

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



EMERGENCY ORDINANCE NO. 04-019

RELATING TO GROWTH MANAGEMENT; ADOPTING DEVELOPMENT REGULATIONS PROVIDING FOR IDENTIFICATION, DESIGNATION, SITING, AND REGULATION OF ESSENTIAL PUBLIC FACILITIES; DECLARING AN EMERGENCY; AMENDING SECTIONS 30.22.020 AND 30.70.110 SCC; REPEALING CHAPTER 30.42D SCC; ADOPTING A NEW CHAPTER 30.42D SCC; AND SETTING A PUBLIC HEARING DATE

WHEREAS, in February, 1993, Snohomish County adopted countywide planning policies for the siting of essential public facilities of a countywide or statewide nature. These policies call for the creation of an interjurisdictional process that would include or provide for a definition of such facilities, common siting criteria, an inventory of existing and planned future facilities, incentives for local jurisdictions to host such capital facilities, environmental safeguards, the consideration of alternatives to such facilities, and flexibility in the common siting criteria to account for special circumstances. Consistent with the goals and policies of the GMA, the hallmark of the CPP is collaboration among the jurisdictions within the County and public participation in the process; and

WHEREAS, on October 25, 1995, after two years of interjurisdictional collaboration and effort, the Snohomish County Tomorrow ("SCT") forum's Steering Committee and Executive Board approved the common process for the siting of essential public facilities within the County. That process was adopted by the Snohomish County Council as Appendix B to the County's General Policy Plan ("GPP"); and

WHEREAS, in addition to the countywide process that Snohomish County has adopted and agreed to follow, its own Capital Facilities ("CF") Element policies call for the County to "[f]acilitate the siting of essential public facilities sponsored by public or private entities and whose location within unincorporated areas may be appropriate." CF 11, GPP at p. CF-21. Additional policies provide further direction for county actions. CF Policy 11.A.2 provides: "Snohomish County will review and modify its code provisions and administrative procedures as necessary to fully implement the common siting process within its areas of land use jurisdiction;" and

WHEREAS, in accordance with CF Policy 11.A.2, and consistent with Appendix B to the County's GPP, Snohomish County drafted new development regulations that established a process for the siting and permitting of essential public facilities. These regulations were adopted by Amended Ordinance No. 03-006; and

WHEREAS, on April 16, 2003, King County filed a Petition for Review and Request for a Declaratory Ruling ("Petition for Review") with the Board, challenging Amended Ordinance No. 03-006. In its Petition for Review, King County stated that it was the proponent of a project known as the "Brightwater" wastewater treatment system, that would likely be deemed an essential public facility that is difficult to site and that would be harmed by the Snohomish County process for the siting of such facilities; and

WHEREAS, in October 2003, the Central Puget Sound Growth Management Hearings Board invalidated Amended Ordinance No. 03-006 in *King County v. Snohomish County, CPSGMHB No. 03-3-0011*, and remanded the ordinance back to Snohomish County to bring the code into compliance with the goals and requirements of the Growth Management Act; and

WHEREAS, the County moved for reconsideration of the Board's decision and the Board reopened the hearing on the merits for additional oral argument on December 1, 2003. On December 15, 2003, the Board issued its Order on Reconsideration and Clarification affirming its original decision invalidating Amended Ordinance No. 03-006, and remanding the matter for legislative action by the Snohomish County Council by January 14, 2004; and

WHEREAS, on December 29, 2003, Snohomish County filed an appeal of the Growth Board's decision in Snohomish County Superior Court, along with a motion to stay the effect of the Board's decisions; and

WHEREAS, thereafter King County moved the court for an order transferring venue to Thurston County Superior Court, which was granted by Judge Bowden on January 8, 2004. The court did not rule on the County's motion for a stay and the time for compliance with the Board's order continued to run; and

WHEREAS, on January 22, 2004, the County argued its motion for a stay before Judge Paula Casey in Thurston County Superior Court. The parties stipulated at the Judge's request to seek an extension of time for the County to comply with the Board's decision, so that the court would have adequate time to review the County's request for a stay of the Board's decision on appeal; and

WHEREAS, the parties have stipulated, and Judge Casey ruled, that if the County adopts amendments to its essential public facilities regulations in compliance with the Board's orders, that its appeal of the Board's decision in *King County v. Snohomish County* would not be rendered moot; and

WHEREAS, on January 23, 2004, the Central Puget Sound Growth Management Hearings Board issued an order granting and extension of time for Snohomish County to file its Statement of Actions Taken to Comply with the Board's order; and

WHEREAS, on January 28, 2004, Judge Casey denied the County's request for a stay. The parties again agreed to seek a second extension of time in which to comply with the Board's order, which was granted by the Board on February 3, 2004. In its order, the Board established a new date of February 12, 2004, for the County to take action to comply with its decisions;

THEREFORE, BE IT ORDAINED:

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

A. The foregoing recitals are incorporated herein by this reference.

B. The County Council concludes that passage of this ordinance is necessary to preserve the County's ongoing appeal of the Board's decision in *King County v. Snohomish County*, and at the same time, to provide for compliance with the Board's order until the Board's decision is modified or reversed, should that occur.

