

1 ADOPTED: 03/28/18
2 EFFECTIVE: 04/09/18

3
4 SNOHOMISH COUNTY COUNCIL
5 Snohomish County, Washington

6
7 ORDINANCE NO. 18-018

8
9 RELATING TO GROWTH MANAGEMENT; REVISING GENERAL REQUIREMENTS FOR THE
10 PROVISION OF SECURITY DEVICES AND ALLOWING FOR THE DELAY OF THE
11 INSTALLATION OF CERTAIN PRIVATE IMPROVEMENTS ASSOCIATED WITH
12 DEVELOPMENT; AMENDING CHAPTERS 30.66B AND 30.84 OF THE SNOHOMISH
13 COUNTY CODE
14

15 WHEREAS, counties and cities that are required to plan under the Growth Management
16 Act (GMA), chapter 36.70A of the Revised Code of Washington (RCW), must ensure that their
17 comprehensive plans and development regulations encourage economic development and
18 encourage timely and fair processing of development permits; and
19

20 WHEREAS, the Snohomish County GMA Comprehensive Plan (“GMACP”) – General
21 Policy Plan (GPP) directs Snohomish County to provide for expeditious and efficient
22 development, land use practices that reduce housing costs, and a regulatory environment that
23 facilitates growth of the local economy; and
24

25 WHEREAS, chapter 30.84 of the Snohomish County Code (the “County Code” or SCC)
26 establishes requirements and procedures for administering security devices required for
27 development in unincorporated Snohomish County; and
28

29 WHEREAS, Snohomish County (the “County”) authorizes the delay of certain public
30 improvements in subdivisions, short subdivisions, commercial developments, multifamily
31 developments; and
32

33 WHEREAS, the County authorizes the delay of the final paving lift on public roads in
34 subdivisions and short subdivisions; and
35

36 WHEREAS, currently the County authorizes the Director of the Department of Planning
37 and Development Services (PDS) to declare a need for emergency work to be completed under
38 a security device held by the County; and
39

40 WHEREAS, the Snohomish County Council (the “County Council”) has the authority to
41 amend provisions of County code relating to security devices for development; and
42

43 WHEREAS, authorizing the delay of certain public and private improvements, subject to
44 appropriate financial assurances and conditions, in residential and nonresidential developments
45 will promote more expeditious and efficient development; and
46

1 WHEREAS, authorizing the delay of hot asphalt mix paving on private road elements,
2 subject to appropriate financial assurances and conditions, in residential developments will
3 reduce housing and development costs; and
4

5 WHEREAS, the Snohomish County Engineer has an interest in safeguarding the health,
6 safety, and general welfare of communities when emergency work is necessary to be completed
7 under a security device held by the County; and
8

9 WHEREAS, the County seeks to promote the delivery of more affordable housing
10 throughout Snohomish County; and
11

12 WHEREAS, the County seeks to safeguard the health, safety, and general welfare of all
13 communities in the County; and
14

15 WHEREAS, PDS has conducted early and continuous public participation in developing
16 the proposed amendments to title 30 SCC that are contained in this ordinance; and
17

18 WHEREAS, on November 28, 2017, the Snohomish County Planning Commission (the
19 "Planning Commission") was briefed by PDS staff about the code amendments contained in this
20 ordinance; and
21

22 WHEREAS, the Planning Commission held a public hearing on December 19, 2017, to
23 receive public testimony concerning the code amendments contained in this ordinance; and
24

25 WHEREAS, at the conclusion of the Planning Commission's public hearing, the Planning
26 Commission deliberated on the proposed ordinance and voted to recommend amendments to
27 the County Code relating to security devices as shown in its recommendation letter dated
28 December 21, 2017; and
29

30 WHEREAS, on March 28, 2018, the County Council held a public hearing after public
31 notice and considered public comments and the entire record related to the code amendments
32 contained in this ordinance; and
33

