

1 APPROVED: 04/17/2013  
2 EFFECTIVE: 04/28/2013

3  
4 SNOHOMISH COUNTY COUNCIL  
5 Snohomish County, Washington

6  
7 AMENDED ORDINANCE NO. 13-022

8  
9 ADDING A NEW CHAPTER TO TITLE 7 SCC REGARDING INSPECTION AND  
10 MAINTENANCE OF CONSTRUCTED STORMWATER CONTROL FACILITIES

11  
12 WHEREAS, the county is regulated by a Phase I Municipal Stormwater Permit  
13 (the "NPDES Permit") issued by the Washington Department of Ecology pursuant to the  
14 National Pollutant Discharge Elimination System permit program established by the  
15 federal Water Pollution Control Act, codified at 33 U.S.C. § 1251 et seq. (aka the Clean  
16 Water Act); and

17  
18 WHEREAS, the NPDES Permit requires the county to take certain actions to  
19 eliminate the unauthorized discharge of pollutants into the county's storm sewer system  
20 from both public and private property; and

21  
22 WHEREAS, in furtherance of this objective, the NPDES Permit requires the  
23 county to (i) implement regulations requiring that certain types of stormwater control  
24 facilities be regularly inspected and maintained, and (ii) enforce those regulations; and

25  
26 WHEREAS, these requirements have historically been met by portions of  
27 chapter 7.53 of the Snohomish County Code (the "SCC" or the "County Code"), which  
28 generally establishes mechanisms for protecting the quality of the county's aquatic  
29 resources; and

30  
31 WHEREAS, chapter 7.53 SCC is commonly known as the Snohomish County  
32 Water Pollution Control Code; and

33  
34 WHEREAS, due to changes in the county's new NPDES Permits, recent  
35 developments in Washington's procedural due process laws, and other administrative  
36 reasons, it is desirable to create a new, separate chapter of the County Code that will  
37 specifically address inspection and maintenance requirements for constructed  
38 stormwater control facilities; and

39  
40 WHEREAS, the provisions of this ordinance will establish a new chapter of the  
41 County Code that achieves the objectives set forth above; and

42  
43 WHEREAS, a State Environmental Policy Act threshold Determination of  
44 Nonsignificance for the County Code provisions contained in this ordinance was issued  
45 on February 11, 2013; and

1 WHEREAS, pursuant to SCC 7.53.600, chapter 7.53 SCC will be automatically  
2 repealed if not re-enacted before May 7, 2013; and

3  
4 WHEREAS, this ordinance is being processed together with a companion  
5 ordinance that will re-enact chapter 7.53 SCC, subject to certain amendments and  
6 alterations, including the deletion of the provisions that have historically governed  
7 inspection and maintenance of stormwater control facilities; and

8  
9 WHEREAS, the county council held a public hearing on April 17, 2013, to solicit  
10 comments from the public and to consider whether add a new chapter to Title 7 SCC as  
11 set forth in this ordinance; and

12  
13 WHEREAS, the county council concludes that a new chapter should be added to  
14 Title 7 SCC as set forth herein;

15  
16 NOW, THEREFORE, BE IT ORDAINED:

17  
18 Section 1. The county council hereby adopts the foregoing recitals as findings of  
19 fact and conclusions as if set forth in full herein.

20  
21 Section 2. A new chapter is added to Title 7 of the Snohomish County Code to  
22 read:

23  
24 Chapter 7.54  
25 Maintenance of Constructed Stormwater Control Facilities

26  
27 Sections:

- 28  
29 7.54.010 Title.  
30 7.54.020 Purposes and objectives.  
31 7.54.030 Applicability.  
32 7.54.040 Public nuisance.  
33 7.54.050 Administration - Authority of directors.  
34 7.54.060 Snohomish County Drainage Manual.  
35 7.54.070 Definitions.  
36 7.54.080 Maintenance and repair of constructed stormwater control facilities.  
37 7.54.090 Inspections.  
38 7.54.100 Notice and order to cease violation.  
39 7.54.110 Warning notice as alternative to notice and order.  
40 7.54.120 Monetary penalties and costs.  
41 7.54.130 Response to a notice and order.  
42 7.54.140 Revised notice and order.  
43 7.54.150 Hearing examiner process for appeal of notice and order.  
44 7.54.160 Appeal under LUPA.  
45 7.54.170 Final order.  
46 7.54.180 Failure to comply with final order.

