

**CITY OF SNOHOMISH
SNOHOMISH, WASHINGTON**

ORDINANCE 2248

AN INTERIM ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, MODIFYING THE MORATORIUM ESTABLISHED BY ORDINANCE 2239 BY EXTENDING THE SAME AN ADDITIONAL NINETY (90) DAYS TO MARCH 18, 2013; SAID MORATORIUM BEING ON FILING WITH AND PROCESSING BY THE CITY OF APPLICATIONS FOR CERTAIN DEVELOPMENT ACTIVITIES REQUIRING CONNECTION TO THE CITY'S SEWER SYSTEM AND ON SEWER CONNECTIONS IN A DEFINED AREA GENERALLY NORTH OF BLACKMANS LAKE AND EAST OF STATE ROUTE 9; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City's sewer system within the area depicted as "Sewer Moratorium Area" ("Sewer Moratorium Area" or "Area") on the map attached and incorporated as Exhibit A to this Ordinance is at or almost at capacity and any new sewer connections and/or increase in sewer flow and usage within the Area presents significant risk of adverse impacts and consequences to public health, safety, welfare, and property within said Area; and

WHEREAS, the City's Comprehensive Sewer Plan in 1985, a Planning Report for Sewer Facilities for the Cemetery Creek Basin and North Blackmans Lake in 1991, and the City's General Sewer Plan in 1996 identified and generally described the need for a northern sewer trunkline necessary to increase the sewer capacity within the Sewer Moratorium Area and other areas served by the City's sewer system ("Cemetery Creek Special Project" or "Project"); and

WHEREAS, the City Council passed Resolution 1014 in March 2001 that defined a Special Development Area and addressed the future establishment of a Special Project Development Fee in relation to the Cemetery Creek Special Project; and

WHEREAS, in March 2002 the City obtained a Public Works Trust Fund loan ("PWTF") from the State of Washington in the amount of \$1,000,000 for design of the Project; and

WHEREAS, design and construction of the Cemetery Creek Special Project was divided in four segments (Segments 1, 2, 3, and 4); and

WHEREAS, the City Council passed Resolution 1056 in October 2002 that established Project Development Fees and other charges related to the Cemetery Creek Special Project; and

WHEREAS, in June 2004 the City obtained a second PWTF loan in the amount of \$6.5 million for the construction of Segments 1 and 4 of the Project; and

WHEREAS, in May 2005 the City's General Sewer Plan and Wastewater Facilities Plan was updated and included a plan to serve the Cemetery Creek Planning Area, including the four Segments of the Project; and

WHEREAS, the City Council passed a number of resolutions (Resolution 1116—May 2005, Resolution 1130—December 2005, Resolution 1132—February 2006, and Resolution 1152—December 2006) that reset the Project Development Fees and other charges related to the Cemetery Creek Special Project; and

WHEREAS, in June 2007 the City obtained a third PWTF loan in the amount of \$7,000,000 of which \$1,400,000 was immediately withdrawn to complete construction of Segments 1 and 4 of the Project; and

WHEREAS, in September 2007 construction of Segments 1 and 4 of the Project were completed; and

WHEREAS, in December 2007 the sewer trunkline serving the north area of Snohomish was overwhelmed by a storm and over flowed into the Pilchuck River; and

WHEREAS, in June 2008 the City Council passed Resolution 1207 that amended the Cemetery Creek Special Development Area and ratified the Project Development Fee set by Resolution 1152; and

WHEREAS, in February 2009 the City Council approved an agreement with Perteet Engineering for the design of Segments 2 and 3 of the Cemetery Creek Special Project; and

WHEREAS, in September 2009 and due to the continuing economic downturn, decrease in revenues, and reduction in development activity, the City placed the agreement with Perteet Engineering on hold with only 10% of the design completed; and

