

A PROCESS GONE WRONG

- **Why do we think that we need more Council districts ?**
- **Why do we think that the charter needs changing?**
- **Why is the Planning Commission process in Snohomish County not working properly?**

Because:

The County Executive and the Council are violating the Charter requirement:

“We the citizens of Snohomish County, in order to separate the executive and legislative power.....”

Find out:

- **why and when previous council decided to ignore the Preamble of the Home Rule Charter :**
- **That the process is contrary and in violation of the Washington State Planning and Enabling Act.**
- **That the process is violating the County’s own Charter.**
- **That the Council never created a Planning Agency as meant in State Law.**

April 18, 2006

To the Charter Review Commission

Please find enclosed the documentation which may explain some of the shortcomings you may hear about. The underlying reason however is most serious and is on the level of denying constitutional due process rights to all Snohomish County Citizens. Enclosed is a letter written in 2003 to the Council, explaining the seriousness of the problem. The letter also refers to attempts of ten years before to inform the County Executive. Why no response? It would take political guts to try to take powers away from existing departments and giving this to the Council:

The problem in a nutshell is the fact that the Charter states at the very beginning:

“We the citizens of Snohomish County, in order to separate the executive and legislative power....”

This has been ignored for the last twenty years and it is getting worse. Your Councilmen are not the people who are writing the ordinances and your County Executive is violating the Charter daily by having his departments work on legislative matters, all in complete violation of the Charters requirement of the separation of these powers. Who do you think is writing the Critical Area Ordinances? Who do you think wrote the UDC with all of its shortcomings and omissions etc, etc? The County Executive does not have the authority to do what he is doing and the Council does not have enough guts to rise to the occasion. Do not confuse that with long term planning which the County Executive is entitled to do.

The County Executive and Council have ignored their very own Charter and denied its citizens of the benefits of the separation of the Legislative and Executive powers. The question now is will you, as the Charter Review Commission, have the courage to stand up for the citizens and point out the failings of the system ? Or will you argue that you are not here to enforce the very Charter you are supposed to uphold ?

It is apparent that the Charter may not be clear enough to make the County comply with its very purpose. So therefore I suggest that Charter provisions will be added that clearly describe the relationship between the legislative and executive powers and their responsibilities. In doing so we can hold our elected legislative Council responsible for their action. Not doing so you will be endorsing the current system, which is no different than allowing the police writing the laws.

I urge you to make a difference. I am available for additional information if needed

John Postema



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December 31, 2003

Snohomish County Council
3000 Rockefeller Ave.
Everett, WA, 98201

Dear Council,

Before the year is over I want to finish a job I started almost ten years ago, when I was a Planning Commissioner. At that time I analyzed why, when and how the County planning process worked and under whose authority. I presented the results to the County Executive's office, but no action was taken. Shortly thereafter I resigned, partly due to the fact I did not want to be part of a process which portrays to be a quasi-judicial system offering an opportunity of real input to the citizens of Snohomish County, but in reality is a dog and pony show, not only directed by, but also benefiting the County Executive departments involved in this charade.

Since that time few things have changed, and I believe that the issues I raised ten years ago are still valid today. The process is in violation of the County Chapter and the Washington State Statutes.

Enclosed you will find a flow chart of the Comprehensive Plan process as well as the land-use ordinance (development regulations) process. The flow charts show the RCW Statutes or the County Code on which these flow charts are based. You can analyze what was intended versus what is currently going on. For your convenience I have also included all the pertinent RCW statutes and County Code.

When the Home Rule Charter was adopted, it stated the most important element: the Separation of the powers of the County Executive and the powers of the legislative body, the Snohomish County Council.

Under the old Snohomish County system the executive and legislative power were both in the hands of the County Commissioners. Not anymore under Home Rule.

Unfortunately this new concept of separation of powers has been violated many times and is at the root of the problems with the current planning and legislative process. Due to the fact that for many years the Executive's Office and Council were democrat controlled, the violation of the separation of powers concept was never considered. to be a big problem. However, from a citizen's stand point it is a denial of due process if in reality executive departments are creating the law. After all we elect the council to legislate. (On the other hand a lot of citizens are still trying to get the council members to fix problems, which are purely the domain of the county executive.)

I have included ordinance 93-34, which clearly shows how the County Commissioners previously appointed the Planning Director and how the Planning Director had to report to the County Commissioners. All that and more was changed in 1993 in gross violation of the State Planning and Enabling Act.

How was that possible?

I believe that a letter, written by Gordon Sivley (Deputy Prosecuting Attorney) to Councilman Ross Kane in response to questions from him pertaining to the Planning Commission process, indicates that the County could create their own rules if they created a Planning commission not based on the RCW 36.70.

Note that ordinance 93-034 (which is currently in effect) clearly states that this Planning Commission is created under the authority of RCW 36.70. Furthermore the expansion of the Planning Commission from nine members to eleven is clearly in violation of RCW 36.70.080.

It is also highly unlikely that Snohomish County can ignore RCW 36.70. Although RCW 36.70 may not have to be engaged by every county, it does "provide the authority and guidelines to be followed..." (RCW 36.70.010) when it does so to plan, for the future, especially since the County has done so since 1971 (also see bylaws of the Planning Commission.).

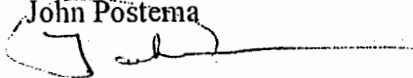
Furthermore it is highly questionable that the County could override State Law. The whole GMA process (RCW 36.70A) has pretty well shown that the County's authority only goes so far. For your information I include two pages of Zoning Laws and practice, as well as one page of the conclusion of the Baker v. Snohomish County Planning

One more issue to be aware of: according to State Law, the Council should create a Planning agency which means a planning department and a planning commission under the sole control of the Council.

In order to accomplish that, the Council should consider to move all FTE's of the Executive departments, who have been involved in the planning and ordinance preparation, (except those who are working on the long term comprehensive plant preparation,) to the legislative branch and make that department responsible to the Council. After all you are the legislators. This change would not have to cost more, and may also create the possibility to add one qualified legislative aid to every Council person of it's choosing.

Respectfully submitted for your consideration and wishing you a creative legislative New Year.

John Postema



.Enclosures Flow Chart Comprehensive Plan
Flow Chart Land use Ordinances
Letter from Gordon Sivley
RCW Planning Enabling Act
County Code Ordinance procedures
Zoning Law case Law
Ordinance 93 -034 and Bylaws of the Planning Commission

See Article I for authority,

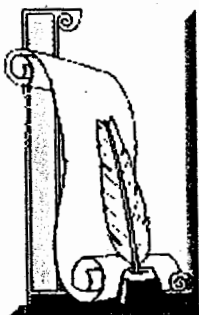
Article II for member amount.

Article III for Director of PDS relationship

Article V for PDS interaction

Article X for quasi-judicial nature

Article XVI relationship with director of PDS



BYLAWS SNOHOMISH COUNTY PLANNING COMMISSION

INDEX

<u>ARTICLE I</u>	
<u>ARTICLE II</u>	Members
<u>ARTICLE III</u>	Officers
<u>ARTICLE IV</u>	Meetings
<u>ARTICLE V</u>	Agenda and Staff Reports for Regular Meetings
<u>ARTICLE VI</u>	Minutes and Records
<u>ARTICLE VII</u>	Hearings
<u>ARTICLE VIII</u>	Quorum
<u>ARTICLE IX</u>	Public Statements
<u>ARTICLE X</u>	Ex-Parte Contacts and Sharing of Information
<u>ARTICLE XI</u>	Conflict of Interest
<u>ARTICLE XII</u>	Committees
<u>ARTICLE XIII</u>	Order of Business
<u>ARTICLE XIV</u>	Attendance
<u>ARTICLE XV</u>	Conduct of Business
<u>ARTICLE XVI</u>	Decision of the Commission

1998 RESOLUTION CONCERNING OPERATING PROCEDURES

1999 RESOLUTION CONCERNING OPERATING PROCEDURES

ARTICLE I

This Commission was established under authority of RCW 36.70.060, "County and Regional Planning," Chapter 201, Laws of 1959 as amended by Chapter 232, Laws of 1961; and under the authority of the Snohomish County Charter, sections 2.20 and 11.30. The official title of this Commission shall be the "Snohomish County Planning Commission" and the Commission, together with the Snohomish County Department of Planning and Development Services, constitutes the Snohomish County Planning Agency.