34 WHEREAS, following the public hearing, the County Council deliberated on the code
35 amendments contained in this ordinance;
36

37 NOW, THEREFORE, BE IT ORDAINED:
38

39 **Section 1.** The County Council adopts the following findings in support of this ordinance:
40

- 41 A. The foregoing recitals are adopted as findings as if set forth in full herein.
- 42
- 43 B. This ordinance will amend title 30 SCC to update regulations related to security devices.
- 44
- 45 C. Procedural requirements:

- 46
- 47 1. The proposal is a Type 3 legislative action under SCC 30.73.010 and 30.73.020.
- 48

- 1 2. A notice of intent to adopt proposed code amendments was transmitted to the
2 Washington State Department of Commerce for distribution to state agencies on
3 November 8, 2017 as RCW 30.70A.106(1) requires.
4
- 5 3. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with
6 respect to this non-project action have been satisfied through the completion of an
7 environmental checklist and the issuance of a determination of non-significance on
8 November 8, 2017.
9
- 10 4. The public participation process used in the adoption of the proposed code amendments
11 complies with all applicable requirements of the GMA and SCC.
12
- 13 5. As required by RCW 30.70A.370, the Washington State Attorney General last issued an
14 advisory memorandum in December 2015 entitled “Advisory Memorandum: Avoiding
15 Unconstitutional Takings of Private Property” to help local governments avoid
16 unconstitutional takings of private property. The process outlined in the State Attorney
17 General’s 2015 advisory memorandum was used by the County in objectively evaluating
18 the regulatory changes in this ordinance.
19
- 20 D. In developing the code amendments, the County considered the goals of the GMA found in
21 RCW 36.70A.020, specifically those goals related to economic development and permits.
22 The code amendments are consistent with:
23
 - 24 1. GMA Goal 5: “Economic development. Encourage economic development throughout
25 the state that is consistent with adopted comprehensive plans, promote economic
26 opportunity for all citizens of this state, especially for unemployed and for disadvantaged
27 persons, promote the retention and expansion of existing businesses and recruitment of
28 new businesses, recognize regional differences impacting economic development
29 opportunities, and encourage growth in areas experiencing insufficient economic growth,
30 all within the capacities of the state’s natural resources, public services, and public
31 facilities.” The code amendments will provide for more efficient development practices
32 and facilitate improved financial security by reforming permitting processes.
33
 - 34 2. GMA Goal 7: “Permits. Applications for both state and local government permits should
35 be processed in a timely and fair manner to ensure predictability.” The code
36 amendments will provide for improved processing of development permits and provide
37 predictability in completion of project requirements.
38
- 39 E. The code amendments will better achieve, comply with, and implement the following goals,
40 objectives, and policies contained in the County’s GMACP – GPP by providing regulations
41 that are predictable, encourage business and jobs, and facilitate economic growth:
42
 - 43 1. Goal ED 1: “Maintain and enhance a healthy economy.”
44
 - 45 2. Goal ED 2: “Provide a planning and regulatory environment that facilitates growth of the
46 local economy.”
47

- 1 3. Objective ED 2.A: “Develop and maintain a regulatory system that is fair,
2 understandable, coordinated and timely.”
3
- 4 4. ED Policy 2.A.1: “Snohomish County shall work to ensure that the Snohomish County
5 Code is an understandable, accessible, and user friendly document.”
6
- 7 5. ED Policy 2.A.2: “Snohomish County should stress predictability but maintain enough
8 flexibility in the Comprehensive Plan and development codes to allow for timely
9 response to unanticipated and desirable developments.”
10

