Adopted: Oct 20, 2010 Effective: Nov 4, 2010

SNOHOMISH COUNTY COUNCIL Snohomish County, Washington

ORDINANCE NO. 10-087

# RELATING TO REQUIREMENTS FOR THE PROVISION OF SECURITY DEVICES RELATED TO CONSTRUCTION AND OTHER ACTIVITIES PERFORMED IN COUNTY RIGHTS-OF-WAY; AMENDING, ADDING AND REPEALING SECTIONS OF TITLE 13 SCC

WHEREAS, title 13 of the Snohomish County Code (the "SCC") governs activities occurring on or relating to public roads located in Snohomish County (the "County"); and

WHEREAS, on July 3, 1985, the County Council adopted Ordinance No. 85-051 which enacted a new title 13 that controls regulations on security devices associated with the development of roads and bridges and associated drainage systems within the unincorporated areas of the County; and

WHEREAS, chapter 13.10 SCC requires that persons undertaking construction and/or other specified types of activities within County road rights-of-way obtain authorization from the County's Department of Public Works ("DPW") prior to undertaking such work or performing such activities within County road rights-of-way; and

WHEREAS, in order to ensure that construction work and other activities governed by permits and authorizations issued pursuant to title 13 SCC are performed and completed by the permittee in accordance with the requirements of title 13 SCC, the Engineering Design and Development Standards (the "EDDS") adopted by DPW, and other applicable laws, rules and regulations, title 13 SCC requires that persons undertaking certain types of projects within County rights-of-way provide security devices to the County as a condition of obtaining the necessary permits and authorizations; and

WHEREAS, title 30 SCC, which governs activities related to land use and development within unincorporated portions of the County, requires persons to obtain permits and/or other types of authorizations from the County's Department of Planning and Development Services ("PDS") prior to undertaking development or other types of activities governed by title 30 SCC; and

WHEREAS, in order to ensure that land use and development activities governed by permits and authorizations issued pursuant to title 30 SCC are performed and completed by the permittee in accordance with the requirements of title 30 SCC and other applicable laws, rules, and regulations, title 30 SCC requires that persons undertaking certain types of development activities provide security devices to the County as a condition of obtaining the necessary permits and authorizations; and

WHEREAS, the County Council wishes to amend the language relating to security devices contained in title 13 SCC to clarify those requirements and coordinate that language with the language relating to security devices used in title 30 SCC, which is being amended by Amended Ordinance No. 10-086, a companion ordinance to this Ordinance, thereby making the

requirements relating to security devices consistent and easier to understand and implement; and

WHEREAS, DPW has conducted early and continuous public participation in developing the amendments to the security device provisions of title 13 SCC that are contained in this Ordinance; and

WHEREAS, pursuant to RCW 36.70A.106(1), a notice of intent to adopt these code amendments was transmitted to the Washington State Department of Commerce on February 25, 2010, and the department acknowledged receipt of the County's notice in a letter dated March 3, 2010; and

WHEREAS, on February 25, 2010, DPW issued a threshold Determination of Nonsignificance for the proposed amendments under the authority of the State Environmental Policy Act ("SEPA"), chapter 43.21C RCW; and

WHEREAS, the Snohomish County Planning Commission ("Planning Commission") held a public hearing on April 27, 2010, to receive public testimony concerning the proposed code amendments; and

WHEREAS, at the conclusion of the Planning Commission's public hearing the Planning Commission voted to recommend adoption of the code amendments proposed by this Ordinance, as shown in its recommendation letter dated June 24, 2010; and

WHEREAS, after proper notice, the County Council held a public hearing on October 20, 2010, to solicit comments from the public and to consider whether to adopt the amendments to title 13 SCC contained herein; and

WHEREAS, immediately following the public hearing, the County Council deliberated on the proposed code amendments;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council hereby adopts the foregoing recitals as findings of fact or conclusions as if set forth in full herein.

Section 2. The County Council makes the following additional findings of fact in support of this ordinance:

- A. The repealing of SCC 13.10.115 and 30.10.120 is necessary to better accommodate the new sections of code being added to chapter 13.10 SCC, eliminate conflicts and make the language more compatible with the security device language in title 30 SCC.
- B. The addition of new sections SCC 13.10.104, 13.10.106, 13.10.108, 13.10.112, 13.10.114, 13.10.116, 13.10.118, 13.10.122 and 13.10.124 is necessary to protect the County's interests and to ensure all regulations concerning security devices required by title 13 SCC are contained within title 13 SCC.
- C. The amendment to SCC 13.10.150 is necessary to correct a code cite from SCC 13.10.115, repealed by this Ordinance, to SCC 13.10.104, added by this Ordinance.