ARTICLE II: MEMBERS

The Planning Commission shall consist of eleven (11) members who shall be appointed by the County Council.

ARTICLE III: OFFICERS

The elected officers of the Commission shall be a Chairperson and Vice-Chairperson. The Vice-Chairperson shall serve in the absence of the Chairperson. In the absence of both the Chairperson and Vice-Chairperson, the members present at such meeting shall elect a Chairperson Pro-Tempore.

The terms of office for Chairperson and Vice-Chairperson shall be one year; for Chairperson Pro-Tempore, only for the meeting at which appointed. In the event of a vacancy from office, a replacement Chair and/or Vice-Chair shall be elected to serve the unexpired term of the vacant office(s). The vacancy shall be filled forthwith.

The Director of the Department of Planning and Development Services or representative shall act as Secretary and shall provide other staff services necessary to carry on the work of the Planning Commission.

ARTICLE IV: MEETINGS

The regular meetings of the Commission shall be held on the fourth Tuesday of every calendar month at a time set in advance by the Commission so as to ensure reasonable public participation, PROVIDED:

1. If the regular meeting falls on a legal holiday, that meeting shall automatically be held on the next day which is not a holiday unless the Commission, by formal action, sets a special meeting day.
2. A quorum of the Commission may, at any regular meeting, substitute another day for the regular meeting of the following month and shall cause notice to be given thereof in the manner provided for notice of special meetings.
3. If, for any reason, the business to be considered at a regular or special meeting day cannot be then completed, the Commission may at such meeting recess and designate the time to reconvene to consider the uncompleted matter, provided that such action shall be publicly announced at the meeting, and notice thereof shall be immediately posted in a conspicuous place in the County Courthouse. Provided further that if such reconvened meeting is not held on a regular meeting day, notice thereof shall be given in the manner provided for notice of special meetings.
4. Special meetings may be called at any time by the Chairperson or, in the Chairperson's absence, by the Vice-Chairperson, or by a majority of the members of the Commission, by delivering personally, electronically, or by mail, written notice to each member of the Commission; and to each local newspaper of general circulation, and to each local radio or television station which has on file with the Commission a written request to be notified of such special meeting or of all special meetings. Such notice must be delivered personally, electronically or by mail at least twenty-four (24) hours before the time of such meetings as specified in the

notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the Commission. Such written notice may be dispensed with as to any member who at or prior to the time and meeting convenes files with the Secretary of the Commission a written waiver of notice. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

5. All regular and special meetings of the Commission shall be open and the public shall be permitted to attend.

ARTICLE V: AGENDA AND STAFF REPORTS FOR REGULAR MEETINGS

A copy of the agenda for every regular meeting of the Planning Commission shall be provided each member not less than six (6) days prior to the date of the meeting at which such agenda is to be considered.

The Secretary of the Planning Commission, in consultation with the Chair, shall set the agenda for any given meeting. No subject matter shall be placed on the agenda for action at any given meeting which was not formally filed with the Department of Planning and Development Services, as hereafter provided, or which was not initiated by motion of the Planning Commission. The Chair may, however, place housekeeping and non-action items on the agenda.

Where any matters filed with the Department of Planning and Development Services for consideration and action by the Planning Commission, which matter is deemed by the Director of the Department of Planning and Development Services to be of concern to other departments of the County and other public agencies in the County, the Department of Planning and Development Services shall notify each such interested department of the impending matter and request a report or recommendation, if any, on the matter. The notification to the other departments shall include any pertinent information, maps or other material and data as will clearly indicate the type of action under consideration. Information resulting from the departmental reports and recommendations shall be considered by the Planning Commission at the time the matter is before it.

The Department of Planning and Development Services staff shall review the times on the agenda and submit the staff's recommendations and findings to the Planning Commission prior to a regular meeting.

ARTICLE VI: MINUTES AND RECORDS

A record of proceedings of all official meetings shall be recorded and the tapes made a part of a permanent public record along with applications made under provisions of law and the complete files of proceedings and actions taken in connection therewith. The agenda, with a record of action taken and attendance sheet, signed by the members in attendance and the Commission Secretary, shall constitute the record of proceedings.

A copy of the records of proceedings taken at any meeting shall be provided by the Department of Planning and Development Services staff to anyone on request.

Formal recommendations considered by the Planning Commission shall constitute a part of the public record of the meeting at which such recommendation was considered, provided that the text of any such recommendation may be considered as being contained in the record of proceedings when properly identified as to the agenda item and/or case file number.

All actions of the Planning Commission, whether by motion or resolution, shall be considered conclusive as to general import as of the date of such action, provided that such action, as to details of phraseology, conditions, etc., shall be subject to approval by the Planning Commission Chairperson presiding over the specific action.

ARTICLE VII: HEARINGS

Hearings conducted by the Planning Commission shall conform to the provisions of law in the matter of public notice, time, number and reporting.

In all cases where it shall appear any notice of publication or posting or communication may be defective, any member, after hearing the statement of the defect, can rise to a point of order and demand that the issue of notice be tabled and that the matter proceed, reserving to any aggrieved person the right to appeal and, upon a vote by the majority, the issue of notice shall become moot as to the Planning Commission. The tabling of an issue of notice shall not prejudice the rights of any aggrieved party to full consideration of the apparent defect at a subsequent review phase.

ARTICLE VIII: QUORUM

Six (6) members of the Planning Commission shall constitute a quorum. All actions of the Planning Commission shall be determined by a minimum of six (6) affirmative votes of the total Commission.

ARTICLE IX: PUBLIC STATEMENTS

While any member has a right to express personal views and opinions pursuant to our Constitutional guarantees of freedom of speech, statements purporting to represent the view or pronouncements of the Commission or committees thereof shall not be made in advance of the Commission's final determination of the matter, except as directed or authorized by a majority of the entire Commission at any special or regular meeting or public hearing. The Commission shall appoint one of its members to issue such statements as the Commission deems necessary. This shall not prejudice the right of any dissenting members to express their minority position.

ARTICLE X: EX-PARTE CONTACTS AND SHARING OF INFORMATION

It is in the public interest that, to the greatest extent possible, all members of the Planning Commission should have an opportunity to be aware of and act upon the information that is available to other members. Therefore, all members are encouraged to place upon the record of the Planning Commission the substance of all ex-parte contacts that have occurred during the time that either a quasi-judicial or legislative matter has been introduced and is still before the Planning Commission for a decision. Examples of legislative issues on which the Planning Commission deliberates and make recommendations include comprehensive plan amendments, area-wide rezones, code amendments, and other policy recommendations.

With respect to matters of a quasi-judicial nature, members shall abide by the provisions of the Appearance of Fairness Doctrine of the State of Washington, as codified at RCW 42.36; and the Snohomish County Code of Ethics, SCC Chapter 2.50, as adopted or subsequently amended. Examples of quasi-judicial land use matters are those which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceedings. Ex-parte communications during the pendency of any quasi-judicial proceeding are prohibited unless the member engaged in such communications: 1) places on the record the substance of any written or oral ex-parte communications concerning the decision of action; and 2) provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered.

