

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington



ORDINANCE 97-057

AMENDING CHAPTER 2.02 SNOHOMISH COUNTY CODE TO COMPLY WITH  
STATE LAW CONCERNING ADMINISTRATIVE SEPA APPEALS

WHEREAS, with the adoption of ESB 6094, effective July 27, 1997, the state legislature enacted a new requirement concerning appeal periods for administrative appeals of threshold determinations under the State Environmental Policy Act (SEPA); and

WHEREAS, the state law requires that such appeals be commenced within 14 days of the notice of issuance of a threshold determination regardless of the existence of a comment period; and

WHEREAS, due to the imminent effective date of the state legislation and to the procedural nature of this amendment, the County Council finds that its public notice of and consideration of this ordinance at a public hearing constitutes appropriate public participation for an emergency situation within the meaning of RCW 36.70A.130(2)(b) of the Growth Management Act;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Snohomish County Code Section 2.02.125, last amended by Amended Ord. 96-003, on Feb. 21, 1996, is amended to read:

**2.02.125 Procedures for appeals within the examiner's jurisdiction.**

Administrative appeals over which the examiner has jurisdiction shall be subject to the following procedural requirements:

(1) Appeals shall be addressed to the hearing examiner but shall be filed in writing with the department of planning and development services within 14 calendar days of the date of action or, in those cases requiring personal or certified mail service, the date of service of the administrative action being appealed(~~(; EXCEPT, That for a DNS, mitigated DNS, or DS requiring a comment period pursuant to WAC 197-11-340(2) and WAC 197-11-408(2), the appeal period shall run concurrently with and extend an additional 7 days beyond the end of the comment period)~~). Appeals shall be accompanied by a filing fee in the amount of \$100.00; PROVIDED, That the filing fee shall not be charged to a department of the county or to other than the first appellant; and PROVIDED, FURTHER, That the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of procedural defect such as but not limited to untimely filing, lack of standing, facial lack of merit, etc.

(2) An appeal must contain the items set forth in the following subsections in order to be complete. The examiner, if procedural time limitations

allow, may allow an appellant not more than 15 days to perfect an otherwise timely filed appeal if such appeal is incomplete in some manner.

(a) Specific identification of the order, permit, decision, determination or other action being appealed (including the county's file number whenever such exists). A complete copy of the document being appealed must be filed with the appeal;

(b) Specific identification of the county code provision which authorizes the appeal;

(c) The specific grounds upon which the appellant relies, including a concise statement of the factual reasons for the appeal and, if known, identification of the policies, statutes, codes, or regulations that the appellant claims are violated. In the case of appeals filed pursuant to Title 23 SCC, a specific listing of the environmental elements alleged to be inadequately or inappropriately addressed in the environmental document and the reasons therefor shall be included;

(d) The name, mailing address and daytime telephone number of each appellant together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any;

(e) The name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and

(f) The required filing fee.

(3) Timely filing of an appeal shall stay the effect of the order, permit, decision, determination or other action being appealed until the appeal is finally disposed of by the examiner or withdrawn; PROVIDED, That filing of an appeal from the denial of a permit shall not stay such denial. Failure to file a timely and complete appeal shall constitute waiver of all rights to an administrative appeal under county code.

(4) No new appeal issues may be raised or submitted after the close of the time period for filing of the original appeal.

(5) The department of planning and development services shall forward the appeal to the examiner's office within three working days of its filing.

(6) The examiner's office, within two working days of receipt of the appeal, shall send written notice of the filing of the appeal to the department whose decision has been appealed (hereinafter referred to as the "respondent"); PROVIDED, That such notice is not required when the department of planning and development services is the respondent. The respondent, within two working days of either receipt of an appeal or notification by the examiner's office of the filing of an appeal, whichever comes first, shall transmit to the examiner's office all relevant public files on the order, permit, decision, determination or other action being appealed.

(7) The examiner's office, within three working days after receipt of the file from the respondent, shall send written notice of the filing of the appeal by first class mail, to the person named in an order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person.

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(8) The examiner may summarily dismiss an appeal in whole or in part without hearing if the examiner determines that the appeal is untimely, incomplete, without merit on its face, frivolous, beyond the scope of the examiner's jurisdiction or brought merely to secure a delay. The examiner may also summarily dismiss an appeal if he/she finds, in response to a challenge raised by the respondent and/or by the permit applicant and after allowing the appellant a reasonable period in which to reply to the challenge, that the appellant lacks legal standing to appeal. Except in extraordinary circumstances, summary dismissal orders shall be issued within 15 days following receipt of either a complete appeal or a request for issuance of such an order, whichever is later.

(9) Appeals shall be processed by the examiner as expeditiously as possible, giving proper consideration to the procedural due process rights of the parties. An open record appeal hearing shall be held before a final decision is issued unless the summary dismissal provisions of subsection (8), above, are utilized or the appeal is withdrawn. The examiner may consolidate multiple appeals of the same action for hearing and decision making purposes where to do so would facilitate expeditious and thorough consideration of the appeals without adversely affecting the due process rights of any of the parties.

(10) Notice of open record appeal hearings conducted pursuant to this section, containing at a minimum the information required in SCC 32.50.060(3)(b) through (e) and (h), shall be given as provided below not less than 15 calendar days prior to the hearing:

(a) The examiner's office shall give notice of all open record appeal hearings by first class mail (unless otherwise required herein) to:

- (i) The appellant;
- (ii) The appellant's agent/representative, if any; and
- (iii) The respondent (by interoffice mail); and
- (iv) To the person named in an order or to the person who initially sought the permit, decision, determination or other action being appealed, whenever the appeal is filed by other than such person;

(b) The department of planning and development services shall give notice of open record appeal hearings arising from Title 20 SCC:

(i) In the same manner as required by SCC 32.50.060(4) for hearings on preliminary subdivision applications; and

(ii) By first class mail to parties of record as defined by SCC 2.02.165(1).

(c) The department of planning and development services shall give notice of open record appeal hearings arising from Title 23 SCC by first class mail to:

- (i) Parties of record as defined by SCC 2.02.165;
- (ii) Agencies with jurisdiction as disclosed by documents in the appeal file; and

(iii) All taxpayers of record and known site addresses within 500 feet of any boundaries of the property subject to the appeal; PROVIDED,

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That the mailing radius for written notice shall correspond to the mailing radius required for the notice of hearing of any discretionary permit or action associated with the environmental document under appeal where such mailing radius is greater than 500 feet.

(d) The examiner's office shall give notice of open record appeal hearings other than those covered by subsections (b) and (c) above, by first class mail to parties of record as defined by SCC 2.02.165.

(11) Notices required by the above subsections shall be deemed adequate where a good-faith effort has been made by the county to identify and mail notice to each person entitled thereto. Notices mailed pursuant to the above subsections shall be deemed received by those persons named in an affidavit of mailing executed by the person designated to mail the notices. The failure of any person to actually receive the notice shall not invalidate any action.

(12) The open record appeal hearing and examiner consideration of the appeal shall be limited solely to the issues identified by the appellant pursuant to the above subsections.

PASSED this 2<sup>nd</sup> day of July, 1997

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

John Horner  
Chairperson

Sheila McCallister  
Clerk of the Council, *asst*

- APPROVED  
 EMERGENCY  
 VETOED

DATE: July 7, 1997

Joan M. Earl  
County Executive

PUBLISHED: \_\_\_\_\_

**JOAN M. EARL**  
Deputy Executive

Approved as to form only:

John V. Stoy 6/2/97  
Deputy Prosecuting Attorney

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