WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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FEB 01 2004
WHATCOM COUNTY COUNCIL

NO. 2005-105

TITLE OF DOCUMENT: Zon2004-00026, Mushroom Substrate Facilities Siting Requirements.

ATTACHMENTS: Proposed Ordinance, Planning Commission Motion, Staff Report and Planning Commission Minutes. Additional background material is available at PDS Office, 5280 NW Drive, Suite A.

SEPA review required? (x) Yes ( ) No
SEPA review completed? (x) Yes ( ) No

Should Clerk schedule a hearing? ( ) Yes (X) 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.)

The proposed ordinance adds a new chapter to Title 20 of Whatcom County Code. The purpose of the new chapter is to provide siting criteria for new mushroom substrate production facilities. The production of mushroom substrate has the potential to produce odors that are highly offensive to neighboring property owners. This ordinance seeks to locate any new facilities in areas that would have the least potential to create nuisance odor problems for existing communities. The Ordinance seeks to distinguish between on-farm substrate producers and “commercial” producers by limiting the total volume of substrate material produced on-farm and requires larger scale producers to locate in the Heavy Impact Industrial zone.

This ordinance is a companion ordinance to the recently adopted Health Code – WCC 24..12, which addresses design, operation and performance requirements of mushroom substrate production facilities (Ord 2004-054). This ordinance will supercede Ordinance 2004-053 – the latest interim ordinance that addresses mushroom composting.

COMMITTEE ACTION:
2/22/2005: Held in committee
3/15/2005: Held in committee
4/12/2005: Held in committee
4/26/2005: Amended version to be introduced May 10, public hearing to be held May 24
6/21/2005: P&D Committee Discussed. The committee recommends to the council to have an executive session on this item at the next Committee of the Whole (due to pending litigation)

COUNCIL ACTION:
2/8/2005: Introduced
5/10/2005: Substitute Introduced
5/24/2005: Amended – hearing on new version scheduled for 7/12
6/7/2005: Introduced
7/12/2005: Adopted 4-3, Fleetwood, Crawford, McShane opposed, Ord. #2005-057

Related County Contract #: Related File Numbers: Ordinance or Resolution Number: Ord. #2005-057

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 # 2005-057

AMENDING THE TEXT OF THE OFFICIAL WHATCOM COUNTY ZONING ORDINANCE, SPECIFICALLY THE ADDITION OF CHAPTER 20.15 - MUSHROOM SUBSTRATE PRODUCTION FACILITIES SITING REQUIREMENTS, ESTABLISHING LOCATIONAL CRITERIA AND ZONING DISTRICTS IN WHICH SUCH FACILITIES WILL BE ALLOWED

WHEREAS, the County Council initiated and passed both Emergency Ordinance 2002-061 and interim ordinance 2002-068 which temporarily amended WCC 20.40, establishing criteria for siting mushroom composting as a conditional use within the agricultural zoning district; and

WHEREAS, the County Council continued the interim conditional use criteria for siting mushroom composting within the agricultural district to the present time; and

WHEREAS, in October 2004, the Whatcom County Board of Health adopted WCC 24.12- Mushroom Substrate Production Facility Rules (Ordinance 2004-054), which regulates operation and design requirements for new, expanding and renovated facilities; and

WHEREAS, Title 20 needs to be amended to complement WCC 24.12 by establishing locational criteria and defining zoning districts in which mushroom substrate production facilities will be allowed; and

WHEREAS, pursuant to WCC 20.90, proposed zoning text amendments shall be considered; and

WHEREAS, a determination of non-significance was issued under the State Environmental Policy Act (SEPA) on November 11, 2004; and

WHEREAS, legal notice was published in the Bellingham Herald on, November 27, 2004; and

WHEREAS, the Planning Commission held a public hearing on proposed amendments on Thursday, December 9, 2004, and considered all testimony; and

WHEREAS, the Planning Commission made amendments to the proposed text and recommended approval, as amended, on January 13, 2005; and
WHEREAS, in late January, 2005, the Planning Commission forwarded its recommendations to the Whatcom County Council; and

WHEREAS, on February 22, March 15, and April 26, 2005, the Council’s Planning and Development Committee reviewed the Planning Commission’s recommendations; and

WHEREAS, following considerable deliberation, the Planning and Development Committee forwarded proposed amendments to the full Council; and

WHEREAS, on April 26, 2005, the County Council approved a modified version of the Planning Commission’s recommended text for public hearing on May 24, 2005; and

