



SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

EMERGENCY ORDINANCE NO. 06-009

RELATING TO GROWTH MANAGEMENT; AMENDING SCC 30.22.020; REPEALING
CHAPTER 30.42D SCC, DEVELOPMENT REGULATIONS PROVIDING FOR
IDENTIFICATION, DESIGNATION, SITING AND REGULATION OF ESSENTIAL
PUBLIC FACILITIES

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 Growth Management Act (Ch. 36.70A RCW) (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 through a conditional use permit process. These regulations were adopted by Amended Ordinance No. 03-006 (EPF I) and codified in chapter 30.42D SCC; and

1 WHEREAS, on April 16, 2003, King County filed a Petition for Review and
2 Request for a Declaratory Ruling ("Petition for Review") with the Central Puget Sound
3 Growth Management Hearings Board (Board), challenging Amended Ordinance No.
4 03-006. In its Petition for Review, King County stated that it was the proponent of a
5 project known as the "Brightwater" wastewater treatment system, that would likely be
6 deemed an essential public facility that is difficult to site and that would be harmed by
7 the Snohomish County process for the siting of such facilities; and
8

9 WHEREAS, on October 13, 2003, the Board issued a Final Decision and Order
10 (FDO) and invalidated Amended Ordinance No. 03-006 in *King County v. Snohomish*
11 *County, CPSGMHB No. 03-3-0011 (King County I)*, and remanded the ordinance back
12 to Snohomish County to bring the code into compliance with the goals and requirements
13 of the Growth Management Act; and
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15 WHEREAS, on December 29, 2003, Snohomish County filed an appeal of the
16 Board's decision in Snohomish County Superior Court; and
17

18 WHEREAS, thereafter King County moved the court for an order transferring
19 venue to Thurston County Superior Court, which was granted on January 8, 2004. The
20 case was then assigned to Thurston County Superior Court Judge Paula Casey; and
21

22 WHEREAS, pursuant to the Board's FDO, on February 11, 2004, the county
23 council adopted Emergency Ordinance No. 04-019 (EPF II) which repealed the
24 development regulations adopted in chapter 30.42D SCC in Amended Ordinance No.
25 03-006 (EPF I) and adopted new development regulations related to essential public
26 facilities in a new chapter 30.42D SCC. EPF II again established a framework for
27 considering essential public facilities through a conditional use permit application
28 process; and
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30 WHEREAS, one of the salient provisions of EPF II was that it established
31 separate tracks with separate permit criteria depending on whether the proposed
32 essential public facility was a regional essential public facility proposed by a "regional
33 authority" or whether it was a local essential public facility proposed by a local authority.
34 Snohomish County adopted this dual track permitting system based on what it
35 perceived to be direction from the Board to that effect in its FDO in the *King County I*
36 case; and
37

38 WHEREAS, on May 26, 2004, following a compliance hearing, the Board issued
39 an Order Finding Continuing Noncompliance and Continuing Invalidity and Notice of
40 Second Compliance Hearing in *King County I*, which (1) found Snohomish County's
41 definition of "regional authority" to be noncompliant with the GMA and invalid, (2)
42 additionally found certain of the conditional use permit criteria for regional EPFs to be
43 noncompliant and invalid, and (3) found the County's conditional use permit criteria for
44 local EPFs to be compliant with the GMA; and
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Emergency Ordinance No. 06-009
GMA; Amending SCC 30.22.020; et al.

1 WHEREAS, Snohomish County filed an appeal of the Board's May 26, 2004,
2 Order in *King County I*, in Skagit County Superior Court. On September 16, 2004, King
3 County successfully moved that court to change venue of that appeal to Thurston
4 County Superior Court where it was consolidated with Snohomish County's earlier
5 appeal before Judge Casey under Thurston County Cause No. 04-2-00083-9; and
6

7 WHEREAS, following a trial on March 14, 2005, Judge Casey issued an Order
8 on May 20, 2005, which affirmed the Board's May 26, 2004, Order with respect to the
9 definition of "regional authority," but reversed the Board with respect to permit criteria
10 for regional EPFs; and
11

12 WHEREAS, on November 16, 2005, the Board adopted an Order requiring
13 Snohomish County to take legislative action by January 25, 2006, to cure the remaining
14 issue of noncompliance in the *King County I* case relating to the definition of "regional
15 authority" in EPF II; and
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17 WHEREAS, on December 7, 2005, the county council adopted Emergency
18 Amended Ordinance No. 05-126, providing that essential public facilities would be
19 regulated through development agreements, amending SCC 30.75.020 and 30.75.100
20 and adding a new section 30.75.130 to the Snohomish County Code; and
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22 WHEREAS, on December 20, 2005, King County and Snohomish County
23 executed a Settlement Agreement related to the siting of King County's proposed
24 Brightwater Sewage Treatment Facility in south Snohomish County. As part of that
25 Settlement Agreement, King County and Snohomish County agreed to dismiss its *King*
26 *County I* case before the Board; and
27

