

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2006-302

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	NO	6/9/06	RECEIVED JUL 03 2006 WHATCOM COUNTY COUNCIL	7/11/2006	Natural Resources Introduction
Division Head:	TEA	3/19/06		7/25/2006	NR/Council
Dept. Head:	HHH	6/15/06			
Prosecutor:	JNF	6/29/06			
Purchasing/Budget:	Dwey	7/1/06			
Executive:					

TITLE OF DOCUMENT: *Zon2006-00001, Mushroom Substrate.*

ATTACHMENTS: *Proposed Ordinance, Planning Commission Motion, Staff Report and Planning Commission Minutes.*

SEPA review required? (x) Yes () NO	Should Clerk schedule a hearing? () Yes (X) NO
SEPA review completed? (x) Yes () NO	Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

Application for a text amendment adding a new chapter of Whatcom County Code 20.20.15 (Mushroom Substrate Production Facilities Siting Requirements) to:

1. *Require applications for mushroom substrate facilities to be processed as administrative or conditional use permits,*
2. *Restrict new mushroom substrate production facilities to Heavy Impact Industrial (WCC 20.68), Commercial Forestry (WCC 20.43) and Agriculture (WCC 20.40),*
3. *Require new mushroom substrate production facilities to comply with buffering and setbacks,*
4. *Establishes commercial and on-farm mushroom production facilities definitions.*

This ordinance is a companion ordinance to the Health Code – WCC 24..12, which addresses design, operation and performance requirements of mushroom substrate production facilities.

COMMITTEE ACTION:
 7/11/06: Discussed in Natural Resources Committee
 7/25/06: Amended and forwarded to Council for approval

COUNCIL ACTION:
 7/11/06: Introduced
 7/25/06: Council Amended and Adopted 6-0
 McShane absent Ord. 2006-031

Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number: Ord. 2006-031
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Please Note: *Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.*

SPONSORED BY: Consent
PROPOSED BY: Planning
INTRODUCTION DATE: July 11, 2006

ORDINANCE # 2006-031

AMENDING WHATCOM COUNTY CODE BY AMENDING CHAPTER 20.15-MUSHROOM SUBSTRATE PRODUCTION FACILITIES SITING REQUIREMENTS AND CHAPTER 20.40 – AGRICULTURE DISTRICT AND CHAPTER 20.68 – HEAVY IMPACT INDUSTRIAL DISTRICT.

WHEREAS, On July 12, 2005, Whatcom County passed Ordinance No. 2005-057, which added a new chapter to Title 20, the Zoning Code, entitled, *Mushroom Substrate Production Facilities*; and

WHEREAS, On August 1, 2005, the Ostrom Company, owner of a mushroom farm near Everson, Washington, filed a Petition for Review with the Western Washington Growth Management Hearings Board (WWGMHB); and

WHEREAS, The Petition for Review alleged that Ordinance 2005-057 - *Mushroom Substrate Production Facilities* was not in compliance with the County's Comprehensive Plan and plan policies or with the Growth Management Act; and

WHEREAS, A Hearing on the Merits of the Ostrom Petition for Review was held before the Western Washington Growth Management Hearings Board on January 4, 2006; and

WHEREAS, A final decision was issued by the Western Washington Growth Management Hearings Board on February 14, 2006; and

WHEREAS, The WWGMHB found Ordinance 2005-057 out of compliance with the Growth Management Act and ordered Whatcom County to bring the regulation into compliance with the Growth Management Act; and

WHEREAS, Pursuant to WCC 20.90, proposed zoning text amendments shall be considered; and

WHEREAS, A determination of non-significance was issued under the State Environmental Policy Act (SEPA) on May 9, 2006; and

WHEREAS, Legal notice was published in the Bellingham Herald on, May 11, 2006; and

WHEREAS, The Planning Commission held a public hearing on the proposed amendments on May 25, 2006, and considered all testimony; and

WHEREAS, The Planning Commission continued deliberations and made amendments to the proposed text and recommended approval as amended on June 8, 2006.

