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SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

AMENDED ORDINANCE NO. 01-077
AMENDING SNOHOMISH COUNTY CODE TITLE 18
TO ADD A NEW CHAPTER 18.62 RELATING TO
THE PHASING OF DEVELOPMENT IN URBAN GROWTH AREAS (UGAs)

WHEREAS, the Snohomish County GMA Comprehensive Plan-General Policy Plan (GPP) directs that land development in urban growth areas (UGAs) should be phased to guide growth first into areas where existing infrastructure capacity is available; and

WHEREAS, the GPP also directs that growth phasing areas be identified within UGA plans to encourage compact urban development and efficient, adequate service provision; and

WHEREAS, the department of planning and development services prepared a new chapter of the county code that would allow the implementation of a development phasing overlay within UGAs; and

WHEREAS, the planning commission held hearings on the development phasing overlay ordinance on November 6, 8, and 14, 2000; and

WHEREAS, following the completion of the planning commission hearings, the county executive further refined the development phasing overlay ordinance, but out of deference to the planning commission; put those changes into a separate ordinance, leaving the planning commission's recommended ordinance in tact; and

WHEREAS, the council held public hearings on October 17, October 31 and November 7, 2001 to consider the entire record and hear public testimony on Ordinance 01-077.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The county council bases its findings and conclusions on the entire record of testimony and exhibits, including all written and oral testimony before the planning commission and the county council. The county council makes the following findings of fact and conclusions:

- A. This amendment is consistent with the state Growth Management Act (GMA) which requires that urban growth be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. (RCW

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36.70A.110). This amendment is consistent with the transportation concurrency requirements of RCW 36.70A.070(6)(b).

- B. This amendment is consistent with countywide planning policy OD-1 that directs Snohomish County and its cities to “identify six-year growth areas geographically within each UGA or establish policies, which direct growth consistent with the land use and capital facilities plan elements to meet state law...” and TR-8 that directs consideration of transportation levels of service and available financial resources to make needed transportation improvements for growth management purposes.
- C. This amendment is consistent with the GPP which directs the following:
 - 1. Phase land development and the provision of public facilities and services within UGAs. (Objective LU 2.C)
 - 2. Where feasible, growth phasing areas shall be identified within UGA plans to encourage compact urban development and efficient, adequate service provision. (Policy LU 2.C.1)
 - 3. Urban growth phasing areas shall be used to direct development first in areas where existing infrastructure capacity is available before extending infrastructure into predominantly undeveloped areas. Leapfrog development within UGAs requiring the extension of services across undeveloped areas shall be avoided. (Policy LU 2.C.2)
 - 4. Concurrency requirements for land development in unincorporated areas shall be pursued by considering adopted level of service standards and the financial resources available to make needed transportation improvements for county roads. (Policy TR 5.A.4).
- D. This amendment is consistent with all other goals, objectives, and policies of the county’s adopted GMA comprehensive plan and with the county’s GMA development regulations.
- E. This amendment to Title 18 SCC satisfies the procedural and substantive requirements of, and is consistent with, the GMA.
- F. There has been early and continuous public participation in the review and adoption of this amendment.
- G. The county prepared and issued Addendum No. 21 (October 27, 2000) to the Final Environmental Impact Statement (FEIS) for the Snohomish County GMA Comprehensive Plan. The addendum describes the amendments to Title 18 SCC contained in this ordinance and analyzes their impacts. Environmental review of this ordinance is also supported by environmental review completed on the Lake Stevens UGA Plan, as described in finding LLL. of Amended Ordinance No. 01-073.

H. The requirements of Title 23 SCC and the state environmental policy act with respect to this proposed action have been satisfied by these documents.

I. This chapter is adopted pursuant to the Growth Management Act (GMA), chapter 36.70A RCW, the Snohomish County Charter, and the Washington State Constitution, art. XI, sec. 11.

J. The county council adopts the findings and conclusions in Section 1 of Amended Ordinance No. 01-073 which adopts the Lake Stevens UGA Plan as a part of the GMACP, and incorporates the same herein by reference.

