

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

MOTION NO. 21-334

REFERRING PROPOSED CODE REVISIONS RELATING TO 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 TO THE
DEPARTMENT OF PLANNING AND DEVELOPMENT SERVICES

WHEREAS, the County Council wishes to obtain a input from Snohomish County Planning and Development Services (PDS) regarding proposed code amendments that would increase exemption thresholds for minor new construction and adopt new categorical exemptions per the State Environmental Policy Act (SEPA) to promote infill development in Urban Growth Areas; and

WHEREAS, the code revisions are Type 3 legislative actions pursuant to Chapter 30.73 SCC; and

WHEREAS, the nature of the amendments proposed address permitting procedures but not land use controls; and

WHEREAS, SCC 30.73.040(2)(b) provides that review by the Snohomish County Planning Commission is not a requirement on legislation affecting solely procedures; and

WHEREAS, PDS would be the department responsible for implementing the procedures described in the proposed code amendments; and

WHEREAS, the County Council requests a prompt review and input on the proposed code amendments by PDS; and

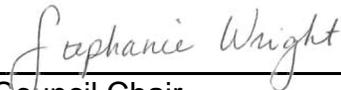
WHEREAS, while the County Council is open to input from PDS on any issue or idea related to the proposed ordinance, the topics of (1) noticing requirements, (2) effect on appeal rights, and (3) criteria for determining categorical exemptions have all been identified as areas where further input is of particular interest; and

NOW, THEREFORE ON MOTION, the County Council hereby refers the potential code revisions, attached as "Exhibit A", to the Department of Planning and Development Services (PDS) for input as follows:

1. Pursuant to Chapter 30.73 SCC, the County Council refers the potential code revisions to PDS for review and input;
2. The County Council requests feedback from PDS by October 29, 2021.

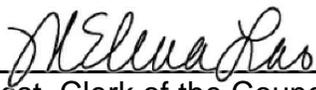
DATED this 29th day of September, 2021.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Council Chair

ATTEST:



Asst. Clerk of the Council

**EXHIBIT A – PROPOSED CODE REVISIONS RELATED TO
EXEMPTIONS FROM SEPA REVIEW**

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

RELATING TO GROWTH MANAGEMENT,
SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

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

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

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

WHEREAS, RCW 43.21C.229 requires that counties complete an Environmental Impact Statement for their comprehensive plan before they can make use of the categorical exemptions; and

WHEREAS, Snohomish County completed a programmatic EIS for the 2015 Update to the General Policy Plan (GPP), and

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

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

WHEREAS, SCC 30.61.030 describes use of existing exemptions but does not yet describe use of the new categorical exemptions authorized by HB 2673.

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

WHEREAS, the exemption thresholds in SCC 30.61.035 are, in some cases, below what under WAC 197-11-800(1)(c) and (d) allow; and

WHEREAS, GPP Goal ED-2 says that the County should “[p]rovide a planning and regulatory environment which facilitates growth of the local economy; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED:

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

- A. The foregoing recitals are adopted as findings as if set forth in full herein.
- B. The County Council made the following findings of fact in support of this ordinance.

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- C. This ordinance will amend Title 30 of Snohomish County Code (SCC) to update development regulations related to SEPA Exemptions. The proposed amendments seek to:
1. Increase exemption thresholds for minor new construction to match what WAC 197-11-800 already allows;
 2. Reflect changes in RCW 43.21C.229 related to categorical exemptions;
 3. Provide clarity on implementation of exceptions for retail development found in RCW 43.21C.229;
 4. Maintain environmental and property rights protections by continued reliance on existing codes;
 5. Clarify that the Director of Planning and Development Services may rely on local conditions or the specifics of a development proposal to determine that a development proposal that might appear to be SEPA-exempt is not actually exempt; and
 6. Continue requiring SEPA-based reciprocal mitigation for projects that are otherwise categorically exempt;
- D. In developing the proposed code amendments, the County considered the goals of the GMA. This ordinance is consistent with GMA Goal 5: "Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans", with GMA Goal 7: "Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability" and with GMA Goal 10: "Environment. Protect the environment and enhance the state's high quality of life, including air and water quality" because it simplifies the process for infill development in established urban growth areas where environmental regulations and protections are already in place.
- E. In addition to the policies cited above, the proposed amendments will better achieve, comply with, and implement the following goals, objectives, and policies contained in the county's GMACP.
- a. Land Use Policy LU 1.A.9: "Ensure the efficient use of urban land by adopting reasonable measures to increase residential, commercial and industrial capacity within urban growth areas [...]. The County Council will use the list of reasonable measures in accordance with the guidelines for review contained in Appendix D of the Countywide Planning Policies [...]" This ordinance promotes efficient use of urban land by acting on one of the reasonable measures listed in Appendix D

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of the Countywide Planning Policies which says to “encourage infill and redevelopment”.

