

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2399

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT; AMENDING CHAPTER 14.90 OF SNOHOMISH MUNICIPAL CODE TO ADOPT THE MAXIMUM ALLOWED FLEXIBLE THRESHOLDS FOR CATEGORICAL EXEMPTIONS FOR MINOR NEW CONSTRUCTION PURSUANT TO WAC 197-11-800(1); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, the City has the authority under Title 35A to adopt regulations related to zoning and land uses and the processing of land use development permits; 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, WAC 197-11-800(1) provides for flexible thresholds for categorical exemptions for minor new construction which cities may raise to the maximums specified in WAC 197-11-800(1)(d) provided certain processes are followed; and

WHEREAS, Title 14 SMC includes Chapter 14.90, “State Environmental Policy Act (SEPA)”, but the Chapter does not provide for flexible thresholds for categorical exemptions for minor new construction pursuant to WAC 197-11-800(1); and

WHEREAS, Snohomish Municipal Code’s development and environmental regulations are up-to-date and reflect the best available science, specifically with the recent updates of the Snohomish Shoreline Master Program in 2018, and the City’s wetland regulations in 2019; and

WHEREAS, on May 7, 2019, the Snohomish City Council adopted Ordinance 2369 to implement an archaeological and cultural resources protection code which provides qualified City staff access to the Washington State Department of Archaeology and Historic Preservation’s data, historic information and predictive models, ensures compliance with Chapters 27.44, 27.53, 68.50, and 68.60 RCW, and includes standard inadvertent discovery language for all projects; and

WHEREAS, compliance with City of Snohomish development regulations is determined during project review and required for all purposed development activity, including minor new construction, independent of SEPA review; and

WHEREAS, compliance with City of Snohomish development regulations for minor new construction proposals constitutes adequate analysis and mitigation of the specified environmental impacts; and

WHEREAS, pursuant to the State Environmental Policy Act (SEPA), the City of Snohomish, as the designated lead agency for review of the proposed amendment, issued a Determination of Non Significance on February 17, 2020 pursuant to WAC 197-11-340(2). No appeal of the determination was filed so the determination stands as issued; and

WHEREAS, on February 10, 2020, the proposed amendments contained herein were transmitted to the State Department of Commerce as required by RCW 36.70A.106; and

WHEREAS, on February 10, 2020, the proposed amendments contained herein were transmitted to affected Native American tribes and a comment opportunity was offered; and

WHEREAS, on March 4, 2020, 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 June 16, 2020, 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 adopt the maximum allowed flexible thresholds for categorical exemption for minor new construction;

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 and conclusions.** The Planning Commission Findings of Fact & Conclusions, 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. SMC 14.90.040 amended. SMC 14.90.040 is hereby amended to read as follows:

14.90.040 Categorical Exemptions Without Flexible Thresholds.

All of the categorical exemptions in WAC 197-11-800(2) through (27) shall apply in the City of Snohomish **and are categorically exempt from requiring a threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in Chapter 197-11-305 WAC., except in the environmentally sensitive areas designated in SMC 14.90.090 the exemptions set forth in WAC 197-11-800(1) and 197-11-800(24) shall not apply.**

Section 4. New Section 14.90.045 SMC adopted. A new Section 14.90.045 SMC entitled “Flexible Thresholds for Minor New Construction Categorical Exemption” is hereby adopted to read as follows:

14.90.045 Flexible Thresholds for Minor New Construction Categorical Exemption

The city establishes the following exempt levels for minor new construction pursuant to WAC 197-11-800(1)(d):

- A. For single-family residential projects, up to thirty dwelling units;
- B. For multi-family residential projects, up to sixty dwelling units;
- C. For agricultural structures, up to forty thousand square feet;
- D. For office, school, commercial, recreational, service or storage buildings, up to thirty thousand square feet;
- E. For parking facilities, up to ninety parking spaces;
- F. For fills or excavations, up to one thousand cubic yards. All fill or excavation, of any quantity, necessary for an exempt project in subsections A-D of this section shall be exempt.

