

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Planning				10/12/93	P&D/Council Discussion
Division Head:				10/26/93	Council Intro
Dept. Head:				11/9/93	P&D/Council
Prosecutor:					
Purchasing/Budget:					
Executive:					

SUBJECT:

An ordinance amending the WC Right to Farm Ordinance, Title 14, and WCC 9.40 and WCC 9.44 to prohibit agricultural operations from being considered nuisance, a disorderly house or a breach of peace.

ATTACHMENTS:

Ordinance

SUMMARY STATEMENT:

Please complete sections of box as appropriate & explain the item below.

Related County contract #:	Should Clerk schedule a hearing? NO / x / YES / / Requested date:
Amount budgeted for this item/project: \$	Is it (or will it be) within budget? YES / / NO / / (Please explain below)
Budget line item number(s):	

It is the purpose and intent of this ordinance to reduce the loss to the county of its agricultural resources by limiting the circumstances under which agricultural operations may be considered a nuisance. It would also prohibit an agricultural operation from being considered a disorderly house or a breach of peace.

ORIGINATOR'S RECOMMENDED ACTION:

Pass

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

10/12/93: Discussion
 10/26/93: Introduced
 11/9/93: Council adopted the ordinance. 7-0.

SPONSORED BY: Consent

PROPOSED BY: Planning

INTRODUCTION DATE: 10/26/93

ORDINANCE NO. 93-073

AN ORDINANCE AMENDING THE WHATCOM COUNTY RIGHT TO FARM ORDINANCE, TITLE 14, AND WCC 9.40 AND WCC 9.44 TO PROHIBIT AGRICULTURAL OPERATIONS FROM BEING CONSIDERED NUISANCE, A DISORDERLY HOUSE OR A BREACH OF PEACE.

WHEREAS, Whatcom County has a long standing commitment to maintaining a viable agricultural base as evidenced by a history of planning and zoning for agricultural land use; and

WHEREAS, Whatcom County adopted a RIGHT TO FARM ordinance (Ordinance # 92-015) in 1992 as part of adoption of an interim Agricultural Resource Land Comprehensive Plan under the Requirements of the Washington Growth Management Act; and

WHEREAS, when the RIGHT TO FARM text proposal was originally drafted, it included provisions to prevent agriculture from being considered a public nuisance; and

WHEREAS, the Whatcom County Prosecutor's Office advised staff at that time that since the County had no nuisance statute, the proposal made no sense; and

WHEREAS, the Planning Department Staff deleted the nuisance provisions from the proposal before it was considered by the County Council; and

WHEREAS, it has been brought to the attention of the County Council that noise complaints against agricultural operators are being responded to by the Whatcom County Sheriff's Office pursuant to Whatcom County Codes 9.40, DISORDERLY HOUSE and 9.44, BREACH OF PEACE; and

WHEREAS, the attached revisions to WCC Title 14, RIGHT TO FARM Ordinance; WCC 9.40, DISORDERLY HOUSE; and WCC 9.44, BREACH OF PEACE reinstate the nuisance language originally proposed by the Planning Department Staff with references to County nuisance statues deleted and additional language added to prohibit agricultural operations from being considered a nuisance, DISORDERLY HOUSE or a BREACH OF PEACE, pursuant to County laws.

WHEREAS,

Section 1. The Official Whatcom County RIGHT TO FARM ORDINANCE, TITLE 14, is hereby amended by adding a new section WCC 14.010(3) and renumbering the previous Section 14.010(3) to 14.010(4); and adding a new section WCC 14.030 and renumbering the

RIGHT TO FARM

previous Section 14.030 to 14.040 to prohibit agricultural operations from being considered a nuisance, a DISORDERLY HOUSE or a BREACH OF PEACE, pursuant to County laws.

Section 2. WCC 9.40, DISORDERLY HOUSE is hereby amended by inserting a new section 9.040.020 to prohibit agricultural operations from being considered a disorderly house; and renumbering subsequent sections.

Section 3. WCC 9.44, BREACH OF PEACE is hereby amended by adding a new section 9.040.020 to prohibit agricultural operations from being considered a breach of peace; and renumbering subsequent sections.

