

1 ADOPTED: 06/15/22
2 EFFECTIVE: 07/07/22

3 SNOHOMISH COUNTY COUNCIL
4 Snohomish County, Washington

5
6 ORDINANCE NO. 22-021

7
8 RELATING TO GROWTH MANAGEMENT; ADMINISTRATIVE APPEAL HEARING
9 NOTICE REQUIREMENTS FOR TYPE 1 AND TYPE 2 PERMITS; AMENDING
10 CHAPTERS 30.71 AND 30.72 SCC
11

12 WHEREAS, counties and cities that are required to plan under the Growth
13 Management Act (GMA), chapter 36.70A of the Revised Code of Washington (RCW),
14 must ensure that permit applications are processed in a timely and fair manner to
15 ensure predictability, and must encourage involvement of the public in the planning
16 process; and

17
18 WHEREAS, the Economic Development chapter of the Snohomish County GMA
19 Comprehensive Plan (GMA) – General Policy Plan (GPP) includes a policy requiring
20 the County to periodically review the permitting process to eliminate unnecessary
21 administrative procedures that do not respond to legal requirements for public review
22 and citizen input; and

23
24 WHEREAS, Type 1 permits are processed and administratively decided by the
25 Snohomish County Department of Planning and Development Services (PDS) under
26 chapter 30.71 of the Snohomish County Code (SCC or “County Code”), and Type 2
27 permits are processed under chapter 30.72 SCC and decided by the Snohomish County
28 Hearing Examiner (“Hearing Examiner”) after a public hearing; and

29
30 WHEREAS, Snohomish County provides for administrative appeals of both Type
31 1 and Type 2 decisions; and

32
33 WHEREAS, Type 1 decision administrative appeal hearings are open record and
34 heard by the Hearing Examiner, and Type 2 decision administrative appeal hearings are
35 closed record and heard by the Snohomish County Council (“County Council”); and

36
37 WHEREAS, under RCW 36.70B.110(9) and Washington Administrative Code
38 (WAC) 365-196-845(14), counties are not required to provide for administrative appeals
39 of project permit decisions; and

40
41 WHEREAS, if a county does allow administrative appeals, the WAC does not
42 provide specific requirements for notification of appeal hearings; and

1 WHEREAS, Snohomish County has the discretion to determine the best method
2 to provide notice of the pendency of both Type 1 and Type 2 administrative appeal
3 hearings; and
4

5 WHEREAS, SCC 30.71.080 currently describes three different processes to be
6 performed by two different county departments (PDS and the Office of Hearings
7 Administration) to provide notice that a Type 1 open record administrative appeal
8 hearing has been scheduled before the Hearing Examiner; and
9

10 WHEREAS, the County wishes to eliminate potential confusion and streamline
11 the process for providing notice of Type 1 administrative appeal hearings by requiring
12 that the Office of Hearings Administration rather than PDS provide notice (unless notice
13 was given under the combined notice provisions of SCC 30.70.080(2)); and
14

15 WHEREAS, SCC 30.71.080(2) and SCC 30.72.100(1) require the Office of
16 Hearings Administration and Council Clerk, respectively, to mail notice of administrative
17 appeal hearings to parties of record through the United States Postal Service (USPS);
18 and
19

20 WHEREAS, with the popularity of email correspondence and the change in
21 permit processing by PDS to only accept digital permit submissions, requiring that
22 notice be physically mailed is not the preferred, cost effective, or most efficient method
23 of delivery in most situations; and
24

25 WHEREAS, the proposed code amendments contained in this ordinance will
26 amend chapters 30.71 and 30.72 SCC to (1) specify a single department and process
27 for providing notice of Type 1 appeal hearings, and (2) create a presumption of emailing
28 notice to parties of record for both Type 1 and Type 2 appeal hearings unless otherwise
29 indicated; and
30

31 WHEREAS, on February 22, 2022, the Snohomish County Planning Commission
32 (the "Planning Commission") was briefed by PDS staff about the proposed code
33 amendments contained in this ordinance; and
34

35 WHEREAS, the Planning Commission held a public hearing on March 22, 2022,
36 to receive public testimony concerning the proposed code amendments contained in
37 this ordinance; and
38

39 WHEREAS, the Planning Commission deliberated on the proposed ordinance at
40 the conclusion of the public hearing and voted to recommend approval of amendments
41 to the County Code relating to the noticing process for Type 1 and Type 2 administrative

1 appeal hearings with an amendment as described in the Planning Commission’s
2 approval letter dated March 28, 2022; and

3
4 WHEREAS, on June 15, 2022, the County Council held a public hearing after
5 proper notice, and considered public comment and the entire record related to the code
6 amendments contained in this ordinance; and

7
8 WHEREAS, following the public hearing, the County Council deliberated on the
9 code amendments contained in this ordinance.

