zoning or health codes.

POLICY CHANGE

TITLE 20 Zoning

20.64 Resort Commercial (RC) District

20.64.260 Density requirements.

Maximum gross density varies according to the availability of public water and/or public sewer. Where public water service is not provided, the maximum density for dwelling units, ~~or dwelling unit equivalent as determined by the Whatcom County health department,~~ shall be one dwelling/five acres. Where public water service is provided but public sewer is not provided, the maximum density for dwelling units, ~~or dwelling unit equivalent as determined by the Whatcom County health department,~~ shall be two per acre, ~~unless the health department finds that conditions require a lower density.~~ The following densities apply only where both public sewer and public water serve the project:

~~261~~ (1) Single-family dwellings and duplexes shall not exceed a maximum gross density of seven units per acre. Single-family dwellings and duplexes shall have a minimum net density of seven units per acre in the Birch Bay UGA.

~~.262~~ (2) Multifamily dwellings including all condominiums except time share condominiums shall not exceed a maximum gross density of 22 units per acre. Multifamily dwellings including all condominiums (except time share condominiums) that are not in a mixed use development shall have a minimum net density of 10 dwellings per acre in the Birch Bay UGA.

~~.263 .261~~ Mobile home parks shall be administered pursuant to WCC 20.80.950. ~~not exceed a maximum gross density of seven units per acre. Mobile home parks shall have a minimum net density of seven units per acre the Birch Bay UGA.~~

~~.264 .262~~ Recreational vehicle parks shall be administered pursuant to WCC 20.80.955 ~~shall not exceed a density of 15 units per acre.~~

~~.265 .263~~ ~~Nonresort-oriented H~~hotels and motels are not allowed without public water. Where public water service is provided it shall not exceed a floor area ratio (FAR) of 0.60.

~~.266~~ ~~Resort-oriented hotels and motels including time share condominiums shall not exceed a floor area ratio (FAR) of .56.~~

~~.267 .264~~ Nonhabitation commercial uses shall not exceed a floor area ratio (FAR) of .70.

7) Hearing Examiner requested updated code.

On September 9th 2025 with AB2025-539 Council revised the language governing the Hearing Examiner in WCC 2.11. Subsequently, the Hearing Examiner advised PDS that WCC should be updated to align with the changes made in September.

TITLE 22 LAND USE AND DEVELOPMENT

22.05 Project Permits

22.05.150 Permit revocation.

(1) Upon notification by the director that a substantial violation of the terms and conditions of any previously granted zoning conditional use, shoreline substantial development, or shoreline conditional use permit exists, the hearing examiner shall issue a summons as per WCC 2.11.220 to the permit holder requiring said permit holder to appear and show cause why revocation of the permit should not be ordered. Failure of the permit holder to respond may be deemed good cause for revocation.

(2) Upon issuance of a summons as set forth in subsection (1) of this section, the hearing examiner shall schedule an open record hearing to review the alleged violations. The summons shall include notice of the hearing and shall be sent to the permit holder and the director of planning and development services no less than 12 calendar days prior to the date of the hearing. At the hearing the hearing examiner shall receive evidence of the alleged violations and the responses of the permit holder, as per the ~~business~~ rules of the hearing examiner's office. Testimony shall be limited to that of the division and the permit holder except where additional evidence would be of substantial value in determining if revocation should be ordered. The land use division's evidence may include the testimony of witnesses.

22.05.160 Appeals.

(1) Any person with standing may appeal any order, final permit decision, or final administrative determination made by the director in the administration or enforcement of any chapter to the hearing examiner, who has the authority to hear and decide such appeals per WCC [2.11.210](#). Appeals relating to personal wireless service facilities are filed with a court of competent jurisdiction rather than the hearing examiner.

(...)

(d) The ~~business~~-rules of the hearing examiner shall govern appeal procedures. The hearing examiner shall have the authority granted in the ~~business~~-rules, and that authority is incorporated herein by reference. See also WCC [2.11.220](#).

8) Preapplication refunds

The preapplication conference historically reduced the amount of work done by PDS; however, with the growth of state and federal guidelines and regulations over the years, the workload has increased to the point of making this discount a cost burden on PDS.

POLICY CHANGE

TITLE 22 LAND USE AND DEVELOPMENT

Chapter 22.05 Project Permits

22.05.040 Preapplication conferences.

The purpose of a preapplication conference is to assist applicants in preparing development applications for submittal to the county by identifying applicable regulations and procedures. It is not intended to provide a staff recommendation on future permit decisions. Preapplication review does not constitute acceptance of an application by the county nor does it vest an application, unless otherwise indicated in Whatcom County Code.

