

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Author: Matt W. Aamot	WMA	10-15-99	RECEIVED OCT 19 1999 WHATCOM COUNTY COUNCIL	10-26-99	Council Introduction
Division Head: Sylvia Goodwin	SG	10-15-99		11-9-99	Planning & Development Committee
Dept. Head: Michael T. Knapp	TK	10-15-99		11-23-99	Final Council Action
Prosecutor: Dave Grant	Dmg	10-15-99			
Purchasing/Budget:	PLD	10/19/99			
Executive: Pete Kremen	PK	10-19			

SUBJECT: Ordinance adopting Comprehensive Plan amendments, along with associated zoning amendments, relating to adult entertainment (File # CMP99-00004).

ATTACHMENTS:

- (1) Proposed Ordinance.

SEPA review required? (x) Yes () NO
 SEPA review completed? (x) Yes () NO

Should Clerk schedule a hearing? () Yes (x¹) NO
 Requested Date:

¹ The Council must hold a hearing if they want to change the Planning Commission's recommendation (WCC 20.10.110 and WCC 20.90.090).

SUMMARY STATEMENT: The request is to adopt amendments to the Whatcom County Comprehensive Plan and associated changes to the zoning establishing criteria for locating adult businesses.

The Growth Management Act requires that Comprehensive Plan amendments be considered only once per year, with certain exceptions. All amendments must be considered concurrently. In 1999, the County Council initiated 13 amendments for review under Resolution No. 99-012. The Planning Commission held multiple hearings to consider these amendments. The Planning Commission took a final vote on the package of the 13 amendments on October 14, 1999. The Council is requested to adopt the Planning Commission's recommendations or, alternatively, to hold a hearing and adopt modifications to the Commission's recommendations. The Council can not adopt the amendments until 60 days after they were sent to the State Department of Community, Trade & Economic Development, which occurred on September 23, 1999 (RCW 36.70A.106/WAC 365-195-620). Additionally, the amendments have to be adopted prior to or along with the budget (WCC 20.10.040). Therefore, it appears that the request should be voted on at the Council's November 23, 1999 meeting.

Distribution Request

Indicate those who should receive a copy after Council action. List specific names to the right.

ADS Facilities Management	
ADS Finance	
ADS Human Resources	
ADS Info Services	
Assessor	
Auditor	
Cooperative Extension	
District Court	
Executive	
Health	
Hearing Examiner	Michael Bobbink
Jail	
Juvenile	
Parks	
Planning	Michael T. Knapp
Prosecutor	
Public Works	
Sheriff	
Superior Court	
Treasurer	
Other	

COUNCIL ACTION TAKEN:

1999 - 412 10/26/99: Introduced
 11/9/99: Adopted 7-0, Ord. #99-070

Related File Numbers: AB99-074

Ordinance or Resolution Number (this item):

ORD # 99-070

SPONSORED BY: Consent
PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: _____

ORDINANCE NO. 99-070

**AMENDING THE WHATCOM COUNTY
COMPREHENSIVE PLAN TEXT AND TITLE 20 ZONING TEXT REGARDING
ADULT ENTERTAINMENT**

WHEREAS, The Whatcom County Council passed Resolution 99-012 on March 23, 1999 initiating 13 Comprehensive Plan amendments, and related amendments to the Official Whatcom County Zoning Ordinance (Title 20), for review in 1999; and

WHEREAS, One of the proposed amendments is a request to amend the Comprehensive Plan and Zoning Ordinance to establish policies and regulations governing the location of adult entertainment businesses in unincorporated Whatcom County; and

WHEREAS, The Deputy SEPA Official for Whatcom County issued a determination of non-significance on November 20, 1998; and

WHEREAS, Pursuant to RCW 36.70.390 and RCW 36.70.590, legal notice was published in the Bellingham Herald on June 27, 1999; and

WHEREAS, The Planning Commission held a public hearing on the subject amendment on July 8, 1999 and considered all testimony;

WHEREAS, The Planning Commission held a work session on October 14, 1999 to consider all the amendments concurrently, as required by WCC 20.10.100, WCC 20.90.070, and WCC 20.90.040; and

