

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Terry Galvin	TG	02/02/94		2/8/94	Council Introduction
Division Head: Dan Taylor	DT	2/3/94		3/8/94	Hearing
Dept. Head: Nate Brown	NB	2/2/94		3/15/94	Work Session
Prosecutor:	AF	2/2/94		3/22/94	P&D/Council
Purchasing/Budget:					
Executive:					

**SUBJECT:** An Ordinance amending Whatcom County Code, Chapter 12.08 Development Standards, to add new language authorizing Development Standards, their format and procedures

**ATTACHMENTS:** Proposed Ordinance  
 Agency Report with attached Staff Report  
 (for Staff Report and Planning Commission Minutes see attachments to Development Standards Regulations Agenda Bill)

**SUMMARY STATEMENT:** Please complete sections of box as appropriate & explain the item below.

Related County contract #: n/a	Should Clerk schedule a hearing? NO /X/ YES / / Requested date:
Amount budgeted for this item/project: \$ n/a	Is it (or will it be) within budget? YES / / NO / / (Please explain below) n/a
Budget line item number(s): n/a	

This Ordinance amends Whatcom County Code, Chapter 12.08 relating to development standards, to add new language authorizing and providing administrative protocol for the creation and administration of Development Standards. The Planning Commission's major amendments to staff's draft related to the role of the Technical Advisory Committee and the appeals process. These items have been substantially improved as a result of these changes.

Upon approval of this Ordinance the Council may want to begin the appointment process of the seven member TAC.

**ORIGINATOR'S RECOMMENDED ACTION:** The Director of Planning and Development Services recommends Council accept the Planning Commission recommendation and adopt the proposed ordinance.

**COMMITTEE ACTION TAKEN:**

**COUNCIL ACTION TAKEN:**

- 2/8/94: Council Introduction
- 3/8/94: Hearing
- 3/15/94: Work Session
- 3/22/94: Council adopted the ordinance. 7-0  
 (with amendments)

**Related File Numbers:**

**Ordinance or Resolution Number (this item only):**

SPONSORED BY: Planning

PROPOSED BY: Council

INTRODUCTION DATE: 2/8/94

ORDINANCE NO. 94-018

AN ORDINANCE AMENDING WHATCOM COUNTY CODE, CHAPTER 12.08 DEVELOPMENT STANDARDS, TO ADD NEW LANGUAGE AUTHORIZING DEVELOPMENT STANDARDS, THEIR FORMAT AND PROCEDURES.

**WHEREAS**, pursuant to RCW 36.70.550, a technical committee consisting of representatives from the Buildings and Code Administration, the Division of Engineering, and the Planning Department prepared proposed amendments to the WCC Chapter 12.08 authorizing development standards; and

**WHEREAS**, the County Council on July 13, 1993 reviewed the proposed amendments and requested they be forwarded to the Planning Commission to begin the formal review process; and

**WHEREAS**, a Determination of Non-Significance was issued on August 23, 1993; and

**WHEREAS**, pursuant to RCW 36.70.590, legal notice was published in the Bellingham Herald on Thursday, September 9, 1993; and

**WHEREAS**, the Planning Commission held a public hearing on September 21, 1993 and held the written record open until October 1, 1993; and

**WHEREAS**, the Planning Commission held work sessions on October 13, November 10, and December 8 and 15, 1993, and after due deliberation and consideration of all testimony approved the staff recommendation with amendments; and

**WHEREAS**, the Council at a public meeting on February 22, 1994, reviewed and approved the Planning Commission recommendation; and

**WHEREAS**, the Council found the amendments in the best interest of the public health, safety, and welfare; and

**WHEREAS**, the Council has adopted the following Findings and Conclusions:

Findings

1. The existing enabling language in Chapter 12.08 is vague and creates no clear relationship between comprehensive plans, regulations, and development standards resulting in inconsistent language in all three documents.

- 1 2. There is currently no clear process through which this relationship can be  
2 established.
- 3
- 4 3. The existing regulations and development standards do not provide the flexibility  
5 necessary to accommodate innovative land use development, changing conditions  
6 or unique circumstances.
- 7
- 8 4. On December 6, 1984, the County Council passed Ordinance No. 84-106, adopting  
9 the Whatcom County Development Standards. These standards have not been  
10 significantly updated since that time.
- 11
- 12 5. There is presently strong pressure locally and through State legislation to provide  
13 more comprehensive development standards which are more closely tied to and  
14 better integrated with existing and proposed State and local land use programs.

