

**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2007-316

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Gary Davis	GD	7/12/07	RECEIVED  JUL 17 2007  WHATCOM COUNTY COUNCIL	7/24/07	Introduction
Division Head: Linda Peterson	LP	7-13-07		8/7/07	P&D / Council
Dept. Head: J.E. "Sam" Ryan	JSR	7/19/07		9/25/07	Council
Prosecutor: Royce Buckingham	RB	7/13/07			
Purchasing/Budget:					
Executive: Pete Kremen	PK	7-16-07			

**TITLE OF DOCUMENT:** Ordinance adopting amendments to the UR zoning district relating to establishing an Urban Residential 6 units/acre (UR6) district and requiring minimum densities in the UR4 and UR6 districts.

- ATTACHMENTS:**
- (1) Proposed ordinance,
  - (2) Whatcom County Planning Commission Findings of Fact & Reasons for Action, Conclusions and Recommendation,
  - (3) Staff Report, ZON2007-00002

SEPA review required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	Should Clerk schedule a hearing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> NO Requested Date:
SEPA review completed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO	

<sup>1</sup> A hearing must be held if the Council changes the Planning Commission recommendation (WCC 20.10.110).

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Amend the official Whatcom County Zoning Ordinance: Chapter 20.20 - Urban Residential (UR) District, to add an Urban Residential 6 units/acre (UR6) district and to address minimum density and minimum lot size requirements in Urban Residential 4 units/acre (UR4) and UR6 districts.

<b>COMMITTEE ACTION:</b>  8/07/2007: Forwarded to Council for approval	<b>COUNCIL ACTION:</b>  7/24/2007: Introduced 8/07/2007: Held 9/25/2007: Council Adopted 6-1 Crawford oppose Ord. 2007-050
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<b>Related County Contract #:</b>	<b>Related File Numbers:</b> Replaced 2007-248	<b>Ordinance or Resolution Number:</b> Ord. 2007-050
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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](http://www.co.whatcom.wa.us/council).

SPONSORED BY: Consent  
PROPOSED BY: Planning  
INTRODUCTION DATE: 7/24/2007

ORDINANCE # 2007-050

ADOPTING AMENDMENTS TO THE UR ZONING DISTRICT  
RELATING TO ESTABLISHING A UR6 DISTRICT AND REQUIRING  
MINIMUM DENSITIES IN THE UR4 AND UR6 DISTRICTS

**WHEREAS**, The proposal will facilitate efficient utilization of land in urban growth areas;  
and

**WHEREAS**, Legal notice was published in the Bellingham Herald; and

**WHEREAS**, The Planning Commission held public hearings on the proposal; and

**WHEREAS**, The Planning Commission has evaluated the proposed amendments; and

**WHEREAS**, The County Council has considered the Planning Commission’s Findings of Fact & Reasons for Action, Conclusions and Recommendations.

The Council makes the following findings of fact and conclusions:

FINDINGS OF FACT

1. Notice of the subject amendment was sent to the Department of Community, Trade and Economic Development (CTED) and other state agencies, on April 19, 2007.
2. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on April 15, 2007.
3. Notice of the Planning Commission hearing for the subject amendment was posted on the County’s website on April 20, 2007.
4. On April 20, 2007, the Whatcom County SEPA Official stated that the subject proposed zoning text amendments are procedural in nature and therefore exempt from the requirements of SEPA pursuant to WAC 197-11-800(19).
5. Chapter 20.20 of the Official Whatcom County Zoning Ordinance lacks density requirements that would ensure that density goals of the GMA and Whatcom County Comprehensive Plan will be met.
6. The County should add a UR6 district to Chapter 20.20 to ensure that future development in the Lynden and Ferndale UGAs will meet the Comprehensive Plan’s density goals for those UGAs.

7. The County should add minimum net density requirements to the UR4 and UR6 districts to ensure that future development will meet the density goals of the GMA and the Comprehensive Plan.

CONCLUSIONS

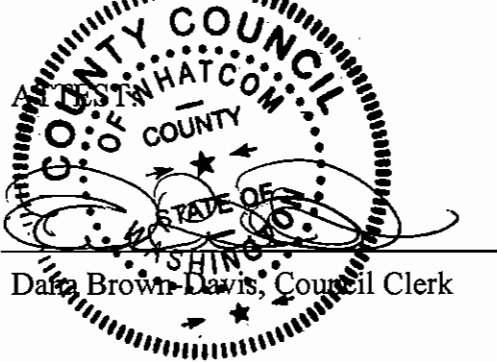
The subject amendment is consistent with the Whatcom County Comprehensive Plan and serves the public interest.