WHEREAS, The Planning Commission evaluated the merits of each amendment in relationship to the County Wide Planning Policies and the goals, policies and objectives of the Comprehensive Plan, as required by WCC 20.10.100 and WCC 20.90.070; and

WHEREAS, The Planning Commission issued Findings of Fact & Reasons for Actions, Conclusions and Recommendations on the amendments; and

WHEREAS, the County Council has considered the Planning Commission's Findings of Fact & Reasons for Action, Conclusions, and Recommendations for all the amendments, as required by WCC 20.10.110 and WCC 20.90.080; and

WHEREAS, the County Council has considered all the amendments concurrently so that the cumulative effect of the various proposals can be ascertained, as required by the Growth Management Act (RCW 36.70A.130) and WCC 20.10.010; and

WHEREAS, the County Council finds that the Comprehensive Plan amendments recommended by the Planning Commission conform to the Growth Management Act and that the amendments to the Official Whatcom County Zoning Ordinance recommended by the Planning Commission are consistent with and implement the Comprehensive Plan; and

WHEREAS, the County Council finds the Comprehensive Plan and zoning amendments in the best interest of the public health, safety, and welfare, based on the following findings and conclusions:

FINDINGS

1. On October 13, 1998, the Whatcom County Council adopted Emergency Ordinance No. 98-070 directing the County to review Comprehensive Plan policies and zoning regulations relating to adult businesses. The ordinance also established a moratorium preventing the County from issuing any permits for adult businesses for sixty days.
2. On December 8, 1998, the Whatcom Council adopted Ordinance No. 98-086 directing the County to review Comprehensive Plan policies and zoning regulations relating to adult businesses. The ordinance also established a moratorium preventing the County from issuing any permits for adult businesses until specific Comprehensive Plan and zoning amendments have been enacted in approximately November of 1999.
3. Notice that Emergency Ordinance 98-070 was adopted was published in the Bellingham Herald on October 17, 1998.
4. Notice of a hearing on Ordinance 98-086 was published in the Bellingham Herald on November 28, 1998.
5. Notice that Ordinance 98-086 was adopted was published in the Bellingham Herald on December 12, 1998.
6. Notice that the subject amendment had been "initiated" for further evaluation was published in the Bellingham Herald on April 8, 1999.
7. Notice of the hearing for the subject amendment was published in the Bellingham Herald on June 27, 1999.
8. A public hearing was held on the subject amendment on July 8, 1999.
9. A Determination of Non-significance was issued under the State Environmental Policy Act (SEPA) on November 20, 1998. The SEPA Official reaffirmed this determination of non-significance on July 1, 1999.
10. The goals and policies of the Whatcom County Comprehensive Plan include protecting the qualities that make the County a desirable place to live (Goal 2A), retaining rural character in Whatcom County (Goal 2CC), enhancing the community's overall quality of life (Goal 7G), and ensuring a sense of community (Goal 10A). The text of the Comprehensive Plan also indicates that "Gateways, corridors, and connections are important as we pass from one identified place to another. The act of entering or leaving is an essential element in establishing the sense of place . . ." (p. 10-7). The Comprehensive Plan indicates that the County should recognize the opportunities and problems, including those associated with commercial signs, which impact gateways, corridors, and connections such as Interstate 5. It recognizes human gateways as well as natural gateways (p. 10-7).