### 15 Conclusions

- 16
- 17
- 18 1. The proposed Enabling Ordinance is needed to provide clear direction for the  
19 development of and administration of Whatcom County regulations and  
20 development standards.
- 21
- 22 2. The proposed Enabling Ordinance will clarify the relationship between legislative  
23 and administrative requirements and provide clear direction and protocol for the  
24 development and adoption of development standards in Whatcom County; and
- 25
- 26 3. The regulatory language found in Exhibit A provides the necessary regulatory  
27 authority for the development of a Stormwater Management Chapter as the first  
28 installment of a complete revision and update of the 1984 Development Standards.
- 29
- 30 4. Adoption of this language is in the public interest since it would further the  
31 objectives and goals of the Comprehensive Plan and establish a consistent policy  
32 for the review of road and drainage improvements and land alteration activities.
- 33
- 34 5. The enclosed language will provide the necessary flexibility to accommodate  
35 innovative land use development, changing conditions and unique circumstances.
- 36

37  
38 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that:


39  
40 Section 1. The Whatcom County Code, Chapter 12.08, Construction Standards, is hereby  
41 amended by creating a new section, 12.08.035, to add new language authorizing  
42 development standards, their format, and procedures. (Exhibit A)

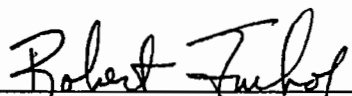
43  
44 Section 2. Adjudication of invalidity of any of the sections, clauses, or provisions of this  
45 Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part  
46 thereof other than the part so declared to be invalid.

ADOPTED this 22nd day of March, 1994.

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

ATTEST:

  
\_\_\_\_\_  
Ramona Reeves, Council Clerk

  
\_\_\_\_\_  
Robert Imhof, Chairperson

APPROVED as to form & content:

Approved ( ) Denied

  
\_\_\_\_\_  
Karen Frakes, Civil Deputy Prosecutor

  
\_\_\_\_\_  
Shirley Van Zanten, Executive

Date: 5-9-94

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**EXHIBIT A**

**12.08.035 Authorization of Development Standards,  
Their Format and Procedure**

**PURPOSE**

Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County Development Standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with County regulations.

The Whatcom County Development Standards are not intended to establish new land use regulations or levels of service provided by Whatcom County. The Whatcom County Development Standards shall be used by public officials and citizens in the planning and implementation of development projects within the county and are intended to provide a service to citizens in this process. It is the intent of these standards to eliminate arbitrary, subjective, and independent decisions throughout the development process. These standards are also intended to provide flexibility and responsiveness to individual site characteristics and projects, and to encourage and support innovative development design solutions which meet or surpass the standards required by Whatcom County through the establishment of Minimum Performance Requirements. It is expected that the process established hereby will enable a dynamic and continuous improvement of Whatcom County's development activity.

**SCOPE**

All development activity within Whatcom County shall be subject to the administrative and technical application of Whatcom County Development Standards. The establishment of these standards is based strictly upon technical application of regulatory requirements. Any deviation from these standards shall be permitted only by adherence to the procedures established herein.

**Regulatory Authority**

Regulatory provisions are definitive and establish the basis for administering the Whatcom County Development Standards. The following regulatory functions must be established by legislative authority prior to administrative adoption of the Whatcom County Development Standards:

- A. Minimum levels of health, safety, public welfare and service provided by the County.
- B. Underlying basic principles which establish a definition of what activity is and is not allowed.

- C. General principles which are subjective in nature.
- D. Penalties and fines.
- E. Local implementation of Federal and State statutory requirements.
- F. Specific physical, social, economic, and environmental goals which are specified within each chapter of the Standards.

#### **Administrative Authority**

The Whatcom County Development Standards shall be established as an administrative function completely dependent upon regulatory authority. These standards shall be:

- A. Based upon technical application of professional practices.
- B. The basis for dimensional requirements, analytical functions, reporting, and documentation.
- C. Specifically dependent upon legislative authority.
- D. Detailed, instructional, objective, factual, and focused on specific issues.
- E. The basis for establishing how a permitted activity is allowed or how a prohibited activity is avoided.