ARTICLE XI: CONFLICT OF INTEREST

If it shall appear to any member at any time that a conflict of interest may arise which could embarrass the integrity of the Commission, it shall be the member's duty to openly state the nature of such conflict, and shall then refrain from any subsequent Commission participation, deliberation or voting on the subject matter for which conflict arises.

ARTICLE XII: COMMITTEES

Special committees may be created by majority vote. All members of the Commission wishing to serve on a special committee shall be appointed as members of said committee. No committee containing less than two (2) members shall be created. The Chair or Commission may appoint or recommend its members to outside committees.

ARTICLE XIII: ORDER OF BUSINESS

The order of business at regular meetings shall be:

- a) Roll call and at the first meeting of the calendar year, elections
- b) Announcement of the agenda
- c) Status of past recommendations
- d) Old business
- e) New business
- f) Adjournment

ARTICLE XIV: ATTENDANCE

Four unexcused absences in any calendar year by any member shall automatically obligate the Commission to request that member to resign and to so advise the County Executive. Except in instances of sudden illness or other unforeseen hardship, members shall advise the Department of Planning and Development Services, who shall notify the Chair, of their intended absence prior to 4:30 p.m. on the day prior to the meeting. Excused absences will be noted for recordation at the roll call.

ARTICLE XV: CONDUCT OF BUSINESS

The Chairperson of the Planning Commission shall direct the conduct of meetings.

Members desiring to interrogate applicants or witnesses shall first ask leave of the Chairperson to do so.

ARTICLE XVI: DECISION OF THE COMMISSION

There shall be a written statement of decision, including the facts of the case, findings of the Commission and the final decision. In cases of conditional approval, the statement shall include explanations and reasons for the conditions.

The Planning Commission's goal is to provide a consensus recommendation to the County Council on matters referred to the Planning Commission for action after full and complete discussion with all members in attendance. Each Planning Commission

member should strive to fulfill this goal by attending as many Commission meetings as possible and by expressing his or her views. When, despite the best efforts of each member, a consensus cannot be reached, minority reports may be prepared and forwarded to the Council. When a decision is reached a member not voting with the majority may prepare a minority report. When the minority is comprised of more than one individual, and if requested, the minority report may be prepared by Planning staff. A minority report, or request for preparation of a minority report, shall be made within seven (7) calendar days of the date of majority action, or the right to transmit such report shall be deemed to have been waived. All minority reports shall be signed by the members who prepare, or request preparation, of the report and shall be forwarded to the County Council by the Chairperson. Minority reports will be transmitted by the Chairperson at the same time as the majority recommendation is transmitted, with copies distributed to all members.

In every case where the action of the Planning Commission is overruled, reversed or not adopted by the County Council, the Director of the Department of Planning and Development Services will make available to the Planning Commission, at its next regular meeting, the findings, conclusions and decision of the Council.

Bylaws adopted the 26th day of April 1971.

AMENDED AS INCORPORATED HEREIN
the 26th day of October 1971.

AMENDED AS INCORPORATED HEREIN
the 27th day of January 1981.

AMENDED AS INCORPORATED HEREIN
the 28th day of May 1991.

AMENDED AS INCORPORATED HEREIN
the 25th day of April 1995.

AMENDED AS INCORPORATED HEREIN
the 9th day of April 1996.

Kurt Munnich, Chairperson

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

AMENDED
ORDINANCE NO. 93-034

CREATING A PLANNING COMMISSION;
AMENDING SNOHOMISH COUNTY CODE CHAPTER 2.08

BE IT ORDAINED:

Section 1. Snohomish County Code Sections 2.08.010, 2.08.020, and 2.08.040, adopted by Resolutions on September 5, 1978 and June 18, 1962 are hereby repealed.

Section 2. A new Section 2.08.005 is added to Snohomish County Code Chapter 2.08 to read:

2.08.005 Planning commission created. The Snohomish County Planning Commission is hereby created and shall be referred to in this chapter as the commission. The commission is created pursuant to Snohomish County Charter Sections 2.20 and 11.30 and shall serve as an advisory body to the council and executive. The commission shall perform the functions of a planning commission under RCW Chapter 36.70 with regard to the preparation of any comprehensive plans and official controls and amendments thereto which are adopted by the county under the authority of RCW Chapter 36.70. The commission shall also perform such other and additional duties as the council shall, from time to time, direct by ordinance.

Section 3. A new Section 2.08.015 is added to Snohomish County Code Chapter 2.08 to read:

2.08.015 Composition of commission. The commission shall consist of eleven members appointed by the council from nominees proposed by the council and executive pursuant to their concurrent authority to make such nominations pursuant to Charter Section 2.20. Appointments shall be made in accordance with Section 2.08.080 SCC.

Section 4. Snohomish County Code Section 2.08.030, last amended by Resolution on September 15, 1978, is amended to read:

2.08.030 Commission's hearings. The ((planning)) commission shall conduct such hearings as are required of a planning commission by RCW Chapter 36.70 and such other hearings as are required by this code and shall make findings of fact and conclusions therefrom which shall be transmitted to the

AMENDED
ORDINANCE NO. 93-034
AMENDING SCC CHAPTER 2.08
Page 1

department of planning and community development. The department shall transmit the same on to the council ((board)) with such comments and recommendations it deems necessary.

Section 5. Snohomish County Code Section 2.08.050, adopted by Resolution on June 18, 1962, is amended to read:

2.08.050 Administrative responsibility. The ((A))director of planning and community development shall be ((appointed-by-the-board-of-county-commissioners;--He-shall-be responsible-for-the-proper-operation-of-the-planning-department- He-shall-be-directly-responsible-to-the-board-of-county commissioners;--He-shall-have-the-responsibility-of-employing, supervising-and-dismissing-the-personnel-of-the-planning-staff and)) responsible for providing secretarial and technical assistance to the ((planning))commission.

Section 6. Snohomish County Code Section 2.08.060, adopted by RESolution on June 18, 1962, is amended to read:

2.08.060 Financing. The commission((county-planning department)) shall incur no financial obligations nor authorize any financial expenditures except for such purposes as are expressly authorized in advance by the county council((board-of county-commissioners)) in such a manner as the law provides. ((The-county-planning-commission-shall-be-subject-to-the-same limitations-pertaining-to-financial-obligations-or expenditures;)) Appropriations for the operation of ((both the-planning-department-and))the ((planning))commission shall be separately identified, but the office accounting or other office records of finances shall be kept by the ((planning))department of planning and community development.

Section 7. Snohomish County Code Section 2.08.070, adopted by Resolution on June 18, 1962, is amended to read:

2.08.070 Adoption of ((adopts)) rules. ((The planning-director-shall-establish-such-rules-and-procedures-as are-necessary-to-assure-a-thorough-and-expeditious-dealing-with matters-properly-the-concern-of-the-planning-department;--except that-such-procedure-shall-not-be-in-contravention-of-state-law-or county-resolution;))

The ((planning)) commission shall adopt its own rules and regulations governing the conducting of its internal affairs; PROVIDED, That such rules and regulations shall not be in conflict with state or county law ((or-county-resolution)).

GOVERNMENT

*Code reviser's note: For community mental health program administrative board, see chapter 7.48 SCC.

Chapter 2.01
DEPARTMENT OF PLANNING AND DEVELOPMENT SERVICES

2.01.010 Creation and Purpose.

There is hereby established a Snohomish county department of planning and development services. It shall be the purpose of this department to manage overall land use planning activities, provide coordination of the associated permit and inspection process, and perform other resource management functions which may be assigned to it. The department will be responsible for implementing land use and resource management policies as defined by the county council.