11 F. The proposed amendments are consistent with the record:

- 12
- 13 1. This ordinance will amend SCC 30.66B.440 to:
 - 14
 - 15 i. Clarify that the installation of certain public improvements required by chapter 30.66B
16 SCC may be delayed with a performance security device under title 13 SCC; and
17
 - 18 ii. Expand the type of improvements required by chapter 30.66B SCC whose
19 installation may be delayed with a performance security device under Chapter 30.84
20 SCC.
21
- 22 2. This ordinance will amend SCC 30.84.020 to add a new provision requiring a property
23 owner to grant the County a construction easement allowing the County to enter upon
24 the property and complete the work guaranteed by a security device in the event such
25 work is not completed as required.
26
- 27 3. This ordinance will amend SCC 30.84.050 to make housekeeping changes to language.
28
- 29 4. This ordinance will amend SCC 30.84.060 to:
 - 30
 - 31 i. Clarify the relationship of the County Engineer in making certain determinations
32 when emergency work by the County is necessary under a security device held by
33 the County; and
34
 - 35 ii. Make housekeeping corrections to language.
36
- 37 5. This ordinance will amend SCC 30.84.105 to:
 - 38
 - 39 i. Allow the PDS Director, with the County Engineer’s concurrence, to approve the
40 delay of certain public or private improvements in a subdivision, short subdivision,
41 residential, or nonresidential development when certain conditions are met and in
42 accordance with other applicable performance security provisions;
43
 - 44 ii. Prohibit the delay of monument placement when required as part of construction;
45
 - 46 iii. Clarify the language for general delay of construction under subsection (2) and
47 adjust the timing of required completion to two years from the County’s receipt and
48 approval of a performance security device;

- iv. Allow the PDS Director, with the County Engineer's concurrence, to approve a delay in the final placement hot mix asphalt on private road networks in subdivisions, short subdivisions, and residential developments under subsection (3) with a performance security device; provided that the delay may be up to one year from recording the plat or shat plat or receipt and approval of the performance security device;
 - v. Remove reference to the delay of final placement of hot mix asphalt on public roads under subsection (3) because it is provided for under SCC 13.10.124(3);
 - vi. Clarify the language under subsection (4) and establish the role of the County Engineer in determining performance security devices for private road network elements;
 - vii. Move the discretionary extension provision of subsection (6) to subsection (2) for clarity;
 - viii. Renumber subsection (7); and
 - ix. Make technical corrections and housekeeping changes to language.
6. This ordinance will amend SCC 30.84.150 to make housekeeping changes to language and clarify citations.

G. The proposed code amendments are consistent with the record as set forth in the PDS Staff Report dated November 9, 2017.

Section 2. The County Council makes the following conclusions:

- A. The code amendments are consistent with Washington State law and the County Code.
- B. The code amendments are consistent with the GMACP and with the goals, objectives, and policies of the GPP.
- C. The County has complied with all SEPA requirements in respect to this non-project action.
- D. The regulations contained in this ordinance do not result in an unconstitutional taking of private property for a public purpose.
- E. The County complied with the state and local public participation requirements under the GMA and chapter 30.73 SCC.

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

1 **Section 4.** Snohomish County Code Section 30.66B.440, last amended by Amended
2 Ordinance 10-086 on October 20, 2010, is amended to read:

3
4 **30.66B.440 Timing of improvements.**

5 Construction of frontage improvements, offsite road improvements, and access and
6 transportation circulation improvements is required prior to approval for occupancy or final
7 inspection, except that ~~((if the development is a subdivision or short subdivision,))~~ construction
8 may be delayed, if allowed, ~~((is required prior to the recording unless with the approval of the~~
9 ~~county engineer, construction is assured))~~ with a performance security in accordance with SCC
10 13.10.124 or 30.84.105. When no building permit will be associated with a conditional or
11 administrative conditional use permit, construction of improvements is required as a
12 precondition to approval, unless some later time of construction is recommended by the
13 ~~((director of public works))~~ county engineer and imposed by the approving authority as a
14 condition of approval.