28 WHEREAS, on January 18, 2006, King County and Snohomish County
29 submitted a stipulation requesting the Board to dismiss the *King County I* case; and
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31 WHEREAS, the Board has not dismissed the *King County I* case, and has
32 instead stated in a footnote in a January 23, 2006, Order of Dismissal in the case of
33 *King County IV* (No. 05-3-0031), that it expected Snohomish County to take legislative
34 action in *King County I* as ordered in the November 16, 2005, order; and
35

36 WHEREAS, the county council intended, through the enactment of Emergency
37 Amended Ordinance No. 05-126, to establish a new process for regulating proposals for
38 essential public facilities through development agreements rather than the conditional
39 use permit process contemplated by the EPF II ordinance; and
40

41 WHEREAS, the regulatory framework established by the EPF II ordinance is no
42 longer consistent with the county's process for consideration of proposals for essential
43 public facilities as codified in SCC 30.75.020, .100 and .130 as adopted by Emergency
44 Amended Ordinance No. 05-126;
45

1 NOW, THEREFORE, BE IT ORDAINED BY THE SNOHOMISH COUNTY
2 COUNCIL:

3
4 Section 1. The county council adopts the following findings of fact and
5 conclusions:

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

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9 B. The county council concludes that adoption of this Ordinance is necessary to
10 resolve an inconsistency between the regulatory frameworks for consideration of
11 proposals for essential public facilities in EPF II and in Emergency Amended Ordinance
12 No. 05-126.

13
14 C. The county council concludes that adoption of this Ordinance is also
15 necessary to cure the finding of noncompliance by the Board in the *King County I* case.

16
17 D. This Ordinance is necessary for the immediate preservation of public peace,
18 health or safety or for the support of county government and its existing public
19 institutions, and is an emergency ordinance under SCC 30.73.090(2).

20
21 E. This matter is exempt from planning commission review pursuant to SCC
22 30.73.040(2).

23
24 F. The County Council held a public hearing on February 22, 2006.

25
26 Section 2. The adoption of this Ordinance is exempt from the requirements for a
27 threshold determination under the State Environmental Policy Act (SEPA) and chapter
28 30.61 SCC because it is a procedural action under WAC 197-11-800(19).

29
30 Section 3. Snohomish County Code Section 30.22.020, last amended by
31 Amended Ordinance No. 05-040 on July 6, 2005 is amended to read:

32
33 30.22.020 Categories of uses.

34 (1) SCC 30.22.100, 30.22.110, and 30.22.120 comprise the use matrix. The use
35 matrix lists uses and indicates whether uses are permitted (P), require conditional use
36 (C) or administrative condition use (A) approval, or are prohibited in a particular zone.

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

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

43 (c) Administrative conditional uses (A) also require special review to ensure
44 compatibility with permitted uses in the same zone. Administrative conditional uses are

1 granted by the department. Uses formerly categorized as temporary uses or special
2 uses are not processed as administrative conditional uses.

3 (d) Special use permits (S) require a local, state, or regional land use permit issued
4 for a facility at a particular location subject to conditions placed on the proposed use to
5 ensure compatibility with adjacent land uses,

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

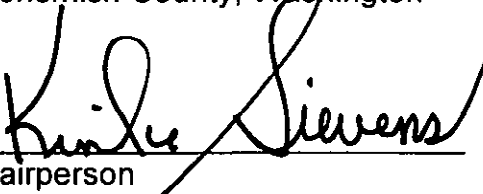
8 (2) Essential public facilities (~~may be conditionally~~) shall be permitted in any zone in
9 which they are listed as a permitted or conditional use (~~if they satisfy the applicable~~
10 ~~requirements of chapter 30.42D SCC and 30.42G SCC~~) upon the approval of a
11 development agreement under SCC 30.75.020, 30.75.100 and 30.75.130.

12
13 Section 4. Chapter 30.42D SCC adopted by Emergency Ordinance No. 04-019
14 on February 11, 2004, is repealed.

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16 Section 5. If any provision of this ordinance or its application to any person or
17 circumstance is held invalid, the remainder of the ordinance or the application of the
18 provision to other persons or circumstances is not affected.

19
20 PASSED by a vote of 5 to 0 this 22nd day of February, 2006.

21
22 SNOHOMISH COUNTY COUNCIL
23 Snohomish County, Washington

24
25 
26
27
28 Chairperson

29 ATTEST:

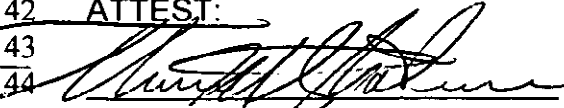
30 
31
32 Asst. Clerk of the Council

33 () APPROVED
34 () EMERGENCY
35 () VETOED

36
37 DATE: 2/23/06

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39 
40
41 County Executive

42 ATTEST:

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1 Approved as to form only:

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3 _____
4 Deputy Prosecuting Attorney

D-15