C. Pursuant to section 2.120 of the Snohomish County Charter, the Council finds and concludes that this ordinance is necessary for the immediate preservation of the public peace, health or safety or for the support of county government and its existing public institutions. Non-emergency options for amending the essential public facilities regulations are not timely under the Board's orders and will subject the county to potential sanctions under RCW 36.70A.330 and .340, and could jeopardize its public funding.

D. The Council may adopt amendments to the essential public facilities regulations by emergency action under RCW 36.70A.390 and SCC 30.73.090. Council has scheduled a hearing on March 31, 2004 at the hour of 1:30 p.m. to hold a public hearing in accordance with the public participation requirements set forth in RCW 36.70A.390.

Section 2. Pursuant to WAC 197-11-880 and SCC 30.61.020, the adoption of this ordinance is exempt from the requirements for a threshold determination under the State Environmental Policy Act (SEPA). Further, even if this action were not exempt from SEPA, the County issued a determination of nonsignificance (DNS) on April 6, 2001 for Amended Ordinance 03-006, and the council finds that it adequately addresses the environmental impacts of this proposal.

Section 3. SCC 30.22.020 (last amended by Amended Ordinance No. 03-006 adopted on February 19, 2003, which became effective on March 9, 2003), is hereby amended to read:

30.22.020 Categories of uses.

(1) SCC 30.22.100, 30.22.110, and 30.22.120 comprise the use matrix. The use matrix lists uses and indicates whether uses are permitted (P), require conditional use

(C) or administrative conditional use (A) approval, or are prohibited in a particular zone.

(a) Permitted uses (P) are those permitted outright. Certain uses have special requirements indicated by footnotes in the use matrices.

(b) Conditional uses (C) are those which required special review in order to ensure compatibility with permitted uses in the same zone. Conditional use permits are granted by the hearing examiner following a review and recommendation from the department and an open record public hearing.

(c) Administrative conditional uses (A) also require special review to ensure compatibility with permitted uses in the same zone. Administrative conditional uses are granted by the department. Uses formerly categorized as temporary uses or special uses are now processed as administrative conditional uses.

(d) Prohibited uses are those which are not allowed in a zone. A blank box in the use matrix indicates a use is not allowed.

(2) Essential public facilities (~~that are difficult to site~~) may be conditionally permitted in any zone in which they are listed as a permitted or conditional use if they satisfy the applicable requirements of chapter 30.42D SCC and 30.42C SCC.

Section 4. Chapter 30.42D SCC (added by Amended Ordinance No. 03-006, on Feb. 19, 2003 which became effective on March 9, 2003), is hereby repealed in its entirety.

Section 5. A new chapter 30.42D is hereby added to the Snohomish County Code to read as follows:

CHAPTER 30.42D

ESSENTIAL PUBLIC FACILITIES

30.42D.010 Purpose and applicability.

30.42D.020 Identification of essential public facilities—appeal.

30.42D.030 Essential public facilities—designation of local, regional, state or federal EPF by director—notice--appeal.

30.42D.040 Conditional use permit required.

30.42D.050 Optional site consultation process.

30.42D.060 Essential public facilities--conditional use permit procedure.

30.42D.070 Independent consultant review.

30.42D.080 Decision criteria for local essential public facilities.

30.42D.090 Decision criteria for designated essential public facilities.

30.42D.100 Hearing examiner authority.

30.42D.110 Building permit application.

30.42D.010 Purpose and applicability.

(1) This chapter establishes a process for identifying, siting and regulating essential public facilities (EPFs).

(2) Nothing in this chapter shall be construed as precluding the siting of essential public facilities in contravention of applicable state law. This chapter shall be interpreted

in a manner consistent with the requirements of the Growth Management Act and other other applicable statutes and regulations.

