



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2019-531

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TITLE FOR AGENDA ITEM:

Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance adopting interim zoning regulations for the siting, establishment, and operation of temporary homeless facilities

HISTORY OF LEGISLATIVE FILE

| Date: | Acting Body: | Action: | Sent To: |
|--------------|---------------------|--|-----------------|
| 10/22/2019 | Council | INTRODUCED FOR PUBLIC HEARING | Council |
| | | Aye: 7 Brenner, Browne, Buchanan, Byrd, Donovan, Frazey, and Sidhu | |
| | | Nay: 0 | |
| | | Absent: 0 | |
| 11/06/2019 | Council | ADOPTED | |
| | | Aye: 6 Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu | |
| | | Nay: 1 Byrd | |
| | | Absent: 0 | |

4
5 **ORDINANCE NO. 2019-074**
6 **(AN INTERIM ORDINANCE OF WHATCOM COUNTY, WASHINGTON)**

7
8 **ADOPTING INTERIM ZONING REGULATIONS FOR THE SITING, ESTABLISHMENT, AND**
9 **OPERATION OF TEMPORARY HOMELESS FACILITIES**

10
11 **WHEREAS**, homelessness continues to be a local, regional and national challenge due to
12 many social and economic factors; and

13
14 **WHEREAS**, tent and tiny house encampments have become a temporary mechanism for
15 providing shelter for homeless individuals and families; and

16
17 **WHEREAS**, under RCW 36.01.290 the Washington State Legislature has authorized
18 religious organizations to host temporary encampments to provide shelter for homeless
19 individuals on property that these religious organizations own or control; and

20
21 **WHEREAS**, on July 24, 2018, the Whatcom County Council adopted Ordinance 2018-041,
22 adopting interim regulations for the establishment and operation of temporary homeless facilities
23 for one year; and

24
25 **WHEREAS**, Ordinance 2018-041 expired on July 24, 2019; and

26
27 **WHEREAS** the County Council finds that extending the interim regulations imposed by
28 Ordinance 2018-041 is necessary for the protection of public health and safety; and

29
30 **WHEREAS**, the Whatcom County Code does not currently have permanent provisions
31 addressing the establishment and operation of temporary homeless facilities; and

32
33 **WHEREAS**, interim homeless facility regulations and processing requirements are
34 necessary to preserve and protect public health and safety and prevent danger to public or
35 private property; and

36
37 **WHEREAS**, interim zoning controls enacted under RCW 36.70A.390 and/or RCW
38 36.70.790 are methods by which the County may preserve the status quo so that new plans and
39 regulations will not be rendered moot by intervening development; and

40
41 **WHEREAS**, RCW 36.70A.390 and RCW 36.70.790 both authorize the enactment of an
42 interim zoning map, interim zoning ordinance, or interim official control without holding a public
43 hearing as long as a public hearing is held within at least sixty days of enactment; and

44
45 **WHEREAS**, RCW 36.70A.390 provides that, "A county or city governing body that adopts
46 a moratorium, interim zoning map, interim zoning ordinance, or interim official control without
47 holding a public hearing on the proposed moratorium, interim zoning map, interim zoning
48 ordinance, or interim official control, shall hold a public hearing on the adopted moratorium,
49 interim zoning map, interim zoning ordinance, or interim official control within at least sixty days
50 of its adoption, whether or not the governing body received a recommendation on the matter
51 from the planning commission or department. If the governing body does not adopt findings of
52 fact justifying its action before this hearing, then the governing body shall do so immediately
53 after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim
54 official control adopted under this section may be effective for not longer than six months, but
55 may be effective for up to one year if a work plan is developed for related studies providing for
56 such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim
57 official control may be renewed for one or more six-month periods if a subsequent public hearing
58 is held and findings of fact are made prior to each renewal"; and

1 **WHEREAS**, in conformity with the responsibilities of Whatcom County to meet public
2 health, safety and welfare requirements and provide zoning and land use regulations pursuant to
3 state law, and the County's authority to regulate land use activity within its corporate limits, the
4 County intends to develop appropriate public health, safety and welfare requirements and zoning
5 and land use regulations for the establishment and operation of temporary homeless facilities;
6 and
7