Section 4. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

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

**Amend WCC Title 14 as per Exhibit "A", attached

**Amend WCC 9.40 as per Exhibit "B", attached

**Amend WCC 9.44 as per Exhibit "C", attached

ADOPTED this 9th day of November, 1993.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

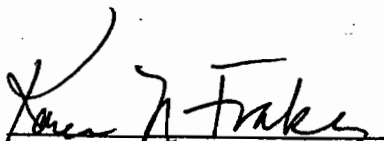


Ramona Reeves, Council Clerk

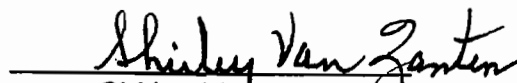


Margaret M. Laidlaw, Chair

APPROVED as to form & content: Approved Denied



Karen Frakes
Civil Deputy Prosecutor Attorney



Shirley Van Zanten, Executive

Date: 11-30-93

EXHIBIT "A"

WHATCOM COUNTY
RIGHT TO FARM ORDINANCE

14. .010 Policy and Purposes.

- (1) (a) It is the declared policy of this County to promote farm operations and to inform residents of the County's support for the right to farm.
- (b) State planning goals encourage the conservation of productive agricultural lands and discourage incompatible uses. Land uses adjacent to farm lands should not interfere with farm operations.

- (2) The purpose of this ordinance is to promote a good neighbor policy between agricultural and non-agricultural property owners by requiring notice to purchasers and users of property adjacent to or near farm operations of the inherent potential problems associated with such purchase or use, including but not limited to the NOISES, ODORS, DUST, CHEMICALS, SMOKE, AND HOURS OF OPERATIONS that may accompany farm operations. Through mandatory disclosures purchasers and users will better understand the consequences of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

- (3) Where non-agricultural land uses extend into agricultural areas or exist side by side, agricultural operations are frequently the subjects of nuisance complaints and on occasion have been forced to cease or curtail operations. Such nuisance complaints discourage investments in farm improvements to the detriment of adjacent agricultural uses and the economic viability of the county's agricultural industry as a whole. It is the purpose and intent of this ordinance to reduce the loss to the county of its agricultural resources by limiting the circumstances under which agricultural operations may be considered a nuisance. This ordinance is not to be construed as in any way modifying or abridging County, State, or Federal laws; rather it is only to be utilized in the interpretation and enforcement of the provisions of this code and County regulations.

- ~~(34)~~ An additional purpose of this ordinance is to facilitate the unhampered continuation of legal and customary operations associated with farm operations.

14. .020 Definitions.

- (1) Discretionary Development Permits - Permit applications requiring discretionary review, including but not limited to subdivision permits, binding site plan approvals, planned unit developments, special use permits, variances, shoreline substantial development permits, and conditional use permits.
- (2) "Farm" means that land, buildings and machinery used in the commercial production of farm products.

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- 1 (3) "Farm Operations" means condition or activity which occurs on a farm in connection with
2 the commercial production of land based farm products, and includes but is not limited
3 to: market produce at roadside stands or farm markets; preparation for market, delivery
4 to storage or to market, or to carriers for transportation to market; transportation of
5 equipment; storage and application of manure; noise, dust, fumes, odors, flies, operation
6 of machinery and irrigation pumps; ground and aerial seeding or spraying; the
7 application of chemical and organic fertilizers, conditioners, insecticides, pesticides and
8 herbicides and associated drift of such materials; and the employment and use of labor.
9
- 10 (4) "Farm Products" means those land based plants and animals useful to human beings,
11 and including, but not limited to: forage and sod crops, grains and feed crops, dairy and
12 dairy products, livestock - including breeding and grazing, fruits, vegetables, flower
13 seeds, grasses, trees, fish, apiaries and horticultural products, or any other product
14 which incorporates the use of food, feed and fiber, or fur.
- 15 (5) "Good Management Practices" means current, economically feasible, management
16 practices available as defined by the American Society of Agronomy, the United States
17 Department of Agriculture Soil Conservation Service, the Washington State University
18 Cooperative Extension Service in Whatcom County, and other land based professional
19 or industrial agricultural organizations.
- 20 (6) "Person" means an individual, corporation, partnership, association, or other legal
21 entity.

22 **14. .030 Nuisance, Disorderly House, Breach of Peace.**

23
24
25 No land based farm operation, facility or appurtenances thereof, regardless of
26 past or future changes in the surrounding area's land use or zoning designation,
27 conducted or maintained for commercial purposes, and in a manner consistent
28 with current good management practices, not superseding local, State, or
29 Federal regulations shall be or become a nuisance or a DISORDERLY HOUSE
30 as defined in Whatcom County Code 9.40 or a BREACH OF PEACE, as defined
31 in Whatcom County Code WCC 9.44.
32
33
34

35 **14. .0340 Disclosure.**

- 36 (1) The statement set forth in subsection (2) ("Disclosure") shall be used under the
37 following circumstances and in the following manners:
38
39 (a) Upon the conveyance of a fee interest in real property **THE SELLER SHALL**
40 **REQUIRE THAT DISCLOSURE STATEMENT AS SET FORTH IN**
41 **SUBSECTION (2)** be signed by the purchaser and recorded in the County
42 Auditor's office in conjunction with the deed conveying the real property when
43 one of the following conditions are met:
44
45 (1) that the real property is within one-half mile of real property upon which
46 farm operations are conducted
47
48

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2 (2) the real property is within the area designated as AGRICULTURE on the
3 map or maps comprising the Whatcom County Comprehensive Plan.

