SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 18-018

RELATING TO GROWTH MANAGEMENT; REVISING GENERAL REQUIREMENTS FOR THE PROVISION OF SECURITY DEVICES AND ALLOWING FOR THE DELAY OF THE INSTALLATION OF CERTAIN PRIVATE IMPROVEMENTS ASSOCIATED WITH DEVELOPMENT; AMENDING CHAPTERS 30.66B AND 30.84 OF THE SNOHOMISH COUNTY CODE

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 their comprehensive plans and development regulations encourage economic development and encourage timely and fair processing of development permits; and

WHEREAS, the Snohomish County GMA Comprehensive Plan ("GMACP") – General Policy Plan (GPP) directs Snohomish County to provide for expeditious and efficient development, land use practices that reduce housing costs, and a regulatory environment that facilitates growth of the local economy; and

WHEREAS, chapter 30.84 of the Snohomish County Code (the "County Code" or SCC) establishes requirements and procedures for administering security devices required for development in unincorporated Snohomish County; and

WHEREAS, Snohomish County (the "County") authorizes the delay of certain public improvements in subdivisions, short subdivisions, commercial developments, multifamily developments; and

WHEREAS, the County authorizes the delay of the final paving lift on public roads in subdivisions and short subdivisions; and

WHEREAS, currently the County authorizes the Director of the Department of Planning and Development Services (PDS) to declare a need for emergency work to be completed under a security device held by the County; and

WHEREAS, the Snohomish County Council (the "County Council") has the authority to amend provisions of County code relating to security devices for development; and

WHEREAS, authorizing the delay of certain public and private improvements, subject to appropriate financial assurances and conditions, in residential and nonresidential developments will promote more expeditious and efficient development; and

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WHEREAS, authorizing the delay of hot asphalt mix paving on private road elements, subject to appropriate financial assurances and conditions, in residential developments will reduce housing and development costs; and

WHEREAS, the Snohomish County Engineer has an interest in safeguarding the health, safety, and general welfare of communities when emergency work is necessary to be completed under a security device held by the County; and

WHEREAS, the County seeks to promote the delivery of more affordable housing throughout Snohomish County; and

WHEREAS, the County seeks to safeguard the health, safety, and general welfare of all communities in the County; and

WHEREAS, PDS has conducted early and continuous public participation in developing the proposed amendments to title 30 SCC that are contained in this ordinance; and

WHEREAS, on November 28, 2017, the Snohomish County Planning Commission (the "Planning Commission") was briefed by PDS staff about the code amendments contained in this ordinance; and

WHEREAS, the Planning Commission held a public hearing on December 19, 2017, to receive public testimony concerning the code amendments contained in this ordinance; and

WHEREAS, at the conclusion of the Planning Commission's public hearing, the Planning Commission deliberated on the proposed ordinance and voted to recommend amendments to the County Code relating to security devices as shown in its recommendation letter dated December 21, 2017; and

WHEREAS, on March 28, 2018, the County Council held a public hearing after public notice and considered public comments 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 update regulations related to security devices.

C. Procedural requirements:

1. The proposal is a Type 3 legislative action under SCC 30.73.010 and 30.73.020.
2. A notice of intent to adopt proposed code amendments was transmitted to the Washington State Department of Commerce for distribution to state agencies on November 8, 2017 as RCW 30.70A.106(1) requires.

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 November 8, 2017.

4. The public participation process used in the adoption of the proposed code amendments complies with all applicable requirements of the GMA and SCC.

5. As required by RCW 30.70A.370, the Washington State Attorney General last issued an advisory memorandum in December 2015 entitled “Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property” to help local governments avoid unconstitutional takings 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 in this ordinance.

D. In developing the code amendments, the County considered the goals of the GMA found in RCW 36.70A.020, specifically those goals related to economic development and permits. The code amendments are consistent with:

1. GMA Goal 5: “Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state’s natural resources, public services, and public facilities.” The code amendments will provide for more efficient development practices and facilitate improved financial security by reforming permitting processes.

2. GMA Goal 7: “Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.” The code amendments will provide for improved processing of development permits and provide predictability in completion of project requirements.

E. The code amendments will better achieve, comply with, and implement the following goals, objectives, and policies contained in the County’s GMACP – GPP by providing regulations that are predictable, encourage business and jobs, and facilitate economic growth:

1. Goal ED 1: “Maintain and enhance a healthy economy.”

2. Goal ED 2: “Provide a planning and regulatory environment that facilitates growth of the local economy.”
3. Objective ED 2.A: “Develop and maintain a regulatory system that is fair, understandable, coordinated and timely.”

