

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2239

**AN INTERIM ORDINANCE OF THE CITY OF SNOHOMISH,
WASHINGTON, ADOPTING A SIX MONTH MORATORIUM 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; 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 \$1,297,500, as of year end December 31, 2011, 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, a six (6) month moratorium shall 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, it is further requested that a six (6) month moratorium be imposed regarding the connection 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, a public hearing will be held on July 17, 2012, before Snohomish City Council regarding the moratorium that is subject of this Ordinance; 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 impose a six (6) month moratorium on the filing and processing of applications for certain development activities within the City limits within the Sewer Moratorium Area (Exhibit A) and upon further connections to the City sewer system within the Sewer Moratorium Area (Exhibit A) 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 moratorium 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).

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

Section 3. Public Hearing. A public hearing concerning this Ordinance and the moratorium imposed by this Ordinance is set for Tuesday, July 17, 2012.

Section 4. Moratorium on Development Activities Established. Subject to the exemptions provided in Section 6 and the variance process in Section 7, a moratorium is hereby established, effective immediately upon the adoption of this Ordinance, upon the filing of and processing by the City of new applications for the following development activities within the portion of the Sewer Moratorium Area that is depicted on attached and incorporated Exhibit "A" and that is within the legal boundaries of the City of Snohomish:

- a. Short plats;
- b. Subdivisions;

- c. Planned residential developments;
- d. Administrative development plans;
- e. Shoreline permits, including but not limited to shoreline substantial development permits and shoreline conditional use permits;
- f. Building permits for commercial buildings, industrial buildings, multi-family residential buildings, single-family residential buildings and/or accessory uses thereto, and any other building or structure;
- g. Conditional use, special use, or unclassified use permits;
- h. Annexations, except those for municipal purposes;
- i. Rezones, except those initiated by the City and those associated with comprehensive plan amendments; and
- j. Any other development activities that would result in increased sewer usage and/or increased demands on the sewer system within the Sewer Moratorium Area.

Section 5. Moratorium on Connections to City Sewer System within the Sewer Moratorium Area. Subject to the exemptions provided in Section 6 and the variance process in Section 7, a moratorium is hereby established, effective immediately upon the adoption of this Ordinance, upon any further connections to the City sewer system within the Sewer Moratorium Area that is depicted on attached and incorporated Exhibit A and that is within the legal boundaries of the City of Snohomish.

Section 6. Exemptions to the Moratorium. The following development activities within the City limits within the Sewer Moratorium Area are exempt from the moratorium established in Sections 4 and 5:

- a. Permits or applications for which the City has contractually committed to sewer availability, including but not limited to approved preliminary subdivisions, short plats, or binding site plans;
- b. New sewer service to properties that paid assessments as part of local improvement districts established prior to the effective date of this Ordinance for the purpose of providing sewer;
- c. All projects (if any) that have vested rights to new sewer connections because of previously submitted and fully complete applications;
- d. New sewer connection in cases where the property owner has presented the City with documentation from the Snohomish Health District that sufficiently demonstrates a failed on-site septic system, and that there is no feasible alternative but to connect to the public sewer system;
- e. The Snohomish Health District or the State Department of Ecology authorizes temporary use of an on-site sewer system, the Applicant pays sewer connection fees at the time of building permitting, and the Applicant signs and records a covenant agreeing to connect to the City of Snohomish sewer system and decommission the on-site system within 60 days of receiving a request from the City;
- f. Projects which can be shown to allow improvements to a property without increasing sewer usage and which do not impact the volume of sewer flow to the City sewer system within the Sewer Moratorium Area, as determined after an evaluation of the facts and circumstances by the City Engineer;

- g. Subject to approval of the Snohomish Health District and in accordance with Chapter 15.06 SMC and other applicable laws and regulations, installation of new/upgraded septic systems on existing platted lots within the City limits if the building or proposed structure to be served by the system is more than 200 feet from a public sewer line;
- h. Projects within the City limits for which the property owner/developer submits a design for the extension of a sewer main(s) to existing Phase 1 or 4 trunkline segments, the design is approved by the City Engineer, and the property owner/developer agrees to be solely responsible for all costs and expenses associated with installing said sewer main extension. The applicant must provide a sewer capacity analysis that demonstrates there is sufficient capacity for their development, and their proposal will not take away available capacity for those not within the moratorium area as determined after an evaluation of the facts and circumstances by the City Engineer. The City Engineer may expressly condition approval of the design upon a requirement that the development connect to the Phase 2 or 3 trunkline segments when the respective trunkline segment is completed and available for service and execution of a written agreement between the City and the property owner/developer to this effect; and
- i. The Applicant makes arrangements for temporary sewer service with another sewer provider in the Area on such terms as are acceptable to the City Engineer and Snohomish Health District authorities, provided that the Applicant designs and constructs the connection so that it can easily be converted to City service at the applicant's sole expense.

