

**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2009-447

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Suzanne Bosman			<b>RECEIVED</b>  NOV 17 2009  WHATCOM COUNTY COUNCIL	11/24/09	Council Introduction
Division Head: Wain Harrison				12/8/09	PD – Committee & County Council
Dept. Head: David Stalheim	DS	11-13-09			
Prosecutor: Karen Frakes	KNF	11/13/09			
Purchasing/Budget: Brad Bennett					
Executive: Pete Kremen	PK	11/17/09			

**TITLE OF DOCUMENT:**  
 (1) Proposed Zoning Code Amendment - WCC 20.94, "Enforcement & Penalties"  
 (2) Whatcom County Planning Commission Findings of Fact and Reasons for Action

**ATTACHMENTS:**

SEPA review required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> NO SEPA review completed? <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:
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**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.)*

A proposed text amendment to the Whatcom County Zoning Ordinance, Title 20. The purpose of this amendment is to cease issuing citations and instead issue administrative civil penalties. This amendment to WCC 20.94 will provide consistency with enforcement language adopted in other Whatcom County statutes.

<p><b>COMMITTEE ACTION:</b>                  12/8/2009: Amended and forwarded to Council for approval</p>	<p><b>COUNCIL ACTION:</b>                  11/24/2009: Introduced                  12/08/2009: Council Amended &amp; Adopted 6-0                  Ord. 2009-085</p>
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<b>Related County Contract #:</b>	<b>Related File Numbers:</b>	<b>Ordinance or Resolution Number:</b> Ord. 2009-085
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SPONSORED BY: Consent  
PROPOSED BY: PDS  
INTRODUCTION DATE: 11/24/2009

**ORDINANCE NO. 2009-085**

**AMENDING WCC TITLE 20.94, "PENALTIES & ENFORCEMENT"**

**WHEREAS**, Whatcom County Planning and Development Services docketed zoning amendments to be brought forward for consideration by the County Council.

**WHEREAS**, Planning staff identified the need to amend the existing code language for effective enforcement of the Whatcom County Ordinance.

**WHEREAS**, each person in Whatcom County has a fundamental right to a healthy and safe living environment.

**WHEREAS**, under the Whatcom County Comprehensive Plan, Policy 11B-7, we should simplify regulations and establish effective inspection, compliance and enforcement measures.

**WHEREAS**, the recommended Title 20 text amendment will better protect public health, welfare, safety and environmental resources by providing for regulatory enforcement of those codes previously adopted.

**WHEREAS**, Whatcom County Planning staff initiated the 60 Day Review process as required by RCW 36.70A.106. On October 15, 2009, Commerce notified Whatcom County that the notice of the proposed amendment had been received and was processed with the Material ID # 14996.

**WHEREAS**, a Determination of Non-Significance (DNS) was issued under the State Environmental Policy Act (SEPA) by the Deputy SEPA official for Whatcom County and the legal notice published in the Bellingham Herald on October 16, 2009. No Comments received.

**WHEREAS**, requests for comments regarding the proposed text amendment were sent to thirty three local attorneys and the Whatcom County Chapter of the Building Industry Association of Washington (BIAW) on October 15, 2009. No Comments received.

**WHEREAS**, a legal notice for the Planning Commission public hearing was published in the Bellingham Herald on November 1, 2009.

**WHEREAS**, no testimony or comments were received at the November 12, 2009 public meeting. The planning Commission voted to recommend approval for the zoning text amendment.