(Ord. 82-130 § 2, adopted December 10, 1982; Ord. 95-004, § 1, Feb. 15, 1995, Eff date Feb. 27, 1995).

2.01.020 Definitions.

The following definitions shall apply to terms used in this chapter:

- (1) "Department" means the Snohomish county department of planning and development services.
- (2) "Director" means the director of the department of planning and development services.
- (3) "County personnel system" means those statements of policy and procedure contained in Title 3A SCC or its successor.
- (4) "Exempt personnel system" means the conditions of employment under the provisions of chapter 3.68 SCC and amendments thereto.

(Ord. 82-130 § 2, adopted December 10, 1982; Ord. 95-004, § 2, Feb. 15, 1995, Eff date Feb. 27, 1995).

2.01.030 Authority and Functions.

The department shall have the authority to develop comprehensive land use plans, administer zoning and development codes, and coordinate the permit and inspection process. The department's scope of authority shall include, but not be limited to, the following functional areas:

- (1) Administration of the community planning process;
- (2) Coordination of the development technical review process;
- (3) Administration of the resource planning process;
- (4) Planning and administration of the community development grant programs;
- (5) Coordination and administration of the permit issuance, inspection and compliance process;
- (6) Administration of the economic development planning process;

(7) Coordination of the State Environmental Policy Act review process;

(8) Perform such other planning, technical review, permit issuance, inspection, and compliance functions as are delegated by the county executive.

(Ord. 82-130 § 2, adopted December 10, 1982).

2.01.035 Buildable lands program.

The department shall work with cities to develop buildable lands analysis procedures reports and five-year buildable lands review and evaluation reports in accordance with RCW 36.70A.215 and county-wide planning policy UG-14, subject to their review and adoption on behalf of the county by the county council. Council review of five-year review and evaluation reports shall be consistent with the methodology of the applicable buildable lands analysis procedure report and include at least one public hearing. Council action of a report under this section shall not limit the county executive's ability to comment on the report for dispute resolution or other purposes.

(Added Amended Ord. 02-033, July 24, 2002, Eff date Aug. 9, 2002).

2.01.040 Director.

(1) The director shall organize, manage and administer the activities of the department. He or she shall advise the executive and the council with regard to programs managed by or affecting the activities of the department.

(2) The director may, upon approval by the executive, issue rules as may be necessary to carry out the purposes of this chapter, and upon approval by the executive and/or council, enter into contracts on behalf of the county to carry out the purposes of this chapter.

(3) The director shall prepare and submit to the executive an annual budget request for the department.

(4) The director shall appoint all officers and employees of the department in accordance with the rules of the county personnel system and exempt personnel system and shall implement service improvements and cost reductions where possible.

(5) The director shall have the power to accept on behalf of the county, deeds and other conveyances or covenants of real property when such conveyances or covenants are tendered in compliance with conditions of land use or development permit, and it consistent with adopted land use, development or engineering standards and regulations.

(a) Right-of-Way (ROW) conveyances shall be approved and accepted by the director of the department of public works or county engineer.

(b) Road establishments are accepted under separate authority and procedures in accordance with chapters 36.81 RCW and 13.90 SCC.

(c) Dedications of real property within the boundaries of a final subdivision are accepted under separate procedure in accordance with the provisions of SCC 19.40.010(8).

(6) The director may delegate functions, powers, and duties to other officers and employees of the department as deemed expedient to further the purposes of this chapter.

(Ord. 82-130 § 2, adopted December 10, 1982; Ord. 02-026, Eff. Date August 9, 2002).

2.01.050 Appointment of Director.

The director shall be appointed by the executive subject to confirmation by the county council. The director shall serve

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at the pleasure of the executive and shall be subject to the county exempt personnel system.

(Ord. 82-130 § 2, adopted December 10, 1982).

2.01.060 Organization by Director.

The director may create divisions and reassign positions and functions within the department; PROVIDED, That any budget transfers required by such actions are approved by the council; and PROVIDED FURTHER, That personnel assignments and changes shall be made in conformance with the personnel rules and policies of Snohomish county.

(Ord. 82-130 § 2, adopted December 10, 1982).

2.01.070 Severability.

If any provision of this chapter is held invalid, the remainder of the chapter shall not be affected.

holding office during the remainder of the term for which he was elected or appointed.

Section 2.40 Term of Office

The term of office of each councilmember shall be four years following election and until a successor is elected and qualified.

Section 2.50 Organization

The county council shall annually elect one of its members as chair and one as vice-chair who shall act in the absence of the chair. The council shall be responsible for its own organization, the rules of conduct of its business and for the employment and supervision of such persons as it deems necessary to assist it in the performance of its duties. A majority of the council shall constitute a quorum at all meetings. Council action shall require at least a majority of the entire council except as provided by this charter or ordinance.

Section 2.60 Rules of Procedure

The county council shall enact by ordinance rules of procedure governing the time, place and conduct of its meetings and hearings and the introduction, publication, consideration and adoption of ordinances. All meetings shall be open to the public except to the extent executive sessions are authorized by state law.

Section 2.70 Relationship with Other Branches

Except in the performance of its legislative functions under this charter, the county council, its staff, and individual council members shall not interfere in the administration of the executive branch or give orders to or direct, either publicly or privately, any officer or employee subject to the direction and supervision of the county executive or other elected officials. The county executive and county council jointly shall hold biennial public hearings and provide a county operation review forum for public comment on the operation of each county department.

Section 2.80 Council Subpoena Powers

The county council may, in connection with the legislative process, make investigations into the affairs of the county and the conduct of any county department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence, and may invoke the aid of any court of competent jurisdiction to carry out such powers; provided that

any witness shall have the right to be represented by counsel.

Section 2.90 Audit

The county council may conduct or cause to be conducted audits of the financial operations of the county government or any portion thereof. The county council shall conduct or cause to be conducted periodic performance and program audits to review the effectiveness and efficiency of the programs and operations of the county. Annual audits shall continue to be performed by the state in accordance with general law.

Section 2.100 Ordinances – Form

No ordinance shall contain more than one subject which shall be clearly expressed in the title. Ordinances may, by reference, adopt Washington state statutes, or any recognized, printed codes or compilations in whole or in part. All ordinances of the county of a general and permanent nature shall be incorporated into and become part of a Snohomish County Code. The county council shall establish by ordinance procedures to codify ordinances and to correct deficiencies and conflicts and to remove obsolete provisions from the code. Proposals for enactment of technical revisions to the code shall be submitted to the county council.

Section 2.110 Ordinances – Enactment

Proposed ordinances may be introduced by any councilmember, mini-initiative or initiative. Every proposed ordinance shall be introduced in its entirety in writing. At least thirteen days shall pass between the introduction and the final passage of every ordinance, except emergency ordinances. Brief summaries of proposed ordinances providing reasonable notice as to the nature of the action contemplated shall be published before consideration. The council shall hold at least one public hearing after due notice to consider the proposed ordinance. Any proposed ordinance may be amended by motion at hearing without publication, provided, that such amendments shall not change the scope and object of the proposed ordinance. No proposed ordinance shall become a law unless on its final passage the vote be taken by roll call by yeas and nays. Ordinances, or summaries of them, shall be published after enactment. Except for emergency ordinances, a minimum of three affirmative votes shall be required to adopt an ordinance.

Every ordinance shall be presented to the county executive within five working days after adoption by the county council. Within ten working days

2.48.120 Ordinance procedures. The council shall act by ordinance when exercising its legislative powers or when otherwise required by state law, the charter, or other ordinances.