WHEREAS, during 2010 to 2012 the collection of development fees for the Cemetery Creek Special Development Area was and is insufficient for the City to pay the annual payment towards the PWTF loan, and as a result the City had to borrow approximately \$1,761,500 from other City funds to cover the loan debt service; and

WHEREAS, in spring 2011, the Project completion date for Segments 2 and 3 utilizing the PWTF loan was extended from June 2011 to June 2012; and

WHEREAS, in January 2012 City representatives communicated to the PWTF representatives that given the lack of development and development fees, the City would likely need to either return the PWTF loan or get another extension of the deadline for constructing and completing Segments 2 and 3 of the Project and using and paying back the PWTF loan; and

WHEREAS, the City has made efforts to obtain funds and/or financing to complete construction of Phases 2 and 3 of the Project, and has been unable to obtain such funds or secure such financing from other sources; and

WHEREAS, based on the foregoing recitals and facts, the City has been unable to construct Segments 2 and 3 of the Project and it is uncertain when these Segments of the Project will be completed; and

WHEREAS, implementation and completion of Segments 2 and 3 of the Cemetery Creek Special Project is necessary to significantly increase the capacity of the City’s sewer system within the Sewer Moratorium Area (Exhibit A) to allow for new sewer connections and increased sewage flow and usage; and

WHEREAS, both federal and state law recognize that local governments have broad police powers to impose measures addressing local issues where the measure “promotes public safety, health or welfare and bears a reasonable and substantial relationship to accomplishing the purpose pursued” and the measure does not conflict with the general law of the State (quoting *Weden v. San Juan County*, 135 Wn.2d 678, 700 (1998)); and

WHEREAS, Washington law recognizes that imposition of development moratoria is within this police power granted to local governments under article XI, section 11 of the Washington State Constitution (“While no positive grant of authority exists under the SMA to impose a moratorium, such an explicit grant is not required in the face of Washington Constitution article XI, section 11’s broad delegation of police power to the local governments.” *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 704 (2007) (Opinion of Justice Chambers “concurring in result”), and Washington courts have historically upheld moratoria on a variety of grounds (*see, e.g.: Jablinske v. Snohomish County*, 28 Wash.App. 848, 626 P.2d 543 (Div. 1 1981), *Matson v. Clark County Bd. of Com’rs*, 79 Wash. App. 641, 647-48, 904 P.2d 317, 320 (Div. 2 1995), and *Ord v. Kitsap County*, 84 Wash. App. 602, 929 P.2d 1172 (Div. 2 1997)); and

WHEREAS, Federal law precedent recognizes that imposition of development moratoria is within the broad police power granted to local governments, and that moratoria are important and useful tools to manage land development and growth, and to allow time for thoughtful and proper planning, as well as to deal with emergent and unforeseen situations, such as that presented here regarding implementation and completion of Segments 2 and 3 of the Cemetery Creek Special Project to increase the capacity of the City’s sewer system (“moratoria, or ‘interim development controls’ as they are often called, are an essential tool of successful development,” *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), and temporary planning moratoria provide local governments with “an important land-use planning tool with a well-established tradition,” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 216 F.3d 764, 777 (9th Cir. 2000)); and

WHEREAS, the State Legislature has expressly authorized cities like the City of Snohomish to adopt a moratorium for up six months, which can be renewed, or up to one year pursuant to a work plan, pursuant to RCW 35.63.200 (the State Planning Enabling Act), RCW 35A.63.220 (authorizing non-charter code cities to enact moratoria), and RCW 36.70A.390 (authorizing moratoria as part of the GMA); and

WHEREAS, and additionally, under RCW 35A.11.020 and RCW 35A.21.160, code cities such as the City of Snohomish have all the powers which any city or any class may have consistent with the state constitution and not specifically denied to code cities by law; and