WHEREAS, a public hearing was held on May 24, 2005, at which time the County Council received testimony and conducted deliberation on the merits of the proposed ordinance; and

WHEREAS, the Council makes the following findings of fact and conclusions:

FINDINGS OF FACT

1. A Determination of Non-Significance was issued on November 11, 2004.
3. The Planning Commission held a public hearing to consider the proposed text amendment on December 9, 2004, and deliberations on January 13, 2005.
4. The County Council requested a text amendment adding a new chapter of Whatcom County Code 20.20.15 (Mushroom Substrate Production Facilities Siting Requirements) to require applications for mushroom substrate facilities to be processed as administrative or conditional use permits, restrict new mushroom substrate production facilities to Heavy Impact Industrial (WCC 20.68), and Agriculture (WCC 20.40), require new and expanding mushroom substrate production facilities to comply with buffering and setbacks, establish commercial and on-farm mushroom production facilities definitions.
5. The Whatcom County Board of Health adopted WCC 24.12- Mushroom Substrate Production Facility Rules in October 2004 (Ord 2004-054). WCC 24.12 partially eclipses Ord 2004-053, the current interim ordinance to Title 20, the Zoning Ordinance. WCC 24.12 has been adopted to "protect public health from the potential negative impacts of mushroom substrate production facilities through the establishment of permit requirements and minimum design and operational standards" WCC 24.12.010(2).
6. Adverse human impacts are a major problem facing mushroom (Agaricus) compost production (Atmospheric Pollutants and Trace Gases, Noble, Hobbs, Dobrovin-Pennington, Misselbrook and Mead, 2001). Numerous studies, reports, lawsuits, and articles have documented that mushroom substrate production is an adverse human and environmental impact and constitutes noxious emissions to local communities.

7. Concern that current regulations were inadequate to protect the community from adverse human and environmental impacts and to provide aquifer protection, the County Council adopted an interim Ordinance (2002-068) to provide additional criteria and design standards for permitting mushroom substrate production facilities.

8. Noxious emissions from mushroom substrate production have been determined to be an impact to public health. The Whatcom County Board of Health has adopted WCC 24.12 – Mushroom Substrate Production Rules. These rules provide performance, design, and operational requirements to provide community protection from the potential adverse affects of mushroom substrate production.

9. This text (WCC 20.15) is a companion ordinance to the Mushroom Substrate Production Rules as contained in WCC 24.12. This text provides siting regulations (zoning district, buffers and setbacks) as well as distinguishes two types of mushroom substrate production facilities – commercial and on-farm.

10. Regulatory changes in the Fraser Valley floor of British Columbia, Canada now require mushroom substrate producers to conduct all substrate production indoors. This requirement led to increased interest in substrate production in Whatcom County. IMS, a Canadian substrate producer was the only permitted facility located in Whatcom County immediately after the rule changes in BC. The facility occupied by IMS was originally designed for solid waste composting and was only partially indoors. From April 18, 1999 through September 9, 2003, the Northwest Air Pollution Authority reports receiving 1,100 health, odor, and dust complaints on the operation. IMS entered into an agreement with the City of Ferndale and Whatcom County, which required them to vacate the site.

11. The British Columbia mushroom industry is over a 70 million dollar per year business and exports a large percentage of their production into US markets.

12. Noxious emissions generated by mushroom substrate facilities exhibit similar adverse human and environmental health impacts as do other high-impact industries, due to the potential for quantities of emissions from the mushroom substrate production process.
13. Industries known to emit large quantities of noxious emissions require careful
siting to minimize impacts to local communities and residents. Large buffers,
setbacks from adjacent properties, facility design and management
standards are commonly employed to mitigate the negative impacts of these
types of industries.

14. Mushroom substrate production without associated on-farm production is a
manufacturing business and as such is not permitted in the agricultural
zoning district.

15. The quantity of mushroom substrate is related to the quantity of noxious
emissions produced during the composting process. The quantity of noxious
emissions produced is directly related to the potential for the creation of
greater adverse human and environmental health impacts. It is a matter of
scale that prompts the threshold of 3,250 cubic yards of finished compost per
month as the dividing line between the size of the operation allowed in the
Agricultural zone and those required to locate in the Heavy Impact Industrial
Zone. An operation of this size (3,250 yards/month) would be roughly twice
the size of the largest on-farm mushroom producer currently operating in
Whatcom County (Ostrom). During the period from December 9, 2002
through November 29, 2004, the Northwest Air Pollution Control Authority
has received 16 noxious emission complaints on Ostrom. Expansion of
existing or newly sited on-farm mushroom substrate production facilities
would be required to comply with WCC 24.12 – Mushroom Production Facility
Rules. These rules would require expansion or new facilities to be completely
enclosed.

