WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2014-177

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Suzanne Bosman	SRB	4-17-14	RECEIVED APR 29 2014 WHATCOM COUNTY COUNCIL	5/6/14	P & D Comm.
Division Head: Mark Personius					
Dept. Head: Sam Ryan	SR	4/17/14			
Prosecutor: Karen Frakes	KHF	4/17/14			
Purchasing/Budget:					
Executive: Jack Louws		04.29.14			

TITLE OF DOCUMENT: A discussion on the complexities of code enforcement and the absence and/or ambiguity of certain regulations in the Whatcom County Zoning Ordinance, Title 20.

ATTACHMENTS:

Copy of a memo to county council dated April 16, 2014 titled, "Issues Effecting Code Enforcement."

SEPA review required? ***( ) Yes (X) NO***	***Should Clerk schedule a hearing?*** ***(X) Yes ( ) NO***
SEPA review completed? ***( ) Yes (X) NO***	***Requested Date:*** PD Committee 5/6/2014

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.)***

Discussion regarding the absence and/or ambiguity of certain regulations in the Whatcom County Zoning Ordinance, Title 20 making it difficult for code enforcement to respond to citizen complaints such as vacation rentals, motocross tracks, recreational vehicles, junk storage and other nuisances.

COMMITTEE ACTION:	COUNCIL ACTION:

Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number:

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.

WHATCOM COUNTY
Planning & Development Services
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360-738-2525 Fax

J.E. "Sam" Ryan
Director

MEMORANDUM

TO: Whatcom County Council Members

THROUGH: J.E. "Sam" Ryan, Director

FROM: Suzanne Bosman, Senior Planner

DATE: April 16, 2014

SUBJECT: Presentation to the PD Committee on Issues Effecting Code Enforcement

Whatcom County Planning and Development Services (PDS) staff is responding to the request by the County Executive and the County Council regarding how code enforcement cases are processed and the challenges confronting code enforcement officials due to the ambiguity and/or the absence of zoning code regulations.

In response to this request, staff would like to present a brief presentation to the PD committee on May 6, 2014.

Please refer to the April 16, 2014 memo titled, "Issues Effecting Code Enforcement" included with the April 17, 2014 agenda bill.

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J.E. "Sam" Ryan
Director

M E M O R A N D U M

TO: Council Members

THROUGH: J.E. "Sam" Ryan, Director

FROM: Suzanne Bosman, Senior Planner

DATE: April 16, 2014

SUBJECT: Issues Effecting Code Enforcement

In September 2013, Executive Louws directed the Code Enforcement Office to provide him with the top ten code amendment issues that prevent staff from better serving the public and/or enforcing the code. Staff came up with a list of frequent complaints received by the public, that due to the lack of regulations or the ambiguity of existing text, make violations difficult to enforce. We added vacation rentals to our list due to the recent complaints received by the Executive and County Council Offices.

The most prevalent issues affecting the code enforcement office can be broken down into four categories. A brief presentation regarding some of these issues will be presented to the county council at the PD Committee Meeting on May 6, 2014:

1. Complaints most frequently received by the public that are difficult to enforce
2. Absence of Regulations
3. Logistics and ambiguity of existing code
4. Complexities of Code Enforcement (procedures, time, staff, challenges, attorneys, etc.)

I. Complaints Most Frequently Received

1. Beekeeping (in the RR, RR-I, UR and other higher density zone districts).

Discussion: We receive frequent complaints that young children and animals cannot go outside in their own backyard because they'll be stung by swarms of bees kept by their neighbors. Bees also leave a black tar like substance that cannot be removed from people's cars, boats, homes, etc. Existing small lot subdivisions such as Paradise Lakes Country Club, Lummi Island Scenic Estates, Tweed Twenty, etc. are among those affected. Beekeeping may be better suited in the Rural or Agricultural zone district.

2. Livestock Regulations (specifically pertaining to fowl).

Discussion: Our current livestock regulations are imposed for parcels of less than 10 acres in the UR, RR, RR-I, Rural or Forestry zone districts. The intent is to allow for small hobby farms when not part of a larger agricultural operation. Livestock is determined by animal units which equates to 1,000 pounds of livestock live weight. The average chicken weighs 3-5 pounds. In using this measure of calculation and assuming the average chicken weighs four pounds, then on a half an acre you can have 250 chickens.

