

<i>CLEARANCES</i>	<i>Initial</i>	<i>Date</i>	<i>Date Received in Council Office</i>	<i>Agenda Date</i>	<i>Assigned to:</i>
<i>Originator:</i>		10/16/2018		10/23/2018	Planning Committee
<i>Division Head:</i>				10/23/18	Introduction
<i>Dept. Head:</i>	<i>[Signature]</i>	10.16.18		11/7/18	Hearing
<i>Prosecutor:</i>					
<i>Purchasing/Budget:</i>					
<i>Executive:</i>					

TITLE OF DOCUMENT:

Discussion on proposed Ordinance amending WCC Chapter 24.11, Drinking Water

ATTACHMENTS:

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

Should Clerk schedule a hearing? () 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.)

Discussion on proposed ordinance amending WCC Chapter 24.11 Drinking Water to allow additional language regarding Water Associations

COMMITTEE ACTION:

10.23.2018: Discussed

COUNCIL ACTION:

10/23/2018: Substitute Introduced 4-2, Donovan and Browne opposed

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.

ORDINANCE NO. 2018-_____

AMENDING WHATCOM COUNTY CODE CHAPTER 24.11, DRINKING WATER

WHEREAS, Whatcom County is responsible for determining water availability in connection with property development and issuance of building permits, standards for which are set forth in Chapter 24.11 WCC; and

WHEREAS, the County Council finds the proposed amendment to be in the best interest of public health, safety, and welfare; and

WHEREAS, legal notice requirements have been met; and

WHEREAS, the Whatcom County Council hereby adopts the following findings of fact and conclusion:

FINDINGS OF FACT

1. Under RCW 90.03.015, a "municipal water supplier" is a water purveyor which supplies water for fifteen or more residences or a non-resident population of twenty-five or more people for sixty or more days per year, or for government purposes, or to distribute for one of these purposes; and
2. Under RCW 43.20.260, a municipal water supplier "has a duty to provide retail water service within its retail service area if: (1) Its service can be available in a timely and reasonable manner; (2) the municipal water supplier has sufficient water rights to provide the service; (3) the municipal water supplier has sufficient capacity to serve the water in a safe and reliable manner as determined by the department of health; and (4) it is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation . . ."; and
3. Many municipal water suppliers are organized as private entities such as water associations, clubs, or community groups (all hereafter referred to as "water associations"); and
4. Other municipal water suppliers are public municipal corporations, which include without limitation water districts, public utility districts, cities, and towns ("municipal corporations"); and
5. Municipal corporations, including water districts, are local governments under which all voters residing within their boundaries, customers and non- customers alike, have the right to vote for their elected officials; and
6. Municipal corporations are governed by and subject to the Open Public Meetings Act, the Public Records Act, the Code of Municipal Ethics, and many other laws governing public entities, in the public interest; and

7. Some water associations may be municipal water suppliers under the RCW 90.03.015, but they are not municipal corporations, are not subject to the aforementioned laws governing municipal corporations, and do not afford the same public protections, rights, or processes available to citizens of municipal corporations; and
8. Though a municipal water supplier has a duty to serve a property with water if service can be made in a timely and reasonable manner and the other criteria are met, the only definition of "timely" in state law is when water can be provided to an applicant within one hundred and twenty days, but there is no day designated as the beginning of the 120 days (RCW 70.116.060(3)), and there is no definition of "reasonable" anywhere in state law; and
9. The lack of criteria or standards for what constitutes "reasonable" service has caused disputes between water associations and their customers and potential customers; and
10. The Whatcom County Council determines that it is not reasonable for a water association to require a property owner of four (4) or fewer single-family certified lots of record with an adequate and legal alternate water supply available, to extend a water association's water main more than five hundred feet (500'), due to the likely expense and potential lack of explanation to or recourse for the applicant.

CONCLUSION

The subject amendments are consistent with the Whatcom County Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that Whatcom County Code 24.11 is hereby amended as outline in Exhibit A to this ordinance.

BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional; such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

ADOPTED this _____ day of _____ 2018.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Council Clerk

Rud Browne, Chairperson

APPROVED as to form:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**

Civil Deputy Prosecutor

Jack Louws, Executive

() Approved () Denied

Date: _____

EXHIBIT A

Chapter 24.11 DRINKING WATER

CHAPTER 24.11.040 Definitions

"Water association" means any purveyor of public water that is not organized as a municipal corporation, regardless of how the entity refers to itself. A water district governed by RCW Title 57 or any other water purveyor organized as a municipal corporation is not a water association.

CHAPTER 24.11.050 General requirements

- A. Applicants must submit all required forms, letters, and documents to the director.
- B. The director will consider applications for water availability proposing to use ground water, spring water, surface water, sea water or rainwater.
- C. The director shall evaluate the availability of a public water system prior to approving the use of a private water system. If it is determined that a public water system is available and willing to provide water, the applicant must connect to that public water system when:
1. The applicant proposes to use surface water, spring water, rainwater, or contaminated ground water; or
 2. The applicant proposes to build on a lot located in a short subdivision or long subdivision that Whatcom County approved based on the availability of public water; or
 3. The existing public water system has a water main adjacent to the property line of the applicant and connection is consistent with RCW 36.70A.110(4); or
 4. The existing public water system has defined a "service area boundary" in accordance with the Whatcom County Coordinated Water System Plan which includes the property of the applicant.
- D. Notwithstanding the foregoing, The County shall allow the applicant to choose not to connect to a water association within the boundaries of which his or her property is located if the applicant meets all of the criteria listed in subsection 1 of this section, subject to subsection 2.
1. The applicant requested in writing a denial of service decision from said water association and has not received back a completed and signed WCHD denial form or other written response denying service within thirty (30) days of the request, and meets the criteria listed below, subject to subsection 2:
 - a. The applicant's nearest property boundary is more than five hundred feet (500') from the nearest water association main of adequate size and pressure for the proposed use; and
 - b. The application is for not more than four (4) connections on not more than four (4) existing certified legal lots of record for single family residences and/or associated accessory dwelling units, and is not an application for a short subdivision; and

c. The proposed use is otherwise consistent with Title 20 of the Whatcom County Code, and

d. As of the date of application for director approval of evidence of adequate water, the applicant has an adequate and legal water supply for each proposed use.

2. Unless the below requirements are waived by the water association, the applicant shall execute and record instruments that run with the property to accomplish the following:

a. The applicant shall execute and record a perpetual utility easement for the benefit of the water association, to water association standards, reasonably sufficient to allow the water association and its successors to install a water main and appurtenances on the applicant's property, for the purpose of a future main extension. The easement shall be parallel to and abutting a dedicated road right-of-way; all or a portion may be in another location that does not unduly impair the applicant's present and future use of the lot.

b. The applicant shall sign and record a covenant against his or her property for the benefit of the water association which requires a future extension and connection to the water association system at the applicant's expense, in the event the water association water main is extended to within five hundred feet (500') or less of the applicant's nearest property line.

3. This section D applies to water associations only, which are defined as any purveyor of public water that is not organized as a municipal corporation, regardless of how the entity refers to itself. This section does not apply to municipal corporations such as water districts, public utility districts, cities or towns.

E. The director will only approve a private or Non Group B two-party well for proposed short subdivisions or long subdivisions when analytical results of untreated water samples for primary inorganic or organic contaminants do not exceed a maximum contaminate level (MCL) adopted by Washington State Department of Health.

F. Purveyors of public water systems and private water system applicants must comply with Washington State Department of Ecology water right requirements and must demonstrate that they have an adequate water supply for their proposed service per WCC 24.11.060. Compliance will include, at a minimum, possession of a water right permit or certificate for:

1. All surface water sources excluding sea water.
2. All ground water sources using more than 5,000 gallons per day.
3. Irrigating more than one-half acre of lawn or noncommercial garden.

(Ord. 2018-020 Exh. A; Ord. 2013-028 § 2 Exh. B; Ord. 2002-024).