WHEREAS, due to the above-described circumstances, pursuant to Ordinance 2239 enacted on June 19, 2012 the City Council declared a public emergency to exist and that a six (6)

month moratorium be imposed regarding the filing and processing of applications for certain development activities within the City limits within the Sewer Moratorium Area (Exhibit A) in order to ensure that the sewer system capacity within the Area is not exceeded which could result in significant adverse impacts and consequences to public health, safety, welfare, and property; and

WHEREAS, due to the above-described circumstances, pursuant to Ordinance 2239 enacted on June 19, 2012 the City Council further imposed a six (6) month moratorium regarding connections to the City's sewer system within the Sewer Moratorium Area (Exhibit A) in order to ensure that the sewer system capacity within the Area is not exceeded which would result in significant adverse impacts and consequences to public health, safety, welfare, and property; and

WHEREAS, Section 12 of Ordinance 2239 provided that the six (6) month moratorium therein might be renewed or modified by the City Council after a subsequent public hearing and entry of findings of fact; and

WHEREAS, a public hearing was held on December 18, 2012 before the Snohomish City Council regarding the modification of the moratorium by its extension for an additional ninety (90) days; and

WHEREAS, the City Council finds that it is in the interest of the public health, safety, welfare, and economic viability of the City of Snohomish to modify the moratorium imposed by Ordinance 2239 and to extend it for an additional ninety (90) days, the conditions giving rise to the moratorium still existing and additional time being required to establish longer term regulations to address sewer capacity issues and as a result, it is necessary to extend Ordinance 2239 for an additional ninety (90) days; in order to ensure that the sewer system capacity within the Area is not exceeded;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of this renewal and extension of the moratorium established by Ordinance 2239 is to temporarily suspend additional demands on the capacity of the sewer system in the Sewer Moratorium Area that is already at or almost at capacity in order to protect the public safety, health, and property from the adverse impacts of additional sewer hookups and increased sewer usage that could overwhelm the sewer system within said Area (Exhibit A), and to allow the City additional time until Segments 2 and 3 of the Cemetery Creek Special Project that will provide for an increase in the sewer capacity within the Sewer Moratorium Area (Exhibit A) and to develop additional regulations to address capacity issues and conditions precedent to authorizing utility connections in areas where utility infrastructure has not yet been constructed.

Section 2. Findings of Fact. The above "Whereas" clauses constitute findings of fact in support of the moratorium modified and extended by this Ordinance and said findings are fully incorporated into this Ordinance.

Section 3. Public Hearing. A public hearing concerning this Ordinance and the extension of moratorium imposed by this Ordinance occurred on December 18, 2012.

Section 4. Moratorium on Development Activities Modified and Extended. That certain moratorium established by Ordinance 2239, is hereby modified and extended an additional ninety (90) days. As a result of this extension, the moratorium established by Ordinance 2239 will expire on March 18, 2013. The moratorium established by Ordinance 2239 is not otherwise modified and the terms and provisions of Ordinance 2239 respecting the said moratorium shall remain in full force and effect, modified as to duration by extension under this Ordinance.

Section 5. Effective Date. This Ordinance shall take effect immediately upon passage by an affirmative vote of the City Council.

Section 6. Publication. This Ordinance shall be published by an approved summary which shall consist of the title of the Ordinance.

ADOPTED by the City Council and **APPROVED** by the Mayor this _____ day of _____, 2012.

CITY OF SNOHOMISH

By: _____
Karen Guzak, Mayor

ATTEST/AUTHENTICATED:

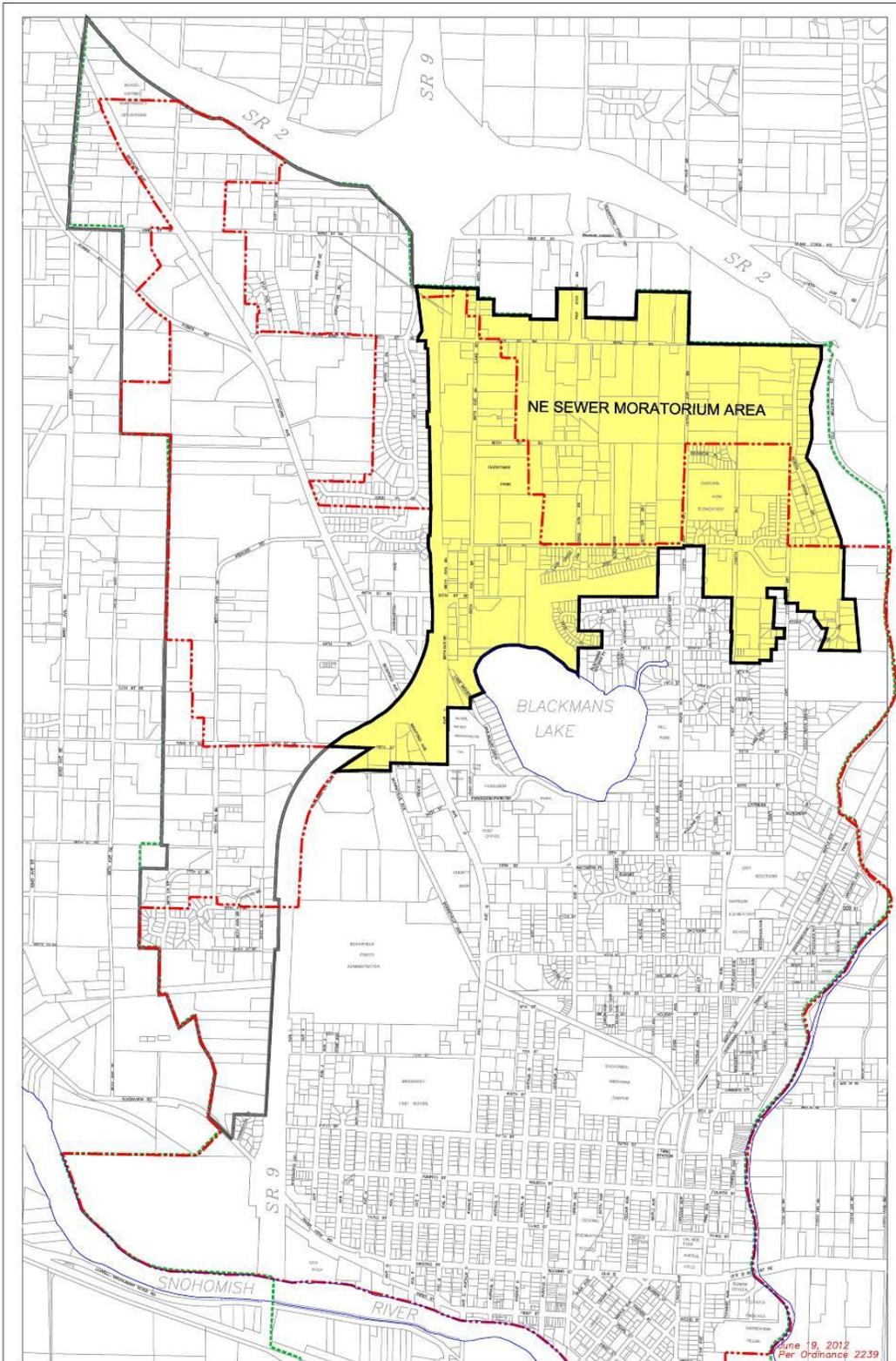
By: _____
Torchie Corey, City Clerk

APPROVED AS TO FORM:

By: _____
Grant K. Weed, City Attorney

Date of Publication: _____

Effective Date: _____



*NE SEWER MORATORIUM AREA
CITY OF SNOHOMISH
CEMETERY CREEK SERVICE AREA BOUNDARY*

SEWER SERVICE BOUNDARY LIMITS
 CITY LIMITS
 UGA BOUNDARY