

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2369

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, RELATING TO THE PROTECTION OF ARCHAEOLOGICAL SITES AND CULTURAL RESOURCES, BY ADOPTING A NEW CHAPTER 14.252 SNOHOMISH MUNICIPAL CODE “ARCHAEOLOGICAL RESOURCES”; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City has the authority under Title 35A and Chapter 58.17 RCW to adopt regulations related to zoning and land uses and the processing of land use development permits; and

WHEREAS, RCW Chapters 27.53 and 68.60 establish regulations for the protection of archaeological sites and cultural resources; and

WHEREAS, the City has adopted a Land Use Development Code under Title 14 of the Snohomish Municipal Code (“Development Code”) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the City; and

WHEREAS, Title 14 SMC does not include any provisions for protection of archaeological sites and cultural resources; and

WHEREAS, this Ordinance was reviewed under the State Environmental Policy Act and determined to be categorically exempt from a SEPA Checklist under requirements of WAC 197-11-305 and WAC 197-11-800(19) as a procedural action; and

WHEREAS, on January 10, 2019, the proposed amendments contained herein were transmitted to the State Department of Commerce as required by RCW 36.70A.106; and

WHEREAS, on April 3, 2019, following notice as required by law, the Planning Commission held a duly-noticed public hearing to receive staff and citizen input concerning the proposed code amendments and all persons who wished to be heard on the matter were heard; and

WHEREAS, the Planning Commission adopted “Findings of Facts & Conclusions” and recommended City Council approval of the proposed code amendments which are attached hereto as “Exhibit A” and incorporated by this reference; and

WHEREAS, on May 7, 2019, at a duly-noticed public meeting, the City Council received staff and citizen input, and considered the recommendation of the Planning Commission, and all persons who wished to be heard on the matter were heard; and

WHEREAS, the City Council has determined that it is in the public interest to safeguard the heritage of the City of Snohomish by protecting archaeological sites and cultural resources from being destroyed or disturbed by development activity.

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

Section 1. Adoption of Recitals as Findings. The City Council hereby adopts each of the recital paragraphs above as findings and hereby incorporates them by reference as though fully stated herein.

Section 2. Adoption of Planning Commission Findings. The Planning Commission findings as set forth in “Exhibit A” are hereby adopted and incorporated by reference, including but not limited to the findings that the Development Code regulations and amendments adopted by this Ordinance are:

- a. Internally consistent with the City of Snohomish Comprehensive Plan;
- b. Consistent with the Washington State Growth Management Act;
- c. Consistent with the Washington State Environmental Policy Act (Chapter 43.21C RCW); and
- d. In the interest of the public health, safety, and welfare of Snohomish residents.

Section 3. New Chapter 14.252 SMC Adopted. A new Chapter 14.252 SMC entitled “Archaeological Resources” is hereby adopted to read as set forth in attached “Exhibit B” which is hereby incorporated herein by this reference as though fully contained herein.

Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

Section 5. Authority to Make Necessary Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance and attachments including, but not limited to, the correction of scrivener’s clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 6. Effective Date. This ordinance shall be effective five days after adoption and publication by summary.

ADOPTED by the City Council and **APPROVED** by the Mayor this 7th day of May, 2019.

CITY OF SNOHOMISH

By John T. Kartak
John T. Kartak, Mayor

ATTEST:

By Pat Adams
Pat Adams, City Clerk

APPROVED AS TO FORM:

By Grant K. Weed
Grant K. Weed, City Attorney

Exhibit A

Snohomish Planning Commission Findings of Fact & Conclusions

Based on the review of the proposed amendments to the subdivision regulations and other sections of Title 14 Snohomish Municipal Code related to archaeological resources, the Planning Commission of the City of Snohomish makes the following Findings of Fact:

1. The City has the authority under RCW Title 35A to adopt regulations related to land use development.
2. RCW Chapters 27.53, 27.44, and 68.60 establish regulations for the protection of archaeological sites and resources.
3. The SEPA Checklist was revised in 2016, with revisions made to the “Historic and cultural preservation” section (question 13), requiring more detailed investigation into cultural and historic resources that may be impacted by a development application.
4. Codifying the regulatory authority for archaeological and cultural resources will enable the City of Snohomish to more effectively regulate and protect such resources.
5. The City has adopted a Land Use Development Code as Title 14 of the Snohomish Municipal Code (SMC) to implement the Comprehensive Plan and to ensure compatible and rational land development and land use in all portions of the city.
6. Chapter 14.225 SMC establishes the process for proposed demolitions of structures in the Historic District and provides for the Design Review Board as the decision-making authority for such applications.
7. The proposed amendments to Title 14 SMC will add a new Chapter 14.252 SMC “Archaeological Preservation” to regulate known and suspected archaeological sites and resources in the City of Snohomish consistent with RCW 27.53, 27.44, and 68.60.
8. The proposed amendments implement GMA planning goal 13 related to historic preservation: “(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.”
9. The proposed amendments implement the following policies contained in the Snohomish Comprehensive Plan:
 - a. Policy EP 1.2: Technical guidance. Require professional studies and seek the guidance of disciplines with expertise in critical area protection and natural hazard mitigation: 1) where appropriate to confirm the presence of regulated critical areas and compliance with critical area regulations; and 2) where prudent to ensure that public and environmental safety is adequately addressed through the development review process.
 - b. Policy HO 6.3: Permit process. Achieve permitting processes, applicable regulations, and conditions of approval that are clear and understandable.
 - c. Policy HO 6.4: Periodic review. Periodically evaluate permit review processes to minimize costs to developers to the extent possible while preserving the public health, safety, and welfare.

10. Procedural requirements.
 - a. The proposed amendments are consistent with state law.
 - b. Pursuant to RCW 36.70A.106(1), a notice of intent to adopt the proposed amendments was transmitted to the Washington State Department of Commerce for distribution to state agencies on January 10, 2019.
 - c. Pursuant to WAC 197-11-800(19)(b), the proposal was determined to be exempt from State Environmental Policy Act (SEPA) review by the City of Snohomish SEPA Review Official as a procedural action text amendment that will result in no substantive changes respecting use or modification of the environment.
 - d. The public process used in the adoption of the proposed amendments has complied with all applicable requirements of the GMA and the SMC.
11. The Planning Commission held a public hearing on April 3, 2019, to receive public testimony concerning the proposed amendment.
12. At the conclusion of the public hearing, the Planning Commission voted to recommend City Council approval of the proposed amendments.

Based on the foregoing Findings of Fact, the Snohomish Planning Commission hereby makes the following conclusions:

1. The proposed amendments will safeguard the heritage of the City by facilitating the early identification and resolution of conflicts between preservation of archaeological and historic resources and land uses.
2. The proposed amendments are consistent with Washington State law and the SMC.
3. The proposed amendments implement and are consistent with the goals and policies of the Comprehensive Plan.
4. The proposed amendments protect the public health, safety, and general welfare.
5. The proposed amendments do not result in an unconstitutional taking of private property for public purpose and they do not violate substantive due process guarantees.

Date: _____

By: _____
 Mitch Cornelison, Planning Commission Vice Chair

Exhibit B

Chapter 14.252 ARCHAEOLOGICAL RESOURCES

Sections:

- 14.252.010 Purpose and applicability.**
- 14.252.020 Applicability of zoning requirements.**
- 14.252.030 Archaeology site report.**
- 14.252.040 Project or permit approval for property on state register as an archaeological resource.**
- 14.252.050 Inadvertent discovery of archaeological resources.**
- 14.252.060 Inadvertent discovery of human remains.**
- 14.252.070 Appeals.**
- 14.252.080 Severability.**

14.252.010 Purpose and applicability.

- A. The purpose of this chapter is to protect archaeological and cultural resources within the City of Snohomish for future generations, in order to:
 - 1. Safeguard the heritage of the city as represented by those sites and objects which reflect significant elements of city history;
 - 2. Foster civic pride and a sense of identity with city history;
 - 3. Promote and facilitate the early identification and resolution of conflicts between preservation of archaeological and historic resources and land uses; and
 - 4. Comply with all federal and state laws related to regulation of archaeological and cultural sites.

- B. In Washington State, archaeology sites and Native American grave sites are protected by both federal and state laws. This chapter does not repeal, modify, or waive any provision of federal or state law currently enacted, or as enacted in the future, that regulates archaeological sites including, but not limited to: the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-mm); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); the National Historic Preservation Act (16 U.S.C. 470 et seq.); Chapter 27.44 RCW titled "Indian Graves and Records"; and Chapter 27.53 RCW titled "Archaeological Sites and Resources"; Chapter 68.50 RCW titled "Human Remains"; Chapter 68.60 RCW titled "Abandoned and Historic Cemeteries and Historic Graves.