- 1           7.54.190      Criminal prosecution.
- 2           7.54.200      Reduction of monetary penalties.
- 3           7.54.210      No county liability.
- 4           7.54.220      Immunity from suit.
- 5           7.54.230      Compliance with other laws.
- 6           7.54.600      Sunset.

7  
8   **7.54.010 Title.**

9  
10 This chapter shall be known as the Snohomish County Stormwater Facility Maintenance  
11 Code.

12  
13   **7.54.020 Purposes and objective.**

- 14  
15 (1) The purposes of this chapter are to:
- 16   (a) Protect the quality of the county’s aquatic resources, including receiving waters,  
17 groundwater, and aquatic sediments, from the discharge of contaminants and the  
18 adverse impacts of stormwater runoff;
  - 19   (b) Ensure the function and integrity of public infrastructure related to stormwater  
20 control, including county roads, associated rights-of-way, and stormwater control  
21 facilities;
  - 22   (c) Reduce, prevent and ameliorate the adverse impacts of contaminated discharges  
23 on public health, safety and welfare; and
  - 24   (d) Protect, maintain and improve the quality of the county’s water resources for fish  
25 and wildlife habitat, human recreation and other ecological and aesthetic purposes and  
26 beneficial uses.

- 27 (2) The objectives of this chapter are to:
- 28   (a) Establish minimum requirements for the regular inspection and maintenance of  
29 constructed stormwater control facilities, pursuant to which the owners, occupants and  
30 operators of real property on which such facilities are located must keep such facilities  
31 in good condition and repair so that such facilities perform their intended function,  
32 thereby controlling, reducing and preventing the discharge of pollutants to the waters of  
33 the State as required by chapter 90.48 RCW, the Clean Water Act, the county’s  
34 Drainage Manual and the county’s Phase 1 NPDES Municipal Stormwater Permit; and
  - 35   (b) Establish procedures pursuant to which the county may enforce compliance with  
36 the requirements described above.

37  
38   **7.54.030 Applicability.**

39  
40 Unless specifically exempted herein, this chapter applies to all constructed stormwater  
41 control facilities located in the unincorporated areas of the county.

42  
43   **7.54.040 Public nuisance.**

44  
45 Each and every violation of this chapter constitutes a public nuisance subject to  
46 enforcement action under this chapter or to such other remediation as is authorized by

1 law. The remedies set forth in this chapter are not exclusive, and do not limit or restrict  
2 the authority of the county to cure, abate, ameliorate or remediate violations in any other  
3 lawful manner.

4  
5 **7.54.050 Administration - Authority of directors.**

6  
7 The directors of the department of public works and the department of planning and  
8 development services shall be responsible for implementing this chapter. The directors  
9 are each authorized to adopt and amend procedural rules pertaining to the  
10 implementation and enforcement of this chapter; provided that the directors shall  
11 coordinate with one another to avoid adopting conflicting or duplicative procedural rules  
12 under this section. Copies of all procedural rules and amendments thereto shall be  
13 available to the public at the respective departments.

14  
15 **7.54.060 Snohomish County Drainage Manual**

16  
17 The technical guidelines and best management practices contained in the most recent  
18 version of the Drainage Manual adopted by the director of the department of public  
19 works pursuant to chapter 30.63A SCC shall be used in implementing the requirements  
20 of this chapter. A copy of the Drainage Manual shall be available to the public at the  
21 department of public works.

22  
23 **7.54.070 Definitions.**

24  
25 In this chapter, unless the context clearly requires otherwise, the following terms shall  
26 have the meanings specified below:

27 (1) "Aquatic sediment" means a surface sediment overlain by an aquatic environment;  
28 a solid, fragmented, particulate material transported and deposited by wind, water, ice  
29 or chemically precipitated from solution and/or secreted by organisms; forming deposits  
30 of loose, unconsolidated layers in which the void spaces are occupied by fresh, marine  
31 or brackish water.

32 (2) "Best management practices" or "BMPs" means physical objects, structures,  
33 managerial practices, or behaviors, that when used singly or in combination, eliminate  
34 or reduce the introduction of contaminants to stormwater, receiving waters, or  
35 groundwater.

36 (3) "Clean Water Act" means the federal Water Pollution Control Act, codified at 33  
37 U.S.C. 1251 et seq., as now existing or hereafter amended.

38 (4) "Constructed stormwater control facility" means any type of catch basin or drainage  
39 facility for which maintenance standards are set forth in Volume V, Chapter 4 of the  
40 Drainage Manual.