10
11 NOW, THEREFORE, BE IT ORDAINED:

12
13 Section 1. The County Council adopts the following findings in support of this
14 ordinance:

- 15
16 A. The foregoing recitals are adopted as findings as if set forth in full herein.
17
18 B. This ordinance will amend title 30 SCC to revise SCC 30.71.080 and SCC
19 30.72.100. The code amendments will increase the clarity and efficiency of the
20 noticing process for Type 1 open record appeal hearings by: 1) eliminating PDS from
21 the noticing process for appeal hearings; and 2) requiring a single noticing process
22 that allows for use of email. The code amendments will also clarify that the Council
23 Clerk can provide notice of Type 2 closed record appeal hearings by email.
24
25 C. In developing the code amendments, the County considered the goals of the GMA
26 identified in RCW 36.70A.020, specifically the goals related to ensuring permits are
27 processed in a timely and predictable manner and encouraging involvement of
28 citizens in the planning process. The proposed regulations are reasonably related to,
29 and necessary for, the advancement of these GMA planning goals.
30
31 D. The code amendments will allow chapters 30.71 and 30.72 SCC to achieve, comply
32 with, and implement the below listed policy contained in the County’s GMACP by
33 providing regulations that are predictable and streamlined.

34
35 ED Policy 2.A.3: “To ensure timeliness, responsiveness, and increased
36 efficiency, the county shall develop and maintain a program of periodic
37 review of the permitting process to eliminate unnecessary administrative
38 procedures that do not respond to legal requirements for public review and
39 citizen input.”
40
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1 E. Procedural requirements.

- 2
- 3 1. This ordinance is a Type 3 legislative action under chapter 30.73 SCC.
- 4
- 5 2. As required by RCW 30.70A.106(1), a notice of intent to adopt the proposed
- 6 code amendments was transmitted to the Washington State Department of
- 7 Commerce for distribution to state agencies on February 3, 2022.
- 8
- 9 3. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with
- 10 respect to this non-project action have been satisfied through the completion of
- 11 an environmental checklist and the issuance of a determination of non-
- 12 significance on February 3, 2022.
- 13
- 14 4. The public participation process used in the adoption of this ordinance complies
- 15 with all applicable requirements of the GMA and the SCC.
- 16
- 17 5. The Washington State Attorney General last issued an advisory memorandum,
- 18 as required by RCW 36.70A.370, in September of 2018 entitled “Advisory
- 19 Memorandum: Avoiding Unconstitutional Takings of Private Property” to help
- 20 local governments avoid the unconstitutional taking of private property. The
- 21 process outlined in the State Attorney General’s 2018 advisory memorandum
- 22 was used by Snohomish County in objectively evaluating the regulatory changes
- 23 proposed by this ordinance.
- 24

25 F. This ordinance is consistent with the record.

- 26
- 27 1. SCC 30.71.080(1) is amended to eliminate the specific reference to PDS, as the
- 28 Office of Hearings Administration will be providing notice for Type 1 administrative
- 29 appeal hearings unless an exception applies.
- 30
- 31 2. SCC 30.71.080(2) is amended to eliminate reference to subsections (3) and (4)
- 32 and to allow the Office of Hearings Administration to email notice of Type 1
- 33 decision administrative appeals, unless a party did not provide an email address
- 34 or requested notice through U.S. mail. Emailing notices to parties that have
- 35 provided their email address is the most efficient method to provide notice, is cost
- 36 effective, and aligns with current practice. SCC 30.71.080(2) is also amended to
- 37 reflect the name change of the hearing examiner’s office to the Office of Hearings
- 38 Administration.
- 39
- 40
- 41
- 42

1 3. SCC 30.71.080(3) and (4) are removed to make clear that the Office of Hearings
2 Administration will provide notice of Type 1 administrative appeal hearings.
3

4 a. SCC 30.71.080(2) currently requires the Hearing Examiner's office to
5 give notice by first class mail of all open record appeal hearings, except
6 where notice has already been given under the combined notice
7 provisions of SCC 30.70.080(2) and except where notice has been
8 provided by PDS under SCC 30.71.080(3) or (4).
9