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 on 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 25th day of Sept., 2007



Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

Carl Weimer, Chairperson

APPROVED as to form:

Approved     Denied

  
Civil Deputy Prosecutor  
Pete Kremen, Executive

Date: 9-28-07

## Exhibit A: Proposed amendments to WCC 20.20.252

20.20.252 Maximum density, minimum lot size and maximum lot size within an urban growth area.

District	Maximum Gross Density	Minimum Lot Size		Maximum Lot Size	Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	Cluster Lots	
UR: all densities without public sewer and water **	<u>Maximum gross density: 1 dwelling unit/5 acres</u>	N/A*	12,500 sq. ft.	22,000 sq. ft.	N/A
UR: all densities outside short-term planning areas **	<u>Maximum gross density: 1 dwelling unit/5 acres</u>	N/A*	12,500 sq. ft.	22,000 sq. ft.	N/A
UR: all densities with public sewer or water **	<u>Maximum gross density: 1 dwelling unit/5 acres</u>	N/A*	12,500 sq. ft.	22,000 sq. ft.	N/A
UR-3: in short-term planning areas, with public sewer and water, and stormwater collection and detention facilities	<u>Maximum gross density: 3 dwelling units/1 acre</u>	12,000 sq. ft.	8,000 sq. ft.	N/A	25%
UR-4: in short-term planning areas with public sewer and water, and stormwater collection and detention facilities	<u>Maximum gross density: 4 dwelling units/1 acre;</u> <u>Minimum net density: 4 dwelling units/1 acre***</u>	8,000 sq. ft.	6,000 sq. ft.	N/A	20%
UR-6: in short-term planning areas with public sewer and water, and stormwater collection and detention facilities	<u>Maximum gross density: 6 dwelling units/1 acre;</u> <u>Minimum net density: 6 dwelling units/1 acre***</u>	<u>5,500 sq. ft.</u>	<u>4,000 sq. ft.</u>	N/A	<u>20%</u>

\* For the purpose of administering the lot consolidation provisions of WCC 20.83.070, the conventional minimum lot size shall be 5 acres.

\*\* Does not apply to the Bellingham urban growth area.

\*\*\* Minimum density shall be calculated as net density, after deducting the areas restricted from development by critical area regulations and infrastructure requirements.

# **WHATCOM COUNTY PLANNING COMMISSION FINDINGS OF FACT & REASONS FOR ACTION, CONCLUSIONS AND RECOMMENDATIONS**

## **AMENDMENTS TO THE UR ZONING DISTRICT RELATING TO ESTABLISHING A UR6 DISTRICT AND REQUIRING MINIMUM DENSITIES IN THE UR4 AND UR6 DISTRICTS**

**WHEREAS**, The proposal will facilitate appropriate urban densities in urban growth areas and preservation of rural and resource lands surrounding urban growth areas; and

**WHEREAS**, Legal notice was published in the Bellingham Herald; and

**WHEREAS**, The Planning Commission held public hearings on the proposal; and

**WHEREAS**, The Planning Commission has evaluated the proposed amendments.

NOW THEREFORE BE IT RESOLVED:

THE PLANNING COMMISSION ENTERS THE FOLLOWING FINDINGS OF FACT & REASONS FOR ACTION, CONCLUSIONS AND RECOMMENDATIONS:

### **FINDINGS OF FACT AND REASONS FOR ACTION**

1. Notice of the subject amendment was sent to the Department of Community, Trade and Economic Development (CTED) and other state agencies, on April 19, 2007.
2. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on April 15, 2007.
3. Notice of the Planning Commission hearing for the subject amendment was posted on the County's website on April 20, 2007.
4. On April 20, 2007, the Whatcom County SEPA Official stated that the subject proposed zoning text amendments are procedural in nature and therefore exempt from the requirements of SEPA pursuant to WAC 197-11-800(19).
5. Chapter 20.20 of the Official Whatcom County Zoning Ordinance lacks density requirements that would ensure that density goals of the GMA and Whatcom County Comprehensive Plan will be met.
6. The County should add a UR6 district to Chapter 20.20 to ensure that future development in the Lynden and Ferndale UGAs will meet the Comprehensive Plan's density goals for those UGAs.

