

1 Adopted:  
2 Effective:

3  
4 SNOHOMISH COUNTY COUNCIL  
5 Snohomish County, Washington

6  
7 **DISCUSSION DRAFT** ORDINANCE NO. 21-          

8  
9 RELATING TO GROWTH MANAGEMENT; INCREASING EXEMPTION THRESHOLDS FOR MINOR NEW  
10 CONSTRUCTION AND ADOPTING NEW CATEGORICAL EXEMPTIONS PER THE STATE  
11 ENVIRONMENTAL POLICY ACT TO PROMOTE INFILL DEVELOPMENT IN URBAN GROWTH AREAS;  
12 AMENDING EXISTING SECTIONS IN CHAPTER 30.61 OF THE SNOHOMISH COUNTY CODE  
13

14  
15 WHEREAS, the Washington State Legislature recently amended the State Environmental  
16 Policy Act (SEPA), Chapter 43.21C RCW to promote infill development in Urban Growth Areas  
17 (UGAs) by Substitute House Bill 2673 (HB 2673); and  
18

19 WHEREAS, HB 2673 made specific amendments to RCW 43.21C.229 that increased the  
20 potential categorical exemptions from SEPA such that actions where the “density and intensity  
21 of use is roughly equal to or lower than called for in the goals and policies of the applicable  
22 comprehensive plan” with certain exceptions; and  
23

24 WHEREAS, RCW 43.21C.229 requires that counties complete an Environmental Impact  
25 Statement for their comprehensive plan before they can make use of the categorical  
26 exemptions; and  
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28 WHEREAS, Snohomish County completed a programmatic EIS for the 2015 Update to  
29 the General Policy Plan (GPP), and  
30

31 WHEREAS, the Future Land Use Map in the GPP designates UGAs and land use plan  
32 designations that determine the density and intensity of development in those plan  
33 designations; and  
34

35 WHEREAS, the GPP also identifies implementing zones for each of the plan designations  
36 and includes goals and policies that guide the specific development regulations found in  
37 Snohomish County Code (SCC) Title 30; and  
38

39 WHEREAS, SCC 30.61.030 describes use of existing exemptions but does not yet describe  
40 use of the new categorical exemptions authorized by HB 2673.  
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**DISCUSSION DRAFT** ORDINANCE NO. 21-          

RELATING TO GROWTH MANAGEMENT; INCREASING EXEMPTION THRESHOLDS FOR MINOR NEW CONSTRUCTION AND ADOPTING NEW CATEGORICAL EXEMPTIONS PER THE STATE ENVIRONMENTAL POLICY ACT TO PROMOTE INFILL DEVELOPMENT IN URBAN GROWTH AREAS; AMENDING EXISTING SECTIONS IN CHAPTER 30.61 OF THE SNOHOMISH COUNTY CODE

1 WHEREAS, SCC 30.61.035 already provides for certain exemption thresholds for minor  
2 new construction as allowed under WAC 197-11-800(1)(c) and (d); and  
3

4 WHEREAS, the exemption thresholds in SCC 30.61.035 are, in some cases, below what  
5 under WAC 197-11-800(1)(c) and (d) allow; and  
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7 WHEREAS, GPP Goal ED-2 says that the County should “[p]rovide a planning and  
8 regulatory environment which facilitates growth of the local economy; and  
9

10 WHEREAS, GPP Objective NE 1.A recognizes the need to “[b]alance the protection of the  
11 natural environment with economic growth, housing needs and the protection of property  
12 rights; and  
13

14 WHEREAS, SCC Title 30 already includes requirements to protect the natural  
15 environment and property rights and where compliance with these constitutes adequate  
16 mitigation under SEPA; and  
17

18 WHEREAS, GPP Policy ED 2.A.3 requires that to “ensure timeliness, responsiveness, and  
19 increased efficiency, the county shall develop and maintain a program of periodic review of the  
20 permitting process to eliminate unnecessary administrative procedures that do not respond to  
21 legal requirements for public review and citizen input”; and  
22

23 WHEREAS, increasing the thresholds for minor new construction in SCC 30.61.035 to the  
24 level allowed under WAC 197-11-800 would eliminate unnecessary administrative procedure  
25 for some development proposals; and  
26