**FINDINGS OF FACT AND REASONS FOR ACTION**

1. Planning staff determined the current system of issuing citations to be ineffective. The lack of having an effective means to enforce the Whatcom County Zoning Ordinance has weakened the authority of the code resulting in many non-compliant sites throughout Whatcom County.
2. Whatcom County Planning and Development Services initiated a proposed amendment to the Whatcom County Zoning Ordinance. The proposed amendment was given file number PLN2009-00005 by Planning and Development Services.
3. In accordance with the RCW 36.70A.106, Whatcom County Planning & Development Services notified the Washington State Department of Commerce (Commerce) of the intent to amend the Official Whatcom County Zoning Ordinance, Title 20, Section 20.94, "Enforcement and Penalties".
4. Whatcom County Planning and Development Services staff prepared a SEPA checklist for this non-project action. On October 16, 2009, a Determination of Non-Significance (DNS) was issued. Pursuant to RCW 36.70.590, legal notice of the SEPA determination was published in the Bellingham Herald on Friday, October 16, 2009.
5. The Whatcom County Planning Commission held a public hearing on the proposed zoning text amendment on November 12, 2009 where the Planning Commission voted to recommend approval for the proposed zoning text amendment.
6. The proposed amendment has been reviewed in relationship to the goals, objectives and policies of the Whatcom County Comprehensive Plan.
7. The text amendment will provide a prescribed system of enforcement to respond, evaluate and resolve code enforcement issues including procedures for issuing notices, imposing civil penalties, issuing stop work orders, revoking permits and allowing remission and or appeals.
8. The text amendment will provide due process by allowing remission of a penalty, the right to appeal, and the right to request a pre or post-deprivation hearing for a stop work order.
9. The text amendment will result in making the enforcement language consistent with subsequent adopted county statutes.

10. The text amendment will allow for a timelier and more effective means of issuing civil penalties.

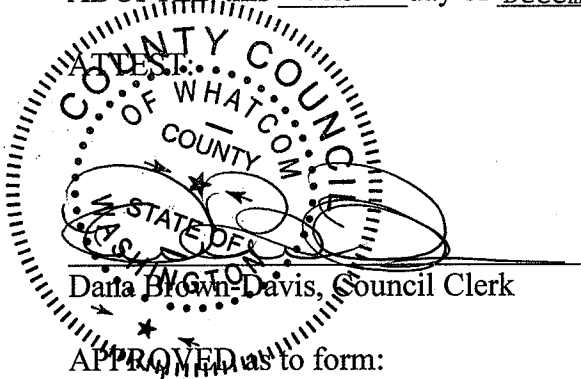
**CONCLUSION**

The proposal meets all of the legal requirements as noted within the Findings of Fact and Reasons for Action. The proposed amendment is compatible with the Growth Management Act, Whatcom County Comprehensive Plan Goals and Policies, along with policies within Whatcom County's County Wide Planning Policies. Approval of this amendment is in 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 in Exhibit A.

ADOPTED this 8th day of December 2009.



Dana Brown-Davis, Council Clerk


APPROVED as to form:

  
Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
Seth Fleetwood, Chairperson

Approved      ( ) Denied

  
Pete Kremen, County Executive

Date: 12-17-09

## **EXHIBIT A**

### **20.94.010 - Purpose**

The purpose of this chapter is to ensure compliance with regulations and standards relating to all elements of the Whatcom County Zoning Code. This section provides guidelines to determine when and how to issue notices and/or orders; impose civil penalties; revoke permits and/or review decisions; and address remission and appeal processes.

### **20.94.020 - Notice of Violation**

- a.) In the event any person, firm, partnership, corporation, or other entity violates any of the provisions of this title, the county may issue a notice of violation. The notice shall be in writing and delivered by personal service to the owner, the owner's agent, the operator and/or violator, and/or sent by certified mail, and/or be conspicuously posted at the site. The date of posting and/or receipt of the notice shall serve as the date of official notification.
- b.) The notice shall describe the violation with reasonable particularity declaring the act and/or acts to cease and desist, and/or requiring the necessary corrective action to be taken within a specific and reasonable time. The notice may simultaneously accompany a Notice of Penalty.