(a) An EPF is any public facility or facilities owned or operated by a unit of local or state government, public or private utility, transportation company, or any other entity that provides a public service as its primary mission, and is difficult to site. EPFs include those facilities listed in RCW 36.70A.200, and any facility that appears on the list maintained by the state office of financial management under RCW 36.70A.200(4).

(b) A "regional, state or federal EPF" means an essential public facility identified and designated by the director as a facility that is likely or required to be built within six years by a regional authority as defined by this section or by a state or federal agency where state or federal law preempts the exercise of local regulatory authority over facility siting.

(c) A "regional authority" under this chapter means Snohomish County acting alone or jointly in combination with a public agency through an interlocal agreement approved by the legislative body of each participating public agency pursuant to chapter 39.34 RCW, provided that the purpose of the interlocal agreement is to site, operate, or expand an EPF and Snohomish County is a voting member of any legal or administrative entity created thereunder.

(d) A "local EPF" means an essential public facility that is not a regional, state or federal EPF.

(2) This chapter is intended to ensure that EPFs, as needed to support orderly growth and delivery of public services, are identified, sited and regulated for the public health, safety and welfare in a timely and efficient manner. It is also intended to provide the county with additional regulatory authority to require mitigation of impacts that may occur as a result of siting, operating or expanding an EPF. Finally, this chapter is intended to promote enhanced public participation that will produce future land use decisions consistent with community goals and the comprehensive plan.

30.42D.020 Identification of essential public facilities--appeal.

(1) Any public or private entity proposing to site an EPF in the unincorporated area of the county shall provide written notice to the director of its intent to site the EPF, once it is known that the EPF is likely or required to be built within six years. The notice shall contain a detailed description of the proposal including a proposed site plan. The director shall review the notice upon receipt and determine whether, in his judgment, the proposed project shall be identified as an EPF. The director shall provide notice of his decision within 45 days to the applicant and publish notice of the decision in the official county newspaper.

(2) The director's decision shall be appealable to the county council by the applicant or by any affected person. Appeals shall be filed in writing with the department within 14 days following publication of the director's decision. There shall be no filing fee required. The council shall hold a public hearing on the appeal within 30 days of the filing of the appeal. At the hearing, any interested person may provide oral or written comment on matters relevant to the appeal. The council shall issue a decision on the appeal within 14 days of the close of the hearing. The council's decision shall be a final decision subject to appeal under Chapter 36.70C RCW.

30.42D.030. Essential public facilities—designation of local, regional, state or federal EPF by director—notice--appeal.

(1) Where the siting decision for an EPF has been or is being determined by a regional authority as defined by this chapter or by a state or federal agency where state or federal law preempts the exercise of local regulatory authority over facility siting, the director shall issue a determination that the proposal is designated as a regional, state or federal EPF. The director shall designate all other EPF proposals as local EPFs. The director shall provide written notice to the council of the designation. The director shall provide notice of his decision within 45 days to the applicant and publish notice of the decision in the official county newspaper.

(2) The director's decision shall be appealable to the county council by the applicant or by any affected person. Appeals shall be filed in writing with the department within 14 days following publication of the director's decision. There shall be no filing fee required. The council shall hold a public hearing on the appeal within 30 days of the filing of the appeal. Any appeal under this section shall be combined with an appeal under SCC 30.42.D.020 if an appeal is filed under that section. At the hearing, any interested person may provide oral or written comment on matters relevant to the appeal. The council shall issue a decision on the appeal within 14 days of the close of the hearing. The council's decision shall be a final decision subject to appeal under Chapter 36.70C RCW.

30.42D.040 Conditional use permit required.

(1) An EPF shall be a conditional use in all zones in which it is listed as a permitted or conditional use in the use matrix, chapter 30.22 SCC. In the event of a conflict with chapter 30.22 SCC, the provisions of this section shall govern.

(2) An EPF must satisfy the requirements of this chapter and chapter 30.42C SCC, except SCC 30.42C.100.

30.42D.050 Optional site consultation process.

Prior to siting an EPF and submitting a conditional use permit application, an EPF sponsor is encouraged to consult with the Snohomish County Tomorrow (SCT) forum's Planning Advisory Committee and/or the SCT Infrastructure Coordinating Committee. The consultation process, while not required, is encouraged as a means for project sponsors to present facility proposals, seek information about potential sites, and propose possible siting incentives and mitigation measures for affected jurisdictions.

30.42D.060 Essential public facilities--conditional use permit procedure.

(1) The approval process for an EPF conditional use permit is a Type 2 process as described in chapter 30.72 SCC. Application shall be made according to the submittal requirements checklist provided by the department pursuant to SCC 30.70.030.