Staff frequently receives complaints regarding the number of chickens allowed on small lots in subdivisions (such as those listed above under #1). The stench from the chicken waste is unbearable and to allow 100-300 chickens seems excessive. We should put a limit on the number of fowl you can have for hobby farms. In addition, we have no restrictions regarding roosters. Many jurisdictions don't allow roosters or have limitations regarding them.

3. Non-Permitted Storage

Discussion: Enforcement staff frequently receives complaints about sites with junked cars or that have an assortment of junk on the property. WCC 20.80.540 states, "For the protection of the quality of residential and commercial areas, and to maintain individual property values, the indiscriminate deposition of discarded vehicles, used building materials, equipment, appliances and assorted junk shall be prohibited in all Residential and Commercial Zone Districts.

Therefore, if the site is in the Rural or Agricultural zone, then there is nothing we can do to enforce it. I've been told that the code was written this way intentionally because people that purchase property in the Rural or Agricultural zone districts do so because they don't want to live in higher density housing developments. They want more freedom regarding the use of their land without having to deal with the restrictions that often come from home owner associations with private covenants and bylaws. Most jurisdictions have language that requires the cars to be operable or licensed. Perhaps a simple fix would be to prohibit this use in all zone districts with the exception that parcels of five or more acres in the Rural and Agricultural zones may keep non-permitted storage on their property if it is properly screened from view either by means of a fence or vegetative buffer.

II. Absence of Regulations – New Code Needed

1. Motocross Tracks (for personal use only)

Discussion: Every Spring staff is inundated with complaints regarding private motocross tracks. There are no regulations for this use anywhere in the code. A common complaint is the noise, dust and hours of operation. Perhaps we should allow for private motocross tracks for personal use only, with specific criteria (i.e. specific zone districts, minimum acreage, setbacks from property lines, buffering, etc.)

2. Towing & Impound Yards

Discussion: Several reputable tow truck companies have wanted to expand their business into the County but we only allow for "towing services when based at a service station". In addition, the use is only allowed in two zone districts: Tourist Commercial (TZ) and Gateway Industrial (GI). We also do not allow for impound yards so if the car is towed it can't be impounded. Perhaps the code should be amended to allow this use.

3. Temporary Vending/Mobile Units

Discussion: Mobile vending units are beginning to show up in parking lots around the county. The code enforcement team cannot answer whether they are legal or not legal since they're not addressed anywhere in the code. Although, temporary vending units are exempt from a building permit what about use? We have coffee stands that are "portable" although they never move. There is no review for stormwater, traffic, zoning, landscaping, etc. In addition, they are establishing their use in a parking lot taking away parking space precisely required by the county for the initial primary use.

4. Pt. Roberts Notification Requirements

Discussion: The 15-day comment period required for discretionary permits does not provide enough time for people in Pt. Roberts to review the proposal and submit their comments.

Mail sent from the U.S. to Canada often takes up to a week for delivery. Due to the unique geographical location of Pt. Roberts no one can easily drop by the county's office to review a project's file.

People who own property or live in Pt. Roberts have suggested we do our legal notice in the All Point Bulletin as opposed to the Bellingham Herald since no one in Point Roberts receives the Bellingham Herald.

The County should consider changing WCC 2.33, WCC 20.84, and WCC 20.72 regarding permit review procedures for discretionary permits in Pt. Roberts to require a longer comment period and require the legal posting be published in the All Point Bulletin.

5. Vacation Rentals

Discussion: Complaints have been submitted to PDS by homeowners living on Lake Whatcom regarding the noise and commercial venues occurring on property's being rented out for short-term vacation use (fewer than 30 days). The rentals are advertised on such internet sites as Vacation Rentals By Owner (VRBO).

Although there is a push by a few citizens to have legislation passed to regulate such uses, the pros and cons of such legislation will be discussed with the County Council PDS Committee. Planning and Development Services will be requesting direction from the county council if a zoning code amendment to limit and/or prohibit vacation rentals is needed.