7. The County should add minimum net density requirements to the UR4 and UR6 districts to ensure that future development will meet the density goals of the GMA and the Comprehensive Plan.

**CONCLUSIONS**

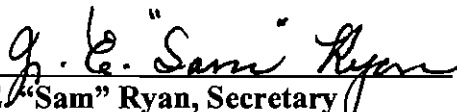
The subject amendment is consistent with the Whatcom County Comprehensive Plan and serves the public interest.

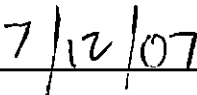
**RECOMMENDATION**

Based upon the above findings and conclusions, the Planning Commission recommends approval of the amendments to the Official Whatcom County Zoning Ordinance shown in Exhibit A.

**WHATCOM COUNTY PLANNING COMMISSION**

  
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**Kenneth Mann, Chairperson**

  
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**J.E. "Sam" Ryan, Secretary**

  
\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

Commissioners present at the April 26, 2007 meeting when the vote was taken on the subject amendment: John Belisle, Rabel Burdge, David Hunter, John Lesow, Kenneth Mann, Geoff Menzies, Ron Roosma, Jesse Salomon, and John Steensma.

**Vote: Ayes: 9, Nays: 0, Abstain: 0, Absent: 0. Motion carried to approve the proposed rezone.**

## Exhibit A: Proposed amendments to WCC 20.20.252

20.20.252 Maximum density, minimum lot size and maximum lot size within an urban growth area.

District	Maximum Gross Density	Minimum Lot Size		Maximum Lot Size	Min. Reserve Area (Cluster Subdivisions)
		Conventional	Cluster	Cluster Lots	
UR: all densities without public sewer and water **	<u>Maximum gross density: 1 dwelling unit/5 acres</u>	N/A*	12,500 sq. ft.	22,000 sq. ft.	N/A
UR: all densities outside short-term planning areas **	<u>Maximum gross density: 1 dwelling unit/5 acres</u>	N/A*	12,500 sq. ft.	22,000 sq. ft.	N/A
UR: all densities with public sewer or water **	<u>Maximum gross density: 1 dwelling unit/5 acres</u>	N/A*	12,500 sq. ft.	22,000 sq. ft.	N/A
UR-3: in short-term planning areas, with public sewer and water, and stormwater collection and detention facilities	<u>Maximum gross density: 3 dwelling units/1 acre</u>	12,000 sq. ft.	8,000 sq. ft.	N/A	25%
UR-4: in short-term planning areas with public sewer and water, and stormwater collection and detention facilities	<u>Maximum gross density: 4 dwelling units/1 acre;</u> <u>Minimum net density: 4 dwelling units/1 acre***</u>	8,000 sq. ft.	6,000 sq. ft.	N/A	20%
UR-6: in short-term planning areas with public sewer and water, and stormwater collection and detention facilities	<u>Maximum gross density: 6 dwelling units/1 acre;</u> <u>Minimum net density: 6 dwelling units/1 acre***</u>	<u>5,500 sq. ft.</u>	<u>4,000 sq. ft.</u>	<u>N/A</u>	<u>20%</u>

\* For the purpose of administering the lot consolidation provisions of WCC 20.83.070, the conventional minimum lot size shall be 5 acres.

\*\* Does not apply to the Bellingham urban growth area.

\*\*\* Minimum density shall be calculated as net density, after deducting the areas restricted from development by critical area regulations and infrastructure requirements.

Planning/Zoning Amendments/Zoning 2007ZON2007-00002 UR Text Change/Zon200700002Findings.doc

**WHATCOM COUNTY  
PLANNING & DEVELOPMENT SERVICES  
STAFF REPORT**

**I. BACKGROUND INFORMATION**

**File #** ZON2007-00002

**File Name:** UR Text Amendments

**Applicant:** Whatcom County Planning and Development Services

**Request:** Amend the density requirements of the Urban Residential (UR) zone, section 20.20.250-253 of the Official Whatcom County Zoning Ordinance:

- Add to the UR4 district a minimum net density requirement of four dwelling units/one acre, retaining the existing maximum gross density of four dwelling units/one acre;
- Add a UR6 district, with a maximum gross density of six dwelling units/one acre, a minimum net density requirement of six dwelling units/one acre, and a minimum lot size of 5,500 square feet (4,000 square feet for cluster);
- Define net density as being calculated “after deducting the areas restricted from development by critical area regulations and infrastructure requirements,” consistent with the definition given in 20.22.252(4) (URM24 zone).
- Change density column heading to “Density” and specify maximum gross density and minimum net density for each row as appropriate.