41 (5) "Constructed stormwater control facilities regulated by the county's Phase I NPDES  
42 municipal stormwater permit" means those constructed stormwater control facilities that  
43 discharge into the county's storm sewer system and are thereby subject to the operation  
44 and maintenance program mandated by Special Condition S5.C.9 of the county's  
45 Phase I NPDES municipal stormwater permit.

46 (6) "Contaminant" means a solid, liquid, or gaseous substance that, if discharged to a

1 drainage facility, natural drainage system, receiving waters or groundwater, will alter the  
2 physical, chemical, or biological properties thereof to the extent that the discharge will  
3 render the facility, system, or water harmful, detrimental, or injurious to the public  
4 health, safety, or welfare, or to domestic, commercial, industrial, agricultural,  
5 recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish,  
6 or other aquatic life.

7 (7) "Department" means the department of public works or the department of planning  
8 and development services, unless otherwise specified.

9 (8) "Director" means the director of the department of public works or the department of  
10 planning and development services, unless otherwise specified.

11 (9) "Drainage facility" means any part of a man-made physical system designed or  
12 constructed to collect, treat convey, store, or control the flow of stormwater. Drainage  
13 facilities include, but are not limited to, storm water conveyance and containment  
14 facilities, including pipelines, constructed channels and ditches, infiltration facilities,  
15 retention and detention facilities, stormwater treatment facilities, erosion and  
16 sedimentation control facilities, and all other drainage structures and appurtenances.

17 (10) "Ecology" means the Washington State Department of Ecology.

18 (11) "EPA" means the United States Environmental Protection Agency.

19 (12) "Groundwater" means all waters that exist beneath the land surface or beneath the  
20 bed of any stream, lake, or reservoir, or other body of surface water, whatever may be  
21 the geological formation or structure in which such water stands, flows, percolates or  
22 otherwise moves.

23 (13) "National Pollutant Discharge Elimination System" or "NPDES" means the national  
24 program authorized under the Clean Water Act for controlling pollutants from point and  
25 nonpoint source discharges into waters of the United States.

26 (14) "National Pollutant Discharge Elimination System permit" or "NPDES permit"  
27 means a permit issued by Ecology or the EPA to implement the requirements of the  
28 Clean Water Act.

29 (15) "Natural drainage system" means the physical beds and boundaries of receiving  
30 waters, including those natural drainage systems that have been altered by human  
31 actions.

32 (16) "Person" means any natural person, corporation, non-profit corporation, municipal  
33 corporation, government agency, limited liability company, partnership, limited  
34 partnership, limited liability partnership, professional services corporation, or any other  
35 legally recognized entity.

36 (17) "Person(s) responsible" or "responsible person(s)" means the person(s) obligated  
37 to remediate a particular violation, and includes all of the following persons:

38 (a) The fee owner(s) of the real property on which the violation exists or occurred;

39 (b) The tenant(s), licensee(s) or other person(s) entitled use, occupy or otherwise  
40 control the real property on which the violation exists or occurred;

41 (c) The person(s) who performed or committed the acts or omissions causing or  
42 leading to the violation (if applicable); and

43 (d) Any other person(s) responsible for the violation under applicable law.

44 (18) "Receiving waters" means lakes, rivers, ponds, streams, wetlands, brackish or salt  
45 waters, portions of Puget Sound, and any other naturally occurring surface waters or

1 watercourses located within the unincorporated county, including those for which the  
2 physical beds and boundaries have been altered by human actions.

3 (19) "Snohomish County Drainage Manual" or "Drainage Manual" means the manual  
4 adopted by the director of the department of public works pursuant to chapter 30.63A  
5 SCC, and any amendments thereto, as described in SCC 7.54.050.

6 (20) "Stormwater" means surface water runoff resulting from rainfall, snowmelt, or other  
7 precipitation, prior to discharge to a receiving water or groundwater.

8 (21) "Violation" means the occurrence of any of the following:

9 (a) Failure to properly inspect or maintain a constructed stormwater control facility as  
10 required by SCC 7.54.060(1);

11 (b) Failure to comply with any other requirement established in this chapter; or

12 (c) Performing or allowing the performance of any act prohibited by this chapter.  
13

#### 14 **7.54.080 Maintenance and repair of constructed stormwater control facilities.**

15  
16 (1) The person(s) responsible for one or more constructed stormwater control facilities  
17 regulated by the county's Phase 1 NPDES municipal stormwater permit must inspect  
18 and maintain those facilities in accordance with the standards and timelines set forth in  
19 Volume V, Chapter 4 of the Drainage Manual.

