



WHATCOM COUNTY PLANNING COMMISSION

5280 Northwest Drive
Bellingham WA 98226

AGENDA July 25th, 2024

The Whatcom County Planning Commission will hold a **hybrid** meeting at 6:30 p.m., with the option to attend remotely or in person at 5280 Northwest Drive, Bellingham.

- Call to Order
- Roll Call
- Flag Salute
- Department Update
- Open Session for Public Comment
- Commissioner Comments
- Approval of Minutes of: July 11th, 2024
- Meeting Topic:
 - *Code Scrub – Work Session*
- Unfinished Business
- Adjournment

NOTE: For information on how to watch and participate in the meeting in real time, please visit the following web page: [Participate in Virtual Planning Commission Meeting](#)

Individuals who require special assistance to participate in the meetings are asked to contact "PDS_Planning_Commission@co.whatcom.wa.us" at least 96 hours in advance.

There are nine members on the Whatcom County Planning Commission. If you will be giving written information to the Commissioners, please give a copy to the Coordinator for our office files.

*For more information please contact Aileen Kogut-Aguon at (360)778-5935 or PDS_Planning_Commission@co.whatcom.wa.us
5280 Northwest Drive, Bellingham WA 98226*



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 13th, 2024**

Regular Meeting and Work Session

1

1 **Call to Order**

2 The meeting was called to order by Whatcom County Planning Commission Chair,
3 Kelvin Barton at 6:31p.m.

4 **Roll Call**

5 **Present:** Kelvin Barton, Atul Deshmane, Dominic Mocerri, Scott Van Dalen, Julie
6 Jefferson

7 **Absent:** Jim Hansen, Stephen Jackson, Frank James

8 **Staff Present:** Steve Roberge, Aileen Kogut-Aguon and Cliff Strong

9 **Department Update**

10 There is no department update.

11 **Open Session Public Comment**

12 Dave Widner, Robert Koch, MaryLou Whiteford, Chris Secrist, Lisa Adam, Brian Sarni,
13 Scott Jones, Nancy Bay, Jean-Luc Cornet, Scott Jones, Sarah Gardner, Sebastian
14 Durbin and Julie Wilson-McNerney provided public comments.

15 **Commissioner Comments**

16 Commissioner Jefferson asked a clarifying question on when the notices went out.
17 Steve Roberge, Assistant Planning Director PDS, responded that the notices to the
18 business owners were sent out Friday June 7th, 2024.

19 **Approval of Meeting Minutes**

20 **Timestamp: 7:03p**

21 **1 Commissioner Van Dalen moved** to approve the meeting minutes from May 9th
22 2024.

23 **Commissioner Mocerri seconded.**

24 **Roll Call Vote: Ayes - Scott Van Dalen, Dominic Mocerri, Kelvin Barton**

25 **Abstain - Atul Deshmane, Julie Jefferson**

26 **(Ayes-3; Nays-0; Abstain-2). The motion carried.**

27 **2 Commissioner Van Dalen moved** to approve the meeting minutes from May 23rd,
28 2024.

29 **Commissioner Mocerri seconded.**

30 **Roll Call Vote: Ayes - Scott Van Dalen, Dominic Mocerri, Kelvin Barton**

31 **Abstain - Atul Deshmane, Julie Jefferson (Ayes-3; Nays-0; Abstain-2). The**
32 **motion carried.**

33 **Heavy Impact Industrial Work Session**

34 **Timestamp: 7:08p**

35 Cliff Strong, PDS Senior Planner, reviewed the Council's request to:



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1 *Amend Whatcom County Code Chapter 20.68 and other relevant sections of*
2 *Title 20 to define appropriate industrial uses and conditions for industrial uses in*
3 *Heavy Impact Industrial (HII) Districts within a city's designated urban growth*
4 *area.*

5 In addition, Mr. Strong reiterated the potential solutions and concerns the
6 Commissioners discussed at the prior meeting on May 23rd. These solutions
7 included: prohibiting additional certain uses in the area via §20.68.203, prohibiting
8 outdoor HII uses, allowing only light industrial uses in the heavy impact properties,
9 applying the light industrial performance standards to the area and recommending
10 Council impose a moratorium until the HII properties can be rezoned through the
11 Comprehensive Plan update.

12 Concerns included: impacting existing business, some of which might do some of
13 the things contemplated for exclusion; how creating stricter performance standards
14 might affect existing uses; how creating nonconforming uses might affect existing
15 uses; and notifying and hearing from the existing businesses in the area.

16 Mr. Strong pointed out the County attorney's response to the questions the
17 Commission posed regarding legal issues, and corrected an error in staff's analysis
18 of the differences between the LII and HII performance standards.

19 Lastly Mr. Strong reviewed staff's latest recommendation (#4 Combined Solution)
20 from the June 13th memo.

21 The Commissioners resumed discussion from the last session regarding the uses in HII
22 zone and how changes to the code might affect new and existing businesses.

23 Commissioner Mocerri suggested getting input from the City of Bellingham as these
24 code amendments will affect them as well.

