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SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

AMENDED ORDINANCE NO. 09-077

AN ORDINANCE RELATING TO THE AMENDMENT OF TITLES 13 AND 30 SCC TO  
REDUCE THE BONDING AMOUNT FOR PERFORMANCE AND WARRANTY BONDS  
FROM 150 PERCENT TO 110 PERCENT

WHEREAS, Snohomish County is experiencing a significant downturn in the economy,  
including the construction industry; and

WHEREAS, the County Council recognizes that economic stimulus can provide  
additional employment opportunities for the citizens of Snohomish County and is essential to  
helping our economy to turnaround; and

WHEREAS, Performance and Warranty bonds, established in a sufficient amount, are  
necessary and required to protect the public interest; and

WHEREAS, the ability to obtain bonds is critical for companies to bid on and secure  
work on a construction project; and

WHEREAS, this ordinance will reduce the current 150 percent amount required for a  
Performance or Warranty bond to 110 percent; and

WHEREAS, the reduction in the bonding amount as authorized by this ordinance will  
continue to require bonds in an amount sufficient to protect the public interest; and

WHEREAS, this reduction will reduce the cost of bonds making them more affordable  
and more obtainable, which will allow construction companies to secure projects which will  
result in jobs being created, which will help stimulate the economy; and

WHEREAS, the County has provided for public participation in developing the proposed  
revisions in accordance with the state law and County codes; and

WHEREAS, on July 7, 2009, the Department of Public Works, ("DPW"), briefed the  
Public Works Committee on the proposed revisions to chapter 30.66B SCC; and

WHEREAS, on March 24, 2009, the DPW briefed the Planning Commission on the  
proposed revisions to Titles 13 and 30 SCC; and

WHEREAS, on April 28, 2009, the Snohomish County Planning Commission held a  
public hearing, received public testimony, deliberated, and voted to recommend adoption of the  
proposed amendments as enumerated in its recommendation letter of April 28, 2009; and

1           WHEREAS, the DPW has provided for environmental review of the proposed revision in  
2 accordance with state law and County codes; and

3           WHEREAS, having considered the recommendations of the Planning Commission, the  
4 County Executive, and the evidence offered at the public hearing before the Council, the County  
5 Council finds that it is appropriate to amend Titles 13 and 30 SCC to reduce the required  
6 bonding amount for Performance and Warranty bonds from 150 percent to 110 percent.

7  
8 NOW, THEREFORE, BE IT ORDAINED:

9  
10 **Section 1.** The County Council makes the following findings:

- 11  
12 A. The County Council adopts and incorporates the foregoing recitals as findings as if set  
13 forth fully herein.
- 14 B. The county is experiencing a significant downturn in the economy, including the  
15 construction industry.
- 16 C. Economic stimulus that will help create jobs is needed to help with the turnaround of the  
17 economy.
- 18 D. The proposed amendments to Titles 13 and 30 SCC (“proposed amendments”) reduce the  
19 bonding percentage amount for Performance and Warranty Bonds from 150 percent to 110  
20 percent.
- 21 E. The proposed amendments will still require bonds in an amount to protect the public’s  
22 interest.
- 23 F. The county has required and administered thousands of bonds over the years and is  
24 currently administering over 1,600 bonds.
- 25 G. On March 10, 2009, the DPW issued a Determination of Non-Significance for this non-  
26 project action pursuant to the State Environmental Policy Act, Chapter 43.21C RCW  
27 (“SEPA”).

28  
29 **Section 2.** The County Council makes the following conclusions:

- 30 A. The proposed amendments reduce the bonding percentage amount for Performance and  
31 Warranty Bonds from 150 percent to 110 percent.
- 32 B. The proposed amendments will reduce the cost for bonds, making them more affordable  
33 and obtainable, thereby allowing construction projects to start, which will create jobs and  
34 stimulate the local economy.
- 35 C. The proposed amendments will continue to allow, and not negatively impact, any future  
36 or approved projects that implement and support the County’s adopted Transportation  
37 Element, as described by the County’s Comprehensive Plan.
- 38 D. The proposed amendments will have no effect on a project’s consistency with the  
39 County’s Countywide Planning Policies and the County’s development regulations  
40 adopted pursuant to the Growth Management Act, Chapter 36.70A RCW (“GMA”).