Section 2. A new chapter, chapter 18.62, titled "Phasing of Development Within Urban Growth Areas-- Development Phasing Overlay" is added to Title 18 of the Snohomish County Code as follows:

18.62.010 Purpose and objectives.

(1) The purpose of this chapter is to provide a procedure for application and removal of the development phasing overlay to and from the zoning map, respectively, through a rezone process. The development phasing overlay is applied as an overlay to a zoning classification within an UGA, pursuant to direction in an UGA plan, and requires that urban development of the overlay area be delayed until a commitment is in place to fund and construct public facilities necessary to support development.

(2) The objectives of this chapter are:

(a) To implement the policies of the General Policy Plan (GPP), the UGA Plans, and the GMA, chapter 36.70A RCW;

(b) To encourage compact urban development and efficient and adequate urban facilities and services;

(c) To direct development first in areas where existing infrastructure capacity is available;

(d) To avoid premature and uncoordinated development within UGAs that would require the extension of services across undeveloped areas; and

(e) To minimize and avoid impacts to the environment.

18.62.020 Applicability.

(1) This chapter applies to any rezone to apply or remove the development phasing overlay within an unincorporated UGA pursuant to direction in an UGA plan.

(2) This chapter applies to the following permit and approval applications within the development phasing overlay, except as provided in SCC 18.62.020(3):

(a) Rezone;

(b) Subdivision;

(c) Short Subdivision;

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- (d) Conditional Use Permit;
- (e) Planned Residential Development;
- (f) Binding Site Plan;
- (g) Official Site Development Plan;
- (h) Special Use Permit; and
- (i) Building Permit.

(3) This chapter does not apply to the following permit and approval applications and activities within the development phasing overlay:

- (a) Building permit for new single family and duplex dwellings on existing legal lots;
- (b) Building permit for additions to and remodeling of existing single family and duplex dwellings;
- (c) Building permit for ordinary commercial improvements that:
 - (i) are for tenant improvements/additions;
 - (ii) do not increase impervious surface;
 - (iii) do not substantially change the current land use;
 - (iv) are exempt from SEPA; and
 - (v) do not require a concurrency determination pursuant to Title 26B

SCC; and

limited to:

- (d) Building permit for ordinary residential improvements, including, but not limited to:
 - (i) garages;
 - (ii) accessory buildings;
 - (iii) decks;
 - (iv) driveways; and
 - (v) utility systems serving an individual dwelling unit, including but not limited to electrical, public water supply and sanitary sewer;
- (e) Construction, maintenance, and improvement of public and private roads;
- (f) Construction, maintenance, and improvement of utility structures and facilities, including surface water management structures and facilities, except as provided in SCC 18.62.050(2); and
- (g) Construction, maintenance, and improvements of structures and facilities to improve fish and wildlife habitat, restore or rehabilitate streams and other natural systems, and projects to mitigate adverse environmental impacts on natural systems of development activities that may otherwise be required by federal, state, or local permit.

18.62.025 Compliance with other laws.

Approvals granted pursuant to this chapter and any policies and procedures promulgated hereunder do not constitute waivers of the requirements of any other laws or regulations, nor do they indicate compliance with any other laws or regulations. Compliance is still required with all applicable federal, state and local laws and regulations.

18.62.030 Definitions.

(1) Adequacy recommendation. "Adequacy recommendation" means a finding made by the director pursuant to SCC 18.62.090 that public facilities necessary to support development within a specified geographic area in an UGA plan are funded or otherwise committed for construction within the time periods specified by this chapter.

(2) Arterial. "Arterial" means a transportation facility designated as an arterial in an UGA plan or the comprehensive plan.

(3) Development phasing overlay or DPO. "Development phasing overlay or DPO" means a zoning overlay that is applied to a zoning classification within an UGA, pursuant to direction in an UGA plan, that requires urban development to be delayed until a commitment is in place to fund and construct public facilities necessary to support development.