- Section 3. The County Council makes the following conclusions:
- A. The code amendments and revisions proposed by this ordinance are consistent with the goals, objectives, and policies of the GPP.
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  6 B. The amendments to proposed by this ordinance are consistent with the Countywide Planning Policies for Snohomish County and with the multi-county planning policies adopted by the Puget Sound Regional Council.
- 10 C. SEPA requirements, with respect to this non-project action, have been satisfied through the completion of an environmental checklist and the issuance of a determination of nonsignificance (DNS) on February 25, 2010.
- 14 D. The amendments proposed by this ordinance have been broadly disseminated and opportunities have been provided for written comments and public hearing after effective notice.
  - E. The public participation process related to the adoption of this ordinance has been early and continuous and has complied with all applicable requirements, including but not limited to, the GMA, chapter 30.73 SCC, and the Snohomish County Charter.
  - F. The amendments are consistent with the goals and requirements of the GMA.
    - G. This ordinance is adopted pursuant to the Snohomish County Charter and the Washington State Constitution, Article XI, Section 11.
    - Section 4. Snohomish County Code Section 13.10.115, last amended by Amended Ordinance No. 09-077, on August 26, 2009, is repealed.
    - Section 5. Snohomish County Code Section 13.10.120, last amended by Amended Ordinance No. 96-028, on June 12, 1996, is repealed.
    - Section 6. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

## 13.10.104 Security devices – general provisions.

- (1) To ensure all development activities requiring a permit under this title are satisfactorily performed and completed in accordance with the requirements of this title, including any approved plans, specifications and other conditions or requirements related to permit approval, the engineer may require the applicant to provide security devices in accordance with this chapter.
- (2) Two separate types of security devices may be required by the engineer, each of which shall serve a distinct purpose:
- (a) "Performance security" shall mean a security device to ensure all development activities requiring a permit under this title are performed and completed within the time specified and in accordance with the approved plans, specifications, permit or approval requirements or conditions, and all applicable federal, state and local laws, regulations and policies.
- (b) "Maintenance security" shall mean a security device to ensure that all development activities requiring a permit under this title and construction activities undertaken in proposed rights-of-way pursuant to title 30, function correctly and are maintained by the permittee for the

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duration of the time specified and in accordance with the approved plans, specifications, permit or approval requirements or conditions, and all applicable federal, state, and local laws, regulations and policies.

- (3) All security devices required under this title shall provide for:
- (a) Forfeiture to the county and the right for the county to withdraw funds upon failure of the permittee to complete any development activities in accordance with the approved plans, specifications, permit or approval requirements or conditions, and time limits.
- (b) The county's interest in any security device required pursuant to this chapter shall be assignable, without obtaining a re-issuance of the security device, to an annexing municipality in the event the real property covered by the surety device is annexed prior to either completion of the work secured by a performance security or final acceptance and release of the security device for that work covered by a maintenance or performance monitoring security.
- (4) Exemption for public agencies. In accordance with RCW 36.32.590, state agencies and units of local government, including school districts, shall not be required to secure the performance of permit or approval conditions or requirements with a security device. State agencies and units of local government, including school districts, are required to comply with all requirements, terms, and conditions of the permit or approval, and the county may enforce compliance by withholding certificates of occupancy or occupancy approval, by administrative enforcement action, or by any other legal means.
- (5) Private utilities not exempted under RCW 36.32.590 holding a franchise issued pursuant to chapter 13.80 SCC and having a current franchise bond or other franchise security device in place, shall not be required to post a performance security or maintenance security under this chapter if the available amount of the franchise security device is greater than or equal to the amount of the security device that would otherwise be required by this chapter.
- (6) If the county is required to complete any development activities as authorized under SCC 13.10.116, the permittee is responsible for all costs incurred in completing any development activities covered by the security device. The permittee shall reimburse the county for reasonable costs exceeding the amount of the security device.
- (7) When the county uses the proceeds of a security device as authorized under SCC 13.10.116 the county shall provide the permittee with an itemized statement of expenditures and the county shall return, without interest, any overpayment made by the issuer of the security device.
- (8) Release by the county of the final performance security related to construction permitted pursuant to this title shall constitute final construction acceptance of the constructed facilities.