8 **WHEREAS**, the County Council has determined it needs additional time to conduct
9 appropriate research to analyze the effects of the establishment and operation of temporary
10 homeless facilities; and
11

12 **WHEREAS**, interim zoning will provide the County with additional time to review and
13 amend its public health, safety and welfare requirements and zoning and land use regulations
14 related to the establishment and operation of temporary homeless facilities; and
15

16 **WHEREAS**, interim zoning will also allow qualifying religious organizations and registered
17 not-for-profit, tax exempt 501(c)(3) organizations the opportunity to establish and operate
18 temporary homeless facilities; and
19

20 **WHEREAS**, a determination of non-significance (DNS) was issued under the State
21 Environmental Policy Act (SEPA) on July 3, 2018; and
22

23 **WHEREAS**, the County Council concludes that the County does have the authority to
24 establish an interim zoning ordinance and that the County must adopt interim zoning concerning
25 the establishment and operation of temporary homeless facilities to act as a stop- gap measure:
26 (a) to provide the County with an opportunity to study the issues concerning the establishment
27 and operation of temporary homeless facilities and prepare appropriate revisions to the
28 County's codes and regulations; (b) to protect the health, safety, and welfare of the citizens of
29 Whatcom County by avoiding and ameliorating negative impacts and unintended
30 consequences of establishing and operating temporary homeless facilities and (c) to avoid
31 applicants possibly establishing vested rights contrary to and inconsistent with any revisions the
32 County may make to its rules and regulations as a result of the County's study of this matter; and
33

34 **WHEREAS**, the County Council adopts the foregoing as its findings of facts justifying the
35 adoption of this Ordinance; and
36

37 **NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:**
38

39 **Section 1. Findings of Fact.** The County Council adopts the above "WHEREAS" recitals as
40 findings of fact in support of its action as required by RCW 36. 70A.390 and RCW 36.70.790.
41

42 **Section 2. Regulations established.** Regulations concerning the establishment and processing
43 of applications for temporary homeless facilities in unincorporated Whatcom County are
44 hereby established. Establishing such facilities contrary to the provisions of this ordinance is
45 prohibited. Administrative Use approvals shall be required for temporary homeless facilities in
46 the County. Applications for administrative use approvals, land use approvals, or any other
47 permit or approval, in any way associated with temporary homeless facilities, shall not be
48 processed, issued, granted, or approved unless in compliance with this ordinance. If a
49 temporary homeless facility is established in violation of this ordinance or if, after an
50 administrative use permit is issued for the same, the director of the planning and
51 development services department determines that the permit holder has violated this
52 ordinance or any condition of the permit, the temporary homeless facility, its sponsor and
53 managing agency shall be subject to code enforcement and all activities associated with the
54 temporary homeless facility shall cease, and the site shall be vacated and restored to its pre-
55 encampment conditions.
56
57
58
59

1 **Section 3. Definitions.** The following definitions apply to temporary homeless facilities:
2

- 3 A. "Temporary homeless facility" means a facility providing temporary housing
4 accommodations that includes a sponsor and managing agency, the primary purpose of
5 which is to provide temporary shelter for people experiencing homelessness in general
6 or for specific populations of the homeless. Temporary homeless facilities include but
7 are not limited to temporary tent encampments and temporary tiny house
8 encampments.
9
- 10 B. "Temporary tent encampment" means a short-term living facility for a group of
11 homeless people that is composed of tents or other temporary structures, as approved
12 by the director, on a site provided or arranged for by a sponsor with services provided
13 by a sponsor and supervised by a managing agency.
14
- 15 C. "Temporary tiny house encampment" means a temporary homeless facility for a group
16 of people living in purpose-built tiny houses for people experiencing homelessness, as
17 approved by the director, on a site provided or arranged for by a sponsor with services
18 provided by a sponsor and supervised by a managing agency. Temporary tiny houses
19 for the homeless are typically less than 200 square feet and easily constructed and
20 moved to various locations. For the purposes of this ordinance, temporary tiny homes
21 are not dwelling units and, as such, are not required to meet building codes.
22
- 23 D. "Managing agency" means an organization identified as the manager of a temporary
24 homeless facility that has the capacity to organize and manage a temporary homeless
25 facility. Managing agencies are limited to religious organizations and non-profit
26 agencies. A "managing agency" may be the same entity as the sponsor.
27
- 28 E. "Sponsor " means an organization that :
29 1. invites a temporary homeless facility to reside on land they own or lease; and
30 2. is a State of Washington registered not-for-profit corporation and federally
31 recognized tax exempt 501(c)(3) organization; or
32 3. is recognized by the Internal Revenue Service as exempt from federal income
33 taxes as a religious organization, which expresses its religious mission, in part,
34 by organizing living accommodations for the homeless.
35
- 36 F. "Director" means the Planning and Development Services Department Director.
37