4. ED Policy 2.A.1: “Snohomish County shall work to ensure that the Snohomish County Code is an understandable, accessible, and user friendly document.”

5. ED Policy 2.A.2: “Snohomish County should stress predictability but maintain enough flexibility in the Comprehensive Plan and development codes to allow for timely response to unanticipated and desirable developments.”

F. The proposed amendments are consistent with the record:

1. This ordinance will amend SCC 30.66B.440 to:
   i. Clarify that the installation of certain public improvements required by chapter 30.66B SCC may be delayed with a performance security device under title 13 SCC; and
   ii. Expand the type of improvements required by chapter 30.66B SCC whose installation may be delayed with a performance security device under Chapter 30.84 SCC.

2. This ordinance will amend SCC 30.84.020 to add a new provision requiring a property owner to grant the County a construction easement allowing the County to enter upon the property and complete the work guaranteed by a security device in the event such work is not completed as required.

3. This ordinance will amend SCC 30.84.050 to make housekeeping changes to language.

4. This ordinance will amend SCC 30.84.060 to:
   i. Clarify the relationship of the County Engineer in making certain determinations when emergency work by the County is necessary under a security device held by the County; and
   ii. Make housekeeping corrections to language.

5. This ordinance will amend SCC 30.84.105 to:
   i. Allow the PDS Director, with the County Engineer’s concurrence, to approve the delay of certain public or private improvements in a subdivision, short subdivision, residential, or nonresidential development when certain conditions are met and in accordance with other applicable performance security provisions;
   ii. Prohibit the delay of monument placement when required as part of construction;
   iii. Clarify the language for general delay of construction under subsection (2) and adjust the timing of required completion to two years from the County’s receipt and approval of a performance security device;
iv. Allow the PDS Director, with the County Engineer's concurrence, to approve a delay in the final placement hot mix asphalt on private road networks in subdivisions, short subdivisions, and residential developments under subsection (3) with a performance security device; provided that the delay may be up to one year from recording the plat or shat plat or receipt and approval of the performance security device;

v. Remove reference to the delay of final placement of hot mix asphalt on public roads under subsection (3) because it is provided for under SCC 13.10.124(3);

vi. Clarify the language under subsection (4) and establish the role of the County Engineer in determining performance security devices for private road network elements;

vii. Move the discretionary extension provision of subsection (6) to subsection (2) for clarity;

viii. Renumber subsection (7); and

ix. Make technical corrections and housekeeping changes to language.

6. This ordinance will amend SCC 30.84.150 to make housekeeping changes to language and clarify citations.

G. The proposed code amendments are consistent with the record as set forth in the PDS Staff Report dated November 9, 2017.

Section 2. The County Council makes the following conclusions:

A. The code amendments are consistent with Washington State law and the County Code.

B. The code amendments are consistent with the GMACP and with the goals, objectives, and policies of the GPP.

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

D. The regulations contained in this ordinance do not result in an unconstitutional taking of private property for a public purpose.

E. The County complied with the state and local public participation requirements under the GMA and chapter 30.73 SCC.

Section 3. The 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 30.66B.440, last amended by Amended Ordinance 10-086 on October 20, 2010, is amended to read:

30.66B.440 Timing of improvements.
Construction of frontage improvements, offsite road improvements, and access and transportation circulation improvements is required prior to approval for occupancy or final inspection, except that ((if the development is a subdivision or short subdivision,)) construction may be delayed, if allowed, ((is required prior to the recording unless with the approval of the county engineer, construction is assured)) with a performance security in accordance with SCC 13.10.124 or 30.84.105. When no building permit will be associated with a conditional or administrative conditional use permit, construction of improvements is required as a precondition to approval, unless some later time of construction is recommended by the county engineer and imposed by the approving authority as a condition of approval.