**Reason for Request:** Staff proposes revisions to UR zoning to provide greater assurance that the zoning will successfully implement the Comprehensive Plan’s density goals, and will meet the accepted guidelines for urban densities allowable in Urban Growth Areas (UGAs).

**II. ANALYSIS OF THE PROPOSED AMENDMENT**

Factors to be considered when evaluating zoning text amendments are found in WCC 20.90.051. These factors are set forth and addressed below.

- (A) Evaluation of the proposed amendment in relationship to the goals, objectives, and policies of the Whatcom County Comprehensive Plan.**

The Whatcom County Comprehensive Plan contains the following goal:

*Goal 2P: ... [E]ncourage Ferndale to establish new residential developments at densities averaging six to eight units per net residential acre; encourage Lynden to establish new residential developments at densities averaging five to eight units per net residential acre; and encourage remaining smaller cities and Unincorporated Residential/Recreational Urban Growth Areas, not associated with a City, to establish new residential development at average densities of four units per net residential acre, while respecting unique characteristics associated with each city.*

### **Densities in Ferndale and Lynden**

*Gross density* refers to number of dwelling units per total acreage, while *net density* is defined as number of dwelling units per acreage calculated “after deducting the areas restricted from development by critical area regulations and infrastructure requirements.” UR currently permits no densities higher than four dwellings per gross acre, restricting the County’s ability to adopt zoning that conforms to Goal 2P’s density standards in UR4 areas within the Lynden and Ferndale Urban Growth Areas (UGAs). An alternative to UR zoning would be URM, which contains density classifications of six, twelve, eighteen, and twenty-four dwellings per gross acre. However, URM permits multifamily uses, which may not be appropriate or desirable in the UGAs. Of all the density classifications in UR and URM, only the URM24 zone has a required minimum net density: 10 dwellings per net acre.

Staff proposes adding a UR6 zone with a minimum net density of six dwellings per acre and a minimum lot size of 5,500 square feet (4,000 with clustering), which would allow net density up to about eight dwellings per acre. The UR6 zone would be consistent with the densities prescribed by Goal 2P for Ferndale and Lynden.

### **Densities in the smaller cities**

UR4 currently has no minimum net density, providing no assurance that development will reach density goals of the Comprehensive Plan. Adding a minimum net density of four dwellings per acre, in conjunction with the existing minimum lot size of 8,000 square feet (6,000 with clustering), would result in densities consistent with the prescribed densities for the smaller cities.

## **(B) Evaluation of the proposed amendment in relationship to the goals, objectives, and policies of the Growth Management Act.**

The Growth Management Act (GMA) contains the following goals:

*GMA Goal 1: Urban Growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an*

*efficient manner.*

*GMA Goal 2: Reduce Sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.*

### **The four-per-acre standard**

Until 2005 Washington's Growth Management Hearings Boards' decisions had set a minimum "bright line" density of four dwellings per net acre to be allowed in a UGA – "Any new residential land use pattern within a UGA that is less dense [than 4 dwellings/net acre] is not a compact urban development pattern, constitutes urban sprawl, and is prohibited." (*Bremerton, et al. v. Kitsap County*, Central Board No. 95-3-0039c). In 2005, the State Supreme Court overturned the "bright line" rule, saying growth boards did not have the authority to adopt such a standard (*Viking Properties v. Holm*, 144 Wn.2d 112, August 2005).

In *Futurewise v. Whatcom County and Gold Star Resorts, Inc.*, a month after the Viking Properties decision, the Western Washington Growth Management Hearings Board said, "The principle of 4 dwelling units per acre for urban growth is not to be seen as an inflexible requirement but as a general rule of thumb. Where there are reasons to deviate from it, the County's record should show what they are." (Western Board No. 05-2-0013)

### **UR3 not in compliance**

In the *Futurewise* case, the Western Board found some of Whatcom County's UR3 zoning designations within the Bellingham, Ferndale, and Everson UGA's to be noncompliant with the GMA. Though the Board found the UR3 to be compliant within certain areas of the Bellingham UGA where the County documented that a lower density was warranted by environmental factors (the Lake Whatcom watershed and the airport approach area), the Board found that the other UR3 areas "allow residential densities in the urban area that are not urban, that is, at least four dwelling units per acre. The prospect that final platting decisions might actually achieve greater densities does not alter the fact that the zone itself allows less than urban densities in urban areas. This fails to comply with RCW36.70A.110 and failure to update the plan and development regulations fails to comply with RCW 36.70A.130."