10 b. SCC 30.71.080(3) currently requires PDS to mail notice of short
11 subdivision open record appeal hearings to all parties of record, and to
12 publish notice in the official county newspaper, post notice on the subject
13 property, and mail notice by USPS to all taxpayers of record within a
14 certain radius.
15

16 c. SCC 30.71.080(4) currently requires PDS to mail notice of SEPA
17 determination open record appeal hearings to all parties of record,
18 agencies with jurisdiction, and to all taxpayers of record within 500 feet
19 of the subject property.
20

21 d. State law does not require three different noticing procedures and two
22 different responsible departments for these Type 1 appeals. Prior to
23 1986, there was only one process for noticing and one department
24 responsible for noticing. This proposed amendment would revert to this
25 previous stance, would align with current practice, and would comply
26 with state requirements.
27

28 4. Deletion of SCC 30.71.080(3) and (4) eliminates inconsistency in the County Code
29 and a potential source of confusion for the public regarding participation in Type 1
30 administrative appeal hearings. Under SCC 30.71.050(1), any aggrieved party of
31 record may appeal a Type 1 decision. Parties of record to a Type 1 decision receive
32 written notice of the decision from PDS under SCC 30.71.040. Appeals must be
33 filed within a defined appeal period and no new substantive issues may be raised
34 after the close of that time period. At the open record Type 1 appeal hearing before
35 the Hearing Examiner, only parties to the appeal can participate in the hearing,
36 unless they call on a specific interested person to present relevant testimony.
37 Mailing notice of short subdivision and SEPA determination appeal hearings per
38 SCC 30.71.080(3) and (4) to taxpayers of record within a certain radius of the
39 subject property who are not already parties of record creates a false expectation
40 that the public can provide public comment during these appeals. The amendment
41 to remove SCC 30.71.080(3) and (4) eliminates this potential confusion, and
42 ensures that the noticing process for short subdivision and SEPA determination
43 appeal hearings are in line with the process for all other Type 1 appeal hearings.
44

1 5. Under SCC 30.70.060, all Type 1 and Type 2 permit applications require a
2 minimum 21-day public comment period that must close before PDS can make a
3 decision. The comment period is when members of the public can provide
4 comments about proposed permit applications that will be incorporated into PDS's
5 review of the submitted materials. Members of the public who are not parties to an
6 appeal cannot generally participate in appeal hearings. A goal of repealing SCC
7 30.71.080(3) and (4) is to reduce public confusion about the ability to comment
8 during Type 1 permit appeal hearings; the intent is not to reduce public
9 participation in the permitting process.

10
11 6. SCC 30.72.100(1) is amended to clarify that notices for Type 2 appeal hearings
12 can be emailed to parties of record. The amended language within SCC
13 30.72.100(1) is consistent with the amended language within SCC 30.71.080(2)
14 related to emailing notices.

15
16 G. The proposed code amendments are consistent with the record as set forth in the PDS
17 Staff Report dated February 22, 2022, and the Addendum to that staff report dated
18 April 25, 2022.

19
20 Section 2. The County Council makes the following conclusions:

21
22 A. The amendments proposed by this ordinance comply with the GMA.

23
24 B. The amendments proposed by this ordinance comply with the Snohomish County
25 GMACP.

26
27 C. The County has complied with all SEPA requirements with respect to this non-
28 project action.

29
30 D. The public participation process used in the adoption of this ordinance complies with
31 all applicable requirements of the GMA and title 30 SCC.

32
33 E. The amendments proposed by this ordinance do not result in an unconstitutional
34 taking of private property for a public purpose.

35
36 Section 3. The Snohomish County Council bases its findings and conclusions on
37 the entire record of the County Council, including all testimony and exhibits. Any
38 finding, which should be deemed a conclusion, and any conclusion which should be
39 deemed a finding, is hereby adopted as such.

1 Section 4. Snohomish County Code Section 30.71.080, last amended by
2 Amended Ordinance No. 02-064 on December 9, 2002, is amended to read:

3
4 **30.71.080 Notice of Type 1 open record appeal hearing.**

5
6 (1) Notice of open record appeal hearings conducted pursuant to this chapter shall be
7 provided at least 14 calendar days prior to the hearing and shall contain a description of
8 the proposal and list of permits requested, the county file number and contact person,
9 the date, time, and place for the hearing, and any other information determined
10 appropriate (~~by the department~~).