20 (2) For all constructed stormwater control facilities not described in subsection (1)  
21 above, the person(s) responsible for such facilities must inspect and maintain the  
22 facilities in accordance with the standards set forth in Volume V, Chapter 4 of the  
23 Drainage Manual.

24 (3) Inspections required under SCC 7.54.080(1) shall be performed annually. The  
25 director of the department of public works may approve a reduced inspection frequency  
26 for a particular constructed stormwater control facility if the person(s) responsible for  
27 said facility can demonstrate that the reduced frequency is justified on the basis of  
28 maintenance records.

29 (4) Inspection and maintenance records for all constructed stormwater control facilities  
30 shall be retained by the responsible person(s) for a minimum of five years, and shall be  
31 made available to the county upon request.  
32

#### 33 **7.54.090 Inspections.**

34  
35 The county may enter onto real property on which one or more constructed stormwater  
36 control facilities is located and inspect said facilities to determine compliance with this  
37 chapter if (i) the county has the right to enter onto the real property for purposes of  
38 inspection pursuant to an easement, covenant, license, search warrant or other  
39 instrument, or (ii) the owner, occupant or operator of the real property, or another  
40 person having apparent control or authority over the real property grants the county  
41 permission to enter and perform an inspection. Such inspections may include the  
42 following activities:

43 (1) Inspection, sampling, and testing of any constructed stormwater control facility for  
44 the purpose of determining compliance with standards for inspection, maintenance, or  
45 repair adopted by the director and applicable to the facility;

46 (2) Investigation of the integrity of any constructed stormwater control facility

- 1 components using any appropriate test deemed necessary, including, but not limited to,  
2 dye or smoke testing or video surveys;  
3 (3) Creation of records reasonably necessary to document conditions related to  
4 compliance with the standards described above, including but not limited to  
5 photographs, video, measurements and drawings; and  
6 (4) Inspection and copying of nonconfidential records relating to inspection,  
7 maintenance, or repair of the constructed stormwater control facilities.

8

9 **7.54.100 Notice and order to cease violation.**

10

11 (1) Whenever any constructed stormwater control facility is found to be in violation of  
12 this chapter or standards required hereunder, the director may cause a notice and order  
13 to be issued to the responsible person(s), which may include an order to immediately  
14 cease the activity causing the violation or take affirmative action to abate the violation.

15 (2) The notice and order shall include the following information:

16 (a) The name(s) of the person(s) determined to be responsible for the violation;

17 (b) The address or legal description of the real property on which the violation exists  
18 or occurred;

19 (c) A description of the violation, including the specific provision of this chapter or  
20 Volume V, Chapter 4 of the Drainage Manual which has been violated;

21 (d) If applicable, a brief description of any activity which is causing the violation to  
22 exist or occur;

23 (e) A description of any required corrective action;

24 (f) A deadline by which corrective action, if any, must be completed;

25 (g) The amount of monetary penalty imposed due to the violation and the date by  
26 which payment must be made;

27 (h) The signature and written name of the county official issuing the notice and order;

28 (i) The contact information for the county's designated contact person or office to  
29 which questions regarding the notice and order may be directed;

30 (j) The date of the notice and order; and

31 (k) Notice of the right to contest the notice and order as provided in SCC

32 7.54.160(4).

33 (3) A notice and order may be amended at any time to correct clerical errors. An  
34 amendment made pursuant to this subsection shall not affect the validity or effective  
35 date of the original notice and order.

36 (4) The notice and order shall be served upon the responsible person(s) by one of the  
37 following methods:

38 (a) By personal service;

39 (b) By certified mail, sent to the last known address of the responsible person(s);

40 (c) If the address of the responsible person(s) is unknown, by posting a copy of the  
41 notice and order in a conspicuous place at the site of the violation.

42

43 **7.54.110 Warning notice as alternative to notice and order.**

44

45 (1) As an alternative to issuing a notice and order, the director may issue a warning  
46 notice to the person(s) responsible for an apparent violation of this chapter if the

1 apparent violation can be corrected within a reasonable amount of time. A warning  
2 notice is a communication by the director containing recommended actions that may be  
3 taken by the person(s) responsible for an apparent violation in order to potentially avoid  
4 the issuance of a notice and order.