(1) A preapplication conference is required as indicated in WCC [22.05.020](#), unless the director grants a written waiver. For other applications, the applicant may request a preapplication conference. An applicant may request any number of preapplication conferences.

(2) The county shall charge the applicant a fee for each preapplication conference per the unified fee schedule. ~~If the county makes a determination of completeness on a project permit submitted within one year of the notice of site-specific submittal requirements per subsection (6) of this section, 50 percent of the planning fee for one of the preapplication conferences shall be applied to the application cost.~~

(3) It is the responsibility of the applicant to initiate a preapplication conference through a written application. The application shall, at a minimum, include all items identified on the preapplication form and the department's administrative manual. The applicant may provide additional information to facilitate more detailed review.

9) Reduced application fees.

Increasing the number permits does not reduce the number amount of work staff is required to do. With the increase in state requirements, it is cost-prohibitive to give discounts for increased work.

POLICY CHANGE**~~22.25.030 Reduced application fees.~~**

~~When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced by 25 percent of the required aggregate permit and application fees; provided any fees required for processing of an EIS shall not be included as part of the total amount of fees to be reduced by 25 percent:~~

~~(1) Subdivision plat application;~~

~~(2) Rezone application;~~

~~(3) Shoreline substantial development permit, variance or conditional use;~~

~~(4) Major development permit;~~

~~(5) Conditional use permit;~~

~~(6) Variance;~~

~~(7) Planned unit development. (Ord. 2025-005 § 1 (Exh. A); Ord. 2018-032 § 1 (Exh. A)).~~

10) Conditional Use Permits Transferability

WCC 22.05.026(2) says: "Conditional use permits shall be nontransferable unless said transfer is approved by the hearing examiner." There is no criteria and it is not an open hearing process. The hearing examiner has no basis to deny the transfer. The Hearing Examiner recommended the change to further clarify processes in WCC.

POLICY CHANGE**TITLE 22 LAND USE AND DEVELOPMENT****Chapter 22.05 Project Permits****22.05.026(2)**

~~Conditional use permits shall be nontransferable unless said transfer is approved by the hearing examiner.~~

Conditional use permits shall be transferable if said transfer is approved by the hearing examiner after the hearing examiner has found that the use is still in compliance with the

conditions previously put in place, or if found to be non-compliant the hearing examiner puts new updated conditions in place to match modern requirements.

(...)

(5) Revisions. The hearing examiner may administratively approve revisions to conditional use permits; provided, that the proposed changes are within the scope and intent of the original permit. "Within the scope and intent of the original permit" shall mean the following:

(a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that:

(i) Revisions involving new structures not shown on the original site plan shall require a new permit;

(ii) Any revisions shall not exceed height, lot coverage, setback, or any other requirements of the regulations for the area in which the project is located; ~~and~~

(iii) Any revisions shall be reviewed for consistency with the Comprehensive Plan; and

(iv) Applicant demonstrates compliance with conditions of approval;

(b) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;

(c) The use authorized pursuant to the original permit is not changed;

(d) No additional over-water construction will be involved for shoreline conditional use permits;

(e) No substantial increase in adverse environmental impact will be caused by the project revision.

11) Administrative Use Permits Transferability

The previous criteria for transferability allowed blanket transfer of administrative use permits. This new section adds the criteria that the applicant comply with the conditions previously put in place.

POLICY CHANGE**TITLE 22 LAND USE AND DEVELOPMENT****Chapter 22.05.028 Administrative approval use permits.****22.05.028(5)**

(5) Administrative approval use permits, except accessory dwelling units, shall be transferable if said transfer is approved by the director after they have found that the use is still in compliance with the conditions previously put in place.

~~(56)~~ Revisions. The director may approve revisions to administrative approval use permits; provided, that the proposed changes are within the scope and intent of the original permit. "Within the scope and intent of the original permit" shall mean the following:

(a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit; provided, that:

(i) Revisions involving new structures not shown on the original site plan shall require a new permit; and

(ii) Any revisions shall not exceed height, lot coverage, setback, or any other requirements of the regulations for the area in which the project is located; ~~and~~

(iii) Any revisions shall be reviewed for consistency with the Comprehensive Plan; and

(iv) Applicant demonstrates compliance with conditions of approval;

(b) Landscaping may be added to a project without necessitating an application for a new permit; provided, that the landscaping is consistent with conditions (if any) attached to the original permit and is consistent with the regulations for the area in which the project is located;

(c) The use authorized pursuant to the original permit is not changed;

(d) No additional over-water construction will be involved for shoreline conditional use permits;

(e) No substantial increase in adverse environmental impact will be caused by the project revision.

(f) Revisions to surface mines, excluding vertical or lateral expansion, may be considered with demonstration of compliance with existing conditions of approval and a revised haul route agreement if applicable.