4 (3) the real property is within one-half mile of the area designated as
5 AGRICULTURE on the map or maps comprising the Whatcom County
6 Comprehensive Plan.

7
8 (b) Upon the issuance of a discretionary development permit for land on or within
9 one-half mile of the area designated as AGRICULTURE on the map or maps
10 comprising the Whatcom County Comprehensive Plan or within one-half mile of
11 land upon which agricultural operations are being conducted, the discretionary
12 development permit shall include a condition that the owners of the property
13 shall be required to sign a statement of acknowledgement containing the
14 Disclosure (2) on forms provided by Whatcom County, which form shall then be
15 recorded in the County Auditor's Office.

16
17 (c) All building permits and discretionary development permits for land on or within
18 one-half mile of the area designated as AGRICULTURE on the map or maps
19 comprising the Whatcom County Comprehensive Plan or within one half mile of
20 land upon which agricultural operations are being conducted shall contain a
21 notice of Disclosure (2).

22
23
24 (2) The following shall constitute the disclosure required by this section:

25 The subject property is within or near designated AGRICULTURE lands on
26 which a variety of commercial activities may occur that are not compatible with
27 residential development for certain periods of limited duration. You may be
28 subject to inconveniences or discomforts arising from such operations,
29 INCLUDING BUT NOT LIMITED TO NOISE, ODORS, FLIES, FUMES, DUST,
30 SMOKE, THE OPERATION OF MACHINERY OF ANY KIND DURING ANY 24
31 HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND DISPOSAL
32 APPLICATION OF MANURE, AND THE APPLICATION BY SPRAYING OR
33 OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS,
34 HERBICIDES AND PESTICIDES. Whatcom County has determined that the use
35 of real property for agricultural operations is a high priority and favored use and
36 will not consider to be a nuisance those inconveniences or discomforts arising
37 from farm operations, if such operations are consistent with commonly accepted
38 good management practices and otherwise comply with local, state, and federal
39 laws.
40
41

42 **14. .040 Hold Harmless.**

43
44 All discretionary development permits for land on or within one-half mile of the area
45 designated as AGRICULTURE on the map or maps comprising the Whatcom County
46 Comprehensive Plan or within one-half mile of land upon which farm operations are
47 being conducted shall contain an agreement that the developer and any subsequent
48 purchaser or successors in interest shall agree to refrain from any legal action to

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1 restrain or collect damages from the owners of such adjacent properties, or from
2 Whatcom County, arising out of any reasonable and lawful activity on said agricultural
3 lands which occurs in the normal course of their established use. The agreement shall
4 appear as a covenant or deed restriction upon subject property, or the plat and each lot
5 thereof, and shall run with the land. Said covenant or deed restriction may be removed
6 by submission to and approval by the Whatcom County Hearing Examiner, of a petition
7 representing a majority of the land owned by property owners within one-half mile of the
8 plat boundary. However, the Hearing Examiner shall remove the restriction only upon
9 finding that the risk of liability to Whatcom County or the previously existing agricultural
10 OPERATION will not be increased thereby.

11
12 **14. .050 Codification.**

13
14 WCC 14.010 through 14.040 shall be codified to add to or replace appropriate sections
15 of Title 20 of the Whatcom County Code, also referred to as the Official Whatcom
16 County Zoning Ordinance and to add to or replace appropriate sections of Title 21 of
17 the Whatcom County Code, also referred to as the Whatcom County Subdivision
18 Regulations.

19
20 **14. .060 Severability.**

21
22 If any section, subsection, sentence, clause or phrase of this ordinance is for any
23 reason held to be invalid or unconstitutional by the decision of a court of competent
24 jurisdiction, it shall not affect the remaining portions of the ordinance.
25

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1 EXHIBIT "B"

2
3 Chapter 9.40
4 DISORDERLY HOUSE

5
6 9.040.020 For the purposes of enforcing this chapter, farm operations as defined in WCC
7 14.020 shall not be considered to be a disorderly house.

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1 EXHIBIT "C"

2
3 Chapter 9.44
4 BREACH OF PEACE

5
6 9:044.020 For the purposes of enforcing this chapter, farm operations as defined in WCC
7 14.020 shall not be considered to be a breach of peace.