(2) The conditional use permit application shall also include a public participation plan designed to encourage early public involvement in the permitting decision and in determining possible mitigation measures.

(3) In addition to the conditional use permit application fee, an additional fee of \$1000 shall be required for the additional costs associated with review of an EPF application under the criteria established in SCC 30.42D.070.

30.42D.070 Independent consultant review.

(1) The department may require independent consultant review of the proposal to assess its compliance with the criteria contained in SCC 30.42D.070.

(2) If independent consultant review is required, the sponsor shall make a deposit with the department sufficient to defray the cost of such review. Unexpended funds will be returned to the applicant following the final decision on the application.

30.42D.080 Decision criteria for local essential public facilities.

The hearing examiner may approve or approve with conditions, a conditional use permit for a local EPF only when the proposal meets all of the following criteria:

(1) The proposal is consistent with the comprehensive plan;

(2) The project sponsor has demonstrated a need for the project, as supported by an analysis of the projected service population, an inventory of existing and planned comparable facilities, and the projected demand for the type of facility proposed;

(3) If applicable, the project would serve a significant share of the county's population, and the proposed site will reasonably serve the project's overall service population;

(4) The sponsor has reasonably investigated alternative sites, as evidenced by a detailed explanation of site selection methodology;

(5) The project is consistent with the sponsor's own long-range plans for facilities and operations;

(6) The project will not result in a disproportionate burden on a particular geographic area;

(7) The sponsor has provided a meaningful opportunity for public participation in the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the county code, and state or federal law;

(8) The proposal complies with applicable requirements of Chapter 30.42C SCC and all other applicable provisions of the county code;

(9) The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs;

(10) The proposal, as conditioned, adequately mitigates adverse impacts to life, limb, property, the environment, public health and safety, transportation systems, economic development and other identified impacts;

(11) The proposal incorporates specific features to ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property; and

(12) The project sponsor has proposed mitigation measures that provide substantial assistance to displaced or impacted businesses in relocating within the county.

30.42D.090 Decision criteria for regional, state or federal essential public facilities.

The hearing examiner must approve or approve with conditions, a conditional use permit for a regional, state or federal EPF in accordance with the following criteria:

(1) The sponsor has provided a meaningful opportunity for public participation in the siting decision and development of mitigation measures that is appropriate in light of the project's scope, applicable requirements of the county code, and state or federal law;

(2) The proposal complies with applicable requirements of Chapter 30.42C SCC and all other applicable provisions of the county code;

(3) The project site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs;

(4) The proposal, as conditioned, adequately mitigates adverse impacts to life, limb, property, the environment, public health and safety, transportation systems, economic development and other identified impacts;

(5) The proposal incorporates specific features to ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property; and

(6) The project sponsor has proposed mitigation measures that provide substantial assistance to displaced or impacted businesses in relocating within Snohomish County.

30.42D.100 Hearing examiner authority.

As a condition of approval pursuant to SCC 30.42D.080 or .090, the hearing examiner may:

(1) Increase requirements in the standards, criteria, or policies established by this title;

(2) Stipulate the exact location as a means of minimizing hazards to life or limb, property damage, impacts to the environment, erosion, underground collapse, landslides, and transportation systems;

(3) Impose conditions necessary to avoid, minimize or mitigate any adverse impacts identified as a result of the project; and

(4) Require the posting of construction and maintenance bonds or other security as provided in Chapter 30.84 SCC, sufficient to secure to the county the estimated cost of construction, installation and maintenance of required improvements.

30.42D.110 Building permit application.

(1) Any building permit for an EPF approved under this chapter shall comply with all conditions of approval in the conditional use permit. In the event a building permit for an EPF is denied, the department shall submit in writing the reasons for denial to the project sponsor.

(2) No construction permits may be applied for prior to approval of a conditional use permit for an EPF unless the applicant signs a written release acknowledging that such approval is neither guaranteed nor implied by the department's acceptance of the

construction permit applications. The applicant shall expressly hold the county harmless and accept all financial risk associated with preparing and submitting construction plans before a final decision is made under this chapter.

Section 6. Section 30.70.110 (added by Ordinance No. 02-064 on Dec. 9, 2002, which became effective on Feb. 1, 2003), is hereby amended to read:

30.70.110 Processing timelines.

(1) Notice of final decision on a project permit application shall issue within 120 days from when the permit application is determined to be complete, unless otherwise provided by this section or state law.