The preceding separation of legislative and administrative requirements shall be used to distinguish what shall be adopted as new regulation; what shall be amendments to existing regulation; and what requirements are administrative or technical in nature and, therefore, adopted as part of the Development Standards.

#### **APPLICABILITY**

All development activity shall be subject to the Whatcom County Development Standards unless specifically exempted by these standards.

#### **STANDARDS ADOPTION AND MODIFICATIONS**

##### **Adoption and Major Modification**

The Whatcom County Development Standards shall be adopted through an administrative process. Each chapter of the standards shall identify the regulatory basis for the standards and, as such, cannot be presented for administrative approval prior to the legal adoption of the regulatory statute. Regulatory amendments and additions shall be approved in accordance with RCW 36.70 and shall receive full legislative process in accordance with the rules established therein.

The Technical Advisory Committee identified in this ordinance shall make recommendations to the County Executive based upon its review of a proposed update or major modification of the Development Standards. Upon completion of the review, the committee shall make recommendations to the County Executive, who shall, then, formally take action on all proposals for new chapters, sections, or major modifications, subject to review by the County Council, should a majority of the Council or the County Executive so request. The County Executive shall not be limited in the number of modifications that can be made to these standards.

#### Integration of Development Standards

While each chapter of the Development Standards may be presented sequentially for final approval, the TAC shall develop the chapters in a coordinated and integrated fashion, as the elements of any one chapter are to at least some extent dependent upon some elements of other chapters.

#### Minor Modifications

Minor modifications, those affecting procedural or reporting criteria, may be approved by the County Executive without a recommendation from the Technical Advisory Committee or formal action by the County Executive; provided, however, that such modifications shall not exceed the authority of the County Executive. Adequate public notice and official publication of these modifications shall be provided.

### **OFFICIAL TITLES AND DUTIES**

#### Technical Administrator

Each chapter of the Whatcom County Development Standards shall be administered by a Technical Administrator who shall be a qualified professional in the area being administered. The Technical Administrator shall be specified by position title.

The Technical Administrator shall be responsible for making administrative decisions related to each specified chapter or section of the Development Standards in accordance with the provisions established herein.

The Technical Administrator may delegate specific responsibilities to other individuals within the area of expertise of responsibility associated with that person's position.

#### Permanent Technical Advisory Committee

A Whatcom County Technical Advisory Committee (TAC) shall be established to review Development Standards prior to modification.

The TAC shall be comprised of seven voluntary members appointed by the County Executive and approved by the County Council.

Composition: The TAC shall consist of seven volunteers, including certified or licensed

practicing professionals to include a licensed and practicing land surveyor, and three licensed and practicing civil engineers.

Terms: Appointment or re-appointment to the TAC shall be made for a two year period; except, that upon adoption of the Ordinance, three members of this committee shall be appointed for three years during the first term to ensure continuity during re-appointments. Following this first term, all TAC members shall be appointed for a two year term.

Criteria for Appointment: Each member of the TAC shall have professional expertise that relates to Development Standards. Each member shall be able to demonstrate a good understanding of the Whatcom County administrative process, regulations and standards. At least five members of the TAC shall be licensed or a certified practicing professional in the areas under review.

Other Professional Expertise: In the event that the County Executive or the TAC determines that the TAC does not have adequate expertise to address any portion of Development Standards adoption or amendment, the County Executive or the TAC may solicit expertise from other licensed, or certified practicing professionals with the expertise to provide review and make recommendations.

Duties of the TAC: The TAC shall review all proposed standards and modifications and permit applications which propose project designs deemed by the Technical Administrator not to be in strict compliance with the Development Standards to ensure:

- A. Compliance with land use regulations and comprehensive plans;
- B. Consistency with accepted professional practices;
- C. Consistency with objectives through evaluation of technical and dimensional requirements.

## **STRUCTURE**

The Development Standards shall be organized into independent chapters. The first chapter shall, at a minimum, include the Enabling requirements of this ordinance, financial responsibilities, general administrative requirements, and definitions.