5 (2) A warning notice shall include the following information:

6 (a) The name(s) of the person(s) determined to be responsible for the apparent  
7 violation;

8 (b) The address or legal description of the real property on which the apparent  
9 violation exists or has occurred;

10 (c) A description of the apparent violation, including the specific provision of this  
11 chapter or Volume V, Chapter 4 of the Drainage Manual which has been violated;

12 (d) If applicable, a brief description of any activity which is causing the apparent  
13 violation to exist or occur;

14 (e) A description of any recommended corrective action;

15 (f) A deadline by which corrective action should be completed in order to avoid  
16 issuance of a notice and order;

17 (g) The signature and written name of the county official issuing the warning notice;

18 (h) The contact information for the county's designated contact person or office to  
19 which questions regarding the warning notice may be directed; and

20 (i) The date of the warning notice.

21 (3) The director may issue a notice and order for a violation of this chapter irrespective  
22 of any previous issuance of a warning notice regarding the violation.

#### 23 24 **7.54.120 Monetary penalties and costs.**

25  
26 (1) Whenever a violation of this chapter occurs, the director may impose a monetary  
27 penalty upon the person(s) responsible for the violation. The amount of such monetary  
28 penalty shall be calculated pursuant to this section, and set forth in a notice and order  
29 issued pursuant to SCC 7.54.100 above.

30 (2) The base amount of each monetary penalty shall be \$5,000 per violation. If there  
31 are multiple problems with the same constructed stormwater facility, said problems shall  
32 be treated as a single violation for purposes of calculating the amount of base penalty  
33 imposed. If more than one constructed stormwater control facility is located on a  
34 particular property, a \$5,000 base penalty shall be imposed for each constructed  
35 stormwater facility that is in violation of this chapter.

36 (3) In addition to the base penalty amount, the person(s) responsible for a violation may  
37 also be required to reimburse the county for the costs incurred by the county in  
38 investigating the violation and enforcing remediation of the violation, including any  
39 laboratory costs. If the full amount of reimbursable costs incurred by the county due to  
40 a particular violation is not known at the time an original notice and order is issued, a  
41 revised notice and order including such costs in the monetary penalty may be issued to  
42 the responsible person(s) once said costs are known.

43 (4) If there is more than one person responsible for a given violation, all responsible  
44 persons shall be jointly and severally liable to the county for the entire amount of  
45 monetary penalties imposed with respect to the violation.



1 **7.54.130 Response to a notice and order.**

2  
3 The recipient(s) of a notice and order shall respond to the notice and order within 30  
4 calendar days from the date of receiving the notice and order, unless the notice and  
5 order specifies a longer time period. The recipient(s) may respond to a notice and order  
6 in any of the following ways:

7 (1) Cure the violation in a timely manner. The recipient(s) of a notice and order may  
8 cure the violation described in the notice and order within the time period specified in  
9 the notice and order. In such event, the recipient shall promptly notify the county when  
10 the violation has been cured, and the county shall promptly inspect the site for  
11 compliance. If the county determines the violation has been timely cured, any monetary  
12 penalty specified in the notice and order shall be automatically waived in full, as  
13 provided in SCC 7.54.200.

14 (2) Request additional time. The recipient(s) of a notice and order may submit a written  
15 request to the county requesting additional time to cure the violation. Any such request  
16 shall explain why the circumstances surrounding the violation support the request for  
17 additional time. The request shall propose a timeline or schedule pursuant to which the  
18 responsible person(s) will cure the violation. The director may agree to a reasonable  
19 proposal requesting additional time. In connection with approving a request for  
20 additional time under this subsection, the director may also agree that if the violation is  
21 cured by the new deadline, the amount of the monetary penalty specified in the notice  
22 and order shall be reduced by an appropriate amount, consistent with SCC 7.54.200.  
23 The director's decision to grant, deny, or partially grant a request for additional time  
24 shall be in writing, as shall any associated decision to conditionally reduce the monetary  
25 penalty. If the violation is not cured by the new deadline, then any reduction in the  
26 amount of monetary penalties granted pursuant to this subsection shall be void and the  
27 original amount of monetary penalties specified in the notice and order shall be due and  
28 owing.