27 WHEREAS, adopting categorical exemptions for other development proposals that  
28 propose a density or intensity of use roughly equal to or lower than called for in the  
29 comprehensive plan and studied in the EIS for the plan would eliminate unnecessary  
30 administrative procedure for these other development proposals; and  
31

32 WHEREAS, Chapter 30.22 SCC establishes uses allowed in zones and identifies Permitted  
33 Uses, Administrative Conditional Uses, Conditional Uses, and Special Uses; and  
34

35 WHEREAS, the EIS for the 2015 Update to the GPP assumed and identified mitigation for  
36 typical development in UGAs which includes Permitted Uses and Administrative Conditional  
37 Uses; and  
38

39 WHEREAS, Conditional Uses and Special Uses are relatively uncommon and the EIS for  
40 the 2015 Update did not necessarily address them in a comprehensive manner; and  
41

1 WHEREAS, traffic modeling that assumed typical development in the unincorporated  
2 UGAs was relied on in the EIS for the 2015 Update; and

3  
4 WHEREAS, traffic often crosses jurisdictional lines and the traffic mitigation for the 2015  
5 Update EIS assumed that cities, neighboring counties and Washington State would make  
6 certain improvements funded, in part, through reciprocal impact mitigation adopted by  
7 Interlocal Agreements (ILAs) between the various agencies; and

8  
9 WHEREAS, the ILAs that provide for reciprocal impact mitigation typically come into  
10 effect for projects that are not exempt from SEPA; and

11  
12 WHEREAS, the County Council finds that there is an opportunity to facilitate growth in  
13 the local economy by updating the County's development regulations related to SEPA to reflect  
14 the expanded categorical exemptions authorized by HB 2673 and also by revising exemptions  
15 for minor new construction to the levels allowed by WAC 197-11-800; and

16  
17 WHEREAS, the County Council finds that the existing environmental and property rights  
18 projections in Title 30 constitute adequate mitigation for most Permitted Uses and  
19 Administrative Conditional Uses in urban zones; and

20  
21 WHEREAS, the County Council finds expanding SEPA exemption thresholds should not  
22 exempt new development from needing to provide mitigation to non-County roads; and

23  
24 WHEREAS, the County Council finds that adjusting SEPA exemptions is procedural  
25 change that not materially impact the governing land use controls; and

26  
27 WHEREAS, on [Date, Month, Year], the County Council held a public hearing after proper  
28 notice, and considered public comment and the entire record related to the code amendments  
29 contained in this ordinance; and

30  
31 WHEREAS, following the public hearing, the County Council deliberated on the code  
32 amendments contained in this ordinance;

33  
34 NOW, THEREFORE, BE IT ORDAINED:

35  
36 **Section 1.** The County Council adopts the following findings in support of this  
37 ordinance:

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39 A. The foregoing recitals are adopted as findings as if set forth in full herein.

40  
41 B. The County Council made the following findings of fact in support of this ordinance.

1  
2 C. This ordinance will amend Title 30 of Snohomish County Code (SCC) to update development  
3 regulations related to SEPA Exemptions. The proposed amendments seek to:

- 4  
5 1. Increase exemption thresholds for minor new construction to match what WAC 197-11-  
6 800 already allows;  
7  
8 2. Reflect changes in RCW 43.21C.229 related to categorical exemptions;  
9  
10 3. Provide clarity on implementation of exceptions for retail development found in RCW  
11 43.21C.229;  
12  
13 4. Maintain environmental and property rights protections by continued reliance on  
14 existing codes;  
15  
16 5. Clarify that the Director of Planning and Development Services may rely on local  
17 conditions or the specifics of a development proposal to determine that a development  
18 proposal that might appear to be SEPA-exempt is not actually exempt; and  
19  
20 6. Continue requiring SEPA-based reciprocal mitigation for projects that are otherwise  
21 categorically exempt;

22  
23 D. In developing the proposed code amendments, the County considered the goals of the  
24 GMA. This ordinance is consistent with GMA Goal 5: "Economic development. Encourage  
25 economic development throughout the state that is consistent with adopted  
26 comprehensive plans", with GMA Goal 7: "Permits. Applications for both state and local  
27 government permits should be processed in a timely and fair manner to ensure  
28 predictability" and with GMA Goal 10: "Environment. Protect the environment and enhance  
29 the state's high quality of life, including air and water quality" because it simplifies the  
30 process for infill development in established urban growth areas where environmental  
31 regulations and protections are already in place.