The Council makes the following findings of fact and conclusions:

FINDINGS OF FACT

1. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on May 11, 2006. The Whatcom County Planning Commission held a public hearing on the proposed text amendment on May 25, 2006.
2. A determination of non-significance was issued on May 9, 2006, under the State Environmental Policy Act (SEPA).
3. Odors from mushroom substrate production have been determined to be an impact to public health. The Whatcom County Board of Health has adopted WCC 24.12 – *Mushroom Substrate Production Rules* in October of 2004. These rules provide performance, design and operational requirements to provide community protection from the potential adverse affects of mushroom substrate production (Ord No. 2004-054).
4. A companion ordinance to the Mushroom Substrate Production Rules as contained in WCC 24.12 was adopted by County Council July 2005. Ordinance 2005-057 added a new chapter to the zoning ordinance (WCC 20.15 – *Mushroom Substrate Production Facilities*) and provided locational regulations (zoning district, buffers and setbacks) as well as distinguished two types of mushroom substrate production facilities – commercial and on-farm.
5. On August 1, 2005, the Ostrom Company, owner of a mushroom farm near Everson, Washington, filed a Petition for Review with the Western Growth Management Hearings Board. The Petition for Review alleged that Ordinance 2005-057 - *Mushroom Substrate Production Facilities* is not in compliance with the County's Comprehensive Plan and plan policies nor with the Growth Management Act. Simultaneously with the Hearings Board Petition for Review, Ostrom's filed a lawsuit in Skagit County Superior Court challenging the legality of both Ordinance 2005-057 and 2004-054.

6. On October 17, 2005, Whatcom County filed a motion to dismiss several of the claims made in Ostrom's Superior Court Petition. After a hearing held on October 28, 2005 at which several claims were dismissed, the Superior Court case was held in abeyance pending resolution of the Growth Management Hearings Board's determination on Whatcom County's compliance with Growth Management Act requirements.
7. A Hearing on the Merits of the Ostrom's Petition for Review was held before the Western Washington Growth Management Hearings Board (WWGMHB) on January 4, 2006.
8. A Final Decision and Order was issued by the WGMHB on February 14, 2006 which concluded that Ordinance No. 2005-057, now WCC 20.15 – Mushroom Substrate Production Facilities, fails to comply with RCW 36.70A.060(1), 36.70A.040(3), and 36.70A.020(8). "Adopted development regulations that restrict agricultural activity on designated agricultural resource lands to reconcile agricultural activity with residential and other uses on adjacent lands do not comply with the GMA" Final Decision and Order, Case No. 05-2-0017 at 30.
9. Whatcom County is required to bring Ordinance 2005-057 into compliance with the Growth Management Act within 120 days of the decision date. Compliance is due by June 13, 2006.
10. RCW36.70A.060(1) requires that regulations applied to resource lands *"assure that the use of lands adjacent to agricultural, forest and mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals"*. As interpreted by the WWGMHB in its Final Decision and Order, Case No. 05-2-0017, this means that additional regulations that are not based on implementing best management practices are not legitimate local government actions and are not consistent with the GMA.
11. Removal of on-farm mushroom substrate production facilities from the requirements of WCC 20.15 – Mushroom Substrate Production Facilities, incorporating a provision for on-farm mushroom substrate production facilities as an accessory use in the agricultural district, and removing the yardage limitation included in the definition for on-farm mushroom substrate production facilities addresses the issues identified in the WWGMHB Final Decision and Order, Case No. 05-2-0017.

CONCLUSIONS

- 1. The proposed amendment is consistent with Growth Management Act, County Wide Planning Policies, Whatcom County Comprehensive Plan and the Western Washington Growth Management Hearings Board Final Decision and Order pertaining to Case No. 05-2-0017..
- 2. The proposed amendment complies with the approval criteria for amendments as stipulated in WCC 20.90.

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

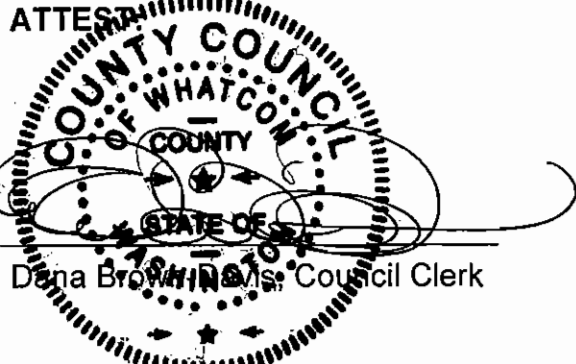
Section 1. The Official Whatcom County Zoning Ordinance, Title 20, is hereby amended as shown in Exhibit A.

