PROPOSED BY: RIENSTRA, SCANLON, GALLOWAY
INTRODUCED: JUNE 2, 2026

ORDINANCE NO. _____

IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE OR PROCESSING OF APPLICATIONS AND PERMITS FOR THE ESTABLISHMENT OF NEW OR EXPANSION OF EXISTING CIVIL DETENTION FACILITIES

WHEREAS, Whatcom County has broad authority under the Washington State Constitution's police powers, set forth in Article XI, Section 11, to protect the public health, safety, and welfare of its residents; and

WHEREAS, these constitutional provisions, along with Whatcom County's home rule authority granted by Article XI, Section 4 of the State Constitution and the Washington State Growth Management Act under Revised Code of Washington (RCW) 36.70A, authorize Whatcom County to adopt land use controls, inclusive of interim measures, to provide for the regulation of land uses within the county and to provide that such uses be consistent with applicable law; and

WHEREAS, the Whatcom County Council previously adopted and amended Whatcom County Code (WCC) Title 20, Zoning, which regulates land use within unincorporated areas of Whatcom County; and

WHEREAS, while counties planning under the Growth Management Act are required to include a process for identifying the siting of essential public facilities pursuant to RCW 36.70A.200, current regulations do not contemplate the expansion of existing or the siting or permitting of new civil detention facilities; and

WHEREAS, Whatcom County is currently updating the Whatcom County Comprehensive Plan as required by RCW 36.70A, a lengthy, multi-year process which, while nearing completion, does not address land use regulations or public health and safety issues that have arisen related to administrative or civil detention facilities, and the county lacks sufficient time to sufficiently and timely address these issues in the comprehensive plan update; and

WHEREAS, RCW 36.70A.390 and RCW 36.70.795 allow for the adoption of an interim land use moratorium for up to one year as long as a public hearing is held within sixty (60) days of adoption, the Council adopts findings of fact setting forth the basis for the interim measure, and a work plan is developed to study land use regulations appropriate to address civil detention facilities; and

WHEREAS, in February 2025 the United States Immigrations and Customs Enforcement (ICE) agency began a significant expansion of "at-large" arrests in American communities, including conducting worksite raids and arrests at immigration check-ins and courthouses, often detaining individuals with no criminal convictions or those participating legally in the asylum process; and

DRAFT

WHEREAS, it is reported that many such detainees have been held in facilities managed by private, for-profit corporations that contract with the government without access to adequate medical care, clean drinking water, or sufficient food, including facilities located in Washington; and

WHEREAS, there are more than 220 civil detention sites around the country, with a total detainee population of 68,000 as of February 2026, up from 40,000 a year earlier; and

WHEREAS, in July 2025 Congress allocated $45 billion in funding to ICE for immigrant detention facilities over four years, more than ten times the agency's previous budget; and

WHEREAS, in recent months ICE has been purchasing warehouses across the country to convert into large-scale detention centers under its Detention Reengineering Initiative; and

WHEREAS, ICE has regularly failed to communicate with local officials about planned facilities in their jurisdictions and has prohibited government officials from accessing existing facilities; and

WHEREAS, officials at ICE detention facilities have denied or delayed detainees' constitutional rights to due process, a violation of basic civil and human rights, and in so doing have harmed community members and entire communities; and

WHEREAS, a federal immigration detention facility currently sited in Ferndale, Whatcom County, has been the subject of complaints regarding compliance with state and local health and welfare requirements, illustrating the potential community impacts associated with the siting of new or expansion of existing detention facilities; and

WHEREAS, incidents of unsanitary conditions and inhumane treatment by individuals detained at the Ferndale detention facility include:

- A family of five, including four minor children who are United States citizens, was detained by the United States Border Patrol and held for more than two weeks without access to legal representation or charges being filed (the mother was transferred to another facility and released after four months in detention when a judge rejected the case against her),
- Facility officials have refused to disclose information to family members and the public regarding the whereabouts of detainees confined at the facility,
- Facility officials have denied legal counsel to detainees or the opportunity to review legal paperwork pertaining to their arrest,
- Members of Congress have been denied access to detainees and the detention facility; and

WHEREAS, the Council finds that based on the information reported and available, an interim land use moratorium imposed by this ordinance pursuant to RCW 36.70A.390 is necessary for the protection of public health and safety of Whatcom County residents and to ensure land use impacts are considered comprehensively; and

WHEREAS, the above actions by ICE in Whatcom County and in other jurisdictions highlight a need for a comprehensive review of how such facilities are defined, sited, and regulated under county land use code provisions and planning policies; and

WHEREAS, Whatcom County Code does not define "detention facility," defining "correctional facilities" at WCC 20.97.030 as "primarily designed, staffed and used for housing juvenile or adult persons for the purposes of pre-trial custody, punishment, correcting and/or rehabilitation following conviction of a criminal offense;" and

WHEREAS, impacts from large-scale civil detention facilities are not contemplated by Whatcom County's development regulations, and an evaluation of potential impacts as well as mitigation measures for any identified impacts should be clearly addressed in the county's development regulations before the filing of any application or permit for a new or expanded civil detention facility is considered; and

WHEREAS, the presence of existing detention infrastructure in western Washington and the fact that other local governments within the state have recently enacted moratoriums on new or expanded detention facilities may compel ICE or contractors for ICE to look to Whatcom County to site new facilities or expand existing facilities; and