32  
33 E. In addition to the policies cited above, the proposed amendments will better achieve,  
34 comply with, and implement the following goals, objectives, and policies contained in the  
35 county's GMACP.

- 36  
37 1. Land Use Policy LU 1.A.9: "Ensure the efficient use of urban land by adopting reasonable  
38 measures to increase residential, commercial and industrial capacity within urban  
39 growth areas [...]. The County Council will use the list of reasonable measures in

1 accordance with the guidelines for review contained in Appendix D of the Countywide  
2 Planning Policies [...]” This ordinance promotes efficient use of urban land by acting on  
3 one of the reasonable measures listed in Appendix D of the Countywide Planning  
4 Policies which says to “encourage infill and redevelopment”.

5  
6 2. Housing Policy HO 3.A.4: “Snohomish County shall endeavor to process completed  
7 development applications within 120 days.” This ordinance will help streamline the  
8 permit process, reducing the gap between actual review timelines and the 120-day  
9 clock.

10  
11 3. Transportation Objective TR 7.A: “Jointly plan, in cooperation with other transportation  
12 providers (cities, WSDOT, transit agencies, and ferry system) adequate transportation  
13 systems such that development can proceed with order and according to the land use  
14 elements of local comprehensive plans.” This ordinance recognizes the importance of  
15 Interlocal Agreements for reciprocal transportation mitigation in joint planning between  
16 transportation providers and it maintains the mechanism for ensuring that new  
17 development continues to contribute towards jointly planned improvements.

18  
19 4. Natural Environment Policy NE 1.A.1: “Regulatory programs developed for the  
20 protection of the natural environment shall provide certainty, clarity, flexibility,  
21 efficiency, public outreach and education so that citizens understand the requirements,  
22 permits are processed quickly, and alternative approaches that provide equal or greater  
23 protection to the environment may be considered.” This ordinance recognizes that  
24 existing codes and administrative rules provide for equal or greater protection of the  
25 natural environment to that which SEPA-based mitigation would require. By reducing  
26 redundant SEPA processes, this ordinance also clarifies expectations regarding  
27 environmental review.

28  
29 F. Procedural requirements.

30  
31 1. The proposal is a Type 3 legislative action pursuant to SCC 30.73.010.

32  
33 2. Pursuant to RCW 36.70A.106(1), a notice of intent to adopt this ordinance was  
34 transmitted to the Washington State Department of Commerce for distribution to state  
35 agencies on [Date, Month, Year], and assigned Material ID No. [REDACTED].

36  
37 3. State Environmental Policy Act (SEPA) requirements with respect to this non-project  
38 action have been satisfied through the completion of an environmental checklist and  
39 the issuance of a Determination of Nonsignificance (DNS) on [Date, Month, Year].  
40

- 1 4. The public participation process used in the adoption of this ordinance has complied  
2 with all applicable requirements of the GMA and the SCC.  
3
- 4 5. The Washington State Attorney General last issued an advisory memorandum, as  
5 required by RCW 36.70A.370, in December of 2015 entitled “Advisory Memorandum:  
6 Avoiding Unconstitutional Takings of Private Property” to help local governments avoid  
7 the unconstitutional taking of private property. The process outlined in the State  
8 Attorney General’s 2015 advisory memorandum was used by the County in objectively  
9 evaluating the regulatory changes proposed by this ordinance.  
10

11 **Section 2.** The Snohomish County Council makes the following conclusions:  
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- 13
- 14 A. The proposal is consistent with the goals, objectives and policies of the GPP.  
15
- 16 B. The proposal is consistent with Washington State law and the SCC.  
17
- 18 C. The County has complied with all SEPA requirements in respect to this non-project action.  
19
- 20 D. The regulations proposed by this ordinance do not result in an unconstitutional taking of  
21 private property for a public purpose.  
22