(1) Introduction. An ordinance may be introduced by any council member, initiative, or mini-initiative. Any council member may introduce an ordinance on the request of the county executive. Ordinances shall be filed in writing with the clerk of the council at any time during regular business hours of the county. Upon receipt of any proposed ordinance, the clerk shall deliver a copy of the same to each council member. If summary of the ordinance is intended to be published, such summary shall also be delivered to each council member.

At the first regular meeting of the council following delivery of any ordinances to all council members, the clerk shall assign the ordinance a number and introduce it by reading the first phrase or clause of the title of such ordinance, unless any member shall request that the entire title be read.

(2) Consideration and Adoption.

(a) Hearing Required. Immediately following introduction as provided in subsection (1) of this section of any ordinance upon which a public hearing is required to be held, the clerk shall assign a time and date of hearing thereon unless the council shall elect to continue assignment or to hear the matter at a different time and date. At such time and date as the ordinance is set for reading, the council shall proceed to hear the same. Any hearing or action thereon may be continued by the council as provided in SCC 2.48.050 and 2.48.060.

The council shall also approve the summary of any ordinance which is intended to be published.

(b) Hearing not Required. Immediately following introduction as provided in subsection (1) of this section of any ordinance, other than an emergency ordinance or one upon which a hearing is required, the clerk shall assign a time and date for consideration of such ordinance by the council. The council may continue assignment, assign a later time and date, table such ordinance, or refer the ordinance to the county executive, any committee, or any county officer or department for consideration, review, and report thereon. No ordinance shall be continued, except where incidental to a referral as provided above, nor tabled for a period longer than two weeks. Upon the time and date set for consideration of an ordinance, the council shall consider and take action thereon; provided, that any consideration or action on an ordinance may be continued by the council as provided in SCC 2.48.050 and 2.48.060.

(3) Passage, Veto. No ordinance other than an emergency ordinance shall be passed in less than thirteen days after its introduction. Following passage of any ordinance it shall be signed

Section 2.110 Ordinances - Enactment

Proposed ordinances may be introduced by any councilmember, mini-initiative or initiative. Every proposed ordinance shall be introduced in its entirety in writing. At least thirteen days shall pass between the introduction and the final passage of every ordinance, except emergency ordinances. Brief summaries of proposed ordinances providing reasonable notice as to the nature of the action contemplated shall be published before consideration. The council shall hold at least one public hearing after due notice to consider the proposed ordinance. Any proposed ordinance may be amended by motion at hearing without publication, provided, that such amendments shall not change the scope and object of the proposed ordinance. No proposed ordinance shall become a law unless on its final passage the vote be taken by roll call by yeas and nays. Ordinances, or summaries of them, shall be published after enactment. Except for emergency ordinances, a minimum of three affirmative votes shall be required to adopt an ordinance.

Every ordinance shall be presented to the county executive within five working days after adoption by the county council. Within ten working days after presentation, the county executive shall either sign the ordinance and return it or veto the ordinance and return it to the county council with his written objections. If an ordinance is not returned to the county council within ten working days after its presentation, it shall be deemed enacted without the county executive's signature. If the county executive vetoes an ordinance, the county council shall have thirty days to reconsider the ordinance. If the ordinance receives at least four affirmative votes it shall become law. Except as otherwise provided by this charter, all ordinances shall take effect ten days after they are signed by the county executive or otherwise enacted, or at a later date if stated in the ordinance.

(ii) The formal identification or citation number of the ordinance;

(iii) A descriptive title;

(iv) A section-by-section summary;

(v) Any other information which the county, city, or town finds is necessary to provide a complete summary; and

(vi) A statement that the full text will be mailed upon request.

(b) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(c) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county, city, or town.

Any ordinance other than those sections amending a prior ordinance may be amended upon consideration by the council following its initial publication if the final publication shall be in form as passed by the council. (Ord. 80-012 SS2(part), adopted June 2, 1980).

2.48.140 Form of ordinances. Ordinances shall be numbered so as to include the year of passage and shall be numbered in the order of introduction in any such year. No ordinance shall contain more than one subject which shall clearly be expressed in the title. The name of the council member or members introducing the ordinance shall be endorsed on the upper right-hand corner of the first page thereof. No previously approved ordinance shall be amended unless the new ordinance sets forth each amended section or subsection at full length. Ordinances may, by reference, adopt Washington State statutes, or any recognized printed codes or compilations in whole or in part. (Ord. 80-012 SS2(part), adopted June 2, 1980).

2.48.150 Emergency ordinances. Any proposed ordinance may be enacted as an emergency ordinance if the council finds as a fact, and states in the ordinance, that an emergency exists and that the ordinance is necessary for the immediate preservation of public peace, health and safety or for the support of county government or its existing institutions. A minimum of four affirmative votes shall be

Chapter 36.70
PLANNING ENABLING ACT

36.70.010 Purpose and Intent. The purpose and intent of this chapter is to provide the authority for, and the procedures to be followed in, guiding and regulating the physical development of a county or region through correlating both public and private projects and coordinating their execution with respect to all subject matters utilized in developing and servicing land, all to the end of assuring the highest standards of environment for living, and the operation of commerce, industry, agriculture and recreation, and assuring maximum economies and conserving the highest degree of public health, safety, morals and welfare. [1963 c 4 § 36.70.010. Prior: 1959 c 201 § 1.]

36.70.030 Commission—Creation. By ordinance a board may create a planning commission and provide for the appointment by the commission of a director of planning. [1963 c 4 § 36.70.030. Prior: 1959 c 201 § 3.]

36.70.040 Department—Creation—Creation of commission to assist department. By ordinance a board may, as an alternative to and in lieu of the creation of a planning commission as provided in RCW 36.70.030, create a planning department which shall be organized and function as any other department of the county. When such department is created, the board shall also create a planning commission which shall assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto. To this end, the planning commission shall conduct such hearings as are required by this chapter and shall make findings and conclusions therefrom which shall be transmitted to the department which shall transmit the same on to the board with such comments and recommendations it deems necessary. [1963 c 4 § 36.70.040. Prior: 1959 c 201 § 4.]

36.70.050 Authority for planning. Upon the creation of a planning agency as authorized in RCW 36.70.030 and 36.70.040, a county may engage in a planning program as defined by this chapter. Two or more counties may jointly engage in a planning program as defined herein for their combined areas. [1963 c 4 § 36.70.050. Prior: 1959 c 201 § 5.]

36.70.070 Commission—Composition. Whenever a commission is created by a county, it shall consist of five, seven, or nine members as may be provided by ordinance: PROVIDED, That where a commission, on June 10, 1959, is operating with more than nine members, no further appointments shall be made to fill vacancies for whatever cause until the membership of the commission is reduced to five, seven or nine, whichever is the number specified by the county ordinance under this chapter. Departments of a county may be represented on the commission by the head of such departments as are designated in the ordinance creating the commission, who shall serve in an ex officio capacity, but such ex officio members shall not exceed one of a five-member commission, two of a seven-member commission, or three of a nine-member commission. At no time shall there be more than three ex officio members serving on a commission: PROVIDED FURTHER, That in lieu of one ex officio member, only, one employee of the county other than a department head may be appointed to serve as a member of the commission. [1963 c 4 § 36.70.070. Prior: 1959 c 201 § 7.]

36.70.080 Commission—Appointment—County. The members of a commission shall be appointed by the chairman of the board with the approval of a majority of the board: PROVIDED, That each member of the board shall submit to the chairman a list of nominees residing in his commissioner district, and the chairman shall make his appointments from such lists so that as nearly as mathematically possible, each commissioner district shall be equally represented on the commission. [1963 c 4 § 36.70.080. Prior: 1959 c 201 § 8.]