(4) Director. "Director" means the director of the Snohomish County Department of Planning and Development Services.

(5) Governmental facilities. "Governmental facilities" means a facility owned and operated by an agency of the federal, state, or local government.

(6) Public facilities. "Public facilities" means public facilities as defined in RCW 36.70A.030.

(7) Public facilities necessary to support development. "Public facilities necessary to support development" means those public facilities identified in an UGA plan's capital facility element as necessary to support an intensification of land use at the parcel or tract level.

(8) Site-Based Public Facilities. "Site-based public facilities" means those facilities that provide infrastructure and are not linear in nature (i.e. roads, sewer, water or electrical lines). They include, but are not limited to:

- (a) Governmental facilities;
- (b) Parks;
- (c) Schools;
- (d) Fire Stations; and
- (e) Utilities.

(9) UGA plan. "UGA plan" means a portion of the comprehensive plan that is completed for an UGA or a specific geographic area within an UGA that provides greater detail and specificity to all applicable elements of the comprehensive plan.

18.62.040 Areas eligible for development phasing overlay.

(1) The county council may, consistent with an UGA plan, add a development phasing overlay to a zoning classification for a specific geographic area through a county initiated area-wide rezone pursuant to chapter 18.73 SCC.

(2) A development phasing overlay may be applied only to those areas where public facilities necessary to support development are not currently funded by public or private revenue sources, as identified in the capital facilities element of the applicable UGA plan. The UGA plan must identify a list of public facilities necessary to support development with the UGA, identify areas eligible for application of the development phasing overlay within the capital facilities chapter, and specify which public facilities necessary to support development are experiencing a funding shortfall within the particular area.

18.62.050 Development restricted in development phasing overlay.

(1) The county shall not approve an application for a permit or approval as specified in SCC 18.62.020(2) within a development phasing overlay until the development phasing overlay is removed through the rezone process pursuant to SCC 18.62.060 or 18.62.070, except as provided in SCC 18.62.050(2).

(2) Applications for permits or approvals to construct or improve site-based public facilities as defined in SCC 18.62.030 may be approved prior to removal of the development phasing overlay when the following requirements are met:

- (a) The application otherwise complies with all applicable county codes; and
- (b) The applicant provides a commitment to participate financially in the funding and construction of the public facilities required for removal of the development phasing overlay on the subject parcel in the amount of the applicant's proportional share, at the time of removal of the development phasing overlay.

18.62.060 Development phasing overlay-- removal through quasi-judicial rezone.

(1) An applicant may request removal of the development phasing overlay, or a portion thereof, from the underlying zone classification using the rezone process in SCC 18.73.060(2).

(2) The process for removing the development phasing overlay through a quasi-judicial rezone shall be as follows:

(a) An applicant must request a pre-application conference with the department of planning and development services and department of public works. In advance of the pre-application conference, the applicant must provide the department with:

(i) a map identifying the area for removal from the development phasing overlay;

(ii) a development phasing overlay site plan that identifies:

(A) the amount of impervious surface,

(B) the number of residential building lots and units if a residential

project, and

(C) the amount of gross floor area for nonresidential projects;

(iii) a targeted drainage plan in accordance with SCC 24.20.040;

(iv) a development phasing overlay traffic review site plan showing ranges of trip generation and trip distributions assuming full build-out of the area to be removed from the development phasing overlay; and

(v) a traffic study pursuant to SCC 18.62.100.

(b) At the pre-application conference, the department shall provide the applicant with a list of required facilities necessary to remove the development phasing overlay from the area requested pursuant to SCC 18.62.135(1) and the department of public works shall provide a transportation concurrency evaluation pursuant to SCC 18.62.100. The departments will not schedule the pre-application conference until the list of facilities and concurrency evaluation is complete.

(c) Following the pre-application conference, the applicant may submit a rezone application to remove the development phasing overlay pursuant to SCC18.62.080 and chapter 18.73 SCC.

(d) The rezone request will be processed in accordance with chapter 18.73 SCC, Title 23 SCC, chapter 32.50 SCC and all applicable local codes and regulations.