23

24 **Section 3.** The Snohomish County Council bases its findings and conclusions on the  
25 entire record of the county council, including all testimony and exhibits. Any finding, which  
26 should be deemed a conclusion, and any conclusion which should be deemed a finding, is  
27 hereby adopted as such.  
28

29

30 **Section 4.** Snohomish County Code 30.61.030, last amended by Amended Ordinance No.  
31 02-064 on December 9, 2002, is amended to read:  
32

33 **30.61.030 Use of exemptions.**

34 (1) Per RCW 43.21C.110(1)(a) and 43.21C.229(2), use of the categorical exemptions  
35 are subject to those rules established by the Department of Ecology identifying where actions  
36 which potentially are categorically exempt may require environmental review as set forth in  
37 WAC 197-11-305(1)(a)-(b). Each department that receives an application for a license or, in the  
38 case of governmental proposals, the department initiating the proposal shall determine

1 whether the license and/or the proposal is exempt. The department's determination that a  
2 proposal is exempt shall be final and not subject to administrative review. If a proposal is  
3 exempt, the procedural requirements of this chapter shall not apply. The county shall not  
4 require completion of an environmental checklist for an exempt action.

5 (2) In determining whether or not a proposal is exempt, the department shall make  
6 certain the proposal is properly defined (WAC 197-11-060) and shall identify the governmental  
7 licenses required. If a proposal includes exempt and nonexempt actions, the department shall  
8 determine the lead agency, even if the license application that triggers the department's  
9 consideration is exempt.

10 (3) If a proposal includes both exempt and nonexempt actions, the county may  
11 authorize exempt actions prior to compliance with the procedural requirements of this chapter,  
12 except that:

13 (a) The county shall not give authorization for:

14 (i) any nonexempt action;

15 (ii) any action that would have an adverse environmental impact; or

16 (iii) any action that would limit the choice of reasonable alternatives;

17 (b) A department may withhold approval of an exempt action linked to a  
18 nonexempt action that would lead to modification of the physical environment, when such  
19 modification would have no purpose if nonexempt action(s) were not approved; and

20 (c) A department may withhold approval of exempt actions linked to a nonexempt  
21 action that would lead to substantial financial expenditures by a private applicant when the  
22 expenditures would serve no purpose if nonexempt action(s) were not approved.

23 (4) If a proposed development will impact critical areas those categorical exemptions  
24 identified in WAC 197-11-908(1) and/or RCW 43.21C.299 relating to infill development shall not  
25 apply unless the department determines that the potentially significant impacts of the  
26 proposed development upon the critical areas are adequately addressed by the county's  
27 development regulations and comprehensive planning documents. In the event a categorical  
28 exemption is disallowed by the department under WAC 197-11-908 limited environmental  
29 review of the proposed development may be required as provided therein.

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32 **Section 5.** Snohomish County Code 30.61.035, last amended by Amended Ordinance No.  
33 15-064 on March 30, 2016, is amended to read:

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35 **30.61.035 Exemption thresholds for minor new construction and infill development.**

1 Subject to the provisions of SCC 30.61.030 above, a proposal is exempt if it meets either the  
2 thresholds for minor new construction in subsection (1) or the criteria to be categorically  
3 exempt as infill development in subsection (2). While proposals may be potentially exempt  
4 under both subsections (1) and (2), these exemptions are not automatic. Subsection (3)  
5 requires that projects which may be categorically exempt to still provide mitigation to other  
6 jurisdictions.