Section 5. Snohomish County Code Section 30.84.020, added by Amended Ordinance 10-086 on October 20, 2010, is amended to read:

30.84.020 Security devices((-)) = general provisions.
(1) A security device shall be made on the forms as provided by the department or in a form acceptable to the director. The following general types of financial sureties may be used as security devices:
   (a) Bond;
   (b) Letter of credit;
   (c) Assignment of funds or account; or
   (d) Other form of security device as may be specifically approved by the director of finance.
(2) All security devices shall provide for:
   (a) Forfeiture to the county and the right for the county to withdraw funds upon failure of the permittee to construct any or all of the improvements in accordance with the approved plans, specifications, permit or approval requirements or conditions, and time limits.
   (b) The county’s interest in any security device required pursuant to this chapter to be assignable, without obtaining a re-issuance of the security device, to an annexing municipality in the event the real property covered by the security device is annexed prior to either completion of the work secured by a performance security or final acceptance and release of the security device for that work covered by a maintenance or performance monitoring security.
(3) The amount of all security devices shall include an inflation factor calculated for the term of the security device together with the term of any allowed extensions.
(4) In the event a development completes improvements to existing right-of-way pursuant to a title 13 SCC permit or future right-of-way and drainage facilities pursuant to a title 30 SCC permit, the maintenance securities required in accordance with SCC 13.10.108(1) and 30.84.120 shall be combined into one maintenance security with the same start and end date.
(5) The combined maintenance security may be divided into separate securities for right-of-way and drainage if special circumstances exist and approval is granted by both the director and the county engineer.

(6) When a security device is required or offered by a permittee for a development under this chapter, the property owner shall grant to the county a construction easement allowing the county to enter upon the property to complete the work guaranteed by the security device in the event such work is not competed as required. The easement shall be on a form provided by the county and shall be recorded with the county auditor before any permits may be issued for the development.

Section 6. Snohomish County Code Section 30.84.050, last amended by Amended Ordinance 17-004 on May 10, 2017, is amended to read:

30.84.050 Notice of noncompliance and forfeiture of proceeds.

(1) If the director determines that work covered by a security device has not been completed or is not operating in conformance with the approved plans, specifications, permit, or approval requirements or conditions, the director shall notify the permittee and the issuer of the security device of said nonconformance. The notice shall:

(a) Describe the work or improvements that must be done to prevent the forfeiture of the security device;

(b) Provide a date certain by which the required work or improvements must be completed to the director's satisfaction; and

(c) State that if the work or improvements are not completed within the time specified, the county will proceed with forfeiture of the security device and use the funds to complete the required work or improvements.

(2) After having given notice pursuant to SCC 30.84.050(1), the director may issue a stop work order prohibiting any additional work until the conditions are corrected.

(3) If the work to correct the noncompliance is not completed within the time specified the director may seek forfeiture of the security device, or a portion thereof, to correct the nonconformance. After the county receives payment from a security device, the county will use the funds to complete the required work or improvements. The permittee may not proceed with work until the required amount of the security device has been re-established.

(4) In the event the county proceeds with forfeiture of a security device, the issuer of the security device shall, within thirty days of demand of the county, make a written commitment to the county that it will either:

(a) Remedy the noncompliance itself with reasonable diligence pursuant to a time schedule acceptable to the county; or

(b) Tender to the county within fifteen days the amount necessary, as determined by the county, to remedy the nonconforming conditions.

(5) Upon completion of either of SCC 30.84.050(4)(a) or 30.84.050(4)(b), the issuer of the security device shall then have fulfilled its obligations under the applicable security device for only those improvements identified by the county in its notice. If the issuer of the security device elects to fulfill its obligation pursuant to the requirements of SCC 30.84.050(4)(b), the county, upon completion of the remedy, shall notify the issuer of the actual cost of the remedy. The
county shall return, without interest, any overpayment made by the issuer of the security device, and the issuer of the security device shall pay to the county any actual costs which exceeded the county’s estimate, limited to the total security device amount.

Section 7. Snohomish County Code Section 30.84.060, added by Amended Ordinance 10-086 on October 20, 2010, is amended to read:

30.84.060 Emergency work by the county.
(1) The director or county engineer may determine an emergency exists when:
   (a) Work covered by a security device has not been completed, was not completed in conformance with the approved plans, specifications, or permit requirements, or is not operating as required and the director or county engineer determines an emergency situation has been or may be created that may endanger the public health, safety, and welfare; and
   (b) The nature or timing of the emergency precludes notification of the applicant and security device issuer as provided in SCC 30.84.050 or the department has attempted to contact the permittee and received no response or the permittee was unable to perform the emergency work required.
(2) When the director or county engineer determines that an emergency exists as provided above, the county may take action to correct the emergency at the permittee’s expense.
(3) The department shall notify the permittee and security device issuer within four days after commencing emergency work. The notice must state the work that was commenced and the nature or timing of the emergency that necessitated the county to perform emergency work without prior notification.
(4) After the county completes any emergency work, the county shall provide the permittee and issuer of the security device with an itemized statement of expenditures.
(5) If funds are collected from a security device, the permittee may not proceed with work covered by the security device until the required amount of the security device has been re-established.