- 1 E. The proposed amendments comply with and are consistent with the procedural and  
2 substantive requirements of the GMA.
- 3 F. All SEPA requirements with respect to this non-project action have been satisfied.
- 4 G. The County complied with state and local public participation requirements under the  
5 GMA and chapter 30.73 SCC.
- 6 H. The County Council includes in its findings and conclusions the ((final review and  
7 evaluation of the proposal)) Staff Report, dated May 7, 2009 completed by DPW in  
8 accordance with chapter ((30.74)) 30.73 SCC, which is hereby made a part of this  
9 ordinance as if set forth herein.

10 **Section 3.** The County Council bases its findings and conclusions on the entire record of the  
11 County Council, including all testimony and exhibits. Any finding which should be deemed a  
12 conclusion, and any conclusion which should be deemed a finding, is hereby adopted as such.

13 **Section 4.** Snohomish County Code Section 13.10.115, last amended by Amended Ordinance  
14 96-028 on June 12, 1996, is amended to read:

15 **13.10.115 Performance security.**

16 (1) The engineer may require an applicant to post a performance security, guaranteeing  
17 right-of-way restoration and/or completion of the proposed construction to the  
18 satisfaction of the engineer.

19 (2) Franchised utilities with a current franchise bond in place will not be required to  
20 post a performance security unless the franchise bond is less than the required  
21 performance security as determined by the engineer.

22 (3) Performance security shall be in an amount of at least ((150)) 110 percent of the  
23 estimate cost of road construction, restoration and/or right-of-way improvements.

24 (4) Performance security shall be made on the forms as provided by the department  
25 and may be one of the following:

- 26 (a) Bond;  
27 (b) Letter of credit;  
28 (c) Assignment of funds or account;  
29 (d) Cashiers check;  
30 (e) Other form of security as may be specifically approved by the director of  
31 finance.

32 **Section 5.** Snohomish County Code Section 30.25.043, adopted by Ordinance No. 02-064 on  
33 December 9, 2002, is amended to read:

34 **30.25.043 Landscaping installation.**

35 (1) All required landscaping shall be installed and a qualified landscape designer shall  
36 certify to the department that the installation complies with the code and the approved  
37 plans prior to issuance of a certificate of occupancy or final approval of the building  
38 permit.

39 (2) The department may authorize up to a 180-day delay when a qualified landscape  
40 designer certifies that planting season conflicts could produce a high probability of plant  
41 loss.

1 (3) A performance security in an amount sufficient to cover up to ((150)) 110 percent  
2 of the cost of purchasing and installing the approved landscaping shall be required by the  
3 department if a planting delay is authorized.

4 **Section 6.** Snohomish County Code Section 30.26.040, adopted by Ordinance No. 02-064 on  
5 December 9, 2002, is amended to read:

6 **30.26.040 Reduction of required spaces.**

7 The department may reduce the parking requirements otherwise prescribed for any use or  
8 combination of uses as set forth below:

9 (1) Retirement apartments. Approved building plans shall show two parking spaces  
10 per dwelling unit. Installation of up to 50 percent of the required spaces may be deferred  
11 by the department and held in reserve as landscaped area. Installation of the deferred  
12 parking spaces and any required parking lot landscaping will be required at such time as  
13 the building is no longer used as a retirement apartment. A performance bond or  
14 alternate surety may be required in the amount of ((150)) 110 percent of the cost of the  
15 deferred improvements to assure installation at a future date;

16 **Section 7.** Snohomish County Code Section 30.41A.410, adopted by Ordinance No. 02-064 on  
17 December 9, 2002, is amended to read:

18 **30.41A.410 Improvements - how pledged.**

19 (1) Before requesting final approval, the applicant shall carry out minimum  
20 improvements by any of the following methods:

21 (a) By actual installation of improvements to the satisfaction of the department; or

22 (b) If acceptable to the department, by furnishing the county with a bond or other  
23 security sufficient to secure the estimated cost of construction and installation of all  
24 required public road, drainage, and other improvements to the satisfaction of the  
25 department in accordance with chapter 30.84 SCC. Performance securities shall  
26 generally be in an amount equal to ((150)) 110 percent of the estimated cost of installing  
27 the improvements.