38 **Section 4. Requirements.** The following requirements shall apply to all temporary homeless
39 facilities approved under this ordinance, unless modified by the director through approval of
40 an administrative use permit.
41

- 42 A. The encampment shall be located a minimum of 20 feet from the property line of
43 abutting properties containing commercial, industrial, and multifamily residential uses.
44 The encampment shall be located a minimum of 40 feet from the property line of
45 abutting properties containing single-family residential or public recreational uses,
46 unless the director finds that a reduced buffer width will provide adequate separation
47 between the encampment and adjoining uses, due to changes in elevation, intervening
48 buildings or other physical characteristics of the site of the encampment.
49
- 50 B. No temporary homeless facility shall be located within a critical area or its buffer as
51 defined by Whatcom County Code (WCC) 16.16 or 23.
52
- 53 C. A temporary homeless facility shall comply with the applicable development standards
54 of Whatcom County Code Title 20 Zoning, except that temporary homeless facilities
55 shall not be considered structures for the purposes of calculating parcel's total lot
56 coverage, as defined by WCC 20.97.217.
57
- 58 D. A six-foot-tall fence is required around the perimeter of the encampment to limit
59 access to the site for safety and security reasons; provided, that the fencing does not

1 create a sight obstruction at the street or street intersections or curbs as determined
2 by the county engineer, unless the director determines that there is sufficient
3 vegetation, topographic variation, or other site conditions such that fencing would not
4 be needed.
5

- 6 E. Exterior lighting must be directed downward and glare contained within the temporary
7 encampment.
8
- 9 F. The maximum number of residents at a temporary encampment site shall be
10 determined by the director taking into consideration site conditions, but in no case
11 shall the number be greater than fifty (50) people.
12
- 13 G. On-site parking of the sponsor shall not be displaced unless sufficient required off-
14 street parking remains available for the host's use to compensate for the loss of on-
15 site parking or unless a shared parking agreement is executed with adjacent
16 properties.
17
- 18 H. A transportation plan, including provisions for transit, and pedestrian and bicycle
19 ingress and egress to the encampment, shall be submitted for review and approval.
20
- 21 I. No children under the age of 18 are allowed to stay overnight in the temporary
22 encampment, unless accompanied by a parent or guardian. If a child under the age of
23 18 without a parent or guardian present attempts to stay at the encampment, the
24 sponsor and the managing agency shall actively endeavor to find alternative shelter for
25 the child through community partners such as Northwest Youth Services, Opportunity
26 Council, Lighthouse Mission, Interfaith Coalition and other appropriate homeless youth
27 services organizations. Children under the age of 18 without a parent or guardian
28 present shall be allowed to remain in a temporary encampment while alternative
29 shelter is being sought.
30
- 31 J. The sponsor or managing agency shall provide and enforce a written code of conduct,
32 which not only provides for the health, safety and welfare of the temporary
33 encampment residents, but also mitigates impacts to neighbors and the community. A
34 copy of the code of conduct shall be submitted to the County at the time of application
35 for the administrative use permit. Said code shall be incorporated into the conditions of
36 approval. The managing agency shall post the County approved written code of
37 conduct on site.
38
- 39 K. An operations plan must be provided that addresses site management, site
40 maintenance, and provision of human and social services. Individuals or organizations
41 shall have either a demonstrated experience providing similar services to homeless
42 residents; and/or certification or academic credentials in an applicable human service
43 field; and/or applicable experience in a related program with a homeless population.
44 Should an individual or organization not have any of the preceding qualifications,
45 additional prescriptive measures may be required to minimize risk to both residents of
46 the temporary homeless facility and the community in general.
47
- 48 L. The sponsor and the managing agency shall ensure compliance with Washington State
49 laws and regulations and the Whatcom County Health Department's regulations
50 concerning, but not limited to, drinking water connections, solid waste disposal, and
51 human waste. The sponsor and the managing agency shall permit inspections by local
52 agencies and/or departments to ensure such compliance and shall implement all
53 directives resulting therefrom within the specified time period.
54
- 55 M. The sponsor and managing agency shall assure all applicable public health regulations,
56 including but not limited to the following, will be met for:
57
- 58 1. Potable water, which shall be available at all times at the site;
 - 59 2. Sanitary portable toilets, which shall be set back from all property lines as

