



SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON

AMENDED EMERGENCY ORDINANCE NO. 98-084

AMENDING SNOHOMISH COUNTY CODE TITLE 32  
TO ADD A NEW CHAPTER 32.35

WHEREAS, the County Council adopted a comprehensive plan under the Growth Management Act (GMA) on June 28, 1995 (GMACP); and

WHEREAS, the GMA requires the county to adopt development regulations that are consistent with the GMACP; and

WHEREAS, the recent decision of the Washington Supreme Court in *Citizens of Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997), indicates that with respect to uses, conflicts between a zoning code or a specific development regulation and a comprehensive plan are resolved in favor of the zoning code or more specific development regulation; and

WHEREAS, there are important provisions of the GMACP, specifically the Growth Phasing Overlay, which have not yet been implemented through the county's development regulations; and

WHEREAS, the *Mount Vernon* decision has called into question the continued vitality of the Growth Phasing Overlay (policy LU 2.A.7 of the General Policy Plan (GPP)) in its present forms; and

WHEREAS, implementation of this portion of the GMACP is necessary to achieve the county's objectives in planning for growth under the GMA; and

WHEREAS, the County Council finds that it is necessary to implement the growth phasing overlay quickly to prevent inappropriate and unintended development in these areas; and

WHEREAS, the County Council finds that an emergency exists within the county, and that amendments to the development regulations are necessary for the immediate preservation of the public peace, health and safety and for the support of county government and its existing institutions;

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THEREFORE, BE IT ORDAINED:

Section 1. Findings and Conclusions. The County Council makes the following findings and conclusions:

- A. The GMA states that growth should be phased within an urban growth area (UGA) as follows: urban growth should be located first in areas already characterized by urban growth that have adequate existing facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of urban growth areas. RCW 36.70A.110(3).
- B. The GMA also directs local jurisdictions to "[e]nsure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards." RCW 36.70A.020(12).
- C. The Countywide Planning Policies, adopted by Ordinance 93-004, as amended, at OD-1 and OD-2, implement the phasing requirements of the GMA. OD-1 directs the County to "[p]romote development within urban growth areas in order to use land efficiently, add certainty to capital facility planning, and allow timely and coordinated extension of urban services and utilities for new development." OD-2(b) states that:

The county will regulate development within the unincorporated portions of urban growth areas in a manner that does not preclude urban densities, based on strategies which will be developed as part of the joint comprehensive planning process for each urban growth area. These strategies will consider the unique development opportunities and constraints in each urban growth area and could range from development limitations in one area to the authorization of development at planned urban densities in those areas that have urban governmental services and capital facilities available.

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- D. The GPP of the GMACP requires phasing of land development and the provision of public facilities and services within UGAs. Objective LU 2.C. Specifically, Policies 2.C.1, 2.C.2 and 2.C.3 require that new development be served by adequate infrastructure and services, and that urban growth phasing be used to direct development first to areas where existing infrastructure capacity is available before extending infrastructure into predominantly undeveloped areas.
- E. Policy LU 2.A.7 of the GPP limits development in areas which are contained within the Growth Phasing Overlay. The intent of Policy LU 2.A.7 is to assure phasing of urban growth within the UGAs in accordance with the GMA, the Countywide Planning Policies, and GPP policies. Areas within the mapped Growth Phasing Overlay are generally areas of the UGAs which will be developed as residential, but for which urban services have not yet been extended or planned for. In enacting Policy LU 2.A.7, the County Council made provision for development at urban densities only if a property owner or developer could demonstrate that adequate infrastructure is planned or in place for that area. By enacting the amendments to the development regulations contained in this ordinance, the County Council intends that the growth phasing overlay be implemented as a phasing tool in accordance with the original goal of the GPP policy.
- F. The County Council is concerned with the vesting of inappropriate and unintended development in the Growth Phasing Overlay area as a result of the recent decision of the Washington Supreme Court in *Citizens of Mount Vernon v. Mount Vernon*. As the *Mount Vernon* decision indicates that may no longer be appropriate, the County Council wishes to effect the existing policy with respect to Growth Phasing Overlay through development regulations as quickly as possible.
- G. The County Council finds that an emergency exists within the county, and that amendments to the development regulations are necessary for the immediate preservation of the public peace, health and safety and for the support of county government and its existing institutions.
- H. In considering this amendment to the development regulations, the County Council has considered and balanced the goals of the GMA. This action furthers the planning goals as follows:
- (1) Urban growth.** The GMA requires that local jurisdictions consider encouraging development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. This action furthers this goal by encouraging growth to occur more efficiently in those portions of the UGA presently served by adequate public facilities and services, rather in those areas which are not presently served by urban services.