16. The British Columbia Mushroom Industry Advisory Committee found that
"Mushroom composting operations, unless properly designed, have the
potential to contaminate surface water courses, including fish bearing
streams, through storm water runoff. Of equal significance is the potential for
contaminating groundwater..."

17. Negative-pressure indoor mushroom substrate facilities can be effective in
reducing, but not eliminating noxious emissions. The amount of the reduction
is primarily dependent initially upon proper design and afterward upon proper
maintenance and operation. Therefore, siting high-impact manufacturing
businesses, like mushroom substrate production facilities, at least ½ mile
from residential areas has been found to reduce conflict and adverse effects.

18. A sufficient number of parcels exist in Whatcom County Agricultural and
Industrial zones to accommodate mushroom substrate production facilities as
contemplated in this ordinance.

CONCLUSIONS

1. The amendment is consistent with Growth Management Act, County Wide
Planning Policies, and Whatcom County Comprehensive Plan.
2. The proposed amendment complies with the approval criteria for amendments as stipulated in WCC 20.90.

3. The Whatcom County Council, in consideration of the analysis, findings and conclusions contained in the staff report concludes that the amendment to Title 20 as included in Exhibit A of this report be adopted.

4. This amendment is necessary to promote the health, safety, and welfare of Whatcom County residents.

**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.

Section 2. The adoption of this ordinance shall nullify the need for Ordinance 2004-053 – interim conditional use criteria for the siting of mushroom composting as a conditional use within the agricultural zoning district.

Section 3. 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 14th day of July, 2005.

ATTEST:

[Signature]

Dana Brown Davis, Clerk of the Council

APPROVED AS TO FORM:

[Signature]

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY WASHINGTON

[Signature]

Laurie Caskey-Schreiber, Council Chair

( ) Approved    ( ) Denied

Pete Kremen, County Executive
Date: 7/15/05

5
Chapter 20.15
MUSHROOM SUBSTRATE PRODUCTION FACILITIES

Sections:
20.15.010 Purpose.
20.15.020 Definitions.
20.15.030 Applicability.
20.15.040 Nonconforming uses and structures.
20.15.050 Permits and zoning.
20.15.060 Prohibited locations.
20.15.065 Prohibited Operations.
20.15.070 Buffer and setback requirements.
20.15.080 Design, development, and operational requirements.
20.15.090 Reserved.
20.15.100 Reserved.
20.15.110 Compliance with land use permit.
20.15.120 Permit submittal requirements.
20.15.130 Criteria for issuance of land use permit.
20.15.140 Reserved.
20.15.150 Reserved.
20.15.160 Closure of facility.
20.15.170 Appeals.
20.15.180 Severability.

20.15.010 Purpose.

The purpose of this chapter is to establish procedures and limitations governing the placement and permitting of all mushroom substrate production facilities.

The intent of these regulations is to ensure that these facilities are located in a manner that protects the County’s natural resources, conserves productive agricultural soils, and minimizes adverse human and environmental impacts, particularly noxious emissions associated with mushroom substrate production operations.

The production of mushroom substrate is a manufacturing activity which is not dependent upon agricultural or any other soils. To conserve those agricultural soils, mushroom substrate production facilities permitted on agricultural lands should be limited in extent and to production only for an on-site mushroom farm.

In addition, mushroom substrate production facilities should not be located contiguous to areas that have or are expected to have residential development at rural or urban densities. Commercial mushroom substrate production facilities should not be located on resource lands.
Where applicable, the permit review, approval process, and oversight of the operation shall be coordinated with the Whatcom County Health Department.

20.15.020 Definitions.

(1) "Active area" means any part of a facility where mushroom substrate production activities are conducted, including but not limited to related areas of feedstock (only excluding straw) storage, leachate and emission collection and treatment devices, and impervious surfaces.

(2) "Commercial mushroom substrate production facility" means a facility producing any mushroom substrate for off-site export, or a facility with 30,000 or more square feet of active area, or an on-farm mushroom substrate production facility with a traying volume of 3,250 or more cubic yards per month.

(3) "Expansion", as it pertains to facilities existing at the effective date of this chapter, means an increase in monthly mushroom substrate production over the average production of the three months prior to the effective date of this chapter.

(4) "Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements on the land.

(5) "Finished substrate" means substrate that has completed the fermentation process and is ready for pasteurization.