### **20.94.030 - Notice of Penalty**

- a.) Any person, firm, partnership, corporation, or other entity who violates any of the provisions of this chapter, shall be guilty of a civil offense. Each day during which such violation is continued or committed shall constitute a separate offense, and may be fined a sum not to exceed \$1,000 for each offense.
- b.) The notice shall be in writing and delivered by personal service to the owner, the owner's agent, the operator and/or violator, and/or sent by certified mail, and/or be conspicuously posted at the site. The notice shall include within its document the amount of the penalty imposed and shall describe the violation with reasonable particularity. The notice may simultaneously accompany a notice of violation. In appropriate cases, corrective action shall be taken within a specific and reasonable time.

### **20.94.040 - Remission of Penalty**

Within 20 calendar days after the notice of penalty is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty.

Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County's final decision on mitigation or remission may be appealed to the Hearing Examiner if the aggrieved party files a written appeal of said decision within 10 calendar days of its issuance.

#### **20.94.050 - Stop Work Orders**

- a.) In a non-emergency situation where it may become necessary to issue a stop work order, a notice shall be issued and include language specifying the intent to issue a stop work order no less than ten (10) calendar days following the date of official notification. The notice of intent to stop work may be included within the notice of violation or as a separate document. The notice of intent to stop work shall provide the opportunity for an administrative pre-deprivation hearing if requested within 72 hours following the date of notification. If it becomes necessary to issue the stop work order following the issuance of the notice of intent to stop work, the requirements for issuing the order shall comply with WCC 20.94.050(c).
- b.) In an emergency situation, where the county has determined that there may be a significant threat to public safety or the environment, the county may order all work to cease until authorized to proceed. The stop work order shall apply to any person, firm, partnership, corporation, or other entity who violates any provision of this title or any code adopted by this title.
- c.) The order shall be in writing and delivered by personal service to the owner, the owner's agent, the operator and/or violator, and/or sent by certified mail, and/or be conspicuously posted at the site. The date of posting and/or receipt shall serve as the date of official notification. The order shall include in writing, the right to request an administrative post-deprivation hearing within 72 hours following the date of notification.
- d.) While the stop work order is in effect, the county may require specific corrective actions to secure the site and/or achieve compliance with this chapter.
- e.) Failure to comply with the stop work order may result in one or both of the following:
  1. A minimum monetary penalty of \$1,000 per day for the unauthorized continuation of a violation once a stop work order has been issued.

2. Failure to comply with the stop work order shall be a gross misdemeanor punishable upon conviction by a minimum fine of \$500 up to a maximum fine of \$1,000 or one year in jail, or both. Under no circumstance may the court defer or suspend any portion of the minimum \$500 fine for any conviction under this section. Each day or part thereof of noncompliance with said stop work order shall constitute a separate offense.

#### **20.94.060 - Appeals**

The hearing examiner shall have the authority to hear and decide, in conformity with this title, appeals pursuant to WCC 20.84.240, unless as specifically noted differently under this chapter.

#### **20.94.070 - Permit Revocation**

The zoning administrator, and/or designee, is authorized to suspend or revoke a permit issued under the provisions of this code in instances where the Hearing Examiner does not otherwise have authority pursuant to WCC 20.92.250. The County may suspend or revoke a permit whenever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, and/or when a substantial or a continued violation of the terms and/or conditions of a permit have not been met.

#### **20.94.080 – Additional Consequences of Violations**

- a.) When a violation has been documented on the site, the zoning administrator, and/or designee, may require that a covenant or agreement be recorded against the deed to inform future property owners of the current restrictions or approved land uses. The county may draft the covenant or agreement upon whatever terms the county in its discretion deems proper.
- b.) When a violation has occurred on a site, any and all future permits or approvals issued by the County that pertain to WCC, Title 20, may be denied for that site until compliance has been achieved to the satisfaction of the zoning administrator, and/or designee.
- c.) In addition to the civil remedies imposed above, the county or the owner or owners of land affected by violations of the provisions of this ordinance may bring such injunctive, declaratory or other actions as deemed necessary to ensure that violations are prevented or cease, and to otherwise enforce the provisions of this title.
- d.) Any person who, through an act of commission or omission, procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.