Section 7. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

#### 13.10.106 Performance security.

- (1) Prior to issuance of any permit or approval authorized under this title, the engineer may require the applicant to provide a performance security guaranteeing, to the satisfaction of the engineer, right-of-way restoration and/or completion of the proposed construction authorized or required by the permit.
- (2) Unless otherwise provided in this title a performance security shall remain in effect through the life of the permit that authorizes the development activity, including all extensions, and until released by the department.
- (3) A performance security shall not be released until all development activity is performed by the permittee to the satisfaction of and is accepted by the engineer, and if required, a maintenance security has been accepted.

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(4) The amount released shall be reduced by any sum forfeited to the county as provided in SCC 13.10.116 or SCC 13.10.118, unless the total required amount of the security device has been re-established, in which case the total amount of the security device shall be released.

Section 8. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

#### 13.10.108 Maintenance security.

- (1) After the department has approved and accepted the development activities performed within existing right-of-way pursuant to a permit in accordance with this title, or future right-ofway pursuant to a permit in accordance with title 30 SCC, the engineer may require the permittee to provide a maintenance security guaranteeing the workmanship, materials and continued function of the completed development.
- (2) Unless otherwise provided in this title, a maintenance security shall remain in effect for a period of two (2) years after final inspection and acceptance by the county of all development activities specified by the approved plans for which a performance security was required.
- (3) When a permittee completes improvements to existing right-of-way pursuant to this title. or to future right-of-way and drainage facilities pursuant to title 30 SCC, the maintenance security required in accordance with SCC 13.10.108(1) and the maintenance security required in accordance with title 30 SCC for drainage facility improvements shall be combined into one maintenance security with the same start and end date. However, the maintenance security may be divided into separate securities for right-of-way and drainage improvements if special circumstances exist and approval is granted by both the engineer and the director of planning and development services.
- (4) A maintenance security shall be released at the end of the time covered by the security provided that the facility is operating as required, as determined by the engineer.
- (5) The amount released shall be reduced by any sum forfeited to the county as provided in SCC 13.10.116 or SCC 13.10.118, unless the total required amount of the security device has been re-established, in which case the total amount of the security device shall be released.

Section 9. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

### Security devices- form and amount.

- (1) A security device shall be made on the forms as provided by the department or in a form acceptable to the director. The following general types of financial sureties may be used as security devices:
  - (a) Bond;
  - (b) Letter of credit;
  - (c) Assignment of funds or account;
- (d) Other form of security device as may be specifically approved by the director of finance.
  - (2) Unless otherwise provided in this title, the security device amount shall be as follows:
- (a) The amount of a performance security will be 110 percent of the total estimated cost, as determined by the engineer, of guaranteeing right-of-way restoration and/or completion of the proposed construction authorized or required by any permit under this title.
- (b) The amount of the maintenance security shall be 20 percent of the actual documented in place cost of the development activities secured by the device. However, if the total cost of the development activities exceeds one million dollars the amount of the maintenance security shall be 15 percent of the total cost of the development activities.

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(3) The amount of all security devices shall include an inflation factor calculated for the term of the security device together with the term of any allowed extensions.

Section 10. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

#### 13.10.114 Extension of security device.

The engineer may require the duration of the maintenance security to be extended for a sufficient time not to exceed two (2) years past the original maintenance security end date to ensure the repairs will perform as required if:

- (1) Curative or restorative improvements have been made to the work and additional time is required to verify whether such curative or restorative improvements will function and operate as required; or
- (2) The applicant has failed to cure defective work or has failed to maintain the improvements after notice from the county, and the engineer determines the applicant has made, or is making, a good faith commitment to ensure that the work will be completed and the improvements will operate as required.

Section 11. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

### Notice of noncompliance and collection of proceeds.

- (1) If the engineer determines that work covered by the security device has not been completed or is not operating as designed and required, the engineer shall notify the permittee, and the issuer of the security device. The notice shall:
- (a) Describe the work or improvements that must be completed to prevent the forfeiture of the security device;
- (b) Provide a date certain by which the required work or improvements must be completed to the engineer's satisfaction; and
- (c) State that, if the work or improvements are not completed within the time specified, the county will proceed with forfeiture of the security device and use the funds to complete the required work or improvements.
- (2) If during the term of the security device the engineer determines that conditions exist which are not in conformance with the approved plans, specifications, permit or approval requirements or conditions, the engineer may issue a stop work order prohibiting any additional development activities until the conditions are corrected. The engineer may seek forfeiture of the security device, or a portion thereof, to correct conditions that are not in conformance with the approved plans, specifications, or permit requirements. The permittee may not proceed with the development activities until the required amount of the security device has been reestablished. After the county receives payment from a security device, the county will use the funds to complete the required work or improvements.
- (3) In the event the county proceeds with forfeiture of a security device, the issuer of the security device shall, within thirty (30) days of demand of the county, make a written commitment to the county that it will either:
- (a) Remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the county; or
- (b) Tender to the county within fifteen (15) days the amount necessary, as determined in good faith by the county, to remedy the nonconforming conditions.
- (4) Upon completion of either of SCC 13.10.116(3)(a) or (b), the issuer of the security device shall then have fulfilled its obligations under the applicable security device for only those development activities identified by the county in its notice. If the issuer of the security device