Section 8. Snohomish County Code Section 30.84.105, last amended by Amended Ordinance 12-018 on May 2, 2012, is amended to read:

30.84.105 Delayed construction – (Performance) performance security.
(1) The director, with the concurrence of the county engineer, may approve the delayed construction of certain public improvements under SCC 13.10.124 and certain private improvements (such as landscaping, wetland mitigation plantings, and the final placement of hot mix asphalt paving on private road network elements) in a subdivision, short subdivision, (commercial) residential, or (multifamily) nonresidential development, when all of the following are met:
   (a) The delay will not create adverse operational or safety impacts or create a threat of significant adverse environmental impacts;
   (b) The permittee provides the department with a performance security in accordance with SCC 30.84.105(4);
(c) The request is not to delay the construction of stormwater retention or detention facilities, storm water treatment facilities, stormwater conveyance systems, erosion and sedimentation control facilities, or the placement of monuments; and

(d) The delayed facilities are constructed to a minimum level of construction as determined by, and acceptable to, the director and county engineer.

(2) Delayed construction shall be completed within two years of the county’s receipt and approval of the performance security, except as approved under SCC 30.84.105(3). The director, with the county engineer’s concurrence, may grant an extension of the deadline for construction up to one additional year for good cause shown.

(3) The director, with the county engineer’s concurrence, may allow construction approval of a subdivision, short subdivision, or residential development without the final placement of hot mix asphalt paving on new private road network elements. The placement of hot mix asphalt paving shall be completed within one year of the county’s receipt and approval of the performance security or earlier, as determined by the director, except that hot mix asphalt paving within a subdivision or short subdivision shall be completed within one year of recording the subdivision or short subdivision.

(4) Delayed construction of improvements approved under this section shall require a performance security in the amount of 150 percent of the estimated cost of all delayed improvements. The county engineer shall determine the estimate for the costs of the final placement of hot mix asphalt paving for private road network elements when delayed installation is approved. The director shall determine the estimate for the costs of any other improvements where delayed installation is approved. When making such estimates, the county engineer and the director shall consider the following:

(a) The costs of constructing all facilities as specified in the approved plan;
(b) The costs of monitoring the facilities’ performance;
(c) The costs of designing and constructing any corrective work including other mitigation measures which may be necessary to correct the effects on-site and off-site of inadequate or failed workmanship, materials or design; and
(d) Any related incidental and consequential costs, inflation, and the cost of inspection of the work by the department.

(5) The performance security shall remain in effect until final inspection and construction acceptance by the county of all facilities specified by the plans whose construction is secured with the performance security.

(6) For good cause shown, the director, with concurrence from the county engineer, may grant an extension of the deadline for completion of construction imposed by SCC 30.84.105(2) for a time period not to exceed twelve months.)

(7) The performance security required pursuant to this section shall not be released or reduced until a maintenance security or performance monitoring security, if required, is accepted pursuant to this chapter.
Section 9. Snohomish County Code Section 30.84.150, added by Amended Ordinance 10-086 on October 20, 2010, is amended to read:

30.84.150 General ((Landscaping)) landscaping.
(1) If the director approves a planting delay pursuant to SCC 30.25.043(2), a performance security shall be required pursuant to SCC 30.84.105(1), (2), (4), (5) to ensure that all actions required by chapter 30.25 SCC are satisfactorily performed and completed in accordance with the approved plans, specifications, permit or approval requirements or conditions.
(2) The director may require a maintenance security prior to releasing a performance security accepted pursuant to SCC 30.84.150(1).

Section 10. Retroactive application. The code amendments contained in Sections 4 through 9 of this ordinance shall apply retroactively to development applications submitted before the effective date of this ordinance.

Section 11. Severability and savings. If any section, sentence, clause, or phrase of this ordinance shall be held to be invalid or unconstitutional by the Growth Management Hearings Board, or 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 28th day of March, 2018.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Council Vice-Chair

ATTEST:

Clerk of the Council
ORDINANCE NO. 18-

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