

SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON

AMENDED ORDINANCE NO. 03-073

RELATING TO GROWTH MANAGEMENT, AMENDING ORDINANCE NO. 93-004 TO AMEND  
COUNTYWIDE PLANNING POLICY OD-4, AND AMENDING SCC 30.10.050

WHEREAS the Growth Management Act (GMA) at RCW 36.70A.210(2) requires adoption of countywide planning policies, which consist of written policy statements used for establishing a countywide framework from which county and city comprehensive plans are developed and adopted under the GMA; and

WHEREAS, RCW 36.70A.210 also requires that countywide planning policies address the manner in which the county's and cities' planning efforts promote contiguous and orderly development and provide urban services to such development; and

WHEREAS, Snohomish County has adopted countywide planning policies in Ordinance No. 93-004 on February 4, 1993, and later amended those policies in Ordinance No. 94-002 on February 2, 1994; Ordinance No. 95-005 on February 15, 1995; Ordinance No. 95-110 on December 20, 1995; Ordinance No. 98-054 on July 15, 1998; Ordinance No. 99-120 on January 19, 2000; and Amended Ordinance No. 99-121 on February 16, 2000; and

WHEREAS, the County's adopted Countywide Planning Policies for urban infrastructure and urban levels of service are contained in Countywide Planning Policy OD-4; and

WHEREAS, the Planning Advisory Committee (PAC) of Snohomish County Tomorrow reviewed the proposal to amend Countywide Planning Policy OD-4 on April 17, 2003; and June 19, 2003, and recommended unanimous approval; and

WHEREAS, the SCT Steering Committee reviewed the proposal to amend Countywide Planning Policy OD-4 on May 28, 2003, and June 25, 2003, and recommended approval to the Snohomish County Council; and

WHEREAS, the Snohomish County Council held a public hearing on July 2 and 9, 2003, and approved the proposed amendment to Policy OD-4;

NOW, THEREFORE BE IT ORDAINED:

Section 1. The County Council makes the following findings and conclusions:

- A. The foregoing recitals are incorporated herein by this reference.
- B. The Council finds that Countywide Planning Policy OD-4 should contain the same limits on extension or expansion of urban governmental services in rural areas as originally adopted in the Growth Management Act, RCW 36.70A.110(4). Countywide Planning Policy OD-4 therefore should be amended to include the statutory language. Specifically, the Growth Management Act limits urban governmental services in the rural area to "those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such

services are financially supportable at rural densities and do not permit urban development." RCW 36.70A.110(4).

C. The Council also finds that, without an express clause addressing churches located in the rural area, Countywide Planning Policy OD-4 may contain a prohibition that raises questions under federal law and the state constitution, based on the following analysis:

1. The Superior Court in *Maltby Christian Assembly v. Central Puget Sound Growth Management Hearings Board*, No. 01-2-07907-5, in which Snohomish County was a respondent, ruled that in reviewing churches' development applications, "the County must appropriately balance the public's interest in responsible growth management against the church's constitutional right to free exercise of its religious beliefs" and "should be flexible and adopt the least restrictive means available to achieve its goal of responsible growth management."
2. The Court also indicated that in meeting its First Amendment obligations, it would be reasonable for the County to allow the extension of public sewer service to a church's property without expanding the urban growth area in order to do so. The proposed amendment to OD-4 would accomplish that purpose.
3. In practice, neither Snohomish County nor its cities appear to have interpreted the current version of OD-4 as prohibiting the extension of public sewer to serve public schools in the rural area. Such is expressly allowed by SCC 32.08.140. By contrast, under current County law, Churches in the rural area are not allowed to connect to public sewer under this or any other provision.
4. The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. Section 2000cc(b)(1) provides that the County shall not "impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."
5. Because the current version and interpretation of OD-4 allows public institutions to connect to public sewer in the rural area but disallows the same service for churches, Snohomish County desires to ensure that the purposes and intent of the RLUIPA are implemented. The proposed amended version of OD-4 is intended to address the requirements of federal law, under RLUIPA.
6. RLUIPA also provides at 42 U.S.C. section 2000cc(a) that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly or institution is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. section 2000cc(a).
7. Without making any admission of liability, Snohomish County is concerned that the current version of OD-4 may lead to an interpretation that does not allow churches in the rural area to connect to public sewer, thus potentially violating this section of RLUIPA. This federal statute makes clear that the County may not impose a substantial

burden on a church without meeting these standards, even while implementing regulations under the GMA.

