SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington  

ORDINANCE NO. 22-021  

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

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

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

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

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

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

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

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

ADOPTED: 06/15/22  
EFFECTIVE: 07/07/22
WHEREAS, Snohomish County has the discretion to determine the best method to provide notice of the pendency of both Type 1 and Type 2 administrative appeal hearings; and

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

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

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

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

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

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

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

WHEREAS, the Planning Commission deliberated on the proposed ordinance at the conclusion of the public hearing and voted to recommend approval of amendments to the County Code relating to the noticing process for Type 1 and Type 2 administrative
appeal hearings with an amendment as described in the Planning Commission’s
approval letter dated March 28, 2022; and

WHEREAS, on June 15, 2022, 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. This ordinance will amend title 30 SCC to revise SCC 30.71.080 and SCC
30.72.100. The code amendments will increase the clarity and efficiency of the
noticing process for Type 1 open record appeal hearings by: 1) eliminating PDS from
the noticing process for appeal hearings; and 2) requiring a single noticing process
that allows for use of email. The code amendments will also clarify that the Council
Clerk can provide notice of Type 2 closed record appeal hearings by email.

C. In developing the code amendments, the County considered the goals of the GMA
identified in RCW 36.70A.020, specifically the goals related to ensuring permits are
processed in a timely and predictable manner and encouraging involvement of
citizens in the planning process. The proposed regulations are reasonably related to,
and necessary for, the advancement of these GMA planning goals.

D. The code amendments will allow chapters 30.71 and 30.72 SCC to achieve, comply
with, and implement the below listed policy contained in the County’s GMACP by
providing regulations that are predictable and streamlined.

ED Policy 2.A.3: “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.”
E. Procedural requirements.

1. This ordinance is a Type 3 legislative action under chapter 30.73 SCC.

2. As required by RCW 30.70A.106(1), a notice of intent to adopt the proposed code amendments was transmitted to the Washington State Department of Commerce for distribution to state agencies on February 3, 2022.

3. State Environmental Policy Act (SEPA), chapter 43.21C RCW, 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 non-significance on February 3, 2022.

4. The public participation process used in the adoption of this ordinance complies with all applicable requirements of the GMA and the SCC.

5. The Washington State Attorney General last issued an advisory memorandum, as required by RCW 36.70A.370, in September of 2018 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 2018 advisory memorandum was used by Snohomish County in objectively evaluating the regulatory changes proposed by this ordinance.

F. This ordinance is consistent with the record.

1. SCC 30.71.080(1) is amended to eliminate the specific reference to PDS, as the Office of Hearings Administration will be providing notice for Type 1 administrative appeal hearings unless an exception applies.

2. SCC 30.71.080(2) is amended to eliminate reference to subsections (3) and (4) and to allow the Office of Hearings Administration to email notice of Type 1 decision administrative appeals, unless a party did not provide an email address or requested notice through U.S. mail. Emailing notices to parties that have provided their email address is the most efficient method to provide notice, is cost effective, and aligns with current practice. SCC 30.71.080(2) is also amended to reflect the name change of the hearing examiner’s office to the Office of Hearings Administration.
3. SCC 30.71.080(3) and (4) are removed to make clear that the Office of Hearings Administration will provide notice of Type 1 administrative appeal hearings.

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

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

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

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

4. Deletion of SCC 30.71.080(3) and (4) eliminates inconsistency in the County Code and a potential source of confusion for the public regarding participation in Type 1 administrative appeal hearings. Under SCC 30.71.050(1), any aggrieved party of record may appeal a Type 1 decision. Parties of record to a Type 1 decision receive written notice of the decision from PDS under SCC 30.71.040. Appeals must be filed within a defined appeal period and no new substantive issues may be raised after the close of that time period. At the open record Type 1 appeal hearing before the Hearing Examiner, only parties to the appeal can participate in the hearing, unless they call on a specific interested person to present relevant testimony. Mailing notice of short subdivision and SEPA determination appeal hearings per SCC 30.71.080(3) and (4) to taxpayers of record within a certain radius of the subject property who are not already parties of record creates a false expectation that the public can provide public comment during these appeals. The amendment to remove SCC 30.71.080(3) and (4) eliminates this potential confusion, and ensures that the noticing process for short subdivision and SEPA determination appeal hearings is in line with the process for all other Type 1 appeal hearings.
5. Under SCC 30.70.060, all Type 1 and Type 2 permit applications require a minimum 21-day public comment period that must close before PDS can make a decision. The comment period is when members of the public can provide comments about proposed permit applications that will be incorporated into PDS’s review of the submitted materials. Members of the public who are not parties to an appeal cannot generally participate in appeal hearings. A goal of repealing SCC 30.71.080(3) and (4) is to reduce public confusion about the ability to comment during Type 1 permit appeal hearings; the intent is not to reduce public participation in the permitting process.

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

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

Section 2. The County Council makes the following conclusions:

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

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

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

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

E. The amendments 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 Section 30.71.080, last amended by Amended Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.71.080 Notice of Type 1 open record appeal hearing.

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

(2) Except where notice has already been given pursuant to the combined notice provisions of SCC 30.70.080(2), (the department pursuant to subsections (3) and (4) below,)) the office of hearings administration shall give notice of all open record appeal hearings (by first class mail (unless otherwise required herein)) to((:)) the parties listed below. Notice shall be by email unless any of the below listed parties did not provide an email address or requested notice via U.S. mail, in which case notice shall be by U.S. mail.

(a) The appellant;
(b) The appellant’s agent/representative, if any;
(c) The department whose decision is being appealed ((by interoffice mail));
(d) The applicant;
(e) Applicant’s agent/representative, if any; and
(f) All parties of record.

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

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

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

(a) Parties of record;
(b) Agencies with jurisdiction as disclosed by documents in the appeal file; and
(c) All taxpayers of record and known site addresses within 500 feet of any boundaries of the property subject to the appeal; provided that the mailing radius shall be increased if necessary to correspond with any larger radius required for the notice of any discretionary permit or action associated with the determination under appeal.)
Section 5. Snohomish County Code Section 30.72.100, last amended by Ordinance No. 20-019 on June 24, 2020, is amended to read:

30.72.100 Notice of Type 2 appeal.

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

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

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

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

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

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

Section 6. 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.
PASSED this 15th day of June 2022.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Council Chair

ATTEST:

Clerk of the Council

(✓) APPROVED
( ) EMERGENCY
( ) VETOED

DATE: 6/27/2022

County Executive

ATTEST:

Melissa Geraghty

Approved as to form only:

Christina Richmond

Deputy Prosecuting Attorney

Digitally signed by
Christina Richmond
Date: 2022.04.26
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