III. Logistics and Ambiguity of Existing Code

1. Recreational Vehicles

Discussion: Staff has always had difficulty enforcing this code because of how it is written. Staff is willing to work with the Long Range Planners to explain the specific problems with this code since there are so many. A separate permit should be required and the length of time a person can stay in the RV should begin at that time. More and more people rent out RV's on their property or simply allow people to live in an RV on their property for a fee. There is one on Northwest Avenue which is called Marc's RV Park. There are four RV's on this particular site and one single-family dwelling. This is a common occurrence throughout the County especially given the economy these past few years. It is near to impossible to enforce this code.

2. Home Occupations

Discussion: This code was a result of staff wanting to make a simple change to the definition of a Home Occupation. By the time it got through the Planning Commission and the County Council, we got an entirely different code; one that hinders true enforcement of the zoning ordinance for businesses. Now, the public can operate a business in an existing structure up to 8,000 square feet as a "Home Occupation" (even though it's not in a home) and can operate this business without the need for Administrative Approval or a Conditional Use Permit. Now, it is an Accessory Use and there is no review for parking, landscaping, traffic, fireflow, stormwater etc. In fact, since the county doesn't require business licenses we don't even know these businesses exist. This will also create a bigger problem in the future if we have to determine whether or not a business was legally established in terms of nonconforming uses.

Staff receives complaints on a regular basis regarding long haul trucking companies that have moved their businesses from the industrial parks to their homes. Complaints received include a decrease in neighboring property values, aesthetics, noise from refrigerated trucks left running over night and diesel trucks starting as early as 3:00 AM and are left to idle as they warm up.

3. WCC 20.80 – Supplementary Requirements

Discussion: This chapter of the Whatcom County Zoning Ordinance has become a "catch-all" for all sorts of criteria. Some sections should be separate ordinances such as a Clearing Ordinance or a Sign Ordinance, and other sections have specific development criteria for each zone district that should simply be moved to the pertinent chapter for that zone.

This is very confusing for staff and it can result in giving the wrong information to the public. For example, setback criteria should be under the appropriate zone district, surface mining registration/inspection procedures should be under the surface mining section of the zoning code, height limitations surrounding airports should be in the zoning districts that surround the airport as shown on the map in the Comp Plan, etc.

4. Height Restrictions (cell towers, private antennas, flag poles, public utilities, etc.)

Discussion: Since Whatcom County has a separate chapter for Wireless Communication Facilities (WCC 20.13) and cell towers are obviously going to exceed the typical height restrictions of the general zone district, staff has assumed that this chapter is exempt from the general height restrictions of the given zone district. However, the code should specifically state that cell towers are exempt from the height restrictions of the specific zone and may even want to consider a maximum height restriction.

However for Public Utilities (WCC 20.82) you can no longer assume there is or is not a height restriction. A Public Utility can be utility lines, sanitary sewer, pipelines, railroads, pump houses, equipment houses, electric substations and radio and television stations. Radio stations and television stations may broadcast through several antennas that make up the broadcast signal. This code does not specifically state that this chapter is exempt from height restrictions of the applicable zone district. Therefore, if not noted in the code, one must assume that public utility antennas are not exempt and cannot exceed the height restriction of the specific zone.

IV. Complexities of Code Enforcement

This section was added to reiterate the undeniable challenges faced by Code Enforcement that do not pertain to any inconsistencies in the code or the need to adopt additional regulations. The following is a list of some of the issues that impact Code Enforcement from processing complaints effectively and in a more timely fashion:

- Time to Process: It used to be easy to simply send a Notice of Violation, require someone to comply within 30-days, and then close the case. Over the years two things have been added to the equation: 1) More people hire Land Use Attorneys; and 2) People don't care if we issue them fines because they don't care about their credit or whether they're sent to collection. Attorney involvement often results in compliance, but typically not until after many months or years of negotiations and agreed upon extensions.

  Sometimes the cases are appealed which result in additional staff time and assistance from our Prosecuting Attorney. (This past year, the fee for an appeal went down while the time to process an appeal increased.)