Section 2. 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 25 day of July, 2006

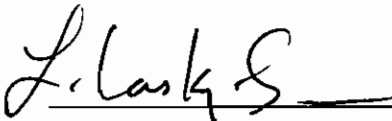
WHATCOM COUNTY COUNCIL

ATTEST

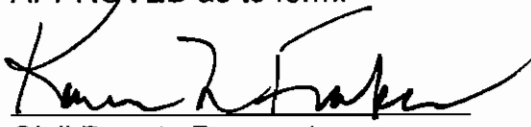


Dana Brown, Council Clerk

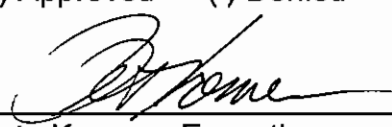
WHATCOM COUNTY,
WASHINGTON


 Laurie Caskey-Schreiber, Chairperson

APPROVED as to form:


 Civil Deputy Prosecutor

Approved Denied


 Pete Kremen, Executive

Date: 8-8-06

EXHIBIT A

Chapter 20.15
COMMERCIAL MUSHROOM SUBSTRATE PRODUCTION
FACILITIES

Sections:

- 20.15.010 Purpose.
- 20.15.020 Definitions.
- 20.15.030 Applicability.
- 20.15.040 Nonconforming uses and structures.
- 20.15.050 Permits and zoning.
- 20.15.060 Prohibited locations.
- 20.15.065 Prohibited operations.
- 20.15.070 Buffer and setback requirements.
- 20.15.080 Design, development, and operational requirements.
- 20.15.090 Reserved.
- 20.15.100 Reserved.
- 20.15.110 Compliance with land use permit.
- 20.15.120 Permit submittal requirements.
- 20.15.130 Criteria for issuance of land use permit.
- 20.15.140 Reserved.
- 20.15.150 Reserved.
- 20.15.160 Closure of facility.
- 20.15.170 Appeals.
- 20.15.180 Severability.
- 20.15.010 Purpose.

The purpose of this chapter is to establish procedures and limitations governing the placement and permitting of all commercial mushroom substrate production facilities.

~~The intent of these regulations is to ensure that these facilities are located in a manner that protects the county's natural resources, conserves productive agricultural soils, and minimizes adverse human and environmental impacts, particularly noxious emissions associated with mushroom substrate production operations.~~

The production of mushroom substrate is a manufacturing activity which is not dependent upon agricultural or any other soils. To conserve those agricultural soils, commercial mushroom substrate production facilities are not permitted on agricultural lands, should be limited in extent and to production only for an on-site mushroom farm.

In addition, commercial mushroom substrate production facilities should not be located contiguous to areas that have or are expected to have residential development at rural or urban densities. ~~Commercial mushroom substrate production facilities should not be located on resource lands.~~

Where applicable, the permit review, approval process, and oversight of the operation shall be coordinated with the Whatcom County health department. (Ord. 2005-057 Exh. A, 2005).

20.15.020 Definitions.

- (1) "Active area" means any part of a facility where mushroom substrate production activities are conducted, including but not limited to related areas of feedstock (only excluding straw) storage, leachate and emission collection and treatment devices, and impervious surfaces.
- (2) "Commercial mushroom substrate production facility" means a facility producing any mushroom substrate for off-site commercial export, ~~or a facility with 30,000 or more square feet of active area, or an on-farm mushroom substrate production facility with a traying volume of 3,250 or more cubic yards per month.~~
- (3) "Expansion," as it pertains to facilities existing at the effective date of the ordinance codified in this chapter, means an increase in monthly mushroom substrate production over the average production of the three months prior to the effective date of the ordinance codified in this chapter.
- (4) "Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements on the land.
- (5) "Finished substrate" means substrate that has completed the fermentation process and is ready for pasteurization.
- (6) "Mushroom substrate" means a highly specific, nutrient-rich product prepared from selective organic and inorganic material for the purpose of cultivating mushrooms.
- (7) "Mushroom substrate production" means any stage of a process where the ingredients necessary for the production of mushroom substrate are assembled, blended, stored or fermented.