- 1 determined by the director;
2 3. Hand-washing stations by the toilets and food preparation areas;
3 4. Food preparation or service tents; and
4 5. Refuse receptacles.
5

- 6 N. Public health regulations (WAC 246.215 and WCC 24.03) on food donations and food
7 handling and storage, including proper temperature control, shall be followed and
8 homeless encampment residents involved in food donations and storages shall be
9 made aware of these Whatcom County Health Department requirements.
10
11 O. The sponsor and the managing agency shall designate points of contact and provide
12 contact information (24 hour accessible phone contact) to the chief criminal deputy of
13 the Whatcom County Sheriff or his/her designee. At least one designated point of
14 contact shall be on duty at all times. The names of the on-duty points of contact shall
15 be posted on-site daily and their contact information shall be provided to the Whatcom
16 County Sheriff's Office as described above.
17
18 P. Facilities for dealing with trash shall be provided on-site throughout the encampment.
19 A regular trash patrol in the immediate vicinity of the temporary encampment site shall
20 be provided.
21
22 Q. The sponsor and the managing agency shall take all reasonable and legal steps to
23 obtain verifiable identification information, to include full name and date of birth,
24 from current and prospective encampment residents and use the identification to
25 obtain sex offender and warrant checks from appropriate agencies. The sponsor and
26 the managing agency shall keep a current log of names and dates of all people who
27 stay overnight in the encampment. This log shall be available upon request to law
28 enforcement agencies and prospective encampment residents shall be so advised by
29 the sponsor and managing agency. Persons who have active warrants, or who are
30 required to register as sex offenders, are prohibited from the encampment's location.
31
32 R. The sponsor and the managing agency shall immediately contact the Whatcom County
33 Sheriff's Office if someone is rejected or ejected from the encampment when the
34 reason for rejection or ejection is an active warrant or a match on a sex offender
35 check, or if, in the opinion of the on-duty point of contact or on-duty security staff, the
36 rejected/ejected person is a potential threat to the community.
37
38 S. Tents over 300 square feet in size and canopies in excess of 400 square feet shall
39 utilize flame retardant materials.
40
41 T. The sponsor, the managing agency and temporary encampment residents shall
42 cooperate with other providers of shelters and services for homeless persons within the
43 County and shall make inquiry with these providers regarding the availability of
44 existing resources.
45
46 U. The sponsor and/or managing agency shall provide before-encampment photos of the
47 host site with the application. Upon vacation of the temporary encampment, all
48 temporary structures and debris shall be removed from the host site within one
49 calendar week.
50
51 V. Upon cessation of the temporary encampment, the site shall be restored, as near as
52 possible, to its original condition. Where deemed necessary by the director, the
53 sponsor and/or managing agency shall re-plant areas in which vegetation had been
54 removed or destroyed.
55

56 **Section 5. Frequency and duration of temporary homeless facilities.**
57

- 58 A. No more than a maximum of 100 people may be housed in temporary homeless
59 facilities (encampments) located in the unincorporated County at any time. Multiple

1 encampment locations may be permitted provided that the aggregate total of people in
2 all temporary tent and/or tiny house encampments shall not exceed 100.

