



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: **AB2024-545**

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Department:	Planning and Development Services Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:	09/24/2024		
Agenda Date:	09/24/2024	Enactment #:	ORD 2024-046		

Related Files:

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TITLE FOR AGENDA ITEM:

Ordinance adopting various amendments to Whatcom County Code Title 20, Zoning

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Proposed amendments to WCC Titles 20 (Zoning). This is an annual “code scrub,” wherein Planning and Development Services proposes amendments to clarify code, fix inconsistencies and grammar, and modify or add minor policies. This year’s six proposed code amendments include one proposed policy change to allow cannabis retail in the Light Impact Industrial District within Urban Growth Areas. Please refer to Exhibit A (attached) where the proposed amendments and explanations are provided.

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
09/10/2024	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Galloway, Scanlon, and Stremlier Nay: 0	
09/24/2024	Council	ADOPTED	
		Aye: 7 Buchanan, Byrd, Donovan, Elenbaas, Galloway, Scanlon, and Stremlier Nay: 0	

Attachments: Staff Report, Proposed Ordinance

ORDINANCE NO. 2024-046

AN ORDINANCE ADOPTING VARIOUS AMENDMENTS TO WHATCOM COUNTY CODE TITLE 20 (ZONING)

WHEREAS, The Council’s 2024 docket includes item PLN2023-00002, “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 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 applied to make various amendments to the Whatcom County Code (WCC) to make corrections, updates, and clarifications pursuant to docket item PLN2024-00002.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on June 24, 2024. No comments have been received to date.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 04, 2024, for their 60-day review. No comments were received.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on August 8th, 2024.
5. The County Council held a duly noticed public hearing on the proposed amendments on September 24, 2024.
6. 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.” There are no policies with which these amendments would be inconsistent.
7. In reference to Exhibit A, Amendment No. 1: This amendment would require applicants for Personal Wireless Facilities whose structure might penetrate FAR Part 77 to submit Federal Aviation Administration (FAA) approval tower heights prior to applying for Whatcom County permits and submit that approval with their application.
8. In reference to Exhibit A, Amendment No. 2: This amendment adds an additional 30-foot setback from single-family residential uses to Personal Wireless Facilities to allow for additional height increases when colocation is proposed.
9. In reference to Exhibit A, Amendment No. 3: This amendment removes two leftover uses of the term “significant” trees, as the County has switched from regulating the removal of “significant trees” to regulating the retention of “tree canopy” in our watershed protection districts.

10. In reference to Exhibit A, Amendment No. 4: This amendment clarifies that 0-foot setbacks are allowed for Single-Family Attached uses where Single-Family attached is allowed.
11. In reference to Exhibit A, Amendment No. 5: This amendment allows cannabis retail in the Light Impact Industrial District within UGAs per Council direction (docket item PLN2024-00006).
12. In reference to Exhibit A, Amendment No. 6: Because of the upcoming stricter permitting timelines of HB 5290, this amendment allows Planning and Development Services to issue permits for land disturbing activities in our watershed protection overlay districts during seasonal closures, though conditions such work not to occur during the seasonal closure.

CONCLUSIONS

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

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Code are hereby adopted as shown in Exhibit A.


Section 2. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments.

Section 3. Severability. 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 24th day of September 2024.


WHATCOM COUNTY COUNCIL
 WHATCOM COUNTY, WASHINGTON
 ATTEST: COUNTY CLERK


 Cathy Halka, Council Clerk


 Barry Buchanan, Council Chair

APPROVED as to form:

Approved () Denied


 George Roche, Civil Deputy Prosecutor


 Satpal Sidhu, Executive

Date: 9/30/24

Exhibit A: 2024 Miscellaneous Code Amendments

(Editor's note: Ellipses (...) indicate that sections of the code not being amended are not shown.)

1) Requiring FAA Approval of Wireless Tower Heights Prior to Applying for Whatcom County Permits.

The County is under strict federal permit processing timelines for wireless facilities. However, an issue has arisen wherein when we ask an applicant whose structure might penetrate FAR Part 77 for FAA approval of their proposed height, the FAA doesn't always respond in a timely manner, forcing PDS to issue a permit prior to receiving its approval. Therefore, PDS proposes to amend WCC 20.13.140 and 20.80.675 to require the applicant to undergo FAA review prior to submittal, and submit that approval in writing at time of application.

Title 20 ZONING

Chapter 20.13 Personal Wireless Facilities

20.13.140 Federal requirements.

All wireless communications support structures must meet or exceed applicable current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate wireless communication support structures and antennas. Any tower construction or modification that penetrates FAR Part 77 requires a FAA approval/determination to be submitted with the application for any Whatcom County permit. If such standards and regulations are changed, owners of the freestanding or attached wireless communication support structure, antennas, and electronic equipment governed by this chapter shall bring such facility into compliance with such revised standards and regulations if required by the federal agency. Failure to bring such facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the facility at the owner's expense.