28 (2) A maintenance bond or other security shall be required in order to assure the  
29 successful operation of the improvements for an appropriate period of time up to two  
30 years after final subdivision approval in accordance with chapter 30.84 SCC. The  
31 maintenance bond or security shall be required upon completion of construction and  
32 installation of the improvements to the satisfaction of the department.

33 **Section 8.** Snohomish County Code Section 30.63A.410, adopted by Ordinance No. 02-064 on  
34 December 9, 2002, is amended to read:

35 **30.63A.410 Performance security - requirements.**

36 (1) Prior to permit or approval. Prior to the issuance of any permit or approval for any  
37 development activity for which a full drainage plan is required, the applicant shall furnish  
38 the department a performance security for installation and maintenance of erosion and  
39 sediment control measures, including an amount sufficient to abate potential adverse  
40 impacts to public and private drainage facilities in the event of failure to complete the  
41 project.

42 (2) Prior to recordation or certificate of occupancy. The applicant for any development

1 activity for which a drainage plan is required who wishes to construct a portion of the  
2 required drainage facilities after recordation of the final subdivision or short subdivision  
3 or issuance of the certificate of occupancy, shall submit a performance security pursuant  
4 to this subsection in a form acceptable to the director prior to obtaining approval of  
5 final subdivision or short subdivision or a certificate of occupancy. The director may  
6 only accept the performance security for this purpose for drainage facilities for which  
7 delayed construction does not pose a threat of significant adverse drainage impacts, as  
8 determined by the director. In no case shall the director accept the performance security  
9 for delayed construction of retention facilities, detention facilities, storm water treatment  
10 facilities, and associated conveyance systems, or erosion and sedimentation control  
11 facilities.

12 The performance security required pursuant to this subsection shall be in the amount of  
13 ~~((150))~~ 110 percent of the greater of either:

14 (a) The estimated cost, as determined by the department, of constructing all drainage  
15 facilities as specified in the approved drainage plan, or

16 (b) The estimated cost, as determined by the department, of monitoring drainage  
17 facility performance and designing and constructing any corrective work plus other  
18 mitigation measures which may be necessary to correct the effects on-site and off-site of  
19 inadequate or failed workmanship, materials or design. The estimated costs shall also  
20 include related incidental and consequential costs, and the cost of inspection of the work  
21 by the department. The performance security shall remain in effect until final inspection  
22 and construction acceptance by the county of all drainage facilities specified by the  
23 drainage plan, which may occur up to two (2) years after recordation of a final  
24 subdivision or short subdivision or issuance of a certificate of occupancy. The  
25 performance security shall not be released until a warranty security is accepted pursuant  
26 to SCC 30.63A.420.

27 If the work required by this chapter is not satisfactorily completed by the applicant  
28 within two years after recordation or issuance of a certificate of occupancy, the applicant  
29 shall forfeit the performance security to the county. Where a surety bond is posted by the  
30 applicant, the surety company shall be required, at the option of the department, to either  
31 pay the security amount to the county upon demand or complete the work according to  
32 the county's terms and conditions. Forfeiture of the performance security hereunder shall  
33 be in addition to any other legal or equitable remedy available to the county.

34 **Section 9.** Snohomish County Code Section 30.63A.420, adopted by Ordinance No. 02-064 on  
35 December 9, 2002, is amended to read:

36 **30.63A.420 Warranty security - requirements.**

37 (1) After final inspection and acceptance of all drainage facilities required by an  
38 approved full drainage plan and before recordation of a subdivision or short subdivision  
39 or issuance of a certificate of occupancy and before the release of any performance bond  
40 required pursuant to SCC 30.63A.410(2), the applicant shall furnish the department a  
41 warranty security in a form acceptable to the director in the amount of ~~((150))~~ 110  
42 percent of the estimated cost, as determined by the department, of monitoring drainage  
43 facility performance and designing and constructing any corrective work plus other  
44 mitigation measures which may be necessary to correct the effects on-site and off-site of

1 inadequate or failed workmanship or materials, or defective design. The estimated cost  
2 shall also include related incidental and consequential costs, and the cost of inspection of  
3 the work by the department.