11. The Urban Fringe Subarea Plan indicates that the “Airport Gateway/Operations Area,” which includes the Bellingham International Airport and the Light Impact Industrial zone immediately to the southeast, is a “gateway to Bellingham” (see pp. 49 and Map 4). Additionally, the Urban Fringe Subarea Plan indicates that the visual impression from Interstate-5 is an important consideration affecting development in several areas (pp. 51, 53, 54, and 55).
12. Since the Whatcom County Comprehensive Plan was adopted in May of 1997, Whatcom County has reviewed studies and information from other jurisdictions relating to adult businesses. These studies and information, which are in the record, indicate that adult businesses have negative secondary effects upon communities including increased crime (especially sexual crimes), exposure of minors to illegal activities, decreased residential property values, decreased commercial property values, and higher turnover rates in commercial and residential areas. Additionally, adult businesses and associated signs can negatively impact the character of the community and perceptions about the community. These secondary effects increase when adult businesses concentrate together.
13. Regulating the location of adult businesses and associated signs is reasonable in order to address documented negative secondary effects of such businesses. Siting adult businesses in the Light Impact Industrial Zone will minimize adverse secondary impacts to residential and commercial areas. However, Bellingham International Airport functions as a gateway to the community. Prohibiting adult businesses in the Light Impact Industrial area southeast of the Bellingham International Airport will protect the character of this gateway. Buffers between adult businesses and schools, day cares, churches, parks, libraries, residential and rural zoning districts, Interstate 5, and State highways will reduce the negative secondary effects upon such areas and the community as a whole. Directing adult businesses to City Urban Growth Areas will preserve the character of rural areas of Whatcom County. Additionally, Urban Growth Areas are typically closer to law enforcement services, which is important because one of the documented secondary effects associated with adult businesses is increased crime. Providing a buffer between an adult business and other adult businesses will reduce impacts to the community that occur when such uses are located in close proximity to each other.
14. The subject proposal would leave approximately 311 acres of industrially zoned land open to adult businesses in unincorporated Whatcom County. This constitutes approximately 2.6 % of the total commercial and industrial zoned land in the unincorporated portion of Whatcom County.
15. Adult businesses exist and are permitted by zoning in cities within Whatcom County. Specifically, adult businesses are allowed in certain Planned Industrial zones within the City of Bellingham (the Urban Fringe Subarea Plan indicates that the City’s Planned Industrial zoning is comparable to the County’s Light Impact Industrial zoning). Adult businesses are allowed in the manufacturing zone within the City of Ferndale. Additionally, adult businesses are allowed in commercial or business zones in the Cities of Blaine, Everson, Lynden, and Sumas.

CONCLUSIONS

1. The subject amendment is consistent with the Whatcom County Comprehensive Plan's goals and policies that seek to make Whatcom County a desirable place to live, preserve rural character, enhance the quality of life, and ensure a sense of community.
2. Studies from other jurisdictions document the secondary effects of adult businesses and associated signs, which include increased crime (especially sexual crimes), exposure of minors to illegal activities, decreased residential property values, decreased commercial property values, higher turnover rates in commercial and residential areas, and alteration of the character of communities.
3. The subject amendment addresses the documented secondary effects of adult businesses by establishing policies and regulations that govern the location of adult businesses. These policies and regulations are intended to avoid or minimize documented secondary effects of adult businesses on other land uses and the community. Therefore, the amendment serves a substantial government interest.
4. The subject amendment makes approximately 311 acres open for adult businesses in unincorporated Whatcom County. These areas provide reasonable avenues of communication for adult businesses.

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

Section 1. The text of the Whatcom County Comprehensive Plan is hereby amended as shown on Exhibit 1.

Section 2. The text of the Official Whatcom County Zoning Ordinance (Title 20) is hereby amended as shown on Exhibit 2.

Section 3. 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.

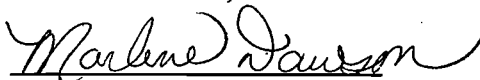
ADOPTED this 9 day of NOVEMBER 1999.

ATTEST:



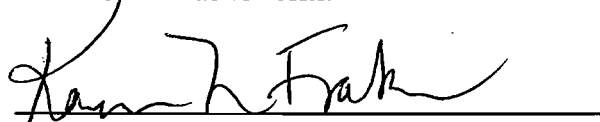
Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Marlene Dawson, Chairperson

APPROVED as to form:



Civil Deputy Prosecutor

Approved () Denied



Pete Kremen, Executive

Date: 11-16-99

Exhibit 1

Add a new section to Chapter 2 of the Whatcom County Comprehensive Plan:

ADULT BUSINESSES – INTRODUCTION

Purpose

The purpose of the adult business section is to prevent crime, protect residential areas and sensitive uses from incompatible uses, protect retail trade, maintain property values, preserve the quality of life in Whatcom County, protect gateways, corridors and connections in the community, preserve rural character, and protect children from increased hazards created by adult businesses.

Process

Because of adverse secondary effects of adult businesses, the County Council established a year-long moratorium in 1998 on accepting new applications until appropriate policies and regulations could be established governing adult businesses. Whatcom County Planning Division staff originally drafted this section in response to the moratorium. It was reviewed with a representative of the Whatcom County Prosecuting Attorney's office with regard to Constitutional issues. The Planning Commission held a public hearing before final adoption by the County Council.

