**WHATCOM COUNTY COUNCIL AGENDA BILL**

<table>
<thead>
<tr>
<th>CLEARANCES</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Originator: Joshua Fleischmann</td>
<td></td>
<td>2/8/12</td>
<td></td>
<td>2/28/12</td>
<td>Council Introduction</td>
</tr>
<tr>
<td>Division Head: Roxanne Michael</td>
<td></td>
<td>2/9/12</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dept. Head Sam Ryan:</td>
<td></td>
<td>2/15/12</td>
<td></td>
<td>3/13/12</td>
<td>Council</td>
</tr>
<tr>
<td>Prosecutor</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchasing/Budget:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Executive:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TITLE OF DOCUMENT:**

*Settlement Agreement*

**ATTACHMENTS:**

Attachment A: Ordinance amending the Urban Residential Mixed Use (URMX) zone.
Attachment B: Settlement Agreement between Whatcom County and City of Bellingham.
Attachment C: Letter from the City of Bellingham

<table>
<thead>
<tr>
<th>SEPA review required?</th>
<th>( ) Yes</th>
<th>( ) No</th>
<th>Should Clerk schedule a hearing?</th>
<th>( ) Yes</th>
<th>( ) No</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPA review completed?</td>
<td>( ) Yes</td>
<td>( ) No</td>
<td>Requested Date:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**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.)

This proposal is in response to a settlement agreement entered into by the City of Bellingham and Whatcom County. The purpose of the settlement agreement was to settle and resolve any and all claims associated with the City’s challenge of County Ordinance No. 2011-008 with the Western Washington Growth Management Hearings Board. The proposal is to reduce the maximum allowable floor area of certain conditionally permitted non-residential uses in the URMX district from 5,000 square feet to 2,500 square feet.

**COMMITTEE ACTION:**

**COUNCIL ACTION:**

- 2/28/2012: Introduced
- 3/13/2012: Council Adopted 7-0
  - Ord. 2012-012

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

- AB2011-127

Ord. 2012-012

**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](http://www.co.whatcom.wa.us/council).
ORDINANCE NO. 2012-012

AMENDING WHATCOM COUNTY CODE (WCC) 20.24.161, TO REDUCE THE MAXIMUM ALLOWABLE FLOOR AREA OF CERTAIN CONDITIONALLY PERMITTED NON-RESIDENTIAL USES IN THE URBAN RESIDENTIAL MIXED (URMX) DISTRICT FROM 5,000 SQUARE FEET TO 2,500 SQUARE FEET

WHEREAS, Whatcom County Planning and Development Services received an application for a zoning text amendment. The application was given file number PLN2016-00013.

WHEREAS, In accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of the proposed zoning text amendment on September 23, 2010. A confirmation letter from the Department of Commerce was received on September 28, 2010.

WHEREAS, A SEPA Determination of Non-Significance was issued on November 23, 2010 in the Bellingham Herald subject to a 14 day comment period ending December 7, 2010.

WHEREAS, Notice of the Whatcom County Planning Commission public hearing for the subject amendment was published in the Bellingham Herald on November 28, 2010.

WHEREAS, The Planning Commission held a public hearing on the subject amendment on December 9, 2010. The Planning Commission voted 7-2 to forward a recommendation of approval to the Whatcom County Council for the subject zoning text amendment.

WHEREAS, The Planning and Development Committee amended the ordinance at the January 25, 2011 meeting, increasing the maximum allowable floor area of certain conditionally permitted non-residential uses in the Urban Residential Mixed (URMX) district from 2,500 square feet to 5,000 square feet.

WHEREAS, The County Council on January 25, 2011 moved to accept the Planning Commission recommendation, with the amendment from the Planning and Development Committee to increase the maximum allowable floor area of certain conditionally permitted non-residential uses in the Urban Residential Mixed (URMX)
district from 2,500 square feet to 5,000 square feet, and requested the Planning Department staff to prepare the ordinance accordingly.

**WHEREAS**, The County Council, on March 29, 2011, introduced an ordinance that would allow drive through services as a conditional use and increases the maximum allowable floor area of certain conditionally permitted non-residential uses in the Urban Residential Mixed (URMX) district from 2,500 square feet to 5,000.

**WHEREAS**, The Whatcom County Council adopted Ordinance No. 2011-008 on April 12, 2011, which, in part, increased the maximum allowable floor area of certain conditionally permitted non-residential uses in the Urban Residential Mixed (URMX) district from 2,500 square feet to 5,000 square feet.

**WHEREAS**, The city of Bellingham and Whatcom County entered into a settlement agreement (Exhibit B) to resolve and settle all claims associated with the City of Bellingham’s challenge of Whatcom County Ordinance No 2011-008.

**PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION**

1) The Whatcom County Planning Commission held a work session on the proposed zoning text amendment on October 28, 2010.

2) The Whatcom County Planning Commission held a public hearing on December 9, 2010 on the proposed zoning text amendment.