8. In addition to concerns about RLUIPA, the proposed version of OD-4 also reduces the risk of violating the rights of churches under the First Amendment to the United States Constitution and rights under Article I, Section 11 of the Washington Constitution.

9. Nothing in the GMA indicates that the County is required to take the risk of violating federal statutory or constitutional law. The amendment to OD-4 is intended to avoid potential liability under this section of RLUIPA as well.

D. The Council has considered the intent of the GMA, in Section 110(4). There is a compelling governmental interest in precluding the extension or expansion of sanitary sewer lines into the rural area, where the line would serve new residential, commercial or industrial growth, and the circumstances in this section authorizing an exception are not present. The intent, consistent with "Goal 2" of the GMA, RCW 36.70A.020(2), is to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development."

E. The Council finds, however, that this statutory purpose is not thwarted by amending Countywide Planning Policy (CPP) OD-4 to make it explicit that a church located in the rural area, directly adjacent to an urban growth area, may connect to an existing public sewer line. The amended version of CPP OD-4 will allow churches to hookup to existing public sewer, while expressly prohibiting use of those sewers in the rural area for existing or future residential, commercial or industrial uses.

F. Since the limitations set forth in the amended version of CPP OD-4 to not undermine the intent of RCW 36.70A.020(2) or .110(4), the current version of CPP OD-4, as it has been interpreted, does not appear to serve a compelling governmental interest.

G. Alternatively, the Council finds that incorporation of the statutory language described in finding "B," above, into amended CPP OD-4 authorizes a rural church to connect to an existing public sewer, if the connection is necessary to protect basic public health in sanitary groundwater supplies, where the church is able to finance the connection and use of the public sanitary sewer.

H. Churches in the rural area which would qualify for connection to public sewer would not constitute urban development because the conditional use permit process would ensure that churches are compatible with the rural area and OD-4 as proposed expressly prohibits any other use from connecting to the public sewer. As noted in the *Final Decision and Order* in the case of *Vashon Maury v. King County*, CPSGMHB Case No. 95-3-0008, (Oct. 23, 1995), Churches are neither exclusively urban or rural. Snohomish County zoning code also defines churches as a permitted use within the rural area, by conditional use permit. Thus, amended CPP OD-4 will not authorize any urban growth within the rural area and will only allow churches in the rural area by conditional use permit, thus ensuring compatibility with the rural area.

I. Based on the Superior Court decision cited in Finding C(2), above, the Council finds that it would be an unnecessary imposition of additional cost and expense on churches to require them to apply for an Urban Growth Area expansion through the annual docketing process, solely for the purpose of obtaining authorization to utilize public sanitary sewers.

J. The Council further finds that, in many cases, the design and development of onsite septic systems can be more expensive to churches than hooking up to an existing public sanitary sewer. Such systems can be expensive to build and expensive to maintain. It would be unfair to limit a church to using onsite septic systems when public sewer, which is typically less expensive and more reliable, is readily available.

K. The County typically requires landowners including churches to connect to a public sewer when it is available. This is a sound policy strongly supported by protection of the public health, safety and welfare. It would also be unfair for the County to require a church to connect to an available public sewer when it becomes available by inclusion of the church's property within a UGA after the church goes to the expense of building an onsite septic system. The amended version of CPP OD-4 would remedy such unfairness by allowing churches which are adjacent to public sewer to connect to the sewer before going to the expense of an onsite septic system.

L. Based on the record before the Council, many of the County's planning areas have significant water quality problems caused by failing septic systems. Under amended CPP OD-4, churches would be allowed to hookup to public sanitary sewer, thus alleviating the kinds of problems identified in the *Quilceda Allen Watershed Management Plan* (Jan. 1999; approved by Department of Ecology, May 3, 1999), at Pages 79, 127, 130, and Technical Supplement Pages 25, 27, 32, 63, 64 and 65.