Section 5. SMC 14.90.090 amended. SMC 14.90.090 is hereby amended to read as follows:

14.90.090 Environmentally Sensitive Areas

- A. The map(s) associated with Chapters 14.255~~250~~ through 14.280 SMC identify the areas of the City that are considered environmentally sensitive. ~~The categorical exemptions in WAC 197-11-800 that are inapplicable for these areas are WAC 197-11-800(1) and 197-11-800(24). All other categorical exemptions shall continue to apply within environmentally sensitive areas.~~
- B. The City shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals **if required**. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. Certain categorical exemptions in WAC 197-11-800 do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

Section 6. 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 7. 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 8. 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 16th day of June, 2020.

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

Date of Publication: 6/23/2020

Effective Date: 6/28/2020

EXHIBIT A

Snohomish Planning Commission Findings of Fact & Conclusions

Based on the review of the proposed amendments to Title 14 Snohomish Municipal Code related to adopting the maximum allowed flexible thresholds for SEPA categorical exemptions for minor new construction, 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. WAC 197-11-800(1) provides for flexible thresholds for SEPA categorical exemptions for minor new construction.
3. WAC 197-11-800(c) sets the minimum standards required in order to raise the exempt levels for minor new construction.
4. Chapter 14.90 Snohomish Municipal Code (SMC) implements the State Environmental Policy Act (SEPA) and SMC 14.90.040 addresses categorical exemptions but does not address flexible thresholds for minor new construction.
5. Snohomish Municipal Code's development and environmental regulations are up-to-date and reflect the best available science, specifically with the recent updates of the Snohomish Shoreline Master Program in 2018 and the city's wetland regulations in 2019
6. On May 7, 2019, the Snohomish City Council adopted Ordinance 2369 to implement an archaeological and cultural resources protection code which provides qualified city staff access to the Washington State Department of Archaeology and Historic Preservation's data, historic information and predictive models, ensures compliance with chapters 27.44, 27.53, 68.50, and 68.60 RCW, and includes standard inadvertent discovery language for all projects.
7. The proposed amendment implements the following goal contained in the Snohomish Comprehensive Plan:

Goal LU 2: Manage growth and community change in accordance with the values and vision of the Snohomish community of residents, land owners, and business people, and consistent with the Growth Management Act.
8. Procedural requirements.
 - a. The proposed amendment is 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 Feb. 10, 2020.

- c. Pursuant to WAC 197-11-800(1)(c)(iii) a 60-day notice with an opportunity to comment on the proposed amendment was provided to affected tribes.
 - d. The public process used in the adoption of the proposed amendments has complied with all applicable requirements of the GMA and the SMC.
9. Pursuant to the State Environmental Policy Act (SEPA), the City of Snohomish, as the designated lead agency for review of the proposed amendment, issued a Determination of Non Significance on February 17, 2020 pursuant to WAC 197-11-340(2). No appeal of the determination was filed so the determination stands as issued
 10. The Planning Commission held a public hearing on March 4, 2020, to receive public testimony concerning the proposed amendment.
 11. At the conclusion of the public hearing, the Planning Commission voted to recommend City Council approval of the proposed amendment.

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

1. The minimum requirements of WAC 197-11-800(1)(c) have been met.
2. The City of Snohomish's adopted development regulations are up-to-date and based on best available science so they provide adequate environmental analysis, protection and mitigation for impacts to the environment that development may generate.
3. The City of Snohomish's adopted development regulations and applicable state and federal laws provide adequate protection for cultural and historic resources.
4. The proposed amendment is consistent with Washington State law and the SMC.
5. The proposed amendment implements and is consistent with the goals and policies of the Comprehensive Plan.
6. The proposed amendment protects the public health, safety, and general welfare.
7. The proposed amendment does not result in an unconstitutional taking of private property for public purpose and it does not violate substantive due process guarantees.

Date: 3/4/2020

By: Terry Lippincott
Terry Lippincott, Planning Commission Chair