(8) “Mushroom substrate production facilities” means “commercial mushroom substrate production facilities” and/or “on-farm mushroom substrate production facilities.”

(9) “On-farm mushroom substrate production facility” means a facility producing mushroom substrate which is used exclusively on the same parcel or adjoining parcels to grow and harvest mushrooms in compliance with best management practices. Limited off-site shipment may be allowed if such shipment is conducted as authorized under WCC 24.12.060(2)(a)(iv).

~~It has less than 30,000 square feet of active area and has a traying volume of less than 3,250 cubic yards per month.~~

~~(10) “Traying volume” means the total volume, expressed in cubic yards per month, of mushroom substrate produced on site and then consumed on site by growing mushrooms. Any unfinished mushroom substrate received shall be considered as produced on site.~~

(11) “Well head protection area” means the area (surface and subsurface), designated by the Whatcom County health department, managed to protect ground water based public water supplies.

(12) “Unfinished substrate” means feedstock that has been pre-wet, but is not yet finished substrate. (Ord. 2005-057 Exh. A, 2005).

20.15.030 Applicability.

The requirements of this chapter shall apply to new commercial mushroom substrate production facilities and to the expansion of existing commercial mushroom substrate production facilities. (Ord. 2005-057 Exh. A, 2005).

20.15.040 Nonconforming uses and structures.

Commercial M-mushroom substrate production facilities in operation as of the effective date of the ordinance codified in this chapter, including vested applications for such facilities, that do not conform to the requirements of this chapter are hereby declared nonconforming uses and shall be subject to the provisions of Chapter 20.83 WCC governing nonconforming uses. Any determination made under Chapter 20.83 WCC shall be governed by the definition of expansion in WCC 20.15.020(3) and all applicable requirements of this chapter; provided, that in the event

of any conflict between provisions, the more stringent standard shall apply. (Ord. 2005-057 Exh. A, 2005).

20.15.050 Permits and zoning.

All new facilities and facility expansions shall be located and permitted according to the following tables.

(1) Commercial mushroom substrate production facility:

Permitted Use	Administrative Use	Conditional Use
	HH	

~~(2) On-farm mushroom substrate production facility:~~

Permitted Use	Administrative Use	Conditional Use
-	HH	AG

(Ord. 2005-057 Exh. A, 2005).

20.15.060 Prohibited locations.

When reviewing applications for new commercial mushroom substrate production facilities, the approving authority shall not locate mushroom substrate production facilities in the Water Resource Protection Overlay District, Stormwater Special Districts, the Recreation and Open Space District, wellhead protection areas, nor within the 100-year floodplain. (Ord. 2005-057 Exh. A, 2005).

~~20.15.065 Prohibited operations.~~

~~On-farm mushroom substrate production facilities shall not ship any finished or unfinished mushroom substrate off-site. All mushroom substrate production not authorized pursuant to this chapter shall be prohibited. (Ord. 2005-057 Exh. A, 2005).~~

20.15.070 Buffer and setback requirements.

(1) The commercial substrate production facility's active area shall meet the following minimum buffer requirements:

(a) Two thousand six hundred forty feet from the following zoning districts: Urban Residential, Rural Residential, Residential-Island, Rural, Commercial, Gateway Industrial, Light Impact Industrial, Point Roberts Special District, and Point Roberts Transitional Zoning.

(b) One thousand feet from parcels located in the Rural Forestry district.

~~The minimum buffer requirements may be increased for substrate production facilities proposed for the Agricultural zoning district if it can be demonstrated that such additional buffer is required to mitigate adverse impacts on nearby land uses.~~

(2) The facility's active area shall meet the following minimum setback requirements:

~~(a) Six hundred sixty feet from property lines for an on-farm mushroom substrate production facility.~~

~~(b a) One thousand feet from property lines, for a commercial mushroom substrate production facility. The minimum 1,000-foot setback requirement may be reduced or eliminated for substrate production facilities proposed for the HII zoning district if it can be demonstrated that such additional setback is not required to mitigate adverse impacts on adjacent land uses.~~

(3) Where applicable, the facility shall provide buffers in accordance with the Whatcom County critical areas ordinance.