(6) "Mushroom substrate" means a highly specific, nutrient-rich product prepared from selective organic and inorganic material for the purpose of cultivating mushrooms.

(7) "Mushroom substrate production facilities" means "Commercial mushroom substrate production facilities" and/or "On-farm mushroom substrate production facilities."

(8) "Mushroom substrate production" means any stage of a process where the ingredients necessary for the production of mushroom substrate are assembled, blended, stored or fermented.

(9) "On-farm mushroom substrate production facility" means a facility producing mushroom substrate which is used exclusively on the same parcel or adjoining parcels to grow mushrooms, has less than 30,000 square feet of active area and has a traying volume of less than 3,250 cubic yards per month.

(10) "Traying Volume" means the total volume, expressed in cubic yards per month, of mushroom substrate produced on-site and then consumed on-site by growing mushrooms. Any unfinished mushroom substrate received shall be considered as produced on-site.

(11) "Well head protection area" means the area (surface and subsurface), designated by the Whatcom County Health Department, managed to protect ground water based public water supplies.

(12) "Unfinished Substrate" means feedstock that has been pre-wet, but is not yet finished substrate.
20.15.030 Applicability.

The requirements of this chapter shall apply to new mushroom substrate production facilities and to the expansion of existing mushroom substrate production facilities.

20.15.040 Nonconforming uses and structures.

Mushroom substrate production facilities in operation as of the effective date of this ordinance, including vested applications for such facilities, that do not conform to the requirements of this chapter are hereby declared nonconforming uses and shall be subject to the provisions of WCC 20.83 governing nonconforming uses. Any determination made under Chapter 20.83 WCC shall be governed by the definition of expansion in 20.15.020(3) and all applicable requirements of this chapter; provided that, in the event of any conflict between provisions, the more stringent standard shall apply.

20.15.050 Permits and zoning.

All new facilities and facility expansions shall be located and permitted according to the following tables.

1) Commercial mushroom substrate production facility:

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2) On-farm mushroom substrate production facility:

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20.15.060 Prohibited locations.

When reviewing applications for new mushroom substrate production facilities, the approving authority shall not locate mushroom substrate production facilities in the Water Resource Protection Overlay District, Stormwater Special Districts, the Recreation and Open Space District, well-head protection areas, nor within the 100-year floodplain.

20.15.065 Prohibited Operations.

On-farm mushroom substrate production facilities shall not ship any finished or unfinished mushroom substrate off-site. All mushroom substrate production not authorized pursuant to this chapter shall be prohibited.
20.15.070 Buffer and setback requirements.

(1) The facility’s active area shall meet the following minimum buffer requirements.
   (a) 2640 feet from the following zoning districts: Urban Residential, Rural Residential, Residential-Island, Rural, Commercial, Gateway Industrial, Light Impact Industrial, Point Roberts Special District, and Point Roberts Transitional Zoning.
   (b) 1000 feet from parcels located in the Rural Forestry district.
   The minimum buffer requirements may be increased for substrate production facilities proposed for the Agricultural zoning district if it can be demonstrated that such additional buffer is required to mitigate adverse impacts on nearby land uses.

(2) The facility’s active area shall meet the following minimum setback requirements.
   (a) 660 feet from property lines for an on-farm mushroom substrate production facility.
   (b) 1,000 feet from property lines for a commercial mushroom substrate production facility. The minimum 1,000 foot setback requirement may be reduced or eliminated for substrate production facilities proposed for the HII zoning district if it can be demonstrated that such additional setback is not required to mitigate adverse impacts on adjacent land uses.

(3) Where applicable, the facility shall provide buffers in accordance with the Whatcom County Critical Areas Ordinance.

(4) Notwithstanding any other provisions in this ordinance or in Title 20, on-farm mushroom substrate production facilities that are non-conforming shall be eligible for a variance from buffer or setback requirements if it can be demonstrated that such additional buffer or setback is not required to mitigate adverse impacts on adjacent land uses and if the criteria established in WCC 20.84.120 have been satisfied.

(5) The facility shall be designed to include any other conditions determined necessary during the review process.

20.15.080 Design, development, and operational requirements.

New mushroom substrate production facilities and the expansion of existing mushroom substrate production facilities shall be designed, developed, and operated in accordance with the provisions of WCC 24.12 - Mushroom Substrate Production Facility Rules. These are minimum requirements and shall be in addition to any other requirements, including those imposed in a project review process, which apply in the district where the facility is located.