GMA Requirements

The GMA does not require a Comprehensive Plan to address adult businesses. However, a County is authorized to plan for land use in general (RCW 36.70A.070). Additionally, the Comprehensive Plan can include any elements relating to the physical development within its jurisdiction (RCW 36.70A.080).

ADULT BUSINESSES – BACKGROUND SUMMARY

Whatcom County provides an outstanding quality of life that is worthy of preserving for future generations. This quality of life is partially dependent upon controlling crime, protecting residential areas, protecting businesses, preserving rural character and maintaining property values. Adult businesses can adversely impact the quality of life and, therefore, Whatcom County should regulate where such uses are allowed.

ADULT BUSINESSES – ISSUES, GOALS AND POLICIES

Location of Adult Entertainment Establishments

Adult businesses have been shown to create adverse secondary effects upon the community in the form of crime, harming other forms of retail trade, impacting property values, and causing deterioration in the quality of life. Such secondary effects can intensify when adult businesses are located in close proximity to one another. Regulating the location of adult businesses is necessary in unincorporated Whatcom County in order to protect the quality of life and minimize adverse secondary impacts of such businesses.

GOAL 2AAA: Establish Criteria for the Location of Adult Businesses

Policy 2AAA-1: Adult businesses will be allowed with conditional use permits in Light Impact Industrial zoning districts that are located within City Urban Growth Areas. Adult businesses will not be allowed in the Light Impact Industrial zone immediately southeast of the Bellingham International Airport because, as the main entrance to the airport, it serves as a gateway to the community.

Policy 2AAA-2: Adult businesses will not be allowed in other zoning districts.

Policy 2AAA-3 Adult businesses will not be allowed within 1,000' of a school, day care, church, park, library, residential zoning district, rural zoning district, Interstate-5 or State highway.

Policy AAA-4 An adult business will not be allowed within 1,000' of any other adult business.

Policy 2AAA-5 Nonconforming adult businesses will be terminated within one year of the adoption of this amendment. A maximum of four one-year extensions may be granted if needed to recoup financial expenditures made in the business.

Exhibit 2

Amend the Urban Residential (UR) District of Title 20 as follows:

20.20.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Urban Residential – Medium Density (URM) District of Title 20 as follows:

20.22.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Urban Residential Mixed (UR-MX) District of Title 20 as follows:

20.24.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Residential Rural (RR) District of Title 20 as follows:

20.32.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Rural Residential-Island (RR-I) District of Title 20 as follows:

20.34.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Eliza Island (EI) District of Title 20 as follows:

20.35.200 Prohibited uses.

.202 Adult businesses.

~~.205~~ Storage or occupation of recreational vehicles

Amend the Rural (R) District of Title 20 as follows:

20.36.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Agriculture (AG) District of Title 20 as follows:

20.40.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Rural Forestry (RF) District of Title 20 as follows:

20.42.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Commercial Forestry (CF) District of Title 20 as follows:

20.43.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Recreation and Open Space (ROS) District of Title 20 as follows:

20.44.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Neighborhood Commercial (NC) District of Title 20 as follows:

20.60.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Small Town Commercial (STC) District of Title 20 as follows:

20.61.250 Prohibited uses.

.251 All other uses.

.252 Adult businesses.

Amend the General Commercial (GC) District of Title 20 as follows:

20.62.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Tourist Commercial (TC) District of Title 20 as follows:

20.63.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Resort Commercial (RC) District of Title 20 as follows:

20.64.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

~~.202 Sauna bath facilities, massage parlors, body painting studios and photography studios which provide live models for lewd purposes; provided that sauna and massage rooms, without separate entrances or signs, may be provided as an integral part of a multiple family dwelling, motel, hotel or rooming house.~~

~~.203 Any business or establishment where lewd films are publicly exhibited as a regular course of business or possessed for the purpose of such exhibition or where a lewd film is publicly and repeatedly exhibited or possessed for the purpose of such exhibition.~~

~~.204 Any business or establishment in which lewd publications constitute a principal part of the stock-in-trade.~~