4 (2) The warranty security shall remain in effect for a period of two (2) years after final  
5 inspection and construction acceptance by the county of all drainage facilities specified  
6 by the drainage plan. Where a project is completed in phases, the warranty period shall  
7 begin to run after completion and acceptance by the county of the first phase of the work  
8 and shall remain in effect for a period of two (2) years after final inspection and  
9 construction acceptance of the final phase.

10 (3) Release of the warranty security by the county shall constitute final approval of the  
11 drainage facilities of the development activity.

12 (4) If, during the period the warranty security is in effect, the drainage facilities  
13 required by an approved full drainage plan do not perform or function satisfactorily or do  
14 not accomplish their intended purpose, the department shall notify the applicant and  
15 specify an appropriate time in which the applicant shall cure the unsatisfactory  
16 performance or perform corrective or restoration work as required. If this additional  
17 work is not performed by the applicant either within the time specified or in a manner  
18 acceptable to the department, the applicant shall forfeit the warranty security to the  
19 county. Where a surety bond is posted, the surety company shall be required, at the  
20 option of the department, to either pay the security amount to the county upon demand, or  
21 complete the additional work according to the county's terms and conditions. Forfeiture  
22 of the warranty security shall be in addition to any other legal or equitable remedy  
23 available to the county.

24 **Section 10.** Snohomish County Code Section 30.84.020, adopted by Amended Ordinance No.  
25 02-064 on December 9, 2002, is amended to read:

26 **30.84.020 Bonds - form and amount.**

27 (1) Bonds and other security devices shall be submitted on forms provided by the  
28 director or in a form acceptable to the director. Surety bonds, letters of credit, and  
29 assignment of savings are the preferred security devices.

30 (2) Unless otherwise provided in this title, the director shall determine the bond or  
31 security device amount as follows:

32 (a) The amount of a performance bond or security will be ~~((150))~~ 110 percent of  
33 the cost of covered work or improvements calculated at the time of expiration of the  
34 device.

35 (b) The amount of the maintenance bond or security will be at least 20 percent of  
36 the cost of the work or improvements secured by the device.

37 (c) The amount of the warranty security will be ~~((150))~~ 110 percent of the  
38 estimated cost of covered work or improvements calculated at the time of expiration of  
39 the device.

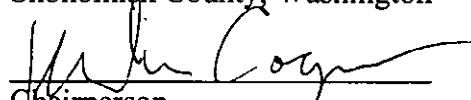
40 **Section 11. Effective date.** The effective date of this ordinance shall be as stated in Charter  
41 § 2.110.

1 **Section 12.** The County Council, pursuant to SCC 1.02.020(1), directs the Code Reviser to  
2 update SCC 13.10.115, 30.25.043, 30.26.040, 30.41A.410, 30.63A.410, 30.63A.420 and  
3 30.84.020.

4 **Section 13. Severability and savings.** If any section, sentence, clause or phrase of this ordinance  
5 shall be held to be invalid or unconstitutional by the Growth Management Hearings Board  
6 (Board), or a court of competent jurisdiction, such invalidity or unconstitutionality shall not  
7 affect the validity or constitutionality of any other section, sentence, clause, or phrase of this  
8 ordinance. Provided, however, that if any section, sentence, clause, or phrase of this ordinance is  
9 held to be invalid by the Board or court of competent jurisdiction, then the section, sentence,  
10 clause or phrase in effect prior to the effective date of this ordinance shall be in full force and  
11 effect for that individual section, sentence, clause, or phrase as if this ordinance had never been  
12 adopted.

13  
14 PASSED this 26th day of August, 2009.

15  
16 SNOHOMISH COUNTY COUNCIL  
17 Snohomish County, Washington

18  
19   
20 Chairperson

21 ATTEST:

22   
23 Asst. Clerk of the Council

24  
25  
26  APPROVED

27  
28  EMERGENCY

29  
30  VETOED

31 DATE: 9/9/09

32  
33   
34 County Executive

35  
36  
37 ATTEST:

38 

39 AARON REARDON  
40 County Executive

41 Approved as to form only:

42  
43  
44 \_\_\_\_\_  
45 Deputy Prosecuting Attorney

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