15
16 **Section 5.** Snohomish County Code Section 30.84.020, added by Amended Ordinance
17 10-086 on October 20, 2010, is amended to read:

18
19 **30.84.020 Security devices((-)) – general provisions.**

20 (1) A security device shall be made on the forms as provided by the department or in a form
21 acceptable to the director. The following general types of financial sureties may be used as
22 security devices:

- 23 (a) Bond;
- 24 (b) Letter of credit;
- 25 (c) Assignment of funds or account; or
- 26 (d) Other form of security device as may be specifically approved by the director of finance.

27 (2) All security devices shall provide for:

28 (a) Forfeiture to the county and the right for the county to withdraw funds upon failure of the
29 permittee to construct any or all of the improvements in accordance with the approved plans,
30 specifications, permit or approval requirements or conditions, and time limits.

31 (b) The county's interest in any security device required pursuant to this chapter to be
32 assignable, without obtaining a re-issuance of the security device, to an annexing municipality in
33 the event the real property covered by the security device is annexed prior to either completion
34 of the work secured by a performance security or final acceptance and release of the security
35 device for that work covered by a maintenance or performance monitoring security.

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

38 (4) In the event a development completes improvements to existing right-of-way pursuant to a
39 title 13 SCC permit or future right-of-way and drainage facilities pursuant to a title 30 SCC
40 permit, the maintenance securities required in accordance with SCC 13.10.108(1)
41 and 30.84.120 shall be combined into one maintenance security with the same start and end
42 date.

1 (5) The combined maintenance security may be divided into separate securities for right-of-
2 way and drainage if special circumstances exist and approval is granted by both the director
3 and the county engineer.

4 (6) When a security device is required or offered by a permittee for a development under this
5 chapter, the property owner shall grant to the county a construction easement allowing the
6 county to enter upon the property to complete the work guaranteed by the security device in the
7 event such work is not completed as required. The easement shall be on a form provided by the
8 county and shall be recorded with the county auditor before any permits may be issued for the
9 development.

10
11 **Section 6.** Snohomish County Code Section 30.84.050, last amended by Amended
12 Ordinance 17-004 on May 10, 2017, is amended to read:

13
14 **30.84.050 Notice of noncompliance and forfeiture of proceeds.**

15 (1) If the director determines that work covered by a security device has not been completed
16 or is not operating in conformance with the approved plans, specifications, permit, or approval
17 requirements or conditions, the director shall notify the permittee((;)) and the issuer of the
18 security device of said nonconformance. The notice shall:

19 (a) Describe the work or improvements that must be done to prevent the forfeiture of the
20 security device;

21 (b) Provide a date certain by which the required work or improvements must be completed to
22 the ((directors)) director's satisfaction; and

23 (c) State that if the work or improvements are not completed within the time specified, the
24 county will proceed with forfeiture of the security device and use the funds to complete the
25 required work or improvements.

26 (2) After having given notice pursuant to SCC 30.84.050(1), the director may issue a stop
27 work order prohibiting any additional work until the conditions are corrected.

28 (3) If the work to correct the noncompliance is not completed within the time specified the
29 director may seek forfeiture of the security device, or a portion thereof, to correct the
30 nonconformance. After the county receives payment from a security device, the county will use
31 the funds to complete the required work or improvements. The permittee may not proceed with
32 work until the required amount of the security device has been re-established.

33 (4) In the event the county proceeds with forfeiture of a security device, the issuer of the
34 security device shall, within thirty ((30)) days of demand of the county, make a written
35 commitment to the county that it will either:

36 (a) Remedy the noncompliance itself with reasonable diligence pursuant to a time schedule
37 acceptable to the county; or

38 (b) Tender to the county within fifteen ((15)) days the amount necessary, as determined by
39 the county, to remedy the nonconforming conditions.

40 (5) Upon completion of either of SCC 30.84.050(4)(a) or 30.84.050(4)(b), the issuer of the
41 security device shall then have fulfilled its obligations under the applicable security device for
42 only those improvements identified by the county in its notice. If the issuer of the security device
43 elects to fulfill its obligation pursuant to the requirements of SCC 30.84.050(4)(b), the county,
44 upon completion of the remedy, shall notify the issuer of the actual cost of the remedy. The

1 county shall return, without interest, any overpayment made by the issuer of the security device,
2 and the issuer of the security device shall pay to the county any actual costs which exceeded
3 the county's estimate, limited to the total security device amount.