7 (1) As allowed under WAC 197-11-800(1)(c) and (d), the exempt levels for minor new  
8 construction are as follows:

9 (a) The construction or location of any single family residential structures of ~~((20))~~  
10 30 dwelling units or less within an urban growth area and 20 dwelling units or less outside of an  
11 urban growth area;

12 (b) The construction or location of any multifamily residential structures of 60  
13 dwelling units or less within an urban growth area and 25 dwelling units or less outside of an  
14 urban growth area;

15 (c) The construction of a barn, loafing shed, farm equipment storage building,  
16 produce storage or parking structure, or similar agricultural structure covering 40,000 square  
17 feet or less;

18 (d) The construction of an office, school, commercial, recreational, service, or  
19 storage building of ~~((25,000))~~ 30,000 square feet or less and associated parking facilities  
20 designed for 90 or fewer automobiles within an urban growth area and 12,000 square feet or  
21 less and associated parking facilities designed for 40 or fewer automobiles outside of an urban  
22 growth area;

23 (e) The construction of a parking lot designed for 40 or fewer parking spaces; and

24 (f) Any landfill or excavation of 1,000 cubic yards or less throughout the total  
25 lifetime of the fill or excavation.

26 (2) As allowed under RCW 43.21C.229, the following types of development within an  
27 Urban Growth Area (UGA) shall be deemed categorically exempt as provided hereunder if the  
28 following criteria are met:

29 (a) Development which is limited to one or more categories of:

30 (i) Residential development;

31 (ii) Mixed-use development; or

32 (iii) Commercial development up to sixty-five thousand square feet, excluding  
33 retail development.

34 (b) Per RCW 43.21C.229(1)(c), this exemption shall be subject to the department  
35 considering the specific probable adverse environmental impacts of the proposed action and  
36 determining that these specific impacts are adequately addressed by the county's development



1 regulations, other applicable requirements of the comprehensive plan, subarea plan element of  
2 the comprehensive plan, planned action ordinance, or other local, state, or federal rules or  
3 laws. or impact fees as described in subsection (3) below.

4 (c) In order for this exemption to be applicable:

5 (i) The site must be located entirely in an Urban Growth Area;

6 (ii) Zoning relied on for the development proposal must be among the zones that  
7 the Land Use chapter of the General policy Plan identifies as an implementing zone for the  
8 applicable plan designation shown on the Future Land Use Map for the site;

9 (iii) The proposed use (or uses) must be identified as a Permitted use or as an  
10 Administrative Conditional use (or uses) for the zone set forth in SCC 30.22.100;

11 (iv) The project must be properly defined per WAC 197-11-060(3);

12 (v) The project will not require phased review (see WAC 197-11-060(5)); and

13 (vi) For purposes of the exemption for “Commercial development” set forth in  
14 subsection (a)(iii) above such term is defined as any permitted non-residential use other than  
15 Retail, General as defined in SCC 30.91R.143.

16 (3) Impact Fees and Mitigation Requirements: A determination of exemption under this  
17 section does not relieve an applicant from impact fees including mitigation imposed under  
18 interlocal agreements for reciprocal mitigation of impacts per SCC 30.66B.710 or 30.66B.720.  
19 Any determination of categorical exemption shall base or condition the determination of  
20 exemption on compliance with these development regulations and mitigation requirements as  
21 set forth above. The determination of exemption shall be documented in a note accompanying  
22 the application as provided in WAC 197-11-305(2) and shall be made a condition of any  
23 approval of the application.

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25  
26 **Section 6.** Effective date and implementation. This ordinance shall take effect 15 days  
27 following adoption by the County Council. The Snohomish County Department of Planning and  
28 Development Services is authorized to take such actions as may be necessary to implement this  
29 ordinance on its effective date.

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31  
32 **Section 7.** Severability and Savings. If any section, sentence, clause or phrase of this  
33 ordinance shall be held to be invalid by the Growth Management Hearings Board (Board), or  
34 unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall  
35 not affect the validity or constitutionality of any other section, sentence, clause or phrase of  
36 this ordinance. Provided, however, that if any section, sentence, clause or phrase of this  
37 ordinance is held to be invalid by the Board or court of competent jurisdiction, then the section,  
38 sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full

1 force and effect for that individual section, sentence, clause or phrase as if this ordinance had  
2 never been adopted.

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PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SNOHOMISH COUNCIL  
Snohomish, Washington

\_\_\_\_\_  
Council Chair

ATTEST:

\_\_\_\_\_

Asst. Clerk of the Council

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

DATE:

\_\_\_\_\_  
County Executive

ATTEST:

\_\_\_\_\_

Approved as to form only:

\_\_\_\_\_

Deputy Prosecuting Attorney