29 (3) Request a reduction in the amount of monetary penalty. The recipient(s) of a notice  
30 and order may submit a written request to the county requesting a reduction in the  
31 amount of the monetary penalty specified in the notice and order. Any such request  
32 shall explain why the circumstances surrounding the violation support the request to  
33 reduce the amount of the monetary penalty. The director may agree to reduce the  
34 amount of the monetary penalty by an appropriate amount, consistent with  
35 SCC 7.54.200, on the condition that the violation must be cured by the deadline  
36 specified in the notice and order or such other deadline as the director may deem  
37 reasonable. The director's decision to grant, deny, or partially grant a request for a  
38 reduction in the amount of any monetary penalty shall be in writing. If the director's  
39 written decision grants or partially grants a reduction in the amount of a monetary  
40 penalty, then the decision shall also specify the deadline by which the violation must be  
41 cured in order for the reduction in monetary penalties to be effective. If the violation is  
42 not cured by the specified deadline, then any reduction in the amount of monetary  
43 penalties granted pursuant to this subsection shall be void and the original amount of  
44 monetary penalties specified in the notice and order shall be due and owing.

45 (4) Request additional time and a reduction in the amount of monetary penalty. The  
46 recipient(s) of a notice and order may submit a written request to the county requesting

1 both additional time in which to cure the violation and a reduction in the amount of the  
2 monetary penalty specified in the notice and order. Any such request shall explain why  
3 the circumstances surrounding the violation support both the request for additional time  
4 and the request to reduce the amount of the monetary penalty. The request shall  
5 propose a timeline or schedule pursuant to which the recipient of the notice and order  
6 will cure the violation. The director may agree to a reasonable proposal (i) requesting  
7 additional time, and/or (ii) to reduce the monetary penalty by an appropriate amount,  
8 consistent with SCC 7.54.200, on the condition that the violation must be cured by the  
9 applicable deadline. The director's decision to grant, deny, or partially grant a request  
10 for both additional time and a reduction in the amount of monetary penalties shall be in  
11 writing. If the director's written decision grants or partially grants a reduction in the  
12 amount of a monetary penalty, then the decision shall also specify the deadline by  
13 which the violation must be cured in order for the reduction in monetary penalties to be  
14 effective. If the violation is not cured by the specified deadline, then any reduction in the  
15 amount of monetary penalties granted pursuant to this subsection shall be void and the  
16 original amount of monetary penalties specified in the notice and order shall be due and  
17 owing.

18 (5) Contest the notice and order. The recipient(s) of a notice and order may contest the  
19 accuracy, validity, or appropriateness of the notice and order by appealing the notice  
20 and order to the hearing examiner within 30 calendar days from the date of receiving  
21 the notice and order. Any such appeal must be made in writing and must contain the  
22 elements described in SCC 2.02.125, except that no filing fee shall be required. The  
23 appeal documents may be delivered either to the department of planning and  
24 development services or directly to the office of the hearing examiner. Any appeal  
25 documents delivered to the department of planning and development services shall be  
26 transmitted to the office of the hearing examiner within three business days.

27

28 **7.54.140 Revised notice and order.**

29

30 (1) Consistent with SCC 7.54.120(3), a revised notice and order may be issued to the  
31 person(s) responsible for a violation for the purpose of adjusting the amount of  
32 monetary penalty imposed in the original notice and order to include costs incurred by  
33 the county in investigating and enforcing remediation of the violation. A revised notice  
34 and order shall clearly reference the original notice and order that is being revised. The  
35 issuance of a revised notice and order does not effect the validity or issuance date of  
36 the original notice and order.

37 (2) The recipient(s) of a revised notice and order shall respond to the revised notice  
38 and order in one of the following ways:

39 (a) Pay the additional amount of penalties in a timely manner. The recipient(s) of a  
40 revised notice and order may pay the increased amount of monetary penalties to the  
41 county within the longest of the following time periods (i) within 30 calendar days of  
42 receiving the revised notice and order, (ii) by the deadline specified in the revised notice  
43 and order, if any, (iii) by any extend deadline for payment of the original monetary  
44 penalty that has been agreed to by the director pursuant to SCC 7.54.130, or (iv) if the  
45 original notice and order was timely appealed, then by the deadline for payment of the

1 original monetary penalty that is specified in the final order resulting from the appeal, as  
2 described in SCC 7.54.170.

3 (b) Contest the revised notice and order. The recipient(s) of a revised notice and  
4 order may contest the accuracy, validity, or appropriateness of the increased amount of  
5 monetary penalties imposed by the revised notice and order by appealing the revised  
6 notice and order to the hearing examiner within 30 calendar days of receiving the  
7 revised notice and order. The scope of such appeal shall be strictly limited to the  
8 accuracy, validity, and appropriateness of the increased amount of monetary penalties  
9 imposed by the revised notice and order. Any such appeal must be made in writing and  
10 must contain the elements described in SCC 2.02.125, except that no filing fee shall be  
11 required. Any appeal documents delivered to the department of planning and  
12 development services shall be transmitted to the office of the hearing examiner within  
13 three business days. If an appeal of the original notice and order is pending with the  
14 hearing examiner, the hearing examiner shall have discretion to consolidate the  
15 appeals.