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elects to fulfill its obligation pursuant to the requirements of SCC 13.10.116(3)(b), the county, upon completion of the remedy, shall notify the issuer of the actual cost of the remedy. The county shall return, without interest, any overpayment made by the issuer of the security device, and the issuer of the security device shall pay to the county any actual costs which exceeded the county's estimate, limited to the total security device amount.

(5) The county may enforce the provisions of this section using any and all available legal or equitable remedies.

Section 12. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

#### 13.10.118 Emergency work by the county.

- (1) The county may determine an emergency exists when development activities covered by a security device have not been completed, were not completed in conformance with the approved plans, specifications, or permit requirements, or are not operating as required and the engineer determines an emergency situation has been or may be created that may endanger the public health, safety, and welfare and one of the following has occurred:
- (a) The nature or timing of the emergency precludes notification of the permittee and security device issuer as provided in SCC 13.10.116; or
  - (b) the department has attempted to contact the permittee and received no response; or
- (c) the permittee was unable to perform the emergency work required. In the event of an emergency, the county may take action to correct the emergency at the permittee's expense.
- (2) The permittee and security device issuer shall be notified in writing within four (4) days after the county commences emergency work. The notice must state the work that was commenced and the nature or timing of the emergency that necessitated the county to perform emergency work without prior notification.
- (3) After completion of the emergency work, the county shall provide the permittee and issuer of the security device with an itemized statement of expenditures.
- (4) If funds are collected from a security device the permittee may not proceed with work covered by the security device until the required amount of the security device has been reestablished.

Section 13. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

#### 13.10.122 Reimbursement of costs.

- (1) If the county completes any development activities under SCC 13.10.116 or 13.10.118, the permittee shall reimburse the county all costs incurred by the county in completing the work. If the county seeks reimbursement of expenditures by collecting on a security device, the permittee shall reimburse the county for reasonable costs exceeding the amount of the security device.
- (2) When the county uses the proceeds of a security device under SCC 13.10.116 or 13.10.118, the county shall provide the permittee and issuer of the security device with an itemized statement of expenditures. For funds collected pursuant to SCC 13.10.116 the county shall return, without interest, any overpayment made by the issuer of the security device.
- (3) The county may enforce the provisions of this section using any and all available legal or equitable remedies.

Section 14. A new Section is added to Chapter 13.10 of the Snohomish County Code to read:

#### 13.10.124 Delayed construction – Performance security.

- (1) The county engineer, with the concurrence of the director, may approve the delayed construction of certain public improvements in a subdivision or short subdivision when:
- (a) The delay will not create adverse operational or safety impacts or create a threat of significant adverse environmental impacts;
- (b) The permittee provides the department with a performance security in accordance with SCC 13.10.124(4);
- (c) The request is not to delay the construction of retention or detention facilities, storm water treatment facilities and associated stormwater conveyance systems, or erosion and sedimentation control facilities; and
- (d) The delayed facilities are constructed to a minimum level of construction as determined by, and acceptable to, the director and county engineer.
- (2) Except as approved in SCC 13.10.124(3), construction delayed pursuant to SCC 13.10.124(1) shall be completed within two (2) years of issuance of the performance security.
- (3) The director may allow construction approval of a subdivision or short subdivision without the final placement of hot mix asphalt paving on new public roads. The placement of hot mix asphalt paving shall be completed within one (1) year of recording of the subdivision or short subdivision.
- (4) The performance security required by SCC 13.10.124(1)(b) shall be in the amount of 150 percent of the estimated cost of all delayed development, as determined by the director taking into account the estimated costs of:
  - (a) Constructing all facilities as specified in the approved plan;
  - (b) Monitoring the facilities' performance;
- (c) Designing and constructing any corrective on-site and off-site measures, including other mitigation measures, which may be necessary to correct the effects of inadequate or failed workmanship, materials or design; and
- (d) Related incidental and consequential costs, inflation, and the cost of inspection of the work by the department.
- (5) The performance security shall remain in effect until final inspection and acceptance by the county of all development specified by the plans whose construction is secured with the performance security.
- (6) For good cause shown, the county engineer, with concurrence from the director, may grant an extension of the deadline for completion of development activities imposed by SCC 13.10.124(2) for a time period not to exceed one (1) year.
- (7) The performance security required pursuant to this section shall not be released or reduced until a maintenance security, if required, is accepted pursuant to this chapter.