(e) After the application is determined complete for processing, the director shall prepare an adequacy recommendation pursuant to SCC 18.62.090 and a report making a recommendation to the hearing examiner on whether to grant the rezone to remove the development phasing overlay.

(f) The hearing examiner will hold an open record predecision hearing pursuant to chapter 2.02 SCC. Notice of the hearing shall be in accordance with chapter 18.73 SCC.

(g) An application for a rezone to remove the development phasing overlay may be approved, approved with conditions pursuant to SCC 18.62.060(5), denied, or denied without prejudice.

(h) The decision of the hearing examiner is final and conclusive with an optional right of reconsideration as provided in SCC 2.02.167 and may then be appealed to the County Council pursuant to SCC 2.02.175.

(3) The county shall approve removal of the development phasing overlay when the following conditions are met:

(a) The area proposed for removal contains at least 40 acres, unless the applicant can demonstrate that a smaller area:

(i) is adjacent to an incorporated area or unincorporated area within the UGA that is not within the development phasing overlay; and

(ii) has a logical connection to the adjacent area, as determined by the director;

(b) The area proposed for removal from the development phasing overlay, shall, to the extent practicable, include all properties that abut on both sides of any street within the rezone area;

(c) All public facilities necessary to support development in the area proposed for removal from the DPO, as identified in the UGA plan and in the list developed by the director pursuant to SCC 18.62.060 (2)(b) will be funded and constructed within three years of the effective date of the rezone except as provided in 18.62.110(2), as demonstrated by the adequacy recommendation of the director and a commitment to finance and construct such facilities as required by SCC 18.62.090(1);

(d) The application meets the requirements set forth in Chapter 18.73 SCC and all other applicable requirements of county code;

(e) The rezone implements the UGA plan; and

(f) The rezone bears a substantial relation to the public health, safety and welfare.

(4) In considering whether SCC 18.62.060(3)(c) has been met, the hearing examiner shall presume correct the director's adequacy recommendation and accord it substantial deference. The hearing examiner may make a finding contrary to the director's adequacy recommendation only upon a showing that the director's recommendation was clearly erroneous.

(5) The hearing examiner may identify specific conditions pursuant to adopted plan policies and development regulations, to be imposed on any proposed development within the area in which the overlay is proposed for removal, including conditions not otherwise authorized by this chapter. Such conditions may include, but are not limited to, restrictions on the density and intensity of development and restrictions on timing of occupancy and development to assure that necessary capital facilities are operational.

18.62.070 Development phasing overlay-- removal by areawide rezone.

(1) The county may remove the development phasing overlay, or a portion thereof, pursuant to an areawide rezone process pursuant to chapter 18.73 SCC and this section. To approve the rezone, the county council must determine that:

(a) All public facilities necessary to support development, as identified in the UGA plan and in the list developed by the director pursuant to SCC 18.62.135(1) will be funded and constructed within three years of the effective date of the rezone;

(b) The rezone implements the UGA plan; and

(c) The rezone bears a substantial relation to the public health, safety and welfare.

(2) Upon removal of the development phasing overlay by areawide rezone, all development as defined in Title 26B SCC proposed in the area in which the development phasing overlay was lifted will be subject to the transportation concurrency requirements of Title 26B, unless a transportation concurrency evaluation pursuant to SCC 18.62.100 has been completed and the proposed development has been deemed concurrent.

18.62.080 Rezone submittal requirements.

(1) Applications for removal of the development phasing overlay pursuant to SCC 18.62.060 shall contain the following:

(a) A strategy for financing public facilities necessary to support development that are required for removal of the development phasing overlay in the area proposed;

(b) A transportation concurrency evaluation pursuant to SCC 18.62.100;

(c) All applicable requirements of SCC 18.73.027;

(d) Fees as required by SCC 18.73.120; and

(e) All items required on the submittal checklist for applications for removal of the development phasing overlay developed by the department pursuant to SCC 18.62.080(3).