36.70.090 Commission—Membership—Terms—Existing commissions. When a commission is created after June 10, 1959, the first terms of the members of the commission consisting of five, seven, and nine members, respectively, other than ex officio members, shall be as follows:

(1) For a five-member commission—one, shall be appointed for one year; one, for two years; one, for three years; and two, for four years.

(2) For a seven-member commission—one, shall be appointed for one year; two, for two years; two, for three years; and two, for four years.

(3) For a nine-member commission—two, shall be appointed for one year; two, for two years; two, for three years; and three, for four years.

Thereafter, the successors to the first member shall be appointed for four year terms: PROVIDED, That where the commission includes one ex officio member, the number of appointive members first appointed for a four year term shall be reduced by one; if there are to be two ex officio members, the number of appointive members for the three year and four year terms shall each be reduced by one; if there are to be three ex officio members, the number of appointive members for the four year term, the three year term, and the two year term shall each be reduced by one. The term of an ex officio member shall correspond to his official tenure: PROVIDED FURTHER, That where a commission, on the effective date of this chapter, is operating with members appointed for longer than four year terms, such members shall serve out the full term for which they were appointed, but their successors, if any, shall be appointed for four year terms. [1963 c 4 § 36.70.090. Prior: 1959 c 201 § 9.]

36.70.100 Commission—Vacancies. Vacancies occurring for any reason other than the expiration of the term shall be filled by appointment for the unexpired portion of the term except if, on June 10, 1959, the unexpired portion of a term is for more than four years the vacancy shall be filled for a period of time that will obtain the maximum staggered terms, but shall not exceed four years. Vacancies shall be filled from the same commissioner district as that of the vacating member. [1963 c 4 § 36.70.100. Prior: 1959 c 201 § 10.]

36.70.110 Commission—Removal. After public hearing, any appointee member of a commission may be removed by the chairman of the board, with the approval of the board, for inefficiency, neglect of duty, or malfeasance in office. [1963 c 4 § 36.70.110. Prior: 1959 c 201 § 11.]

36.70.120 Commission—Officers. Each commission shall elect its chairman and vice chairman from among the appointed members. The commission shall appoint a secretary who need not be a member of the commission. [1963 c 4 § 36.70.120. Prior: 1959 c 201 § 12.]

36.70.130 Planning agency—Meetings. Each planning agency shall hold not less than one regular meeting in each month: PROVIDED, That if no matters over which the planning agency has jurisdiction are pending upon its calendar, a meeting may be canceled. [1963 c 4 § 36.70.130. Prior: 1959 c 201 § 13.]

36.70.140 Planning agency—Rules and records. Each planning agency shall adopt rules for the transaction of its business and shall keep a public record of its transactions, findings, and determinations. [1963 c 4 § 36.70.140. Prior: 1959 c 201 § 14.]

36.70.150 Planning agency—Joint meetings. Two or more county planning agencies in any combination may hold joint meetings and by approval of their respective boards may have the same chairman. [1963 c 4 § 36.70.150. Prior: 1959 c 201 § 15.]

36.70.160 Director—Appointment. If a director planning is provided for, he shall be appointed:

(1) By the commission when a commission is created under RCW 36.70.030;

(2) If a planning department is established as provided in RCW 36.70.040, then he shall be appointed by the board [1963 c 4 § 36.70.160. Prior: 1959 c 201 § 16.]

36.70.170 Director—Employees. The director planning shall be authorized to appoint such employees as are necessary to perform the duties assigned to him within the budget allowed. [1963 c 4 § 36.70.170. Prior: 1959 c 201 § 17.]

36.70.180 Joint director. The boards of two or more counties or the legislative bodies of other political subdivisions or special districts may jointly engage a single director of planning and may authorize him to employ such other personnel as may be necessary to carry out the joint planning program. [1963 c 4 § 36.70.180. Prior: 1959 c 201 § 18.]

36.70.420 Comprehensive plan—Referral to board. A copy of a comprehensive plan or any part, amendment, extension of or addition thereto, together with the motion of the planning agency approving the same, shall be transmitted to the board for the purpose of being approved by motion and certified as provided in this chapter. [1963 c 4 § 36.70.420. Prior: 1959 c 201 § 42.]

36.70.020 Definitions.

upon public utilities, provided the county ordinances specify the standards and criteria that shall be applied.

(8) "Department" means a planning department organized and functioning as any other department in any county.

(9) "Element" means one of the various categories of subjects, each of which constitutes a component part of the comprehensive plan.

(10) "Ex officio member" means a member of the commission who serves by virtue of his official position as head of a department specified in the ordinance creating the commission.

(11) "Official controls" means legislatively defined and enacted policies, standards, precise detailed maps and other criteria, all of which control the physical development of a county or any part thereof or any detail thereof, and are the means of translating into regulations and ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to, ordinances establishing zoning, subdivision control, platting, and adoption of detailed maps.

(12) "Ordinance" means a legislative enactment by a board; in this chapter the word, "ordinance", is synonymous with the term "resolution", as representing a legislative enactment by a board of county commissioners.

(13) "Planning agency" means (a) a planning commission, together with its staff members, employees and consultants, or (b) a department organized and functioning as any other department in any county government together with its planning commission.

36.70.360 Comprehensive plan—Cooperation with affected agencies. During the formulation of the comprehensive plan, and especially in developing a specialized element of such comprehensive plan, the planning agency may cooperate to the extent it deems necessary with such authorities, departments or agencies as may have jurisdiction over the territory or facilities for which plans are being made, to the end that maximum correlation and coordination of plans may be secured and properly located sites for all public purposes may be indicated on the comprehensive plan. [1963 c 4 § 36.70.360. Prior: 1959 c 201 § 36.]

36.70.380 Comprehensive plan—Public hearing required. Before approving all or any part of the comprehensive plan or any amendment, extension or addition thereto, the commission shall hold at least one public hearing and may hold additional hearings at the discretion of the commission. [1963 c 4 § 36.70.380. Prior: 1959 c 201 § 38.]

36.70.430 Comprehensive plan—Board may initiate or change—Notice. When it deems it to be for the public interest, or when it considers a change in the recommendations of the planning agency to be necessary, the board may initiate consideration of a comprehensive plan, or any element or part thereof, or any change in or addition to such plan or recommendation. The board shall first refer the proposed plan, change or addition to the planning agency for a report and recommendation. Before making a report and recommendation, the commission shall hold at least one public hearing on the proposed plan, change or addition. Notice of the time and place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. [1963 c 4 § 36.70.430. Prior: 1959 c 201 § 43.]

36.70.440 Comprehensive plan—Board may approve or change—Notice. After the receipt of the report and recommendations of the planning agency on the matters referred to in RCW 36.70.430, or after the lapse of the prescribed time for the rendering of such report and recommendation by the commission, the board may approve by motion and certify such plan, change or addition without further reference to the commission: PROVIDED, That the plan, change or addition conforms either to the proposal as initiated by the county or the recommendation thereon by the commission: PROVIDED FURTHER, That if the planning agency has failed to report within a ninety day period, the board shall hold at least one public hearing on the proposed plan, change or addition. Notice of the time, place and purpose of the hearing shall be given by one publication in a newspaper of general circulation in the county and in the official gazette, if any, of the county, at least ten days before the hearing. Thereafter, the board may proceed to approve by motion and certify the proposed comprehensive plan or any part, amendment or addition thereto. [1963 c 4 § 36.70.440. Prior: 1959 c 201 § 44.]

36.70.480 Planning agency—Cooperation with agencies. Each planning agency shall, to the extent it deems necessary, cooperate with officials and agencies, public utility companies, civic, educational, professional and other organizations and citizens generally with relation to carrying out the purpose of the comprehensive plan. [1963 c 4 § 36.70.480. Prior: 1959 c 201 § 48.]