(2) In determining the number of days that have elapsed after an application is complete, the following periods shall be excluded:

(a) Any period during which the county asks the applicant to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the county mails notification to the applicant of the need for additional information until the date the county determines whether the additional information satisfies the request for information, or 14 days after the applicant supplies the information to the county, whichever is earlier. If the information submitted by the applicant under this subsection is insufficient, the county shall mail notice to the applicant of the deficiencies and the provisions of this subsection shall apply as if a new request for information had been made;

(b) Any period during which an environmental impact statement is being prepared;

(c) A period, not to exceed 30 calendar days, during which a code interpretation is processing in conjunction with an underlying permit application pursuant to chapter 30.83 SCC.

(d) The period specified for administrative appeals of project permits;

(e) Any period during which processing of an application is suspended pursuant to SCC 30.70.045(1)(b); and

(f) Any period of time mutually agreed upon by the applicant and the county.

(3) The time periods established by this section shall not apply to a project permit application:

(a) That requires an amendment to the comprehensive plan or a development regulation in order to obtain approval;

(b) That requires approval of a new fully contained community as provided in RCW 36.70A.350, and a master planned resort as provided in RCW 36.70A.360(~~or the siting of an essential public facility as provided in chapter 30.42D SCC~~);

(c) That is substantially revised by the applicant, in which case a new 120-day time period shall start from the date at which the revised project application is determined to be complete;

(d) That requires approval of a development agreement by the county council;

(e) When the applicant consents to an extension; or

(f) During any period necessary for reconsideration of a hearing examiner's decision.

(4) Subject to all other requirements of this section, notice of final decision on an

application for a boundary line adjustment shall be issued within 45 days after the application is determined complete.

(5) The county shall notify the applicant in writing if a notice of final decision on the project has not been made within the time limits specified in this section. The notice shall include a statement of reasons why the time limits have not been met and an estimated date of issuance of a notice of final decision.

Failure of the county to make a final decision within the timelines specified by this chapter shall not create liability for damages.

Section 7. This ordinance shall take effect immediately upon passage by the County Council.

Section 8. The County Council will hold a public hearing on this matter on March 31, 2004, at the hour of 1:30 p.m. in Everett, 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 9. 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 by a vote of 5 to 0 this 11th day of February, 2004.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Council Chairperson

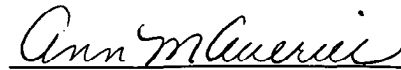
ATTEST:


Clerk of the Council, *asst.*

- () APPROVED
- () VETOED
- (X) EMERGENCY

DATE: 2/24/04

ATTEST:

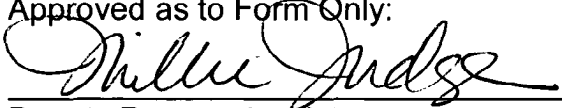



County Executive

EMERGENCY ORDINANCE NO. 04-019
RELATING TO GROWTH MANAGEMENT; ADOPTING DEVELOPMENT
REGULATIONS PROVIDING FOR IDENTIFICATION, DESIGNATION, SITING, AND
REGULATION OF ESSENTIAL PUBLIC FACILITIES; ETC. -- 10

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Approved as to Form Only:


Deputy Prosecuting Attorney

FILED WITH THE CLERK OF THE COUNCIL: 2/11/04
PASSED BY THE COUNTY COUNCIL: 2/11/04
PUBLISHED: _____
EFFECTIVE DATE: 2/11/04
ORDINANCE NO. 04-019

EMERGENCY ORDINANCE NO. 04-019
RELATING TO GROWTH MANAGEMENT; ADOPTING DEVELOPMENT
REGULATIONS PROVIDING FOR IDENTIFICATION, DESIGNATION, SITING, AND
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○ The Council held the required public hearing on Emergency Ordinance No. 04-019 on March 31, 2004. Other than the scrivener error corrections noted below no amendments were made to Ordinance No. 04-020 as adopted on Feb. 11, 2004.

*Code Reviser Note: When adopted on Feb. 11, 2004, Emergency Ordinance 04-019 at 30.42D.060(3), contained an incorrect reference to SCC 30.42D.070. On March 31, 2004 the Council directed that scrivener errors be corrected to reflect the correct reference citation of SCC 30.42D.080 and 30.42D.090.

*Code Reviser Note: When adopted on Feb. 11, 2004, Emergency Ordinance 04-019 at 30.42D.070(1), contained an incorrect reference to SCC 30.42D.070. On March 31, 2004 the Council directed that scrivener errors be corrected to reflect the correct reference citation of SCC 30.42D.080 and 30.42D.090.

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