In the event of a conflict between a provision of this chapter and a general requirement of this title, a provision of Chapter 24.12 WCC, or a requirement
imposed during the project review process, the more stringent provision shall
govern.

The following requirements shall also be met:

(1) The facility shall be designed, built and operated to meet the storm
water and drainage provisions of WCC 20.80.630, 20.80.632, 20.80.633, and
20.80.634.

(2) The facility shall be designed, built and operated in accordance with
applicable local, state, and federal ordinances and laws, including but not
limited to WCC Title 24 and Whatcom County’s SEPA ordinance.

(3) The applicant shall show evidence of adequate water availability to
support the proposed facility.

(4) The facility shall be designed, located and operated subject to any other
conditions determined necessary to mitigate potential adverse impacts
identified during the review process.

Nothing herein shall limit the County’s enforcement authority or remedies set
forth in Title 20 or elsewhere in law or equity for violations of this chapter or land
permits issued pursuant to this chapter.

20.15.090 Reserved.

20.15.100 Reserved.

20.15.110 Compliance with land use permit.

If a mushroom substrate production facility is operating in violation of its
land use permit conditions and the owner/operator does not resolve the violation
within 30 days, or other timeframe approved by the hearing examiner, the land use
permit may be suspended or revoked.

To avoid the suspension or revocation of the facility’s land use permit, the
owner/operator must demonstrate compliance with this chapter, the land use
permit itself, and all other permits and approvals, including but not limited to the
following:

(1) WCC 24.12 – Mushroom Substrate Production Facility Rules, and
(2) Local and state air quality and noise level requirements.

20.15.120 Permit submittal requirements.

(1) Prospective applicants for those facilities described in this chapter are
required to comply with WCC 24.12 – Mushroom Substrate Production
Facility Rules and obtain a Health Department permit. A joint pre-application
consultation with Whatcom County Planning and Development Services Land
Use Division and Whatcom County Health Department staff is required prior
to formal submittal of the land use application. The purpose of the pre-application consultation is for the applicant to provide the County with an overview of the project proposal and for the County to explain the steps involved in the review process and general permit submittal requirements for both the land use and Health Department permits.

(2) The following items shall be submitted to Whatcom County Planning and Development Services for any new application or application for expansion of a mushroom substrate production facility before a land use permit is issued.

(a) A complete land use permit application.
   (i) The permit application shall include:
       (A) An engineering report/plan and specifications that address the design and operational standards of WCC 24.12 – Mushroom Substrate Production Facility Rules.
       (B) A vicinity map having a minimum scale of 1:24,000 showing the area within one mile of the property boundaries of the facility in terms of existing and proposed man-made or natural features that may impact or be affected by the operation of the facility and the location of any identified critical areas.
       (C) A site plan which includes at a minimum, a scale drawing of the facility showing property lines, required buffers and setbacks, critical areas, site topography and existing drainage patterns, the locations and sizes of the straw and feedstock storage areas, all other active areas, material processing areas, fixed equipment, buildings with function identified, storm water and leachate collection devices, access roads, and other specifications determined during the review process.

(b) A complete SEPA checklist.

(3) If deemed necessary by the land use administrator, additional information may be required following a review of the initial permit application submittal.

20.15.130 Criteria for issuance of land use permit.

In addition to all other requirements set forth in this chapter and title, and any other controlling laws and ordinances, new applications or applications for expansion of an existing mushroom substrate production facility must show verification by the Whatcom County Health Department that the proposal complies with WCC 24.12 Mushroom Substrate Production Facility Rules as evidenced by either verification of an approved, or approvable Health Department Permit before a land use permit is issued.

20.15.140 Reserved.

20.15.150 Reserved.
20.15.160 Closure of facility.

The owner/operator of a mushroom substrate production facility shall notify the Whatcom County Planning and Development services director by certified U.S. mail at least 60 days in advance of abandonment or discontinuation of operation. The owner/operator shall comply with the closure plan approved by Whatcom County Health Department.

20.15.170 Appeals.

The hearing examiner shall have the authority to decide, in conformity with this chapter, appeals from any order, requirement, permit decision or determination made by an administrative official in the administration or enforcement of this chapter where more than one interpretation is possible, provided that such appeal shall be filed within 14 days of the action being appealed. The hearing examiner shall hear appeals under this chapter in the same manner as those appeals he has authority to hear under WCC 20.92.210(2).

Any such appeal shall be reviewed de novo by the hearing examiner as to the scope of review and the standard of review.

20.15.180 Severability.

Should any section, subsection, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this regulation.