Section 7. Variances. The City Engineer shall have authority to administratively grant a variance from the moratorium established in Sections 4 and 5 in cases of special hardships, unique circumstances, and practical difficulties. Application for such a variance shall be in writing, state the basis for the request, and shall be filed with the City Engineer together with a filing fee as established by resolution of the City Council. No variance shall be granted unless the City Engineer finds that all of the following facts and conditions exist:

- a. That there are exceptional or extraordinary circumstances such as a bona fide public health emergency or conditions applying to the subject property or as to the intended use thereof that do not apply generally to other properties in the same vicinity;
- b. That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same vicinity;
- c. That the authorization of such variance will not be materially detrimental to the public interest, welfare, or the environment;
- d. That the granting of such variance will not be inconsistent with the long-range plans of the City utility system;
- e. That the granting of such variance is consistent with the Growth Management Act, Chapter 36.70A RCW;
- f. For purposes of this chapter the term "bona fide public health emergency" shall mean that service is necessary and that all of the following are present:
 - (i) The impact on public health potentially impacts the general public rather than solely the property owner making application;
 - (ii) The hardship is not the result of the applicant's own action;

- (iii)The hardship is not merely financial or pecuniary;
- (iv)The City’s NPDES permit will not be affected by the extension (if applicable);
- (v) The extension is consistent with the goals of the City’s sewer comprehensive plans and all other applicable law, including, but not limited to, the Growth Management Act and the State Environmental Policy Act;
- (vi)The City has adequate capacity and adequate infrastructure available to provide the required service, or the applicant voluntarily agrees to provide the necessary infrastructure upgrades to allow service consistent with City standards.

Conditions may be imposed upon the granting of a variance to ensure the protection of the public health, welfare, and environment. Each variance shall be considered on a case-by-case basis, and shall not be construed as setting precedent for or binding on any subsequent application. The decision of the City Engineer on a variance application shall be final, subject to appeal to the City Land Use Hearing Examiner pursuant to the appeal process set forth in SMC 14.75.010 and Chapter 14.75 SMC, including but not limited to filing any appeal within the 14-day period after the written decision of the City Engineer.

Section 8. Interpretation of Ordinance. The City Engineer shall have authority to interpret and provide written interpretations of this Ordinance upon request. Application for such an administrative interpretation of this Ordinance shall be in writing and filed with the City Engineer together with a filing fee as established by resolution of the City Council. Each administrative interpretation of this Ordinance shall be considered on a case-by-case basis, and shall not create any vested rights or be construed as setting precedent for any subsequent application or request. The decision of the City Engineer on a request for an administrative interpretation of this Ordinance shall be final, subject to appeal to the City Land Use Hearing Examiner pursuant to the appeal process set forth in SMC 14.75.010 and Chapter 14.75 SMC, including but not limited to filing any appeal within the 14-day period after the written decision of the City Engineer.

Section 9. Based on the recitals set forth above, and in recognition that the sewer capacity within the Sewer Moratorium Area is at or almost at its capacity, and that new sewer connections and/or increased sewage flow/usage could likely overwhelm the sewer system within the Area and thereby poses an unacceptable risk to the public health, public safety, the public welfare, and/or public property.

Section 10. No Special Duty Created. It is expressly the purpose of this Ordinance to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular individual, class, or group of persons who will or should be especially protected or benefited by the terms of this Ordinance.

No provision or term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers, agents, or employees, for whom the implementation or enforcement of this Ordinance shall be discretionary and not mandatory.

Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any

injury or damage resulting from any action or inaction on the part of the City, its officers, employees, or agents.

Section 11. Severability. Should any section, paragraph, sentence, clause, and/or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional, illegal, or otherwise invalid for any reason by a court of competent jurisdiction, or should any portion of this Ordinance be preempted by state or federal law or regulations, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 12. Effective Period of Moratorium. The moratorium established by this Ordinance shall become effective as set forth in Section 13 below and shall continue in effect for six (6) months thereafter unless repealed, renewed, or modified by the City Council after a subsequent public hearing and entry of findings of fact.

Section 13. 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 19th day of June, 2012.

CITY OF SNOHOMISH

By: _____
Karen Guzak, Mayor

ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

By: _____
Torchie Corey, City Clerk

By: _____
Grant K. Weed, City Attorney

Date of Publication: _____

Effective Date: _____

EXHIBIT A