- When staff assesses penalties it does not mean the site will be brought into compliance. The County does not have an abatement fund. We do not abate properties or place liens against a property. Therefore, if someone elects not to bring their site into compliance, fines no longer matter. We've exhausted all resources.

- Prioritization: PDS has an Administrative Policy (PL1-76-001Z) for prioritizing enforcement cases:

High Priority Violations – Includes, but is not limited to, information that indicates a significant threat to public safety, property, and/or the environment.

Moderate Priority Violations – Includes, but is not limited to, information that indicates a probable, though not imminent, threat to public safety, property, and/or the environment.

Low Priority Violations – Includes, but is not limited to, information that does not indicate a probable/imminent threat to public safety, property, and/or the environment, although these cases may have included activities requiring prior review and/or permit approval through PDS. Low-priority violations may also include issues that are substantively civil in nature.

Since the enforcement staff does not do 100% code enforcement, and given the length of time it takes to process a code violation (to the point of compliance) staff only processes high priority cases.

The reality, however, is that most cases received by the public are assigned either a moderate or low priority status. This results in the public being very frustrated with staff since we are not able to process their complaint. We have to remember that regardless of the priority level given to their case, for the citizen, the on-going violation is negatively impacting their quality of life. It is equally frustrating for staff to receive the negative brunt of their frustration when there is simply nothing more we can do.

- No Enforcement Outside PDS: Most offices, outside of PDS, lack their own enforcement capabilities. Even if they don't have a separate enforcement staff, they should have the ability to enforce their code. For example, the Whatcom County Health Department has the authority to enforce their code and they do so by issuing civil infractions.

  Other departments don't have enforcement language written in their code and therefore have no enforcement authority. They assume that PDS can enforce their regulations when in fact, we can't.

  For example, Public Works, Engineering has no means to enforce their development standards unless it is part of an application for a commercial building permit or through another land use permit. If a business is being operated from a site that does not have a structure, such as the operation of a contractor's off-site equipment and storage yard, then a permit is not applicable and engineering has no ability to enforce their stormwater, traffic and access requirements because they have no means to review the project or collect fees.

  Another example is with the Public Works, Division of River and Flood. Since they don't have any enforcement authority they have no choice but to use our department to try to enforce their issues (which we typically have to do by creative enforcement through the Critical Areas Ordinance).

- Co-Workers: One of the greatest challenges for the Code Enforcement Team is in regard to our own co-workers. Every inspector sees violations. The Assessor's may go to a site where there are multiple violations, the Fire Marshal's Office may go to a fire resulting from the improper storage of flammables associated with an illegal business, and employees from the Division of River and Flood may see structures in the flood plain or floodway that require immediate removal. When this happens, staff drops everything and attends to their emergency. As a result, staff never gets to process the high priority cases from the public because we're processing the high priority cases brought to us internally. This also happens with cases that come to us through the County Council.

Most jurisdictions require each department to do their own enforcement. Only when they have exhausted all resources is it turned over to code enforcement or to the Prosecuting Attorney's Office.

- Interns: In the past our department had interns and support staff to assist with the simple but arduous tasks of doing research, pulling records, filing, etc. We ceased using interns from Western several years ago but they were a great asset and it was a benefit to both parties. If Code Enforcement had an intern (or one we shared with Current Planning) we could spend more time doing code enforcement. Instead, we spend too much of our time doing clerical duties and returning calls. We've already talked to Sam about this request and are hopeful we can bring interns back to PDS.

- Staffing Issues: The lack of staff throughout Planning and Development Services is the main reason we are unable to function effectively. There was once over 27 employees in Natural Resources/Current Planning. Now there are eight (eleven if you include Code Enforcement). In the past we had staff with expertise in a given area of assignment to process the permits needed to bring the site into compliance.

  Now when code enforcement issues a Notice of Violation to a property owner and a building permit, shoreline permit, variance or other land use permit is needed, then the code enforcement officer processes these permits in addition to handling the enforcement case. Due to the time it takes to process the more difficult land use permits there is very little time remaining to do enforcement.