Amend the Gateway Industrial (GI) District of Title 20 as follows:

20.65.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Light Impact Industrial (LII) District of Title 20 as follows:

20.66.010 Purpose.

The purpose of this district is to implement the ~~Light Industrial Park designation of the Comprehensive Plan~~ by providing for the planned development of large land areas, in appropriate locations, ~~exclusively~~ primarily for industrial and subordinate uses which provide support services to the district. Light industrial uses are primarily related to services, and distribution, manufacture and assembly of finished products that have a relatively light impact on adjacent uses and districts. Furthermore, it is the purpose of this district to encourage the master planning of the entire industrial site in ensuring compatibility between industrial operations, as well as the existing and future character of adjacent areas. It is also a purpose of the district to accommodate limited commercial uses that are incompatible with other commercial uses.

Conditional Uses 20.66.150

.157 An adult business enclosed within a building, when located in a City's Urban Growth Area, provided that:

(1) The building that contains the adult business and signs relating to the business are not within 1000' of any of the following:

- (a) The outside boundary of any parcel that already contains a public school, private school, or daycare;
- (b) The outside boundary of any parcel that already contains a church or other house of worship;
- (c) An existing public park;
- (d) The outside boundary of any parcel that already contains a public library;
- (e) A residential or rural zoning district (including Urban Residential, Urban Residential Medium Density, Urban Residential-Mixed, Residential Rural, Rural one dwelling/two acres, Rural one dwelling/five acres, and Rural one dwelling/ten acres and residential zones within City limits);
- (f) Interstate 5 or a State highway; or
- (g) The outside boundary of any parcel that already contains another adult business.

(2) Directional signs permitted under WCC 20.80.470 are not subject to the 1,000' buffer of subsection (1).

(3) Adult businesses are prohibited within the Light Impact Industrial zone located southeast of the Bellingham International Airport shown on Map 4 of the Urban Fringe Subarea Plan.

(4) An adult business shall not sell, provide or allow performances, films, publications, or other activities that are prohibited by state law or County ordinance.

20.66.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses except those allowed as a conditional use under WCC 20.66.157.

Amend the General Manufacturing (GM) District of Title 20 as follows:

20.67.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

Amend the Heavy Impact Industrial (HII) District of Title 20 as follows:

20.68.200 Prohibited uses.

.201 All other uses.

.202 Adult businesses.

~~.203~~~~202~~ In the Urban fringe subarea the following uses are prohibited: petroleum refinery and the manufacturing of products thereof, manufacturing and processing of rubber, plastics, chemical, paper, asbestos and products derived thereof; and primary metal industries.

Amend the Airport Operations (AO) District of Title 20 as follows:

20.70.200 Prohibited uses.

.202 Adult businesses.

~~.204~~~~202~~ Any use which could create a hazard or endanger the landing, takeoff, or maneuvering of aircraft.

Amend the sign section of the Supplementary Requirements chapter of Title 20 as follows:

20.80.410 Signs - General provisions - Applicable to all districts.

- (1) No sign or any portion of a sign shall be located on or over public property, such as road rights-of-way and easements, transmission line corridors or utility easements. Standard building height limits and setbacks shall apply to all signs unless otherwise provided elsewhere in this title or in other county codes or regulations including the county's shoreline management program and the Point Roberts Character Plan. All freestanding signs advertising on-premises operations may be located within required landscaping areas, except that no such sign shall be closer than 10 feet to the road right-of-way. This distance shall be increased if it can be shown to present a traffic hazard.
- (2) On-premises signs meeting the requirements of WCC 20.80.420 to 20.80.460 are permitted. Other than exempt signs under WCC 20.80.470, all other signs in the Recreation and Open Space District are prohibited and all other signs in other districts conditionally permitted subject to meeting the requirements of WCC 20.84.200.
- (3) Off-premises advertising signs are prohibited in all districts except adjacent to arterial roads or Interstate 5 in General Commercial or Industrial Districts where they require a conditional use permit. Maximum sign size shall be 288 square feet and not more than 25 feet high. Minimum separation between off-premises advertising signs shall be a 500-foot radius. All off-premises advertising signs shall meet the setback