- 3
4 B. The director shall not grant a permit for the same site more than once in any calendar
5 year; provided that director is not authorized to issue a permit for the same site sooner
6 than 180 days from the date the site is vacated as provided for in Section 4 of this
7 ordinance.
8
9 C. Temporary tent encampments may be approved for a period not to exceed 180 days.
10 The director may grant one 180-day extension, provided all conditions have been
11 complied with and circumstances associated with the use have not changed. This
12 extension shall be subject to a Type II review process and may be appealed to the
13 hearing examiner as provided in WCC 22.05.020(1). The permit shall specify a date by
14 which the use shall be terminated and the site vacated and restored to its pre-
15 encampment condition.
16
17 D. Temporary tiny house encampments may be approved for a period of between six
18 months and up to one year, provided the sponsor and managing agency comply with
19 all permit conditions. The director may grant one or more extension(s) not to exceed
20 one additional year, provided enabling legislation allows so. Extensions are subject to a
21 Type II review process and may be appealed to the hearing examiner as provided in
22 WCC 22.05.020(1). The permit shall specify a date by which the use shall be
23 terminated and the site vacated and restored to its pre-encampment condition.
24

25 **Section 6. Permit required.** Establishment of a temporary homeless facility shall require
26 approval of an administrative use permit, as described in this ordinance, and compliance with
27 all other applicable County regulations. The director shall have authority to grant, grant
28 with conditions or deny an application for an administrative use permit under this ordinance.
29

30 **Section 7. Application.** Application for an administrative use permit shall be made on forms
31 provided by the County, and shall be accompanied by the following information; provided,
32 that the director may waive any of these items, upon request by the applicant and finding that
33 the item is not necessary to analyze the application. An application to establish a temporary
34 homeless facility shall be signed by both the sponsor and the managing agency ("applicant")
35 and contain the following:
36

- 37 A. A site plan of the property, drawn to scale, showing existing natural features, existing
38 and proposed grades, existing and proposed utility improvements, existing rights-of-
39 way and improvements, and existing and proposed structures, tents and other
40 improvements (including landscaping and fencing at the perimeter of the proposed
41 encampment and the property and off-street parking);
42 B. A vicinity map, showing the location of the site in relation to nearby streets and
43 properties;
44 C. A written summary of the proposal, responding to the standards and requirements of
45 this ordinance;
46 D. The written code of conduct, operations plan and a transportation plan as required by
47 this ordinance;
48 E. Statement of actions that the applicant will take to obtain verifiable identification from
49 all encampment residents and to use the identification to obtain sex offender and
50 warrant checks from appropriate agencies;
51 F. Project statistics, including site area, building coverage, number and location of tents
52 and temporary structures, expected and maximum number of residents, and duration
53 of the encampment;
54 G. Address and parcel number of the subject property;
55 H. Photographs of the site;
56 I. A list of other permits that are or may be required for development of the property
57 (issued by the County or by other government agencies), insofar as they are known to
58 the applicant;
59 J. Permit fees for temporary homeless facilities shall be in accordance with WCC 22.25;

- 1 K. A list of any requirement under this ordinance for which the applicant is asking to
2 modify.
3
4
5

6 **Section 8. Permit Procedures.**
7

- 8 A. Notice. All temporary homeless facility applications shall be reviewed under a Type II
9 process under WCC 22.05, except that the final decision must be rendered within 60
10 days of a determination of completeness. Additionally, the notice of application shall
11 contain proposed duration and operation of the temporary homeless facility, number of
12 residents for the encampment, and contain a County website link to the proposed
13 written code of conduct, operations plan and transportation plan for the facility.
14 B. Decision and Notice of Decision. Final action on permit applications made under this
15 section shall be in accordance with WCC 22.05. Before any such permit may be
16 granted, the applicant shall demonstrate and the director shall find consistency WCC
17 20.84.220 and the following:
18
19 1. The proposed use meets the requirements of this ordinance; and
20 2. Measures, including the requirements herein and as identified by the director,
21 have been taken to minimize the possible adverse impacts which the proposed
22 encampment may have on the area in which it is located. It is acknowledged
23 that not all impacts can be eliminated, however the risk of significant impacts
24 can be reduced to a temporary and acceptable level as the duration of the
25 encampment will be limited.
26

