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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

EMERGENCY ORDINANCE NO. 01-007

ADOPTING A MORATORIUM ON ACCEPTANCE OF APPLICATIONS FOR PERMITS FOR HOUSING OF SEXUALLY VIOLENT PREDATORS, SUCH AS COMMUNITY TRANSITIONAL HOUSING, COMMUNITY TREATMENT FACILITIES, SECURE RESIDENTIAL TREATMENT HOUSING, AND SIMILAR FACILITIES, AND AN INTERIM ZONING ORDINANCE AND OFFICIAL CONTROL RELATIVE TO SUCH FACILITIES; DECLARING AN EMERGENCY; SETTING A DATE FOR HEARING PURSUANT TO RCW 36.70A.390; AND AMENDING SNOHOMISH COUNTY CODE CHAPTER 18.32, ADDING A NEW SECTION 18.32.050, MORATORIUM ON CERTAIN USES

WHEREAS, pursuant to the Snohomish County Charter and the Growth Management Act (GMA), Chapter 36.70A RCW, the County Council has adopted the Snohomish County GMA Comprehensive Plan-General Policy Plan and Title 18 SCC, the Snohomish County Zoning Code for the unincorporated area of Snohomish County; and

WHEREAS, the GMA at RCW 36.70A.390 provides that the County Council may adopt a moratorium, interim zoning ordinance and interim official control; and

WHEREAS, a moratorium, interim zoning ordinance and interim official control enacted under RCW 36.70A.390 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, the County Council finds that an emergency exists within the County, and that a moratorium on acceptance of applications for permits for housing of sexually violent predators, such as community transitional housing, community treatment facilities, secure residential treatment housing or similar facilities, and an interim zoning ordinance and interim official control relative to such facilities, is necessary for the immediate preservation of the public peace, health, and safety and for the support of county government and its existing institutions;

THEREFORE, BE IT ORDAINED:

Section 1. The County Council adopts the following findings of fact and conclusions:

A. The Washington State Department of Social and Health Services (DSHS) is under federal court order to provide "constitutionally adequate mental health treatment" to persons determined to be sexually violent predators under the Community Protection Act, Chapter 71.09 RCW. *Turay v. Seling, et al.*, 108 F. Supp. 1148 (W.D. Wash. 2000). One aspect of such treatment, according to the court, is that "[a]rrangements must be made for the community transition of qualified residents, under supervision, when they are ready for a less restrictive alternative (LRA)." The court found that DSHS "must move decisively, and with adequate funding, to establish LRAs for qualified residents." *Turay*, at 1156.

B. The term "sexually violent predator" is defined at RCW 71.09.020(1) as "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." The term "mental abnormality" is defined at RCW 71.09.020(2) as "a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others." The Washington State Legislature has declared sexually violent predators to be "extremely dangerous" and has found that "sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high." RCW 71.09.010.

C. DSHS established a "Secure Placement Advisory Committee" to comply with the federal court order. The Committee meets in closed session for the purpose of developing siting criteria and recommending site selection for LRA housing or facilities for residential treatment of sexually violent predators under chapter 71.09 RCW for consideration by the Secretary of DSHS. The Secretary of DSHS approved the criteria on November 17, 2000.

D. On December 1, 2000, DSHS announced its site selection for a primary site and three alternate sites for placement of six sexually violent predators in an LRA housing or treatment facility. Alternative site 3 chosen by DSHS is the County of Snohomish-WS Reformatory Honor Farm located in unincorporated Snohomish County.

E. Discussions between DSHS and the County Executive's office have revealed that DSHS may be seeking housing for sexually violent predators, including community transitional housing, community treatment facilities, or secure residential treatment housing or similar facilities, within Snohomish County in the immediate future, either at the Honor Farm site or elsewhere.