Chapter 20.80 Supplementary Requirements

20.80.675 Height limitations surrounding airports.

- (1) No structure shall exceed the height of the imaginary surfaces defined in Federal Aviation Regulations (FAR) Part 77 around airports that have mapped such imaginary surfaces (airports that have mapped Part 77 imaginary surfaces are shown in Appendix H of the Whatcom County Comprehensive Plan). This restriction shall not apply to single-family residences and accessory structures that have a building height of 30 feet or less.
- (2) Applicants for permits within the area covered by the FAR Part 77 imaginary surfaces map shall, upon application, submit correspondence from both the Federal Aviation Administration and an official representative of the airport providing their concurrence that the proposed development meets subsection (1) of this section and will not create a hazard to air navigation.
- (3) The hearing examiner shall have the authority to grant a variance from the height limits of subsection (1) of this section upon finding that the below criteria are satisfied. Pursuant to WCC 20.13, personal wireless eligible facilities are exempt from having to obtain a variance.

- (a) The variance application shall be accompanied by letters from both the Federal Aviation Administration and an official representative of the airport evaluating the effects of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. If neither agency responds to a written request by the applicant to evaluate the proposal within 45 days, the variance application may be submitted without the evaluation(s) required.
- (b) The variance criteria of WCC 22.05.024 shall not apply. Such variances may be granted if the hearing examiner finds that:
 - i. The strict application of the height limit will result in unnecessary hardship; and
 - ii. The height proposed will not be contrary to the public interest and will not create a hazard to air navigation.
- (c) No variance shall be granted that authorizes a use that is not allowed by the underlying zoning.

2) Adding an additional 30-foot setback to allow for how federal guidelines measure tower height. Under Federal regulations, and pursuant to WCC 20.13, additional equipment may be placed on a wireless tower with limited County review. Such equipment can add an additional 30 feet to the height of the tower, potentially violating approved setbacks, and/or placing it in striking distance of a house were it to fall. PDS would like to remedy this, and ensure that all such future towers minimize impact risk, by adding another 30 feet to the setback requirements.

Title 20 ZONING

Chapter 20.13 Personal Wireless Facilities

20.13.090 Design and development standards for small and macro wireless facilities.

.091 Design and Development Standards.

(...)

(12) Setbacks Applicable. The following setback standards shall apply to personal wireless service facilities:

(...)

- (c) Freestanding wireless communication support structures located in a residential related district as described in WCC 20.13.085 shall be set back from any property line by a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater, plus 30 feet.
- (d) Freestanding wireless communication support structures located in other than residential related districts shall be set back from any property line abutting or adjacent to a residential related district a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater, plus 30 feet.
- (e) Regardless of the district, freestanding wireless communication support structures shall be set back from dwellings not on the same legal lot a distance equal to the height of the freestanding wireless communication support structure or the setback of the underlying use district, whichever is greater, plus 30 feet.

(...)

3) Cleaning up a few leftover references to “significant” trees.
In 2018 Council approved amendments to the Watershed Protection Districts that, in part, switched the County from regulating the removal of “significant trees” to regulating the retention of “tree canopy.” However, PDS has found a few leftover uses of the term “significant” trees and we now propose to remove them.

Title 20 ZONING

Chapter 20.51 Lake Whatcom Watershed Overlay District

20.51.440 Tree retention associated with development activity.

(...)

(3) Minimum Tree Canopy Retention. Development subject to the requirements of this section may only remove up to a certain percentage (as shown in Table 20.51.440(3)) or 5,000 square feet, whichever is greater, and as measured cumulatively from January 1, 2017, of the existing tree canopy area, as defined by the dripline of the tree(s) on their property. In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, new on-site plantings of native species shall be required to attain the removed tree canopy coverage, calculated according to projected growth at 20 years maturity consistent with Table 20.51.440(4).

(...)

Chapter 20.71 Water Resource Protection Overlay District

20.71.356 Tree retention associated with development activity.

(...)

(3) Minimum Tree Canopy Retention. Development subject to the requirements of this section may only remove up to a certain percentage (as shown in Table 20.71.356(3)) or 5,000 square feet, whichever is greater, and as measured cumulatively from January 1, 2017, of the existing tree canopy areas, as defined by the dripline of the tree(s) on their property. In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, new on-site plantings of native species shall be required to attain the removed tree canopy coverage, calculated according to projected growth at 20 years maturity consistent with Table 20.71.356(4).

(...)

4) Clarifying that 0-foot setbacks are allowed for Single-Family Attached uses where this use is allowed.

Single-Family Attached uses are allowed in Urban Residential (UR), Urban Residential Medium Density (URM) and Urban Residential – Mixed (UR-MX) districts. Single-Family Attached are defined in WCC means a group of two or more single-family dwelling units, each on a separate lot of record, which are joined to one another by a common party wall, but having separate outside entrances, and for the purposes of this code include townhouses. However, WCC 20.80.210 (Minimum Setbacks) does not specifically state that there is a 0-foot interior side-yard setback for this use, which one would need to do attached units. PDS would like to add a note allowing the 0-foot interior side-yard setback.