36.70.580 Official controls—Public hearing by commission. Before recommending an official control or amendment to the board for adoption, the commission shall hold at least one public hearing. [1963 c 4 § 36.70.580. Prior: 1959 c 201 § 58.]

36.70.620 Official controls—Action by board. Upon receipt of any recommended official control or amendment thereto, the board shall at its next regular public meeting set the date for a public meeting where it may, by ordinance, adopt or reject the official control or amendment. [1963 c 4 § 36.70.620. Prior: 1959 c 201 § 62.]

36.70.630 Official controls—Board to conduct hearing, adopt findings prior to incorporating changes in recommended control. If after considering the matter at a public meeting as provided in RCW 36.70.620 the board deems a change in the recommendations of the planning agency to be necessary, the change shall not be incorporated in the recommended control until the board shall conduct its own public hearing, giving notice thereof as provided in RCW 36.70.590, and it shall adopt its own findings of fact and statement setting forth the factors considered at the hearing and its own analysis of findings considered by it to be controlling. [1963 c 4 § 36.70.630. Prior: 1961 c 232 § 5; 1959 c 201 § 63.]

36.70.640 Official controls—Board may initiate. When it deems it to be for the public interest, the board may initiate consideration of an ordinance establishing an official control, or amendments to an existing official control, including those specified in RCW 36.70.560. The board shall first refer the proposed official control or amendment to the planning agency for report which shall, thereafter, be considered and processed in the same manner as that set forth in RCW 36.70.630 regarding a change in the recommendation of the planning agency. [1963 c 4 § 36.70.640. Prior: 1959 c 201 § 64.]

Section 3.20 Powers and Duties of County Executive

As chief executive officer, the county executive shall have all the executive powers of the county which are not expressly vested in other elective officers by this charter. The county executive shall have the power to:

1. Supervise all appointed executive departments established by this charter or created by the county council;

2. Execute and enforce all ordinances and state statutes within the county, subject to Section 3.120;

3. Present to the county council an annual statement of the governmental affairs of the county and any other report which the county executive may deem necessary;

4. Prepare and present to the county council a proposed budget and a budget message setting forth proposals for the county during the next fiscal year;

5. Prepare and present to the county council comprehensive plans including capital improvement plans for the present and future development of the county;

6. Veto any ordinance adopted by the county council except as otherwise provided in this charter;

7. Assign duties to appointed executive departments which are not specifically assigned by this charter or by ordinance;

Section 3.40 Appointments by County Executive and Confirmation

The county executive shall nominate, and by and with the advice and consent of a majority of the county council, shall appoint the chief officer of each executive department and office, except the separately elected offices. The county executive may appoint a confidential secretary and a deputy county executive without council confirmation.

Section 2.110 Ordinances – Enactment

Proposed ordinances may be introduced by an councilmember, mini-initiative or initiative. Every proposed ordinance shall be introduced in its entirety in writing. At least thirteen days shall pass between the introduction and the final passage of every ordinance, except emergency ordinances. Brief summaries of proposed ordinances providing reasonable notice as to the nature of the action contemplated shall be published before consideration. The council shall hold at least one public hearing after due notice to consider the proposed ordinance. Any proposed ordinance may be amended by motion at hearing without publication, provided, that such amendments shall not change the scope and object of the proposed ordinance. No proposed ordinance shall become a law unless or its final passage the vote be taken by roll call by yeas and nays. Ordinances, or summaries of them, shall be published after enactment. Except for emergency ordinances, a minimum of three affirmative votes shall be required to adopt an ordinance.

Section 3.90 The Executive Departments

The executive departments shall consist of the departments of the county assessor, the county auditor, the county clerk, the county sheriff, the county treasurer and those agencies of the executive branch which are primarily engaged in the execution and enforcement of ordinances and statutes concerning the public peace, health and safety and which furnish or provide governmental services directly to or for the residents of Snohomish county.

SETH R. DAWSON
SNOHOMISH COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION
2918 Colby Avenue, Suite 203
Everett, Washington 98201
Telephone: (206) 388-6330
FAX: (206) 388-6333

RECEIVED

JAN 11 1993

10:35 PM
SNOHOMISH CO. COUNCIL

FILE NO. CO 93-03(g)

M E M O

TO: ROSS KANE
Council Member

FROM: GORDON W. SIVLEY
Senior Civil Deputy

DATE: January 8, 1993

RE: Expansion of Planning Commission

SNOHOMISH COUNTY COUNCIL

EXHIBIT # 2
FILE Ord 93-034

By prior memorandum you requested our advice on your proposal to expand the membership of the county Planning Commission from nine to eleven members. The present Snohomish County Planning Commission was created pursuant to the authority of chapter 36.70 RCW. That statute authorizes the creation of a planning commission having at most nine members. Snohomish County Code chapter 2.08 deals with the creation, authority, and operation of the Planning Commission in Snohomish County. SCC 2.08.020 specifies that the planning commission consist of nine members.

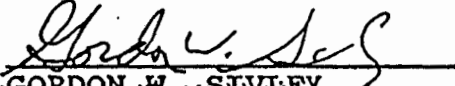
Because Snohomish County is a charter county, it could create a planning commission pursuant to its own charter powers instead of chapter 36.70 RCW. It should be noted that chapter 36.70 is not a preemptive statute. Use of chapter 36.70 RCW for land use planning and zoning is optional to each county, not mandatory. Therefore, the county could, by ordinance, create a body called a planning commission under its charter authority and specify any number of members. Further, among other powers and authority the county might choose to give its planning commission, it could specify in the ordinance that the charter-based planning commission perform the functions of a planning commission under chapter 36.70 RCW.

To make a conversion from a chapter 36.70 RCW-based planning commission to a charter-based one would require passage of an ordinance amending Snohomish County Code chapter 2.08. This would also present an opportunity to make some needed revisions to SCC chapter 2.08 to bring it into compliance with the county charter revisions which became effective in 1987. A particular

Page 2
1/08/93

problem is the procedure for appointing planning commissioners in SCC 2.08.080, which does not recognize the concurrent authority of the county executive to nominate planning commission members as is provided by Charter section 2.20(6).

I trust the foregoing will be of assistance to you. If you have further inquiries regarding this matter please contact me.


GORDON W. STOVLEY
Senior Civil Deputy

GWS:smg

3.00

§ 21.32. Ordinance or statute as superseding the other.

It is a general requisite to the validity of an ordinance that it conform to, and not violate, general statutes.¹ Consistently, a general statute repeals an earlier ordinance to which it is repugnant, unless contrary legislative intention is manifested; conversely, an ordinance does not and cannot supersede an earlier general statute. In other words, in case of conflict the ordinance is void.² Indeed, attached to every statute, every charter, every ordinance or resolution affecting, or adopted by, a municipality, is the implied condition that the same must yield to the predominant power of the state, when that power has been exercised;³ to hold otherwise would lead to serious confusion and often absurd results.⁴ This does not mean that in all events will a general statute on a subject prevail over an ordinance relating to and contrary or varying in its terms from the statute; there may be no conflict despite the contrary provisions, since in the particular matter by state law itself, constitutional or statute, the ordinance may be made to govern within the municipality.⁵ Nevertheless, where the jurisdiction to legislate is exclusively in the state or concurrently in the state and the municipality, and where there is conflict between a statute and an ordinance, the latter must give way. The rule is otherwise where there is no conflict between the ordinance and the statute, that is, where they are neither inconsistent nor irreconcilable with each other, and where the matter is not exclusively regulated by statute.⁶

Authorized ordinances have the same force and effect within the corporate limits that acts of the legislature have on

GENERAL CONSIDERATIONS

[1] When superior court review is by writ of review, as here, the appellate court conducts the same review on appeal as the superior court, but de novo.³ That is, the court's review is limited to a review of the record before the local governmental entity and to a determination of whether that entity's action was arbitrary and capricious or contrary to law.⁴

[2] Municipalities are constitutionally vested with the authority to enact ordinances in furtherance of the public health, safety, morals, and welfare.⁵ However, "the plenary police power in regulatory matters accorded municipalities by Const. Art. 11, § 11, ceases when the state enacts a general law upon the particular subject, unless there is room for concurrent jurisdiction." *Lenci v. Seattle*, 63 Wn.2d 664, 669, 388 P.2d 926 (1964). Whether there is room for concurrent jurisdiction depends upon the legislative intent to be ascertained from an examination of the statute involved and the interaction between the state and local provisions.⁶ Where the Legislature does not specifically state its intent to occupy a given field, such intent can be inferred from "the purposes of the legislative enactment and . . . the facts and circumstances upon which the enactment was intended to operate." *Lenci*, at 670.