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**(2) Reduce sprawl.** The GMA requires that local jurisdictions consider reducing the inappropriate conversion of undeveloped land into sprawling, low-density development. This action furthers this goal by eliminating the possibility of sprawling development in certain areas of the UGA not yet served by adequate urban services.

**(3) Transportation.** The GMA requires that local jurisdictions consider encouraging efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans. This action furthers this goal by requiring that urban development occur only when transportation infrastructure is in place or is contained in six-year capital plans.

**(4) Housing.** The GMA requires that local jurisdictions consider encouraging the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock. This action furthers this goal by preventing premature urban development in areas which are not served efficiently by urban services. In ensuring that local jurisdictions and home buyers will not be overburdened with the costs of providing urban services to areas in a "leap-frog" fashion, these actions promote the GMA's goal of providing affordable housing.

**(5) Economic development.** The GMA requires that local jurisdictions consider encouraging economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of the state, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities. This action furthers this goal by reserving areas of the UGA for future development of industrial and commercial uses at a point in time at which public services and facilities have adequate capacity to serve these high intensity uses.

**(6) Property rights.** The GMA requires that local jurisdictions consider that private property shall not be taken for public use without just compensation being made, and that the property rights of landowners shall be protected from arbitrary and discriminatory actions. This action furthers this goal by allowing development potential in areas of the UGA which otherwise would not be available because of lack of infrastructure to service the area and the minimum net density requirement.

...

**(10) Environment.** The GMA requires that local jurisdictions consider protecting the environment and enhancing the state's high quality of life, including air and water quality, and the availability of water. This action furthers this goal by ensuring that development within the UGA is phased in a manner which allows for provision of services in an efficient manner, thereby conserving limited natural resources, and enhancing quality of life within the UGA.

**(11) Citizen participation and coordination.** The GMA requires that local jurisdictions consider encouraging involvement of citizens in the planning process and ensuring coordination between communities and jurisdictions to reconcile conflicts. This action is consistent with this goal. Despite the fact that this action is being taken as an emergency ordinance, the Growth Phasing Overlay was a part of the county's public participation process for adoption of the GMACP. The Growth Phasing Overlay was again subject to revision in the November 1996 amendments to the comprehensive plan. As such, the substance of this action has been the subject of lengthy public process spanning over years of planning effort. The County Council hereby adopts and incorporates by reference the findings and conclusions related to public participation found in and the legislative record created for Amended Ordinance 94-125 and Amended Ordinance 96-074.

**(12) Public facilities and services.** The GMA requires that local jurisdictions consider ensuring that those public facilities and service necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards. This action furthers this goal by ensuring areas identified as lacking necessary public facilities and services will not be developed until adequate facilities and services are available.

- I. The State Environmental Policy Act's (SEPA) administrative regulations exempts emergency actions from its requirements pursuant to WAC 197-11-880. However, these actions have previously been evaluated for SEPA compliance during adoption and previous amendment of the GMACP. The underlying goals of SEPA have been satisfied by adoption of the Final Environmental Impact Statement for the Snohomish County GMA Comprehensive Plan and addenda.

- J. The issues raised in this ordinance are matters of ongoing public concern and may be further addressed by the County Council in response to ongoing planning and implementation efforts by the Department of Planning and Development Services.

Section 2. A new chapter is added to Title 32 of the Snohomish County Code to read:

### Chapter 32.35

#### Development within the Growth Phasing Overlay

32.35.010 Purpose.

32.35.020 Applicability.

32.35.030 Review of Land Use Applications in Growth Phasing Overlay.

32.35.010 Purpose.

The purpose of this chapter is to implement the Growth Phasing Overlay as a development regulation. The Growth Management Act (GMA) contemplates phasing of growth within the urban growth areas in the following manner: urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Areas within urban growth areas that are not already characterized by urban growth may lack urban services. If growth is permitted in areas lacking urban services, the county or other service providers must finance the expansion, extension and improvement of urban services in a manner which places a disproportionate burden on the public and local government. If such services are not provided in these areas, urban growth cannot occur consistent with the GMA. It is in the public interest to accommodate growth in a manner that efficiently uses the county's limited supply of urban land, and does not preclude the future efficient development of land and the provision of urban services.