Subsequent chapters shall deal specifically with a focused program or issue; such as, but not limited to, stormwater management, road construction, fire protection, land disturbance, critical areas, or any other program or service requiring technical administration. Each chapter shall contain the following:

Regulatory Authority: Regulatory requirements pertaining to the subject matter contained in the specific chapters shall be cited within the first section of each chapter. Regulatory authority shall be established with clear references to code, titles, and associated text. No administrative standard will be established without the regulatory authority outlined in the first section of each chapter. This section shall be created to establish what the physical, social, economic, and environmental requirements of each development standard are, in



order to create and evaluate proposed technical requirements, as well as for use during the Administrative Variance Procedure.

Exemptions: A section shall be incorporated into each chapter and titled, "exemptions." All activities which are exempted from the application of technical requirements, including associated thresholds, shall be clearly delineated in this section. These exemptions shall apply only to the activities cited within this chapter.

Technical Administrator: A section shall be created within each chapter that identifies the technical administrator responsible for administering the requirements of the chapter.

Administrative Requirements: A section shall be created to establish or refer to minimum, submittal requirements in order to ensure compliance to the standards set forth in the chapter. This shall include a description of reporting methods and plan requirements with specified calculation methods also included.

Technical Requirements: A section shall be created that will identify minimum technical requirements, dimensional requirements, and details for the implementation of the associated, regulatory activity.

Appendices: Each chapter shall, if needed, contain appendices which provide plan and section drawings, tables, and various references.

## **EXEMPTIONS**

Exemptions to the Whatcom County Development Standards shall be provided through regulatory provisions in each chapter of the standards. Exemptions are allowed in order to recognize that there is a minimum level of impact below which it is not in the best interest of the County to regulate development activities.

The creation of exemptions to Whatcom County Development Standards can occur only if the following criteria can be met:

- A. Technical information exists to document that the exempted activity can comply with minimum performance requirements established by Whatcom County regulations.
- B. The legislative intent of all Whatcom County regulations is strictly observed.
- C. The exemption is consistent with Federal, State, and local laws.

## **ADMINISTRATIVE VARIANCE PROCEDURE**

Alternatives to any specific requirements of the Development Standards may be considered through an administrative variance procedure. The technical administrator will be responsible for reviewing all applications for variances to the Development Standards and shall be responsible for making variance determinations. Variances to Whatcom County Development Standards will be issued upon receipt of technical documentation acknowledging that minimum performance requirements will be met.

### Criteria for Variance Approval

- A. The variance provides an equivalent result, as provided for in minimum performance requirements, that is in the overriding public interest; and the objectives of safety, function, environmental protection, and facility maintenance, based upon sound engineering, are fully met;
- B. There are special physical circumstances or conditions affecting the property such that the strict application of these provisions would deprive the applicant of all reasonable use of the parcel of land in question and every effort to find creative ways to meet the intent of minimum performance requirements has been made;
- C. The granting of the variance will not be detrimental to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, nor injurious to the quality of waters of the State; and
- D. The variance is the least possible exception that could be granted to comply with the intent of the minimum performance requirements.

Any variance request must be made to the technical administrator. The technical administrator will then establish minimum information requirements that shall be specified for each issue. No variance shall be issued which shall have the overall impact of reducing safety standards or levels of service, or which will not comply with Whatcom County regulations.

An administrative variance to the standards will be subject to a fee that shall cover the full cost of variance review.

### **APPEALS**

The applicant may appeal any final decision of a technical administrator. The appeal shall be made to the TAC.

The TAC shall have the authority to hear and recommend to the County Executive, in conformity with this Ordinance and the official Whatcom County Development Standards, changes to any order, requirement, permit decision or determination made by an administrative official in administering the official Whatcom County Development Standards.

An appeal must be filed in writing within twenty days of the action being appealed and the County must make a final decision regarding this appeal within 60 days of the filing.

The cost of this appeals process shall be borne by the applicant. Staff time shall not be factored into this cost.

## **SPECIAL DISTRICTS**

The Development Standards may identify or reference special districts, special management areas or subareas subject to individual, more restrictive standards. These districts shall be referenced specifically in each chapter and shall clearly be identified regarding the applicability of each requirement.