The subsequent Superior Court decision that overruled other parts of the Board's decision was silent on the UR3 issue, and Whatcom County remains under an order to bring its UR3 areas into compliance with statute. The noncompliant UR3 zoning in the Bellingham UGA will be addressed as part of the Bellingham UGA (Urban Fringe) update process, and staff has initiated rezonings for the UR3 zones in the Ferndale and Everson UGAs.

### **Minimum net density in UR4**

The UR4 designation was not challenged or found noncompliant by the Board. The maximum gross density of four dwellings per acre allows net densities

above four per acre – in fact, the conventional minimum lot size would allow more than five dwellings per net acre. However, developers may not always maximize the permitted density and staff proposes a minimum net density to provide greater assurance that the zoning successfully implements the goals of the Comprehensive Plan and the GMA.

**Comparable zoning classifications in other counties**

Other counties in western Washington have set minimum net densities for their low-density urban residential zones. Pierce, Thurston, and Kitsap Counties all place a minimum net density of four dwellings per acre on their nearest equivalent to Whatcom County's UR4 zoning. King County places a minimum net density as 85% of the zoning classification's base density. Those counties also have a residential classification for areas with significant environmental constraints, where densities below four dwellings per net acre are permitted. Whatcom County's UR3 zone may serve that function when it is removed from areas outside the airport approach area and the Lake Whatcom watershed.

**(C) Environmental implications of the proposed action, as identified by the Whatcom County SEPA Official, must be considered.**

The Whatcom County SEPA Official has determined that the subject proposed zoning text amendments are procedural in nature and therefore exempt from the requirements of SEPA pursuant to WAC 197-11-800(19). Therefore, no environmental implications of the proposal were identified through the SEPA process.

**III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

1. Notice of the subject amendment was sent to the Department of Community, Trade and Economic Development (CTED) and other state agencies, on April 19, 2007.
2. Notice of the Planning Commission hearing for the subject amendment was published in the Bellingham Herald on April 15, 2007.
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Whatcom County Comprehensive Plan will be met.

6. The County should add a UR6 district to Chapter 20.20 to ensure that future development in the Lynden and Ferndale UGAs will meet the Comprehensive Plan's density goals for those UGAs.
7. The County should add minimum net density requirements to the UR4 and UR6 districts to ensure that future development will meet the density goals of the GMA and the Comprehensive Plan.

#### **IV. CONCLUSION**

The subject amendment is consistent with the Whatcom County Comprehensive Plan and the GMA, and serves the public interest.

#### **V. RECOMMENDATION**

Staff recommends amending section 20.20.252 of the Official Whatcom County Zoning Ordinance as shown in Exhibit A, (attached).

(Note: the current edition of the code does not yet reflect recent amendments made to the UR density/lot size charts in 20.20.252 to separate the requirements inside a UGA from those outside a UGA (CMP2006-00006). The text below uses the approved text for the density chart within the UGA, with the proposed density amendments underlined.)

**Exhibit A: Proposed amendments to WCC 20.20.252**

20.20.252 Maximum density, minimum lot size and maximum lot size within an urban growth area.

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UR-3: in short-term planning areas, with public sewer and water, and stormwater collection and detention facilities	Maximum gross density: 3 dwelling units/1 acre	12,000 sq. ft.	8,000 sq. ft.	N/A	25%
UR-4: in short-term planning areas with public sewer and water, and stormwater collection and detention facilities	Maximum gross density: 4 dwelling units/1 acre; Minimum net density: 4 dwelling units/1 acre***	8,000 sq. ft.	6,000 sq. ft.	N/A	20%
UR-6: in short-term planning areas with public sewer and water, and stormwater collection and detention facilities	Maximum gross density: 6 dwelling units/1 acre; Minimum net density: 6 dwelling units/1 acre***	5,500 sq. ft.	4,000 sq. ft.	N/A	20%

\* For the purpose of administering the lot consolidation provisions of WCC 20.83.070, the conventional minimum lot size shall be 5 acres.

\*\* Does not apply to the Bellingham urban growth area.

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