F. The DSHS decisions on siting criteria and site selection were made without allowing any input from Snohomish County.

G. The DSHS decisions on siting criteria and site selection were made without regard to the requirements of the GMA, the Snohomish County GMA Comprehensive Plan- General Policy Plan or the Snohomish County zoning code, Title 18 SCC.

H. The siting criteria adopted by the Secretary of DSHS fail to address serious concerns for the health, safety and welfare of Snohomish County citizens.

I. The county code does not define, authorize or set forth conditional use permit standards regarding the siting or use of facilities for housing sexually violent predators, including community transitional facilities, community treatment facilities, secure residential treatment housing, and similar facilities.

J. It is the intent of the County Council to ensure the development of adequate, fair and reasonable comprehensive plan amendments and development regulations related to the definitions and conditional use permit standards regarding the siting and use of these facilities, including but not limited to safety procedures, location of these facilities within proximity to incompatible uses, capacity of the community to provide services required, capability of law enforcement to provide adequate response time, and locational and siting criteria for essential public facilities within the County, along with any regulations deemed necessary to serve the public health, safety and welfare of Snohomish County citizens.

K. In order to develop adequate, fair, and reasonable regulations related to these facilities, it may be necessary to update and amend the county comprehensive plan and code.

L. The County Executive has undertaken to provide a detailed work plan for studying this issue and for development and adoption of necessary code amendments within one year after adoption of this ordinance. The work plan should be available for public consideration at the hearing on this ordinance, which will be held on the date set forth in Section 7 of this ordinance.

M. The Director of Planning and Development Services should be directed to immediately initiate a study of this issue and expeditiously develop and recommend proposed amendments to the county comprehensive plan and development regulations in accordance with the findings and conclusions stated in this ordinance.

N. RCW 36.70A.390 authorizes the enactment of a moratorium, interim zoning, map, interim zoning ordinance or interim official control by emergency without first holding a public hearing. A public hearing must be held and findings of fact must be made supporting the emergency action within 60 days of such

action. The moratorium, interim zoning ordinance or interim official control may extend up to one year if a work plan is established for related study.

L. If the County were to begin public consideration of permanent regulations and amendments without first adopting a moratorium, those involved in the process of siting these facilities could frustrate effective land use planning by submitting applications for these facilities, thereby rendering the proposed amendments moot.

M. If the County were to follow its normal public participation procedure to adopt new comprehensive plan provisions or development regulations concerning these facilities, the filing of one or more permit applications prior to amendment of the comprehensive plan or development regulations would likely undermine the County's ability to regulate such activity.

N. If a moratorium is not invoked, the filing of applications during the time necessary to conduct any necessary studies and activities is likely to impact effective long range planning and result in the status quo not being preserved during consideration of necessary comprehensive plan and code amendments.

O. It is in the best interest of the public health, safety and welfare of the citizens of Snohomish County to suspend temporarily the acceptance of applications for permits for housing of sexually violent predators, such as community transitional housing, community treatment facilities, secure residential treatment housing, and similar facilities.

P. This measure is necessary to preserve the status quo and the County's ability to effectuate land use planning decisions.

Q. The County staff estimates that the time necessary for the completion of the reviews and plan and code amendments described above, and the preparation and adoption of new requirements, will take between six (6) months and one (1) year.

R. Pursuant to WAC 197-11-880 and SCC 23.12.240, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act.

S. This ordinance is exempt from the public participation requirements of Chapter 32.05 SCC, subject to the requirements of RCW 36.70A.390.

T. Based on the foregoing findings of fact and conclusions, the County Council finds as a fact that a moratorium on acceptance of applications for permits for housing of sexually violent predators, such as community transitional housing, community treatment facilities, secure residential treatment housing and

similar facilities, and an interim zoning ordinance and interim official control relative to such facilities is necessary for the immediate preservation of the public peace, health, and safety and for the support of county government and its existing institutions. Based on the foregoing, the County Council declares an emergency exists and declares that this ordinance should take effect immediately.