11
12 (2) Except where notice has already been given pursuant to the combined notice
13 provisions of SCC 30.70.080(2), (~~and except where notice has been provided by the~~
14 ~~department pursuant to subsections (3) and (4) below,~~) the (~~hearing examiner's~~
15 ~~office~~) office of hearings administration shall give notice of all open record appeal
16 hearings (~~by first class mail (unless otherwise required herein)~~) to(~~the~~) the parties listed
17 below. Notice shall be by email unless any of the below listed parties did not provide an
18 email address or requested notice via U.S. mail, in which case notice shall be by U.S.
19 mail.

- 20
21 (a) The appellant;
22 (b) The appellant's agent/representative, if any;
23 (c) The department whose decision is being appealed (~~by interoffice mail~~);
24 (d) The applicant;
25 (e) Applicant's agent/representative, if any; and
26 (f) All parties of record.

27
28 (~~(3) The department shall give notice of an open record appeal hearing for a decision~~
29 ~~made pursuant to chapter 30.41B SCC:~~

- 30
31 (~~(a) In the same manner as required by SCC 30.72.030; and~~
32 ~~(b) By first class mail to parties of record.~~

33
34 (~~(4) The department shall give notice of an open record appeal hearing for a SEPA~~
35 ~~determination made pursuant to chapter 30.61 SCC by first class mail to:~~

- 36
37 (~~(a) Parties of record;~~
38 ~~(b) Agencies with jurisdiction as disclosed by documents in the appeal file; and~~
39 ~~(c) All taxpayers of record and known site addresses within 500 feet of any boundaries~~
40 ~~of the property subject to the appeal; provided that the mailing radius shall be increased~~
41 ~~if necessary to correspond with any larger radius required for the notice of any~~
42 ~~discretionary permit or action associated with the determination under appeal.))~~

1 Section 5. Snohomish County Code Section 30.72.100, last amended by
2 Ordinance No. 20-019 on June 24, 2020, is amended to read:

3
4 **30.72.100 Notice of Type 2 appeal.**

5
6 (1) Within seven calendar days following the close of the appeal period and upon
7 receipt of a timely filed and complete appeal, the council clerk will ~~((mail))~~ provide notice
8 of the appeal and of the date, time, and place of the closed record appeal hearing to all
9 parties of record. Notice shall be by email unless any party of record did not provide an
10 email address or requested notice via U.S. mail, in which case notice shall be by U.S.
11 mail.

12
13 (2) The dates for filing written arguments with the council shall be included in the
14 hearing notice as follows:

15
16 (a) Parties of record, other than the appellant, may file written arguments with the
17 council until 5:00 p.m. on the fourteenth day following the date of the hearing notice
18 mailed pursuant to SCC 30.72.100(1); and

19
20 (b) An appellant may file written rebuttal arguments with the council until 5:00 p.m. on
21 the twenty-first day following the date of the hearing notice mailed pursuant to SCC
22 30.72.100(1). Such rebuttal is limited to the issues raised in written arguments filed
23 under SCC 30.72.100(2)(a).

24
25 (3) The hearing notice shall be sent for publication in the official county newspaper the
26 same day the notice of appeal is sent to parties of record.

27
28 (4) Within five days of mailing of the hearing notice under SCC 30.72.100(1), the
29 applicant shall conspicuously post notice of the hearing on the signs in accordance with
30 SCC 30.70.045.

31
32 Section 6. Severability and Savings. If any section, sentence, clause or phrase
33 of this ordinance shall be held to be invalid by the Growth Management Hearings Board
34 (Board), or unconstitutional by a court of competent jurisdiction, such invalidity or
35 unconstitutionality shall not affect the validity or constitutionality of any other section,
36 sentence, clause or phrase of this ordinance. Provided, however, that if any section,
37 sentence, clause or phrase of this ordinance is held to be invalid by the Board or court
38 of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to
39 the effective date of this ordinance shall be in full force and effect for that individual
40 section, sentence, clause or phrase as if this ordinance had never been adopted.

1 PASSED this 15th day of June 2022.

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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Chair

ATTEST:



Clerk of the Council

- (X) APPROVED
- () EMERGENCY
- () VETOED

DATE: 6/27/2022



County Executive

ATTEST:



Approved as to form only:

Christina
Richmond

Digitally signed by
Christina Richmond
Date: 2022.04.26
10:20:55 -07'00'

Deputy Prosecuting Attorney