Section 15. Snohomish County Code Section 13.10.150, last amended by Amended Ordinance No. 96-028 on June 12, 1996, is amended to read:

#### 13.10.150 Assignments.

No permit or any rights thereunder to move, haul, place or construct objects or features within the right-of-way may be transferred, assigned or sublet. Rights to use the right-of-way for objects or features placed or constructed within the right-of-way under a valid permit that are of a permanent nature and associated with the use of real property may be transferred by the permittee with title to the associated real property, unless otherwise stated in this title or noted on the permit. Any conditions attached to the permit for continued maintenance of the objects or

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features by the permittee, and continued provision of protection and security to the county in accordance with SCC 13.10.090, SCC 13.10.100 and ((SCC 13.10. 115))SCC 13.10.106 shall also be transferred.

Section 16. Snohomish County Code Section 13.50.030, adopted by Ordinance No. 02-098 on December 9, 2002, is amended to read:

#### 13.50.030 Terms—General.

Type C permits are granted on the following terms and such additional terms as the engineer deems appropriate:

- (1) All terms contained in SCC 13.40.030 except 13.40.030(1).
- (2) Where the permit is issued for the placing or use of physical objects or features within the right-of-way that are of a permanent nature, the engineer may require that the permittee enter into an agreement that requires continued maintenance of the objects or features by the permittee, and may require that such agreement be recorded against any real property associated with the objects or features. The engineer may also require that continued protection and security be provided to the county in accordance with SCC 13.10.090, SCC 13.10.100 and ((SCC 13.10. 115))SCC 13.10.106.
- (3) Aesthetic effects will be considered except with respect to construction site structures. The engineer may determine what landscaping if any, is desirable to screen any structure, which landscaping shall be installed and maintained by the permittee.
- (4) All facilities shall be maintained in a neat and presentable manner by the permittee. At the expiration of the permit all facilities shall be removed and the premises cleaned up and restored to their condition prior to the issuance of the permit.
- (5) Any construction of containers, movable stands and structures upon the right-of-way shall be of an approved design, size, color and construction. All structures shall be painted or stained for aesthetic purposes. The location of such structures or stands shall be determined by the department. Such structures shall be placed and oriented in such fashion as to minimize their exposure to nearby residential areas or public streets or places.
- (6) The permittee using a structure shall be responsible for the cleanup of the area around it. If the area around such structures or the structure itself becomes unsightly or littered with debris, caused either by vandalism or negligent use, the county shall have the privilege, but not the responsibility, of causing the same to be cleaned, and the cost thereof charged to the permittee using the same. It is the responsibility of the permittees to maintain the structure and the area around the location by keeping it clean from debris, litter, glass, and paper, etc.
- (7) The use shall not be materially detrimental to the immediate vicinity, to other existing or future uses of the right-of-way, or, obstruct access, light, air, or view of any abutting owner other than the applicant.
- (8) The provisions of Subtitles 30.2 and 30.3 SCC as applicable to the zoning of adjacent property will be considered. The engineer may determine that certain provisions such as size or placement of objects or features will apply.
- (9) The need for stump removal will be considered in conjunction with tree cutting within the right-of-way. The engineer may determine what stumps, if any, are to be removed.

3 Section 17. Severability and savings. If any section, sentence, clause, or phrase of this ordinance shall be ruled to be invalid or unconstitutional by a court of competent jurisdiction, such ruling shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance, and the section, sentence, clause, or phrase in effect prior to the 7 effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause, or phrase as if this ordinance had never been adopted. PASSED this 20<sup>th</sup> day of October, 2010. SNOHOMISH COUNTY COUNCIL Snohomish County, Washington **APPROVED EMERGENCY VETOED** 16/25/10 HAAKENSON **Deputy County Executive** Approved as to form only: **Deputy Prosecuting Attorney**