(2) If any of the requirements of SCC 18.62.080(1) are not met, the director may make a recommendation to the hearing examiner that the rezone be denied.

(3) The director is authorized to develop a submittal checklist for applications for a rezone to remove the development phasing overlay.

18.62.090 Adequacy recommendation -- preparation and contents.

(1) The director shall prepare an adequacy recommendation in response to an application to remove the development phasing overlay pursuant to SCC 18.62.060. An adequacy recommendation shall be issued only when a finding is made that public facilities necessary to support development or alternative technical solutions, are either:

(a) Listed and funded in capital improvement programs by the county, or other public agencies; or

(b) Committed for construction pursuant to SCC 18.62.090 (2).

(2) A commitment for funding shall be demonstrated by an appropriate financing device, including but not limited to:

(a) The formation of a road or local improvement district;

(b) A latecomer's agreement, when it includes a commitment to participation and completion of the necessary facilities by all benefiting parcels through creation and recording of a reimbursement assessment area pursuant to chapter 35.72 RCW and chapter 13.95 SCC;

(c) Execution of a contract for agreement for construction pursuant to chapter 35.72 RCW and chapter 13.95 SCC;

(d) Recording of a concomitant agreement;

(e) Recording of a developer agreement providing for construction and developer financing; or

(f) Other sources of private funds.

(3) The director shall have authority to require performance security for financing devices listed in SCC 18.62.090 (2). Performance security for any road improvements under SCC 18.62.090 or 18.62.100 shall be provided in accordance with SCC 13.10.115.

(4) The adequacy recommendation shall include a concurrency evaluation as required by SCC 18.62.100.

(5) If the director determines that any of the requirements of this section or of this chapter are not met, the director may make a finding that public facilities necessary to support development do not exist and will not be provided, or may recommend denial of the rezone to the hearing examiner.

18.62.100 Transportation concurrency evaluation.

(1) The department of public works will issue a transportation concurrency evaluation at the pre-application conference, provided that the potential applicant has provided the department with all necessary information to issue a concurrency evaluation, as required by SCC 18.62.060(2)(a) and as may otherwise be required by the department of public works. The department of public works may require the potential applicant to meet with representatives of the department prior to the pre-application conference to review the traffic and transportation-related aspects of the proposal and establish the traffic study requirements necessary for preparing a transportation concurrency evaluation.

(2) The department of public works will determine the traffic study requirements in accordance with Title 26B SCC and rules, policies, and procedures developed pursuant to SCC 18.62.040 and 26B.52.130.

(3) The transportation concurrency evaluation will analyze future level of service of arterial units impacted by all developments proposed in the area proposed for removal from the development phasing overlay, and the extent to which any level-of-service deficiencies are likely to be remedied by improvements which are programmed and funded in a capital improvement program or that are proposed to be funded in accordance with SCC 18.62.090(2). If the department of public works finds that there is adequate provision for maintenance of level-of-service standards, then future development applications within the area proposed for removal will be deemed concurrent for purposes of compliance with the transportation concurrency requirements of SCC 26B.55.030 for a period of time following the removal of the development phasing overlay, which shall correspond to the forecast year for the traffic study. Alternatively, the applicant may request that, upon removal of the development phasing overlay, or portion thereof, all applications for development as defined in Title 26B SCC shall be subject to the transportation concurrency requirements of Title 26B SCC.

18.62.110 Construction of facilities--timing.

(1) Public facilities necessary to support development shall be constructed no later than three years following the effective date of the rezone to remove the development phasing overlay pursuant to SCC 18.62.060, except as provided in SCC 18.62.110(2).

(2) An applicant may request that the director extend the time period for no more than three years, if the applicant can demonstrate that construction of facilities cannot occur within three years. The extension shall be granted if the applicant provides evidence that construction will occur within six years.