- C. This chapter applies to:
 - 1. Properties and sites with a known or suspected presence of archaeological or cultural resources.
 - 2. Properties listed on the Washington Information System for Architectural and Archaeological Records Data (WISAARD).

14.252.020 Applicability of zoning requirements.

Nothing contained in this chapter shall be construed as repealing, modifying, or waiving any other provision of this title.

14.252.030 Archaeology site report.

- A. Known archaeological sites are recorded on the Washington Information System for Architectural and Archaeological Records Data (WISAARD).

The City shall establish and maintain a datasharing memorandum of understanding with the Washington State Department of Archaeology and Historic Preservation (DAHP). The data supplied by the DAHP shall be securely implemented on the City's computer system and used to determine potential conflicts with archaeological sites and historic properties.

- B. An archaeological site may cover only a portion of a property, parcel, or lot and may extend onto more than one property, parcel, or lot.
- C. Completion of a professional archeological survey shall be required for any development application for construction, earth movement, clearing, or other site disturbance of a known or suspected archaeological site. An archaeological survey may also be required based on information provided by Tribes or County and/or State professional archaeologists that the project location has a high probability for containing archaeological resources.
 - 1. Archaeological reporting shall take place through the Washington State Dept. of Archaeology and Historic Preservation's online WISAARD application.
- D. An archaeology survey report required under subsection C. of this section shall:
 - 1. Be written by a professional archaeologist as defined in RCW 27.53.030(11).
 - 2. Meet state and professional standards for cultural resources reporting.
 - 3. Be submitted to the department by the property owner or project proponent;
 - 4. Include the location and extent of the archaeological resources located on site.
 - 5. Include recommendations for avoidance or minimization of impacts on archaeological resources if present, and recommendations for additional archaeological work and/or permitting to comply with state or federal laws for the protection preservation of archaeological resources. When ground disturbance impacts on archaeological resources are unavoidable, the project proponent shall apply for an Archaeological Excavation Permit through the Washington State Dept. of Archaeology and Historic Preservation.
 - 6. Include the results of consultation with any affected Indian tribe.
- E. The department shall provide a copy of the archaeology site report to any affected Indian tribe and the Washington State Department of Archaeology and Historic Preservation.

14.252.040 Project or permit approval for property on state register as an archaeological resource.

- A. The City approving authority shall not issue a permit for any development activity or project approval requiring an archaeology site report pursuant to SMC 14.252.030 without considering the archaeology site report and any comments on the report submitted by an affected Indian tribe and any additional archaeological work and permitting required under RCW 27.53.
- B. Based on the information contained in the archaeology survey report and any comments submitted by the affected Indian tribe(s) obtained during the consultation process, the City approving authority will condition the permit or project approval to comply with any permitting and/or additional archaeological work required under federal and state laws for the protection of archaeological resources.

14.252.050 Inadvertent discovery of archaeological resources.

- A. If, during the course of construction, earth movement, clearing, or other site disturbance, archaeological resources are encountered, all work shall cease immediately. Under these circumstances, the department may issue a stop work order pursuant to chapter 14.85 SMC.
- B. The applicant shall immediately notify the Planning Director and promptly notify any affected Indian tribe, the Snohomish County Archaeologist and the Washington State Department of Archaeology and Historic Preservation (DAHP).
- C. Ground disturbance may not proceed until consultation with any affected Indian tribe, the Snohomish County Archaeologist, and DAHP is completed.
- D. No ground disturbance shall proceed until the department and the applicant have reached an agreement in consultation with the DAHP and any affected Indian tribe regarding a plan for mitigation or preservation of archaeological resources.

14.252.060 Inadvertent discovery of human remains.

- A. If, during the course of construction, earth movement, clearing, or other site disturbance human remains are encountered, all work shall cease immediately in an area large enough to protect the find. Under these circumstances, the department may issue a stop work order pursuant to chapter 14.85 SMC. The applicant shall immediately notify the Planning Director and promptly notify any affected Indian tribe, the Snohomish County Archaeologist and the Washington State Department of Archaeology and Historic Preservation (DAHP).
- B. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The Snohomish County medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the Snohomish County medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

14.252.070 Appeals.

Any permit or land use decision issued with conditions imposed pursuant to this chapter may be appealed under the provisions of Chapter 14.20 SMC relating to the specific permit classification that was issued.

14.252.080 Severability.

If any one or more sections, subsections, or sentences of this chapter are held to be unconstitutional or invalid, such decisions shall not affect the validity of the remaining portions of this code, and the same shall remain in full force and effect.