27 A notice of the decision shall be provided in accordance with WCC 22.05.
28

- 29 C. Conditions. Because each temporary encampment has unique characteristics,
30 including, but not limited to, size, duration, uses, number of occupants and
31 composition, the director shall have the authority to impose conditions on the approval
32 of an administrative use permit to ensure that the proposal meets the criteria for
33 approval listed above. Conditions, if imposed, must be intended to protect public
34 health, life and safety and minimize nuisance-generating features such as noise, waste,
35 air quality, unsightliness, traffic, physical hazards and other similar impacts that the
36 temporary encampment may have on the area in which it is located. In cases where
37 the application for an administrative use permit does not meet the provisions of this
38 ordinance (except when allowed under subsection (D) of this section) or adequate
39 mitigation may not be feasible or possible, the director shall deny the application.
40
41 D. Modification of Requirements. The director may approve an administrative use permit
42 for a temporary encampment that relaxes one or more of the standards in this
43 ordinance only when, in addition to satisfying the decision criteria stated above, the
44 applicant submits a description of the standard to be modified and demonstrates how
45 the modification would result in a safe encampment with minimal negative impacts to
46 the host community under the specific circumstances of the application. In considering
47 whether the modification should be granted, the director shall first consider the effects
48 on the health and safety of encampment residents and the neighboring communities.
49 Modifications shall not be granted if their adverse impacts on encampment residents
50 and/or neighboring communities will be greater than those without modification. The
51 burden of proof shall be on the applicant.
52
53 E. Appeal. The director's decision may be appealed to the hearing examiner as provided
54 in WCC 22.05.020(1) and 22.05.160.
55
56 F. Revocation. The director shall also have the authority to revoke an approved
57 administrative use permit, pursuant to WCC 22.05.150 at any time a sponsor or
58 managing agency has failed to comply with the applicable provisions of this ordinance
59 or permit.

1
2 **Section 9. Purpose.** The purpose of this interim ordinance is to allow and establish a review
3 process for the location, siting, and operation of temporary homeless facilities within the
4 unincorporated County. While the interim ordinance is in effect, the County will study the land
5 use and other impacts associated with temporary homeless facilities, draft final zoning and
6 regulations to address such uses, hold public hearings on such draft regulations, and adopt
7 such regulations.
8

9 **Section 10. Duration of Interim Ordinance.** This interim ordinance will replace Ordinance
10 2018-041 and shall be in effect for one year beginning on November 6, 2019, and ending on
11 November 6, 2020, unless another ordinance is adopted amending the Whatcom County Code
12 and rescinding this interim ordinance before November 6, 2020.
13

14 **Section 11. Work Plan.** During the interim ordinance period, County staff will study the
15 issues concerning the establishment and operation of temporary homeless facilities. Staff will
16 prepare a draft ordinance with appropriate revisions to the County's land use regulations;
17 perform SEPA review of the draft ordinance, and conduct the public review process, including
18 public hearings before the County's Planning Commission and County Council, as required for
19 amendments to the County's development regulations.
20

21 **Section 14. Conflict with other Whatcom County Code Provisions.** If the provisions of this
22 Ordinance are found to be inconsistent with other provisions of the Whatcom County Code,
23 this Ordinance shall control.
24

25 **Section 15. Severability.** If any section, sentence, clause or phrase of this Ordinance should
26 be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity
27 or unconstitutionality shall not affect the validity or constitutionality of any other section,
28 sentence, clause or phrase of this Ordinance.
29

30 **ADOPTED** this 6th day of November, 2019.

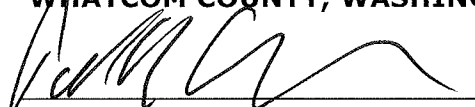
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32
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34 **ATTEST:**

35
36 
37 **Dana Brown-Davis, Council Clerk**

38
39
40 **APPROVED as to form:**

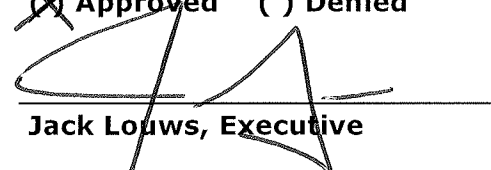
41
42 
43 **Civil Deputy Prosecutor**
44
45
46
47

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**


Rud Browne, Chairperson

TODD DONWAL AS VICE CHAIR

Approved () **Denied**


Jack Louws, Executive

Date: 11/8/2019