Section 2. The County Council hereby declares a moratorium providing that no applications for permits for housing of sexually violent predators, such as community transitional housing, community treatment facilities, secure residential treatment housing, and similar facilities, shall be accepted by the County and an interim zoning ordinance or interim official control designating that none of these facilities shall be defined or permitted as permitted or conditional uses under the Snohomish County Code, or recognized or established as a nonconforming use or structure.

Section 3. The County Council hereby adopts a moratorium and interim zoning ordinance and official control as follows:

A. The County shall not accept any applications for permits for housing of sexually violent predators, such as community transitional housing, community treatment facilities, secure residential treatment housing, and similar facilities, and the County shall not define or permit such facilities as conditional or permitted uses or recognize or establish any asserted nonconforming right to such use or facility;

B. The County Council requests that prior to the public hearing to be held on this ordinance, the County Executive devise a work plan to study this issue and expeditiously review existing regulations and propose any regulations deemed appropriate to serve the public health, safety and welfare in the County;

C. The County Council requests the Director of Planning and Development Services to immediately initiate a study of this issue and expeditiously develop and recommend proposed amendments to the Snohomish County Code in accordance with the findings and conclusions stated in this ordinance;

D. The work plan shall provide that the Director of Planning and Development Services shall process any recommendations for amendment to the County Code pursuant to this ordinance through the full public participation process required by SCC 32.05.020;

E. Pursuant to RCW 36.70A.390, the County Council shall hold a public hearing on the moratorium, interim zoning ordinance and interim official control within 60 days of the adoption of this ordinance;

F. The moratorium, interim zoning ordinance and interim official control shall be effective for at least six months and up to one year with the adoption of a work plan as a part of the findings adopted after the public hearing; and

G. The moratorium, interim zoning ordinance and interim official control may be renewed for one or more six (6) month periods if subsequent public hearing is held and findings of fact are made prior to each renewal.

Section 4. A new section 18.32.050 is hereby added to the Snohomish County Code to read as follows:

18.32.050 Moratorium on Certain Uses. Pursuant to Emergency Ordinance No. 01-007, a moratorium, interim zoning ordinance and interim official control have been adopted to allow time for the adoption of new comprehensive plan and code amendments to address the siting and use of certain facilities within Snohomish County. During the pendency of the moratorium, interim zoning ordinance and interim official control, the following uses do not constitute permitted, conditional or temporary uses: housing of sexually violent predators, including community transitional housing, community treatment facilities, secure residential treatment housing, and similar facilities. During the pendency of the moratorium, interim zoning ordinance and interim official control the County shall not accept any applications for permits for housing of sexually violent predators, such as community transitional housing, community treatment facilities, secure residential treatment housing, and similar facilities, and the County shall not define or permit such facilities as permitted or conditional uses or recognize or establish any asserted nonconforming right to such use or facility. During the pendency of this moratorium, this section shall suspend any existing provision of the Snohomish County Code affected by Emergency Ordinance No. 01-007.

Section 5. The County Council hereby adopts this ordinance as a moratorium, interim zoning ordinance and official control declaring that the uses identified in this ordinance are not permitted or conditional uses in any zone under the Snohomish County Code, or recognized or established as a nonconforming use or structure.

Section 6. This ordinance shall take effect immediately upon passage by the County Council.

Section 7. The County Council shall hold a public hearing on this matter on March 28, 2001 at 6:30 p.m. in Monroe, Washington, at a location to be determined and announced at a later date, for the purpose of hearing public testimony on this matter in accordance with RCW 36.70A.390.

Section 8. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

PASSED this 31st day of January, 2001.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

[Signature]
Chairperson

[Signature]
Clerk of the Council asst

- APPROVED
- EMERGENCY
- VETOED

DATE: 2/5/01

[Signature]
County Executive HITE
Executive Director

PUBLISHED: _____

Approved as to form only:

[Signature] 1/31/01
Deputy Prosecuting Attorney

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