16 (3) To the extent applicable, the provisions of SCC 7.54.150, SCC 7.54.160,  
17 SCC 7.54.170 and SCC 7.54.180 shall each apply to a revised notice and order, just as  
18 they apply to an original notice and order.

19  
20 **7.54.150 Hearing examiner process for appeal of notice and order.**

21  
22 (1) Except as expressly provided to the contrary in this chapter, the provisions of  
23 chapter 2.02 SCC and any applicable rules adopted by the hearing examiner shall  
24 govern the appeal of a notice and order.

25 (2) Unless an appeal of a notice and order is summarily dismissed by the hearing  
26 examiner, the hearing examiner shall hold a public hearing regarding the appeal within  
27 30 business days of the date on which the hearing examiner received the appeal.

28 (3) The hearing examiner shall issue a decision regarding the notice and order  
29 promptly after the conclusion of the hearing, consistent with timelines established by  
30 chapter 2.02 SCC.

31 (4) Should the appellant(s) of a notice and order fail to appear at the public hearing  
32 regarding the notice and order, the hearing examiner shall issue a decision dismissing  
33 the appeal. In that event, the notice and order shall become a final determination of the  
34 following: (i) that the violation described in the notice and order occurred; (ii) that the  
35 person(s) identified in the notice and order as being responsible for the violation are the  
36 responsible person(s); and (iii) that the amount of any monetary penalty set forth in the  
37 notice and order is reasonable and affirmed. For good cause shown, the hearing  
38 examiner may set aside a decision entered upon an appellant's failure to appear.

39  
40 **7.54.160 Appeal under LUPA.**

41  
42 A notice and order constitutes a "land use decision" as that term is defined in the Land  
43 Use Petition Act, chapter 36.70C RCW ("LUPA"). An appeal of a notice and order to the  
44 hearing examiner under SCC 7.54.130(5) constitutes an administrative appeal of the  
45 department's land use decision. The hearing examiner's final decision regarding appeal  
46 of a notice and order is the final decision of the county regarding the violation described

1 in the notice and order, and is appealable to superior court under LUPA. Appeals under  
2 LUPA must be filed within 21 days of the date on which the challenged decision is  
3 issued.

4

5 **7.54.170 Final order.**

6

7 A final order constitutes a conclusive determination that a violation occurred, that the  
8 specified person(s) are responsible for the violation, that any monetary penalty imposed  
9 is valid and must be paid to the county, and that administrative and judicial options to  
10 appeal the determination are exhausted. Unless a different timeline is set forth in the  
11 final order or agreed to in writing by the director, the responsible person(s) must comply  
12 with a final order within 30 calendar days of the date on which the order becomes final.

13

14 **7.54.180 Failure to comply with final order.**

15

16 If the person(s) responsible for a violation under a final order do not fully comply with  
17 the final order within the required time period, the county may take any one or more of  
18 the following actions to cause the responsible person(s) to comply:

19 (1) Institute a civil action in any court of competent jurisdiction to enforce the final order,  
20 to collect the monetary penalties imposed pursuant to this chapter, or both;

21 (2) Engage a collection agency, as defined in chapter 19.16 RCW, to collect the  
22 monetary penalties imposed pursuant to this chapter, in which event the reasonable  
23 costs of collection shall be added to the amount of monetary penalty due;

24 (3) Abate and remediate the violation in accordance with the provisions of this chapter  
25 and other applicable law and charge the costs of such abatement to the responsible  
26 person(s) as additional monetary penalties owing under SCC 7.54.120(3);

27 (4) Cause the responsible person(s) to be criminally prosecuted as provided in SCC  
28 7.54.190; or

29 (5) Pursue other remedies allowed by law.

30

31 **7.54.190 Criminal prosecution.**

32

33 Any person who willfully or knowingly causes or maintains a violation under this chapter  
34 or who willfully or knowingly fails or refuses to remediate a violation under this chapter is  
35 guilty of a misdemeanor and upon conviction shall be punished in the manner provided  
36 for in RCW 9A.20.021, as it now exists or is hereafter amended.