requirements found in WCC 20.80.215. Off-premises signs may be back to back only; no V-type signs are allowed. Off-premises signs may display at most two advertisements per side. The number of off-premises advertising signs within the county shall not exceed 18, which is the total of existing off-premises advertising sign structures that as of April 30, 1990 (a) had a county conditional use permit and (b) those facing Interstate 5 within Commercial or Industrial Districts with a valid state permit. Permit holders for the existing 18 signs may replace any sign they remove with a new sign subject to obtaining conditional use approval for the new sign. By no later than April 30, 1996, all conforming off-premises advertising signs which became nonconforming as a result of new regulations adopted the 7th day of August, 1990, shall meet all requirements of said regulations or be abated; provided that, those signs holding valid conditional use permits need not conform to the setback from residence requirement of WCC 20.80.215(4).

(4) Signs shall not depict or describe "specified sexual activities" or "specified anatomical areas" as defined in WCC 20.97.008.

Amend the Nonconforming Uses and Parcels chapter of Title 20 as follows:

20.83.015 Termination of Nonconforming Adult Businesses

Nonconforming adult businesses shall terminate within one year from the date that the use became nonconforming, except that the Hearing Examiner may approve up to four additional one year extensions, provided that:

- (1) An application is submitted by the owner or operator of such business to the Whatcom County Planning & Development Services Department at least 120 days prior to the date that such business must terminate; and
- (2) The Hearing Examiner shall find, in connection with such adult business, that:
 - (a) The applicant had made, prior to the use becoming nonconforming, substantial financial expenditures related to the adult business; and
 - (b) The applicant has not recovered, through sales, depreciation or other tax benefits, a reasonable portion of the financial expenditures related to the adult business that were made prior to the use becoming nonconforming; and
 - (c) The applicant could not recover, through sales, depreciation or other tax benefits, a reasonable portion of the financial expenditures by converting the nonconforming adult business to a use that is permitted or allowed as a conditional use in the zoning district; and
 - (d) The period for which such adult business may be permitted to continue is the minimum period sufficient for the applicant to recover, through sales, depreciation or other tax

benefits, a reasonable portion of the financial expenditures incurred related to the adult business, but in no case shall exceed one additional year at a time; and

(e) The economic hardship to the applicant is found to outweigh the public benefit to be gained by termination of the nonconforming use.

For the purpose of this section, "financial expenditures" shall mean the capital outlays made by the applicant to establish the adult business, exclusive of the fair market value of the building in which the use is located and exclusive of any improvements unrelated to the nonconforming adult business. "Financial expenditures" shall not include improvements to the building for which all required permits were not obtained. "Financial expenditures" shall not include materials for sale or rent that could be moved to another legal site and placed for sale or rent at that site.

20.83.020 Expansion of nonconforming use.

Nonconforming uses may be extended throughout any building partially occupied by such use at the time of passage of this ordinance, except for nonconforming adult businesses, which shall not be extended to other parts of the building. The expansion of a nonconforming use by addition or enlargement shall be conditionally permitted, except for nonconforming adult businesses, which shall not be expanded. The expansion must be on the parcel as it existed at the time the use became nonconforming and the use shall not expand on adjacent parcel(s). The expansion shall be approved if it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC 20.84.220(2) to (8).

20.83.040 Change to another nonconforming use.

The change of a nonconforming use to another type of a nonconforming use shall be conditionally permitted, except that a nonconforming use shall not be changed to an adult business. The change of nonconforming use shall be approved if it is consistent with the applicable zoning regulations, except the use restrictions, and complies with WCC 20.84.220(2) to (8), providing such change does not require the provision of water and sewer utility services at a level greater than that currently available to the subject property, and that the new nonconforming use does not result in greater impacts upon surrounding properties than did the original nonconforming use.

Amend the Hearing Examiner chapter of Title 20 as follows:

20.92.210 Final decisions.

The hearing examiner shall conduct open record hearings and prepare a record thereof, and make a final decision upon the following matters:

(1) Appeals from the decision of the administrative official or technical committee as set forth in WCC 21.28.040 for short plats.

(2) Appeals from any orders, requirements, permit, decision or determination made by an administrative official in the administration of this ordinance or the subdivision ordinance, exclusive of long plat design and processing requirements.