~~(4) Notwithstanding any other provisions in this chapter or in this title, on-farm mushroom substrate production facilities that are nonconforming shall be eligible for a variance from buffer or setback requirements if it can be demonstrated that such additional buffer or setback is not required to mitigate adverse impacts on adjacent land uses and if the criteria established in WCC 20.84.120 have been satisfied.~~

~~(5 4) The facility shall be designed to include any other conditions determined necessary during the review process. (Ord. 2005-057 Exh. A, 2005).~~

20.15.080 Design, development, and operational requirements.

New commercial mushroom substrate production facilities and the expansion of existing commercial mushroom substrate production

facilities shall be designed, developed, and operated in accordance with the provisions of Chapter 24.12 WCC, Mushroom Substrate Production Facility Rules. These are minimum requirements and shall be in addition to any other requirements, including those imposed in a project review process, which apply in the district where the facility is located.

In the event of a conflict between a provision of this chapter and a general requirement of this title, a provision of Chapter 24.12 WCC, or a requirement imposed during the project review process, the more stringent provision shall govern.

The following requirements shall also be met:

(1) The facility shall be designed, built and operated to meet the stormwater and drainage provisions of WCC 20.80.630, 20.80.632, 20.80.633, and 20.80.634.

(2) The facility shall be designed, built and operated in accordance with applicable local, state, and federal ordinances and laws, including but not limited to WCC Title 24 and Whatcom County's SEPA ordinance.

(3) The applicant shall show evidence of adequate water availability to support the proposed facility.

(4) The facility shall be designed, located and operated subject to any other conditions determined necessary to mitigate potential adverse impacts identified during the review process.

Nothing herein shall limit the county's enforcement authority or remedies set forth in this title or elsewhere in law or equity for violations of this chapter or land permits issued pursuant to this chapter. (Ord. 2005-057 Exh. A, 2005).

20.15.090 Reserved.

(Ord. 2005-057 Exh. A, 2005).

20.15.100 Reserved.

(Ord. 2005-057 Exh. A, 2005).

20.15.110 Compliance with land use permit.

If a commercial mushroom substrate production facility is operating in violation of its land use permit conditions and the owner/operator does not resolve the violation within 30 days, or other timeframe

approved by the hearing examiner, the land use permit may be suspended or revoked.

To avoid the suspension or revocation of the facility's land use permit, the owner/operator must demonstrate compliance with this chapter, the land use permit itself, and all other permits and approvals, including but not limited to the following:

(1) Chapter 24.12 WCC, Mushroom Substrate Production Facility Rules; and

(2) Local and state air quality and noise level requirements. (Ord. 2005-057 Exh. A, 2005).

20.15.120 Permit submittal requirements.

(1) Prospective applicants for commercial mushroom substrate production these facilities described in this chapter are required to comply with Chapter 24.12 WCC, Mushroom Substrate Production Facility Rules, and obtain a health department permit. A joint pre-application consultation with Whatcom County planning and development services land use division and Whatcom County health department staff is required prior to formal submittal of the land use application. The purpose of the pre-application consultation is for the applicant to provide the county with an overview of the project proposal and for the county to explain the steps involved in the review process and general permit submittal requirements for both the land use and health department permits.

(2) The following items shall be submitted to Whatcom County planning and development services for any new application or application for expansion of a commercial mushroom substrate production facility before a land use permit is issued:

(a) A complete land use permit application.

(i) The permit application shall include:

(A) An engineering report/plan and specifications that address the design and operational standards of Chapter 24.12 WCC, Mushroom Substrate Production Facility Rules.

(B) A vicinity map having a minimum scale of 1:24,000 showing the area within one mile of the property boundaries of the facility in terms of existing and proposed manmade or natural features that may impact or be affected by the operation of the facility and the location of any identified critical areas.

(C) A site plan which includes at a minimum, a scale drawing of the facility showing property lines, required buffers and setbacks, critical areas, site topography and existing drainage patterns, the locations and sizes of the straw and feedstock storage areas, all other active areas, material processing areas, fixed equipment, buildings with function identified, stormwater and leachate collection devices, access roads, and other specifications determined during the review process.