4
5 **Section 7.** Snohomish County Code Section 30.84.060, added by Amended Ordinance
6 10-086 on October 20, 2010, is amended to read:

7
8 **30.84.060 Emergency work by the county.**

9 (1) The director or county engineer may determine an emergency exists when:

10 (a) ~~((work))~~ Work covered by a security device has not been completed, was not completed in
11 conformance with the approved plans, specifications, or permit requirements, or is not operating
12 as required and the director or county engineer determines an emergency situation has been or
13 may be created that may endanger the public health, safety, and welfare; and

14 (b) The nature or timing of the emergency precludes notification of the applicant and security
15 device issuer as provided in SCC 30.84.050 or the department has attempted to contact the
16 permittee and received no response or the permittee was unable to perform the emergency
17 work required~~((;))~~.

18 (2) When the director or county engineer determines that an emergency exists as provided
19 above, the county may take action to correct the emergency at the permittee's expense.

20 (3) The department shall notify the permittee and security device issuer within four days after
21 commencing emergency work. The notice must state the work that was commenced and the
22 nature or timing of the emergency that necessitated the county to perform emergency work
23 without prior notification.

24 (4) After the county completes any emergency work, the county shall provide the permittee
25 and issuer of the security device with an itemized statement of expenditures.

26 (5) If funds are collected from a security device, the permittee may not proceed with work
27 covered by the security device until the required amount of the security device has been re-
28 established.

29
30 **Section 8.** Snohomish County Code Section 30.84.105, last amended by Amended
31 Ordinance 12-018 on May 2, 2012, is amended to read:

32
33 **30.84.105 Delayed construction – ~~((Performance))~~ performance security.**

34 (1) The director, with the concurrence of the county engineer, may approve the delayed
35 construction of certain public improvements under SCC 13.10.124 and certain private
36 improvements~~((, including))~~ (such as landscaping, wetland mitigation plantings, and the final
37 placement of hot mix asphalt paving on private road network elements) in a subdivision, short
38 subdivision, ~~((commercial))~~ residential, or ~~((multifamily))~~ nonresidential development, when all of
39 the following are met:

40 (a) The delay will not create adverse operational or safety impacts or create a threat of
41 significant adverse environmental impacts;

42 (b) The permittee provides the department with a performance security in accordance with
43 SCC 30.84.105(4);

1 (c) The request is not to delay the construction of stormwater retention or detention facilities,
2 storm water treatment facilities, stormwater conveyance systems, ~~((or))~~ erosion and
3 sedimentation control facilities~~((;))~~, or the placement of monuments; and

4 (d) The delayed facilities are constructed to a minimum level of construction as determined
5 by, and acceptable to, the director and county engineer.

6 ~~((Except as approved in SCC 30.84.105(3;))~~ Delayed construction ~~((delayed pursuant to~~
7 ~~SCC 30.84.105(1)))~~ shall be completed within two years ~~((of issuance))~~ of the county's receipt
8 and approval of the performance security, except as approved under SCC 30.84.105(3). The
9 director, with the county engineer's concurrence, may grant an extension of the deadline for
10 construction up to one additional year for good cause shown.

11 (3) The director, with the county engineer's concurrence, may allow construction approval of a
12 subdivision, ~~((or))~~ short subdivision, or residential development without the final placement of
13 hot mix asphalt paving on new ~~((public))~~ private road network elements~~((roads))~~. The placement
14 of hot mix asphalt paving shall be completed within one year of ~~((recording of the subdivision or~~
15 ~~short subdivision))~~ the county's receipt and approval of the performance security or earlier, as
16 determined by the director, except that hot mix asphalt paving within a subdivision or short
17 subdivision shall be completed within one year of recording the subdivision or short subdivision.