18.62.120 Alternative technical solutions.

The county may approve an alternative technical solution to identified level of service problems if the alternative achieves the standards or levels of service established for the applicable capital facility. Any alternative technical solution must be approved through the rezone process in SCC 18.62.060 or .070, and approval must also be based upon the following:

- (1) The scope of work and methodology of any study to document the viability of alternative technical solutions shall be reviewed and approved by the applicable department;
- (2) Any alternative technical solution is reviewed and approved by the director of the applicable department; and
- (3) The applicant commits to the financing and construction of alternative technical solutions pursuant to SCC 18.62.090(2).

18.62.130 Expiration of application for removal.

An application for removal of the development phasing overlay shall expire as set forth in SCC 18.73.105.

18.62.135 List of required facilities to remove the development phasing overlay.

(1) Upon request by an applicant, the director shall create a list of public facilities necessary to support development for which financing must be committed in order to lift the development phasing overlay in the area proposed for removal. The list must be developed from information in the UGA plan for the area proposed for removal.

(2) When developing a list of transportation facilities, the director shall determine which arterials will receive traffic from the area proposed for removal, based on information provided by the department of public works. The director shall include the following facilities on the list:

(a) If the area proposed for removal from the development phasing overlay is not abutting an arterial, those facilities (or portions thereof) necessary to provide access between the area proposed for removal and the arterial that is forecasted to receive the most traffic from development of the area proposed for removal;

(b) If the area proposed for removal from the development phasing overlay is abutting an arterial, those facilities (or portions thereof) necessary to provide access between the area proposed for removal and another arterial that is forecasted to receive the most traffic from development of the area proposed for removal; and

(c) The portions of any facilities abutting any property within the area proposed for removal, including any improvements required by the Engineering Design and Development Standards (EDDS) for both sides of the street.

(3) When developing a list of surface water management facilities, the director shall determine which downstream surface water systems will receive stormwater runoff from development of the area proposed for removal. The list shall include any facility that is identified in a UGA plan as lacking funding which is located on surface water systems that will receive stormwater runoff from the development. If the area proposed for removal includes two or more basins, the list shall include necessary surface water facilities only in those basins where effective impervious surface is located. For purposes of this section, "effective impervious surface" means that fraction of impervious surface producing stormwater runoff that cannot be infiltrated.

(4) The director may reduce the contents of the list that would otherwise be required by this section if the director determines that strict application of this section may result in an unreasonable burden on the applicant.

18.62.150 Administrative rules, policies, and procedures.

(1) The director is authorized to create, adopt and amend administrative rules, policies, and procedures to implement and enforce the provisions of this chapter including, but not limited to the establishment of criteria for making an adequacy recommendation pursuant to SCC 18.62.090 and a list of required facilities for removal of the development phasing overlay.

(2) The director of the department of public works is authorized to create, adopt and amend administrative rules, policies and procedures to implement the provisions of this chapter relating to transportation concurrency evaluations. This authority shall be in addition to the director's authority granted pursuant to SCC 26B.52.130.

(3) A copy of all administrative rules, policies, procedures, and criteria and any amendments thereto, shall be filed with the clerk of the county council and shall be available to the public at the front counter of the department of planning and development services.

(4) Initial administrative rules, policies, procedures, and criteria shall be issued within 120 days from the effective date of this chapter.

Section 3. Applicability. The provisions of this ordinance will not apply to applications for which a complete application has been filed on or before the effective date of this ordinance. For purposes of this section, "a complete application" includes those applications filed on or before the effective date of this ordinance that are later determined by the department to be complete as of the date of filing.

Section 4. 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.

Section 5. Sunset Clause. Snohomish County Code Chapter 18.62 adopted by this ordinance, or as amended after the effective date of this ordinance, is repealed effective December 31, 2005, unless reenacted prior to that date as provided in Snohomish County Charter Section 2.115.

PASSED this 7th day of November, 2001.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ATTEST:

Sheila McAllister
Clerk of the Council, *asst.*

Dave S.
Chair

- APPROVED
 EMERGENCY
 VETOED

Date: 11/27/01

Robert J. Drewel
County Executive

ATTEST:

Pamela S. Sandoz

Approved as the form only:

Barbara Dykes
Deputy Prosecuting Attorney

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