3) A proposal for addition of the “drive through service” was brought before the Whatcom County Planning Commission in 2006. The Planning Commission at the time voted to forward a recommendation of denial to the Whatcom County Council.

4) The 2006 Planning Commission recommendation was never forwarded to the Whatcom County Council for review. The zoning request stayed on the long range work plan and in 2010 a new application was filed for review.

5) On October 12, 2010 Whatcom County planning staff received a letter from the City of Bellingham planning staff supporting the 2006 Planning Commission’s recommendation for the proposed zoning text amendment.

6) The Whatcom County Planning Commission voted 7-2 to recommend approval on allowing in the URMX zone drive through services being a Conditional Use, and in the Resort Commercial outright permitting the use. The Planning Commission however did not recommend allowing an
increase in building size in the Resort Commercial zone to 5,000 square feet as requested in the zoning text amendment application.

7) The Whatcom County Council adopted Ordinance 2011-008, which increased the maximum allowable floor area of certain conditionally permitted non-residential uses in the Urban Residential Mixed (URMX) district from 2,500 square feet to 5,000 square feet.

8) The City of Bellingham and Whatcom County entered into a Settlement Agreement (Exhibit B) to resolve and settle all claims associated with the City of Bellingham’s challenge of Whatcom County Ordinance 2011-008.

9) As part of the Settlement Agreement between the City of Bellingham and Whatcom County, the County shall consider amending WCC 20.24.161, which provides that the floor area of certain conditionally permitted nonresidential uses in the URMX District cannot exceed 5,000 square feet, to provide that such uses not exceed 2,500 square feet.
PROPOSED CONCLUSIONS

1. The subject amendments are consistent with the Whatcom County Zoning Code.

2. The subject amendment meets the condition of the Settlement Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council, that revisions to the existing Whatcom County Zoning Code are being proposed as outlined 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 13th day of March, 2012

ATTENTION: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

State of
Dana Brown, Davis, Clerk of the Council

Kathy Kershner, Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor

Approved ( ) Denied

Jack Louws, County Executive

Date: 3-14-12
EXHIBIT A
Exhibit A

20.24 URMX
20.24.150 Conditional Use

.161 The following uses may be approved within a neighborhood center where the locational criteria (WCC 20.24.161(2)) and site criteria (WCC 20.24.161(3)) are met; the floor area per nonresidential use does not exceed 5,000 2,500 square feet; and the developer has conducted at least one neighborhood meeting prior to application for the purpose of hearing neighborhood concerns and suggestions regarding the proposal.

(1) Uses.

(a) Commercial uses with a neighborhood or specialty nature including, but not limited to, barber and beauty shops, bakeries, drugstores; provided, that food markets may have no more than two gasoline pump islands, hardware stores, restaurants and coffee shops with or without drive-up service, stationery stores, laundromats, video rental, bookstores, frame shops and other small convenience retail, rental, or repair shops.

(b) Professional offices.

(c) Adult care centers, mini-day care centers, and day care centers.

(d) Residential units located on the upper floor(s) of buildings containing the uses listed above. Such units will be counted toward minimum densities and maximum percentage of multifamily units, but shall not be counted toward maximum densities.

(2) Locational Criteria. Uses must be clustered in a single center which is no larger than two acres, excluding areas used for duplex and multifamily dwellings, and:

(a) Fronts on an arterial or collector street; or

(b) Is located adjacent to a public square or neighborhood park; and

(c) Is no closer than one-half mile from an existing or approved commercial center or other commercial use or zone;
(d) Neighborhood centers shall not be developed in areas characterized by residential development at less than one dwelling unit per acre except as part of a mixed residential development.*

(3) Site Criteria.

(a) Parking shall be located at the rear of the buildings with access from alleys or side streets. On-street parking may be counted toward the parking requirements in Chapter 20.80 WCC.

(b) Buildings are located adjacent to the right-of-way or sidewalk, or as close as allowed in WCC 20.80.200, Setback requirements.

(c) Commercial development shall occur in nodes; linear strips will be discouraged.

(d) Centers should be visible and accessible to pedestrians from the streets and clearly defined through lighting, landscape, landmarks, and/or open space.

(e) In the Urban Fringe Subarea, specific wetland systems and sensitive environmental areas shall be preserved and incorporated into the development site design plan consistent with Bellingham city ordinances.*

(f) Sidewalks are a minimum of eight feet wide.

(g) Street trees are located on the curb side of the sidewalk in accordance with city of Bellingham street tree standards.

(h) Individual businesses or establishments must be joined by common walls unless the applicant can demonstrate to the satisfaction of the administrator that unique site circumstances dictate some other form.

(i) Storage areas shall be located entirely within the structure and outside trash receptacles shall be enclosed and screened from public view.

(j) All lighting shall be designed and installed to prevent the illumination of adjacent properties during business hours; however, security lighting may be permitted during nonbusiness hours if it is designed to prevent the illumination of adjacent properties.