(3) Appeals from a decision of the administrator of the Shoreline Management Program.

- (4) Applications for zoning ordinance conditional use permits.
- (5) Applications for variances from the terms of the zoning ordinance.
- (6) Applications for shoreline management substantial project permits when no open record hearing is required.
- (7) Applications for variances from the terms of the Whatcom County Shoreline Management Program.
- (8) Applications for Shoreline Management Program conditional use permits.
- (9) Applications for flood damage prevention variances.
- (10) Appeals from SEPA determinations of significance, of nonsignificance, and mitigated determinations of nonsignificance.
- (11) Preliminary plats of proposed subdivisions including subdivision variances for subdivisions of five or more lots.
- (12) Application for variances from the provisions of WCC Title 22.
- (13) Revocation proceedings involving previously approved zoning conditional use permits, shoreline management substantial project permits and shoreline conditional use permits.
- (14) Applications to continue operations of nonconforming adult businesses pursuant to WCC 20.83.015.

Amend the Definitions chapter of Title 20 as follows:

20.97.008 Adult Business

An “adult business” is a commercial establishment where a “substantial portion” of the establishment includes an adult bookstore, adult eating or drinking establishment, adult theater, or other adult commercial establishment, or any combination thereof, as defined below:

- (1) An “adult bookstore” is a store that has as a “substantial portion” of its stock-in-trade any one or more of the following:
 - (a) Books, magazines, periodicals or other printed matter that are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas;” or
 - (b) Photographs, films, motion pictures, videocassettes, slides or other visual representations that are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas.”
- (2) An “adult eating or drinking establishment” is an eating or drinking establishment that regularly features any one or more of the following:
 - (a) Live performances that are characterized by an emphasis on “specified anatomical areas” or “specified sexual activities;” or
 - (b) Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas;” or

(c) Employees who, as part of their employment, regularly expose to patrons “specified anatomical areas.”

Adult eating or drinking establishments are not customarily open to the general public during such features because they exclude minors by reason of age.

(3) An “adult theater” is a theater that regularly features or allows viewing of one or more of the following:

(a) Films, motion pictures, videocassettes, slides or similar photographic reproductions characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas;” or

(b) Live performances characterized by an emphasis on “specified anatomical areas” or “specified sexual activities.”

Adult theaters are not customarily open to the general public during such features or viewing because they exclude minors by reason of age.

An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.

(4) An “other adult commercial establishment” is a facility that features employees who as part of their employment, regularly expose to patrons “specified anatomical areas” and that is not customarily open to the general public during such features because it excludes minors by reason of age.

“Specified sexual activities” are: (1) human genitals in a state of sexual stimulation or arousal; (2) actual or simulated acts of human masturbation, sexual intercourse or sodomy; or (3) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

“Specified anatomical areas” are: (1) less than completely and opaquely concealed human genitals, pubic region, human buttock, anus, or female breast below a point immediately above the top of the areola; or (2) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

For the purpose of determining whether a “substantial portion” of an establishment includes an adult bookstore, adult eating or drinking establishment, adult theater, or other adult commercial establishment, or combination thereof, the following factors shall be considered: (1) the amount of floor area accessible to customers and allocated to such uses; (2) the amount of floor area accessible to customers and allocated to such uses as compared to the total floor area accessible to customers in the establishment; and (3) whether the establishment advertises or is promoted as an adult business.

For the purpose of determining whether a bookstore has a "substantial portion" of its stock in materials defined in paragraphs (1)(a) or (1)(b) hereof, the following factors shall be considered: (1) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area accessible to customers containing such stock; (3) the amount of floor area accessible to customers containing such stock as compared to the total floor area accessible to customers in the establishment; and (4) whether the bookstore advertises or is promoted as an adult business.

~~20.97.200 — Lewd matter or lewd.~~

~~"Lewd matter or lewd" means "obscene matter" and means any matter: (1) which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and (2) which depicts or describes patently offensive representations or descriptions of:~~

~~(a) Ultimate sexual acts, normal or perverted, acted or simulated; or~~

~~(b) Masturbation, excretory functions, or lewd exhibition of the genital or genital area.~~

~~Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole and in the context in which it is used, possesses serious literary, artistic, political or scientific value.~~