(b) A complete SEPA checklist.

(3) If deemed necessary by the land use administrator, additional information may be required following a review of the initial permit application submittal. (Ord. 2005-057 Exh. A, 2005).

20.15.130 Criteria for issuance of land use permit.

In addition to all other requirements set forth in this chapter and title, and any other controlling laws and ordinances, new applications or applications for expansion of an existing commercial mushroom substrate production facility must show verification by the Whatcom County health department that the proposal complies with Chapter 24.12 WCC, Mushroom Substrate Production Facility Rules, as evidenced by either verification of an approved, or approvable health department permit before a land use permit is issued. (Ord. 2005-057 Exh. A, 2005).

20.15.140 Reserved.

(Ord. 2005-057 Exh. A, 2005).

20.15.150 Reserved.

(Ord. 2005-057 Exh. A, 2005).

20.15.160 Closure of facility.

The owner/operator of a commercial mushroom substrate production facility shall notify the Whatcom County planning and development services director by certified U.S. mail at least 60 days in advance of abandonment or discontinuation of operation. The owner/operator shall comply with the closure plan approved by Whatcom County health department. (Ord. 2005-057 Exh. A, 2005).

20.15.170 Appeals.

The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more

than one interpretation is possible; provided, that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as those appeals he has authority to hear under WCC 20.92.210(2).

Any such appeal shall be reviewed de novo by the hearing examiner as to the scope of review and the standard of review. (Ord. 2005-057 Exh. A, 2005).

20.15.180 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this regulation. (Ord. 2005-057 Exh. A, 2005).

Agriculture District – 20.40

20.40.100 Accessory uses.*

.108 Composting and mulching facilities other than commercial mushroom ~~composting~~ substrate production facilities, if the use is ancillary to the primary agriculture use, when in compliance with federal and state water quality standards. When the primary purpose of the mushroom composting is to service off-site locations, it shall not be considered a farm operation for the purposes of Chapter 14.02 WCC, Right to Farm Ordinance.

(1) .109 On-farm Mushroom substrate production (WCC 20.15.020(9)), when substrate is used solely on-site for the growing and harvesting of mushrooms, and in compliance with best management practices and in compliance with WCC 24.12. –Mushroom Substrate Production Facility Rules. Limited off-site shipment may be allowed if: such shipment is conducted as authorized under WCC 24.12.060(2)(a)(iv):

- a. sample sized quantities, in less than 1 cubic yard quantities, that may be shipped off-site for analytical purposes; and
- b. equal exchanges of limited quantities of finished substrate, solely between facilities owned by the same operator, for substrate quality testing purposes. Such exchanges will be conducted only following prior notification of the public by the Health Department, with prior approval of

the Director of Public Health and will be substantiated by proper shipping documentation.

.10910 Home occupations, when in compliance with the following:

(1) The occupation or profession shall be carried out wholly within the principal or accessory buildings; and

(2) Not more than two persons outside the immediate family shall be employed in the home occupation. (Ord. 2003-029 § 1 (Att. A § 14), 2003; Ord. 2001-020 § 1 (Exh. 1 § 1), 2001; Ord. 2001-012 § 1, 2001; Ord. 98-018 § 1, 1998; Ord. 96-056 Att. A § I1, 1996; Ord. 92-079, 1992; Ord. 89-10, 1989; Ord. 88-93, 1988; Ord. 88-29, 1988; Ord. 88-13, 1988; Ord. 87-23, 1987; Ord. 87-12, 1987; Ord. 87-11, 1987; Ord. 86-42, 1986).

*Code reviser's note: The amendments of Ordinance 2005-039 concerning mushroom composting, extending amendments from Ords. 2004-053, 2004-027, 2003-050, 2003-027, 2002-068, 2002-061 and 2002-033, expired October 24, 2005. Refer to Chapter 20.15 WCC for current provisions concerning mushroom substrate production facilities.

HEAVY IMPACT INDUSTRIAL (HII) DISTRICT - 20.68

20.68.130 – Administrative approval uses.

.131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the requirements as contained in WCC 20.15.020(2) (Commercial Mushroom Substrate Production Facilities).