M. In balancing the goals of the GMA, the Council finds that, by reducing the potential septic load in watersheds with existing water pollution problems, amended CPP OD-4 will protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water. ARCW 36.70A.020(10).

N. Appropriate public participation has been provided through the SCT process and through a public hearing on this ordinance held after public notice on July 9, 2003.

O. Requirements of the State Environmental Policy Act have been met through the issuance of Addendum No. 5 to the Puget Sound Regional Council's Vision 2020 1995 Update Final Environmental Impact Statement on July 16, 2003.

Section 2. Section 1 of Ordinance No. 93-004, adopted February 4, 1993, is amended by amending OD-4, which is contained in the document entitled "Countywide Planning Policies for Snohomish County" dated February 4, 1993, and was last amended by Amended Ordinance No. 99-121 on February 16, 2000, as follows:

OD-4 In general, allow extension of urban infrastructure and urban levels of service only within UGAs, except as shown to be necessary to protect basic public health and safety and the environment, when such services are financially supportable at rural densities and do not permit urban development, to remedy public health emergencies PROVIDED, a church located in a rural area directly adjacent to (abutting) an Urban Growth Area shall not be precluded from hooking up to an existing sewer main, so long as the size, scale and uses at the church are compatible with the surrounding area and preserve rural character, as evidenced by the issuance of a conditional use permit. Use of the stubouts or connecting lines serving the church by any residential, commercial, or industrial use in the rural area is prohibited.

Section 3. Snohomish County Code Section 30.10.050, adopted by Amended Ordinance 02-064 on November 9, 2002, is amended to read:

30.10.050 Countywide and multi-county planning policies.

(1) Pursuant to RCW 36.70A.210(2), Snohomish County has adopted countywide planning policies (CPPs) that establish the framework for county and city comprehensive plans as follows:

(a) Ordinance No. 93-004, adopted on February 4, 1993 (adopting CPPs); (b) Ordinance No. 94-002, adopted on February 2, 1994 (amending Policies UG-4, HO-7, OD-2);

(c) Amended Ordinance No. 95-005, adopted on February 15, 1995 (amending Policy UG-2);

(d) Ordinance No. 95-110, adopted on December 20, 1995 (amending Policy UG-2, Appendix B);

(e) Ordinance No. 98-054, adopted July 15, 1998 (amending Policy TR-12, adding Policy TR-13);

(f) Amended Ordinance No. 99-120, adopted on January 19, 2000 (adding Policy OD-12); and

(g) Amended Ordinance No. 99-121, adopted on February 16, 2000 (amending Policies UG-14, HO-9, and ED-3); and

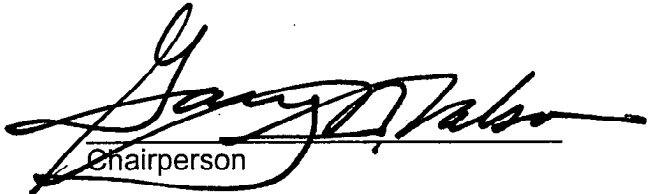
(h) Amended Ordinance No. 03-073, adopted on July 9, 2003 (amending OD-4).

(2) Pursuant to RCW 36.70A.210(7), Snohomish County participated with King, Pierce, and Kitsap counties in the development and adoption of multi-county planning policies. These policies were adopted by the Puget Sound Regional Council on March 11, 1993 by Resolution A-93-02 and were updated by Resolution PSRC-A-95-02 on May 25, 1995.

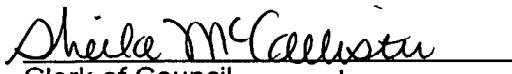
Section 4. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

PASSED this 9<sup>th</sup> day of July, 2003.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

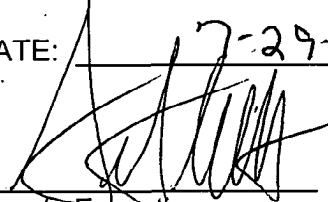
  
Chairperson

ATTEST:

  
Clerk of Council *asst*

- APPROVED
- VETOED
- EMERGENCY

DATE: 7-29-03

  
County Executive  
STEPHEN L. HOLT  
Executive Director

ATTEST:

Conie Merrin

APPROVED AS TO FORM ONLY:

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Deputy Prosecuting Attorney

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