STATE PREEMPTION

Baker asserts that the SMA has preempted the field of the regulation of surface mining and that, accordingly, Snohomish County may not enforce any of its local land use

³*Bay Indus., Inc. v. Jefferson Cy.*, 33 Wn. App. 239, 240-41, 653 P.2d 1355 (1982).

⁴*Bay Indus.*, at 241.

⁵Const. art. 11, § 11 provides:

"Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."

⁶*Lenci v. Seattle*, 63 Wn.2d 664, 669, 388 P.2d 926 (1964).

PREAMBLE

" We, the citizens of Snohomish County, in order to separate the executive and legislative power"

BASIC CAUSE OF PROBLEM

- 1. Planning department is not considered an independent department as the Hearing Examinors department and is treated as an half breed Executive-Council department, ignoring the Charter requirements of the quasi-judicial nature of the Planning Agency

NOTE : SCC 3.10 states that Executive departments do not include departments with quasi-judicial powers. SCC3.90 also shows that Planning department is not included in executive department,

- 2. Council did not create a Planning Department as meant in RCW 36.70.040. Chapter 2.08 only creates the Planning Commission, but Chapter 2.01 creates the department of Planning and Community Development. It is very obvious that CD is an executive department : "director shall serve at the pleasure of the executive". It is also obvious that the departments functions are administrative (SCC2.01.030), that it is not created as authorised by RCW 36.70 and that the planning commission can not be an extension to that department.

- 3. Interestingly, Chapter 2.01, which creates the CD department, does not mention its duties to enforce the Snohomish County land use regulations ! For all the basic reasons, the people who enforce the laws should not directly be involved with the writing of the law. Chapter 2.01 has been created in 1982 and never been changed !

- 4. Definition of Department and Planning Agency RCW36.70.020 (8) and (13)(b) mean " a planning department together with its planning commission

SEPARATION OF POWERS

SCC 2.20 "County Council shall exercise its legislative power"

SCC 2.70 "County Council and Staff shall not interfere in the administration of the executive branch, except in the performance of its legislative functions"

SCC 3.20 "County Executive shall have the power to prepare and present to Council comprehensive plans, including capital improvement plans for the present and future development of the county".

CONFLICTS :

RCW 36.70.160 requires Director of the Planning agency to be appointed by the Council. No director appointed.

RCW 36.70.420 requires Planning Commission to transmit its findings to the County Council !. NOT SO, SCC 2.08.030 requires transmittal to the department of Community and Development !

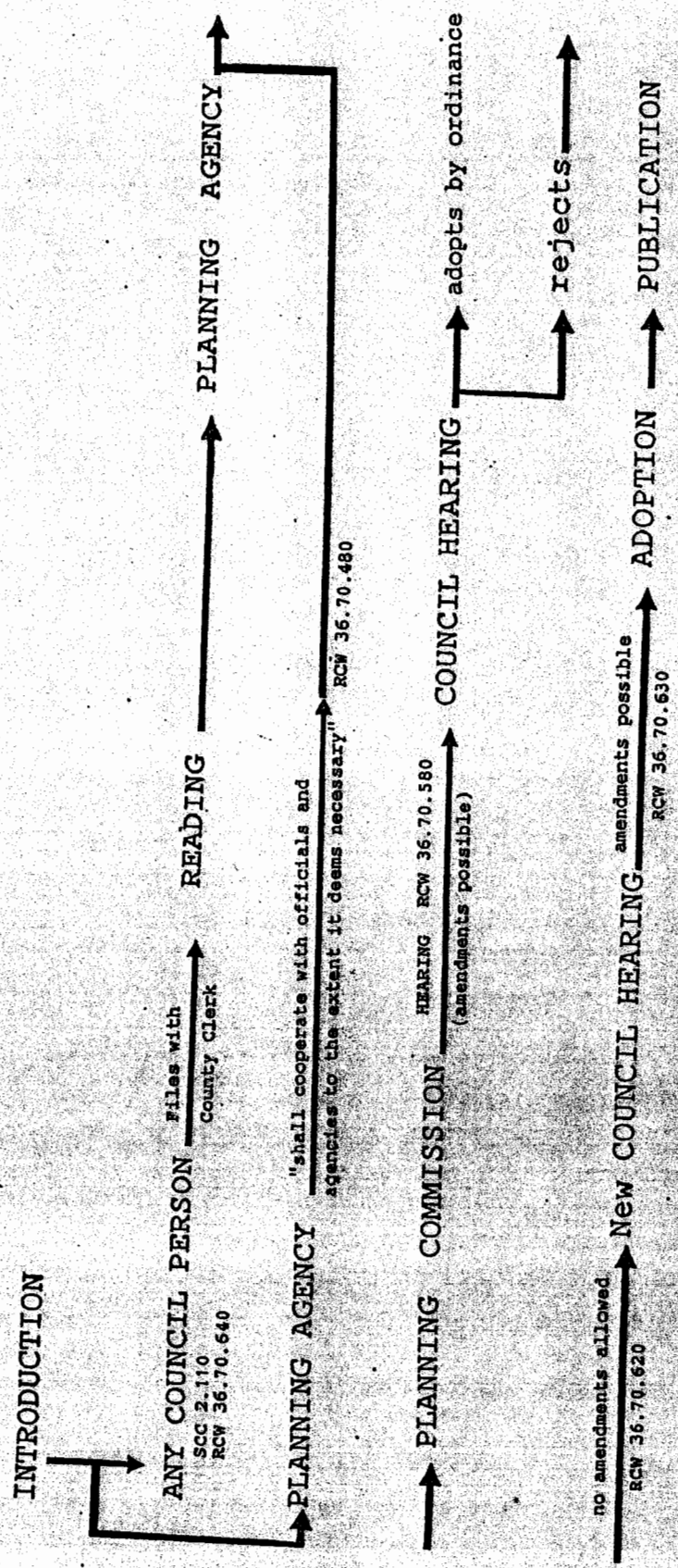
SCC 3.20(5) requires County Executive to prepare plans for Council. NOT SO in practice, executive departments prepare for Planning Dept.

RCW 36.70.480 allows Planning department (with the Council appointed Director) to cooperate with other department "TO THE EXTENT IT DEEMS NECESSARY". NOT SO : Planning Staff develops regulation under direction of Director of Planning and Community Development.

RCW 36.70.040 allows the Council to create a Planning department which shall be organized and function as any other department of the county. When such department is created, the council shall also create a Planning Commission which shall assist the Planning department. NOT SO : SCC 2.08.005 creates a Planning Commission which serves the council and executive !

PROCEDURE Snohomish County

ORDINANCES DEVELOPMENT REGULATIONS - (LAND USE)



Comprehensive Plan Snohomish County

(Creation and amendments)



ORIGINATES