WHEREAS, the Council deems a moratorium necessary because the acceptance or approval of applications for new or expanded civil detention facilities, in the absence of clear zoning and development standards consistent with the Whatcom County Comprehensive Plan, may result in siting and permitting decisions that are harmful to public health, safety, and welfare and may not sufficiently mitigate against community and environmental concerns; and

WHEREAS, the Council finds that an interim moratorium imposed by this ordinance is necessary for the protection of public health and safety; and

WHEREAS, new or expanded detention facilities would likely have significant impacts on water, sewage and wastewater, transportation and parking, public safety, and public health, and would draw significant public interest which would likely require a long-term security plan and a short-term construction staging plan; and

WHEREAS, the Department of Planning and Development Services will provide a threshold State Environmental Policy Act (SEPA) determination prior to adoption of this interim moratorium ordinance; and

WHEREAS, Whatcom County requires time to analyze and determine how best to update its land-use regulations to address the issues related to any expansion of existing or permitting of new civil detention facilities in Whatcom County, including evaluation of appropriate siting, cumulative impacts, and community burden, and to identify and consider mitigation measures most appropriate to address impacts; and

WHEREAS, the Council does not intend for this ordinance to impact the actions of or diminish support for the Whatcom County Sheriff's Department or the local police departments of Whatcom County's cities, which lawfully abide by the Keep Washington Working Act, or the county's ongoing efforts to reshape its justice system through the

DRAFT

design and construction of a new county jail, a new behavioral care center, and the expansion of services for behavioral health and substance use disorder treatment; and

WHEREAS, the Council recognizes the limits to its authority over actions imposed by federal statutes and the United States Constitution and finds that this temporary action is within its constitutional police powers and land use authority as outlined in state law and the Whatcom County Charter to provide time to evaluate and implement appropriate land use regulations consistent with the county's comprehensive plan in a manner that protects the health and well-being of residents.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that an interim development moratorium is hereby established and imposed pursuant to the county's constitutional authority and RCW 36.70A.390, prohibiting the filing, acceptance, processing, or approval of any permit or application to establish, site, or expand civil or administrative detention facilities in all zoning designations within unincorporated Whatcom County, regardless of whether the use is permanent, temporary, primary, or accessory; and

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

SECTION 1. Purpose. This interim land use moratorium will allow the county sufficient time to comprehensively review and analyze the land use policy and regulations appropriate for siting and regulating civil detention facilities in addition to determining cumulative impacts of such facilities in order to identify necessary mitigation regulations that should be considered and implemented prior to consideration of siting, expansion or establishment of new or existing civil or administrative detention facilities.

SECTION 2. Exceptions. This ordinance shall not apply to the existing Whatcom County Jail, the proposed new Whatcom County jail, or any existing facilities or planned behavioral health care centers or crisis centers, nor does it apply to any project already vested.

SECTION 3. Effective Date. This interim moratorium shall take effect and be in force and effect for one (1) year from the effective date of this ordinance and shall automatically expire after a period of one (1) year, unless extended as provided for by statute or until the Council adopts amendments to Title 20 of the Whatcom County Code (WCC) addressing this subject matter, whichever date occurs first. Any land use or permit application that is accepted during this moratorium period as a result of error or by use of vague or deceptive descriptions is null and void and without legal force or effect.

SECTION 4. Findings of Fact. The Whatcom County Council adopts the above WHEREAS recitals as findings of fact incorporated by reference as the basis for passing this interim land use moratorium, as required by RCW 36.70A.390 and RCW 36.70.795.

DRAFT

SECTION 5. Public Hearing Required. Pursuant to RCW 36.70A.390, the Whatcom County Council shall hold a public hearing within sixty (60) days of the passage of this interim moratorium ordinance.

SECTION 6. Work Plan. During the moratorium, the County Executive will seek to develop a work plan to evaluate the appropriate land use regulation, mitigation, and zoning considerations for civil detention facilities, including impacts to public health, welfare, and safety, and, upon completion of the evaluation and any proposals, will provide this information to the Council to consider what, if any, new land use regulation and zoning ordinances are appropriate and consistent with the county's comprehensive plan and applicable state laws for establishing new or expanding existing civil detention facilities. Ten months after this interim moratorium ordinance is passed, the County Executive shall update the Council on the progress or findings of this work plan.

SECTION 7. **State Environmental Policy Act (SEPA) Requirement**. This interim moratorium ordinance is not exempt from a threshold determination of State Environmental Policy Act (SEPA) requirements under RCW 43.21C, Washington Administrative Code (WAC) 197-11, and WCC 16.08. The Whatcom County Planning and Services Department issued a threshold determination on _____ finding:

Additional SEPA review shall be completed as legally required following the development of appropriate land use regulations once analysis and proposals for necessary land use code changes for civil or administrative detention facilities are complete.

DRAFT

SECTION 8. Severability. If any section, sentence, clause, or phrase of this moratorium ordinance is held unconstitutional or unlawful by a court of competent jurisdiction or is preempted by state or federal law or regulation, the remainder of the ordinance or application of the provision to any persons or circumstance shall not be affected. Moreover, if any provisions of this ordinance are found to be inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.

ADOPTED this _____ day of _____, 2026

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

Kimberly Thulin by email 5/22/26 (ks)
Civil Deputy Prosecutor

_____
Satpal Sidhu, County Executive

( ) Approved ( ) Denied

Date Signed: _____

DRAFT