- b. Housing Policy HO 3.A.4: “Snohomish County shall endeavor to process completed development applications within 120 days.” This ordinance will help streamline the permit process, reducing the gap between actual review timelines and the 120-day clock.
- c. Transportation Objective TR 7.A: “Jointly plan, in cooperation with other transportation providers (cities, WSDOT, transit agencies, and ferry system) adequate transportation systems such that development can proceed with order and according to the land use elements of local comprehensive plans.” This ordinance recognizes the importance of Interlocal Agreements for reciprocal transportation mitigation in joint planning between transportation providers and it maintains the mechanism for ensuring that new development continues to contribute towards jointly planned improvements.
- d. Natural Environment Policy NE 1.A.1: “Regulatory programs developed for the protection of the natural environment shall provide certainty, clarity, flexibility, efficiency, public outreach and education so that citizens understand the requirements, permits are processed quickly, and alternative approaches that provide equal or greater protection to the environment may be considered.” This ordinance recognizes that existing codes and administrative rules provide for equal or greater protection of the natural environment to that which SEPA-based mitigation would require. By reducing redundant SEPA processes, this ordinance also clarifies expectations regarding environmental review.

F. Procedural requirements.

- a. The proposal is a Type 3 legislative action pursuant to SCC 30.73.010.
- b. Pursuant to RCW 36.70A.106(1), a notice of intent to adopt this ordinance was transmitted to the Washington State Department of Commerce for distribution to state agencies on [Date, Month, Year], and assigned Material ID No. [REDACTED].
- c. State Environmental Policy Act (SEPA) requirements with respect to this non-project action have been satisfied through the completion of an environmental checklist and the issuance of a Determination of Nonsignificance (DNS) on [Date, Month, Year].
- d. The public participation process used in the adoption of this ordinance has complied with all applicable requirements of the GMA and the SCC.

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- e. The Washington State Attorney General last issued an advisory memorandum, as required by RCW 36.70A.370, in December of 2015 entitled “Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property” to help local governments avoid the unconstitutional taking of private property. The process outlined in the State Attorney General’s 2015 advisory memorandum was used by the County in objectively evaluating the regulatory changes proposed by this ordinance.

Section 2. The Snohomish County Council makes the following conclusions:

- A. The proposal is consistent with the goals, objectives and policies of the GPP.
- B. The proposal is consistent with Washington State law and the SCC.
- C. The County has complied with all SEPA requirements in respect to this non-project action.
- D. The regulations proposed by this ordinance do not result in an unconstitutional taking of private property for a public purpose.

Section 3. The Snohomish 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.

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

30.61.030 Use of exemptions.

(1) Per RCW 43.21C.110(1)(a) and 43.21C.229(2), use of the categorical exemptions are subject to those rules established by the Department of Ecology identifying where actions which potentially are categorically exempt may require environmental review as set forth in WAC 197-11-305(1)(a)-(b). Each department that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal shall determine whether the license and/or the proposal is exempt. The department’s determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, the procedural

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requirements of this chapter shall not apply. The county shall not require completion of an environmental checklist for an exempt action.

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

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

(a) The county shall not give authorization for:

- (i) any nonexempt action;
- (ii) any action that would have an adverse environmental impact; or
- (iii) any action that would limit the choice of reasonable alternatives;

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

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

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

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

30.61.035 Exemption thresholds for minor new construction and infill development.

Subject to the provisions of SCC 30.61.030 above, a proposal is exempt if it meets either the thresholds for minor new construction in subsection (1) or the criteria to be

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categorically exempt as infill development in subsection (2). While proposals may be potentially exempt under both subsections (1) and (2), these exemptions are not automatic. Subsection (3) requires that projects which may be categorically exempt to still provide mitigation to other jurisdictions.

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

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

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

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

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

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

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

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

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

(i) Residential development;

(ii) Mixed-use development; or

(iii) Commercial development up to sixty-five thousand square feet,

excluding retail development.

(b) Per RCW 43.21C.229(1)(c), this exemption shall be subject to the department considering the specific probable adverse environmental impacts of the proposed action and determining that these specific impacts are adequately addressed by the county's development regulations, other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, planned action ordinance, or other local, state, or federal rules or laws. or impact fees as described in subsection (3) below.

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

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

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

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

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

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

and

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

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

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

Section 7. Severability and Savings. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid by the Growth Management Hearings Board (Board), or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

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EXEMPTIONS FROM SEPA REVIEW**

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