25 Commissioner Chair Barton requested a more elaborate packet from staff with codes
26 for the HII for the Bellingham UGA to get a detailed picture of the zoning and the
27 possible amendments being brought to the Commission. Mr. Strong stated that these
28 have already been included in the memos provided.

29 The Commissioners would like more clear direction from County Council on this docket
30 item and if a moratorium is an option before moving forward with a public hearing.

31 Commissioner Mocerri reiterated the idea of Council imposing a moratorium until the
32 HII properties can be rezoned through the Comprehensive Plan update.

33 Commissioner Deshmane asked Council Member Mark Stremmer if he would like to
34 speak on the discussion and provide some input.

35 Mark Stremmer, Whatcom County Council member, though speaking for himself and not
36 the Council, stated that he would hate to be the one to tell existing businesses that
37 they would have to change or be limited in the future.

38 PDS will present to Council the suggestions given and request a clearer direction for
39 the Commission regarding the code amendments for the HII in the Bellingham UGA.



**RECORD OF PROCEEDINGS OF THE
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Regular Meeting and Work Session

3

1 **Adjournment**

2 **Timestamp: 7:53p**

3 The meeting was adjourned at 7:53 p.m.

4 Minutes prepared by Aileen Kogut-Aguon.

5 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

6 _____
7 Kelvin Barton, Chair

Aileen Kogut-Aguon, Secretary

DRAFT

Whatcom County Planning & Development Services Staff Report

Miscellaneous Code Amendments 2024

I. File Information

File # PLN2024-00002

File Name: Miscellaneous Code Amendments 2024

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: 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.

Location: Countywide.

II. Code Amendments

The proposed code amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein.

III. Comprehensive Plan Evaluation

The proposed amendments are consistent with Comprehensive Plan’s Goal 2D to “Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.” Staff finds no policies with which these amendments would be inconsistent.

IV. Proposed Findings of Fact and Reasons for Action

It is recommended 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 various amendments to the 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) on June 6th, 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 4th, 2024, for their 60-day review. No comments were received to date.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on July 25th, 2024
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on August 8th, 2024.
6. The County Council held a duly noticed public hearing on the proposed amendments on _____, 2024.

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.” There are no policies with which these amendments would be inconsistent.
8. 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.
9. 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.
10. 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.
11. In reference to Exhibit A, Amendment No. 4: This amendment clarifies that 0-foot setbacks are allowed for Single-Family Attached uses where this use is allowed.
12. 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).
13. 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.

V. Proposed Conclusions

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

VI. Recommendation

Planning and Development Services recommends that the Planning Commission approve the proposed amendments and Findings of Fact and forward their recommendation to County Council.

Attachments

1. Exhibit A – Proposed Code Amendments

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 [significant](#) 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 [significant](#) 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 the Rural Residential-Island, Urban Residential Mixed, Urban Residential districts, as well as in the Rural Commercial district through a Planned Unit Development.

However, WCC 20.80.210 (Minimum Setbacks) does not specifically state that there is a 0-foot side yard setback for this use, which one would need to do attached units. PDS would like to clarify this by adding a new subsection (vi) to 20.80.210(4).

Title 20 ZONING

Chapter 20.80 Supplementary Requirements

20.80.210 minimum setbacks.

(...)

4) Setbacks. For the purposes of this chapter, the road classification used to determine setback requirements shall be as set forth in this section. In the event a particular road is not listed in this section, the department of public works shall determine the classification, which classification shall be based on the Whatcom County Development Standards or such other local, state or federal roadway standards as the department of public works deems appropriate. Dead-end or loop streets providing access to 16 or fewer lots shall be classified as minor access streets.

(a) Setback Requirements of All Districts.

- i. No manure lagoon or other open pit storage shall be located closer than 150 feet from any property line, or in a manner which creates any likelihood of ground water pollution or other health hazard.
- ii. All manure storage shall be protected from a 25-year flood and shall be located 50 feet from irrigation ditches and waterways, 50 feet from the ordinary high water line of any lake or waterway; provided, that best management practices as determined by the Whatcom County Conservation District are in place. If the best management practices are not in place, 300 feet shall be substituted for 50 feet.
- iii. In all districts where a single-family residence is a primary permitted use, a building permit may be issued for the construction of a replacement dwelling on the same lot; provided, that the owner agrees by filing a statement with the building official that the old dwelling will be demolished, removed or converted to another permitted use upon completion of the new dwelling.
- iv. A 10-foot setback from the international border between Canada and the United States shall be maintained as an open space vista. The 10-foot setback area may be used for landscaping, agriculture, and natural vegetation. Structures may only be built within the 10-foot setback area after approval from the International Boundary Commission.
- v. Roof overhangs or other architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend six feet into the front yard setback; however, in no case will they extend more than one-half the depth of the front yard setback; except as provided in WCC 20.51.342 and 20.71.402.

vi. In the Rural Residential-Island, Urban Residential Mixed, Urban Residential, and Rural Commerical a Planned Unit Development may authorize a 0-foot side yard setback for interior property boundaries for single family attached dwellings.

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 the director shall not issue development permits requiring 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.

(...)

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 the director shall not issue development permits requiring 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.