The Growth Phasing Overlay is a designation on the county's future land use map that delineates areas which may be appropriate for phasing growth in accordance with RCW 36.70A.110. These areas typically lack necessary urban services, including but not limited to: public water and sewer, police and fire protection, drainage facilities, parks, schools, necessary transportation

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infrastructure and transit services. Development at urban densities should not occur in these areas until the necessary urban services are provided. For that reason, urban development to property within the overlay boundary will be allowed to proceed only when the conditions in 32.35.030 are met.

#### 32.35.020 Applicability.

(1) This chapter applies to all land use applications for approval of a subdivision for lands within the Growth Phasing Overlay. The Growth Phasing Overlay remains in effect for all identified properties until it is removed by amendment of the comprehensive plan or development regulation, or repealed as provided for in Section 3 of this ordinance. However, individual properties within the Growth Phasing Overlay which meet the requirements of SCC 32.35.030 may subdivide at urban densities. The Growth Phasing Overlay is delineated on the Future Land Use Map of the county's GMA comprehensive plan, and is identified on the official zoning maps for informational purposes only.

(2) This chapter shall apply to land use applications identified in subsection (1) of this section within the Growth Phasing Overlay that are determined complete after the effective date of this chapter.

(3) The requirements of this chapter are in addition to any other imposed by applicable law.

#### 32.35.030 Review of Applications in Growth Phasing Overlay Areas.

In areas located within a UGA and within a Growth Phasing Overlay, subdivisions may only be approved if conditions 1 to 3 are met, and at least one of the remaining conditions (4 to 8) are met.

(1) Infrastructure is in place or planned to be provided in a city's or district's comprehensive plan.

(2) The county finds that the development of properties would not preclude major planning options that need to be considered in the UGA subarea planning process.

(3) The proposed development as mitigated does not result in a reduction of existing levels of service on impacted roads by more than one level, and does not create concurrency problems or inadequate road conditions.

(4) The area is covered by a city-adopted GMA plan which is generally consistent with the County's GMA comprehensive plan.

(5) The area was previously part of a request for a small area plan amendment study prior to adoption of the GMA and the study has not yet been initiated.

(6) The development proposal is participating in the Housing Demonstration Program.

(7) The proposed development is located south of 132nd Street SE and west of 35th Avenue SE.

(8) The project is providing infrastructure of regional significance as determined by the county.

**Section 3.** Snohomish County Code Chapter 32.35, adopted by this ordinance or as amended after the effective date of this ordinance, is repealed, effective on the date two years following enactment unless re-enacted prior to that date; as provided in Snohomish County Charter Section 2.115.

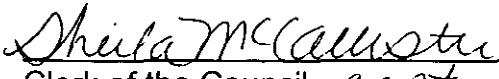
**Section 4. Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

PASSED this 12th day of October, 1998.

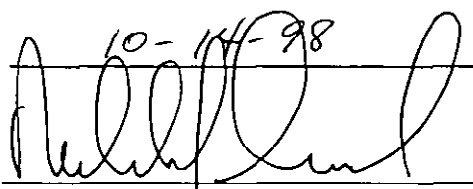
SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
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Chairperson

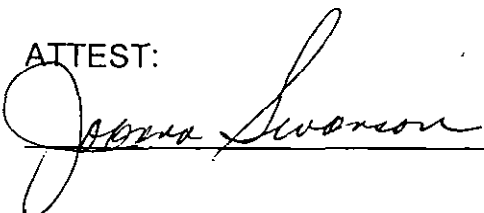
ATTEST:

  
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Clerk of the Council, *asst.*

- APPROVED  
 EMERGENCY  
 VETOED

DATE: 10-14-98  
  
\_\_\_\_\_  
County Executive

ATTEST:

  
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Joanna Swanson

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