(k) In accordance with WCC 20.80.465, Urban Residential-Mixed (UR-MX) District sign regulations, not more than two identification signs,
with a maximum of 32 square feet total area for each storefront shall be permitted; provided, that said sign(s) shall not project above any part of the roof line. Signs may extend 24 inches from the wall or to the edge of a permanent canopy or awning of the building to which it is attached. At least one of the signs for an individual business must be readable to pedestrians on the adjacent sidewalk. Said sign(s) shall be harmonious and compatible in appearance with the character of the surrounding area. Signs may only be illuminated by an indirect external source.*

(1) Use of shared parking areas is encouraged. The minimum parking requirement shall be 50 percent of the parking requirements in WCC 20.80.580, but shall in no case exceed two-thirds of the requirements in WCC 20.80.580.
### Clearances

<table>
<thead>
<tr>
<th>Originator:</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Title of Document:

Settlement Agreement with City of Bellingham re: Growth Managment Hearings Board

### 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.)

Approval of Settlement Agreement between Whatcom County and City of Bellingham related to Growth Management Hearings Board Case #11-2-0006

### Committee Action:

### Council Action:

11/9/2011: Council Approved 6-1, Mamm 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.
Settlement Agreement

This Settlement Agreement ("Agreement") is entered into this 22nd day of November, 2011, by and between the City of Bellingham ("City") and Whatcom County ("County"), collectively "Parties," for the purpose of resolving and settling any and all claims associated with the City’s challenge of County Ordinance No. 2011-008 (Western Washington Growth Management Hearings Board Case No. 11-2-0006) and shall be effective as of the date of execution entered below; and

WHEREAS, the City filed a Petition for Review with the Western Washington Growth Management Hearings Board ("WWGMHB"), challenging County Ordinance No. 2011-008 on numerous grounds, seeking a determination that said ordinance was not compliant with the requirements of the Growth Management Act (Case No. 11-2-0006); and

WHEREAS, the Parties desire to settle the City’s Petition for Review in WWGMHB Case No. 11-2-0006; and

WHEREAS, the Parties have engaged in settlement discussions and established that if the County adopts certain zoning code changes and agrees to certain terms concerning the adoption of an interlocal agreement with the City, the City will dismiss its Petition for Review;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The County shall consider amending Whatcom County Code (WCC) 20.24.161, which provides that the floor area of certain conditionally permitted nonresidential uses in the Urban Residential Mixed (URMX) District cannot exceed 5,000 square feet, to provide that such uses not exceed 2,500 square feet. If this amendment is approved, the County agrees to retain the 2,500 square feet limit for at least five (5) years, unless the Parties mutually agree otherwise. Nothing herein is intended to circumscribe or limit the legislative discretion of the County Council or interfere with the County’s obligation to engage in the requisite public process in considering this amendment.

2. The County and the City further agree that they will execute a new interlocal agreement on planning, annexation, and development within the City’s urban growth area by December 31, 2011. If no agreement is reached by that date and the Parties do not mutually agree to extend this deadline, the Parties agree to submit the matter to mediation, with the Parties sharing the cost of the mediation equally.

3. If the County adopts the zoning amendment described in paragraph 1 above and County and the City execute a new interlocal agreement as described in paragraph 2 above, the City will dismiss its Petition in WWGMHB Case No. 11-2-0006 with prejudice and without costs or fees awarded to either party.
4. For any breach of this Agreement all remedies in law and equity shall be available including the remedy of specific performance.

5. In the event it becomes necessary for either party to undertake action to induce or enforce or defend a claim under this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs related to the enforcement or defense of a claim under this Agreement.

6. This Agreement may not be modified or amended except by the written agreement of the Parties.

7. This Agreement shall be construed and interpreted according to the laws of the State of Washington.

8. This Agreement, including its Exhibits, is a fully integrated and complete Agreement and supersedes all prior or contemporaneous oral or written agreements or understandings between the parties apart from the terms and provisions expressly set forth or incorporated herein.

9. If any section, subsection, sentence, clause, or phrase in this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby. Each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. The undersigned hereby declare that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted, following ample opportunity to confer with legal counsel, for the purpose of making a full and final compromise and settlement of any and all claims or potential claims, disputed or otherwise arising prior to the date of this Agreement.

11. Each person signing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of and to bind the party represented, and that any necessary conditions precedent to the execution of this Agreement on behalf of the party represented have been satisfied.
DATED this 22nd day of November, 2011.

WHATCOM COUNTY

[Signature]
By: Sam Crawford
Its: Whatcom County Council Chair
Signed this 15th day of November, 2011.

APPROVED AS TO FORM:

[Signature]
KAREN N. FRAKES
Senior Civil Deputy Prosecuting Attorney

CITY OF BELLENMH

[Signature] 11/22/11
Mayor

Attest:
[Signature]
Finance Director
Approved as to Form:
[Signature]
Office of the City Attorney