37

38 **7.54.200 Reduction of monetary penalties.**

39

40 Monetary penalties imposed pursuant to this chapter may be reduced or waived under  
41 the circumstances and in the amounts specified below:

42 (1) The director shall waive any monetary penalties, or portions thereof, imposed due to  
43 mistake or error of the county.

44 (2) As specified in SCC 7.54.130(1), the director shall waive in full any monetary  
45 penalties associated with a violation if the responsible person(s) remediate the violation  
46 within the time period specified in the notice and order.

1 (3) SCC 7.54.130(2), (3) and (4) provide the director with discretion to conditionally  
2 reduce the monetary penalties associated with a violation under specified  
3 circumstances. The director shall exercise this discretion based on consideration of the  
4 facts and circumstances surrounding the violation at issue, including, but not limited to,  
5 the severity of the violation, the magnitude of the public interest being protected, and  
6 the willingness of the responsible person(s) to correct the violation once made aware of  
7 the violation. If the director determines it is appropriate and fair to reduce the monetary  
8 penalties associated with a violation, the director shall also have discretion to determine  
9 the amount by which monetary penalties should be reduced.

10  
11 **7.54.210 No county liability.**

12  
13 Administration or enforcement of this chapter shall not be construed to impose or create  
14 a basis for any liability on the part of the county, its appointed or elected officials,  
15 officers, agents, or employees, nor shall this chapter be construed to create any special  
16 relationship with or otherwise protect any specific person or class of persons.

17  
18 **7.54.220 Immunity from suit.**

19  
20 (1) Any county appointed or elected officials, officers, agents or employees charged  
21 with the administration or enforcement of this chapter acting in good faith and without  
22 malice on behalf of the county, shall not be personally liable for any damage that may  
23 accrue to persons or property as a result of any act required by the county, or by any  
24 reason of any act or omission in the discharge of those duties.

25 (2) Any suit brought against county appointed or elected officials, officers, agents or  
26 employees because of an act or omission performed in the administration or  
27 enforcement of any provision of this chapter shall be defended by the county subject to  
28 the provisions of SCC 2.90.085.

29  
30 **7.54.230 Compliance with other laws.**

31  
32 Compliance with this chapter does not constitute a waiver of the requirements of any  
33 other applicable federal, state or local laws and regulations.

34  
35 **7.54.600 Sunset.**

36  
37 As provided in Section 2.115 of the Snohomish County Charter, this chapter shall be  
38 automatically repealed on the date that is six years following enactment unless it is re-  
39 enacted prior to that date.

40  
41 Section 3. Severability and Savings. If any section, sentence, clause or phrase  
42 of this ordinance shall be held invalid or unconstitutional by a court of competent  
43 jurisdiction, such invalidity or unconstitutionality shall not affect the validity or  
44 constitutionality of any other section, sentence, clause, or phrase of this ordinance.  
45 Provided, however, that if any section, sentence, clause, or phrase of this ordinance is  
46 held to be invalid by a court of competent jurisdiction, then the section, sentence,

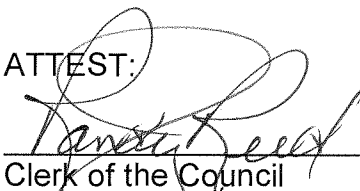
1 clause, or phrase in effect prior to the effective date of this ordinance shall be in full  
2 force and effect for that individual section, sentence, clause, or phrase as if this  
3 ordinance had never been adopted.  
4  
5  
6

7 PASSED this 17<sup>th</sup> day of April, 2013.  
8

9 SNOHOMISH COUNTY COUNCIL  
10 Snohomish County, Washington

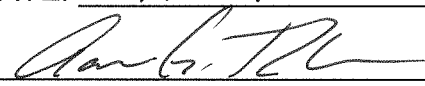
11  
12   
13 \_\_\_\_\_  
14 Chairperson

15 ATTEST:


16   
17 \_\_\_\_\_  
18 Clerk of the Council

- 19  
20 ( ) APPROVED  
21 ( ) EMERGENCY  
22 ( ) VETOED

23 DATE: 4/18/13

24  
25   
26 \_\_\_\_\_  
27 County Executive

28 ATTEST:

29   
30 \_\_\_\_\_  
31 Approved as to form only:

32  
33 \_\_\_\_\_  
34 Deputy Prosecuting Attorney  
35  
36  
37

*[The remainder of this page is intentionally left blank.]*

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