Title 20 ZONING

Chapter 20.22 Urban Residential – Medium Density (URM) District

22.22 Permitted Uses. (...)

.051 Single-family dwellings, single-family attached, duplexes, and multifamily dwellings consistent with the density requirements of the district; provided, that if the total number of dwelling units per lot is greater than four, the site plan shall be reviewed by the technical committee for consistency with the general development criteria of this district as set forth in WCC 20.22.650. Adequate right-of-way and street improvements may also be required so that adjacent public roadways will conform with the road standards section of the county development standards. In the Bellingham Urban Growth Area, roads must also conform with the city of Bellingham's road standards.

Chapter 20.80 Supplementary Requirements

20.80.210 minimum setbacks.

(...)

Zoning District	Setback (in feet) from:						
	Right-of-Way Classification					Other	
	I-5, State Highways, Urban Principal, and Urban Minor Arterials	Urban Collector Arterials and Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
Residential Setbacks							
Rural Residential (RR)	45	35	25	25	20	5	5
– If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some RR setbacks may differ pursuant to WCC <u>20.80.210(5)(a)(iv)</u> and <u>20.80.251(2)</u> .							
Rural Residential-Island (RR-I)	–	–	25	25	20	5	5

Note: Depending on circumstances, some RR-I setbacks may differ pursuant to WCC 20.80.251(4).							
Point Roberts Transitional Zone (TZ)	45	35	25	25	20	5	5
Urban Residential Mixed Use (UR-MX)	45	35	25	10	10	5	5
– If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Urban Residential Medium (URM)	45	35	25	25	20	5	5
– If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some URM setbacks may differ pursuant to WCC 20.80.251(3). Note: Single-Family attached in UR, URM, and UR-MX may have a 0-foot interior side yard setback.							
Urban Residential (UR)	45	35	25	25	20	5 ¹	5
– If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some UR setbacks may differ pursuant to WCC 20.80.251(1).							

5) POLICY CHANGE: Allowing Cannabis Retail in the Light Impact Industrial District within UGAs.

Cannabis retail facilities are currently allowed in four commercial districts in unincorporated Whatcom County, though the areas are limited and most already have established retail cannabis stores. The state legislature recently revised the Washington State Cannabis Social Equity Program to authorize the Liquor and Cannabis Board (LCB) to issue additional cannabis retail sales licenses to applicants who meet the social equity requirements of the program under WAC 314-55-570.

In 2024 the Council placed on the docket item PLN2024-00006, directing staff to *“Evaluate the allowance of cannabis retail facilities in the Light Impact Industrial (LII) zone within a city’s designated urban growth area (UGA) and review and revise the Whatcom County Zoning Code, as applicable.”*

In response, PDS proposes to amend WCC 20.66.050 by adding “cannabis retail facilities” as a permitted use in the LII district when in a UGA.

TITLE 20 ZONING

Chapter 20.66 Light Impact Industrial (LII) District

20.66.050 Permitted uses

(...)

.089 Cannabis retail facilities, when located in a city's Urban Growth Area and located on the same parcel as a legally established cannabis producer or processor.

(...)

6) Clarifying the rules for issuing permits during watershed closure.

To help ensure that land disturbing activities would not occur outside of the seasonal work windows in our watershed protection districts, the code forbids Planning and Development Services from issuing permits during the seasonal closures. However, because of the stricter permitting timelines of HB 5290 (to be implemented by 1/1/25 through a different set of code amendments), PDS can no longer hold off on issuing permits, as the below sections state. Therefore, PDS suggests amending these sections as shown.

TITLE 20 ZONING

Chapter 20.51 Lake Whatcom Watershed Overlay District

20.51.410 Seasonal clearing activity limitations.

(...)

(3) To ensure compliance with subsection (2) of this section, all permits authorizing more than 500 square feet of land disturbance located within the Lake Whatcom watershed shall be conditioned on such work not being authorized from September 15th through May 31st.

(...)

Chapter 20.80 Supplementary Requirements

20.80.735 Water resource special management areas.

(...)

(2) Within water resource special management areas, clearing activity must conform to the following conditions:

(...)

(d) Seasonal Clearing Activity Limitations. In the Lake Samish and Lake Padden watersheds, clearing activity, as defined in Chapter 20.97 WCC, or forest practices regulated by Whatcom County that will result in land disturbance exceeding 500 square feet, shall be prohibited from October 1st through May 31st; provided, that:

(...)

(ii) To ensure compliance with this section, all permits authorizing more than 500 square feet of land disturbance located within the Lake Samish or Lake Padden watersheds shall be conditioned on such work not being authorized from September 15th through May 31st.