18 (4) ~~((The))~~ Delayed construction of improvements approved under this section shall require a
19 performance security ~~((required by SCC 30.84.105(1) shall be))~~ in the amount of 150 percent of
20 the estimated cost of all delayed improvements~~((;))~~. The county engineer shall determine the
21 estimate for the costs of the final placement of hot mix asphalt paving for private road network
22 elements when delayed installation is approved. ~~((as determined in good faith by the))~~ The
23 director shall determine the estimate for the costs of any other improvements where delayed
24 installation is approved. When making such estimates, the county engineer and the director
25 shall consider ~~((taking into account))~~ the following:

26 (a) The costs of constructing all facilities as specified in the approved plan;

27 (b) The costs of monitoring the facilities' performance;

28 (c) The costs of designing and constructing any corrective work including other mitigation
29 measures which may be necessary to correct the effects on-site and off-site of inadequate or
30 failed workmanship, materials or design; and

31 (d) Any related incidental and consequential costs, inflation, and the cost of inspection of the
32 work by the department.

33 (5) The performance security shall remain in effect until final inspection and construction
34 acceptance by the county of all facilities specified by the plans whose construction is secured
35 with the performance security.

36 ~~(((6) For good cause shown, the director, with concurrence from the county engineer, may~~
37 ~~grant an extension of the deadline for completion of construction imposed by SCC 30.84.105(2)~~
38 ~~for a time period not to exceed twelve months.))~~

39 ~~(((7)))~~ (6) The performance security required pursuant to this section shall not be released or
40 reduced until a maintenance security or performance monitoring security, if required, is
41 accepted pursuant to this chapter.

1 **Section 9.** Snohomish County Code Section 30.84.150, added by Amended Ordinance
2 10-086 on October 20, 2010, is amended to read:

3
4 **30.84.150 General ((Landscaping)) landscaping.**

5 (1) If the director approves a planting delay pursuant to SCC 30.25.043(2), a performance
6 security shall be required pursuant to SCC 30.84.105(1), (2), (4), and (5) to ensure that all
7 actions required by chapter 30.25 SCC are satisfactorily performed and completed in
8 accordance with the approved plans, specifications, permit or approval requirements or
9 conditions.

10 (2) The director may require a maintenance security prior to releasing a performance security
11 accepted pursuant to SCC 30.84.150(1).

12
13 **Section 10.** Retroactive application. The code amendments contained in Sections 4
14 through 9 of this ordinance shall apply retroactively to development applications submitted
15 before the effective date of this ordinance.

16
17 **Section 11.** Severability and savings. If any section, sentence, clause, or phrase of this
18 ordinance shall be held to be invalid or unconstitutional by the Growth Management Hearings
19 Board, or a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect
20 the validity or constitutionality of any other section, sentence, clause, or phrase of this
21 ordinance. Provided, however, that if any section, sentence, clause, or phrase of this ordinance
22 is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence,
23 clause, or phrase in effect prior to the effective date of this ordinance shall be in full force and
24 effect for that individual section, sentence, clause, or phrase as if this ordinance had never been
25 adopted.

26
27
28 PASSED this 28th day of March, 2018.

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30
31 SNOHOMISH COUNTY COUNCIL
32 Snohomish County, Washington

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34
35 
36 Council Vice-Chair

37
38 ATTEST:

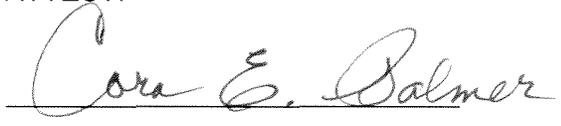
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42 Clerk of the Council
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- APPROVED
- EMERGENCY
- VETOED

DATE: 3/30/18


 County Executive

ATTEST:


Approved as to form only:
 1/25/18

 Deputy Prosecuting Attorney

D-16