

**An Ordinance Repealing Resolutions No. 3078 and R20090532 and Reestablishing the Skagit County Planning & Development Services Department and Planning Commission**

**Whereas** until now Skagit County has conducted its land use planning under the Planning Enabling Act, RCW Chapter 36.70;

**Whereas** the Planning Enabling Act does not establish itself as the exclusive authority for local government land use planning;

**Whereas** there is at least one other statutory scheme for county land use planning embodied in RCW Chapter 35.63;

**Whereas** the Washington State Constitution, in Article XI, Section 11, establishes the right of a county to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”;

**Whereas** the Washington State Supreme Court in *Buell v. City of Bremerton*, 80 Wn.2d 518, 520, 495 P.2d 1358, 1360 (1972) validated the City of Bremerton’s authority to plan directly under the State Constitution without reliance on state planning enabling legislation;

**Whereas** the City of Bellingham (BMC 2.21.010) and King County (KCC 21A.01.020) conduct their land use planning under the Constitutional provisions, and Clark and Thurston counties conduct land use planning pursuant to RCW Chapter 35.63;

**Whereas** the Growth Management Act, RCW Chapter 36.70A, has extensive public participation requirements, some of which conflict with the Planning Enabling Act;

**Whereas** the Planning Enabling Act requires staggering of Planning Commission terms, but over time that staggering has been lost such that four planning commissioners’ terms end on January 31 and four other terms end in the next year;

**Whereas** the Board of County Commissioners desires to evenly stagger Planning Commission terms and make other changes to the structure of the Planning Commission;

**Whereas** Skagit County first established its GMA public participation program in Resolution 16519 (1997) and amended in Resolution 16852 (1998);

**Whereas** the Board of County Commissioners desires to update public notice requirements for the 21st Century;

**Whereas** the Growth Management Act at RCW 36.70A.140 requires “early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans”;

**Whereas**, in January 2012, the Board of County Commissioners sent a letter to the Planning Commission soliciting their feedback on possible reforms;

**Whereas** the Planning Commission discussed possible reforms at their February 7 and March 6, 2012, meetings;

**Whereas**, on January 10, the Board of County Commissioners published a legal notice advertising a written comment period and public hearing, which it held on January 22, 2013;

**Whereas** the included revisions to the public participation program in Skagit County Code Title 14 do not constitute a development regulation or official control;

**Whereas** adoption of this ordinance is categorically exempt under the State Environmental Policy Act pursuant to WAC 197-11-800(19).

**Now Therefore Be It Ordained by the Board of County Commissioners That:**

Section 1. This ordinance may be cited as the [Planning and] Land Use [Legislative Legislation] Reform Ordinance of 2013.

Section 2. Resolution No. 3078, establishing the planning department and planning commission, is hereby repealed.

Section 3. Resolution R20090532, adopting bylaws for the planning commission, is hereby repealed.

Section 4. The planning department and planning commission are both hereby re-established pursuant to Article XI, Section 11 of the Washington State Constitution;

Section 5. A new chapter 2.80 is hereby added to the Skagit County Code, and Skagit County Code chapters 14.02 and 14.08 are hereby amended, as described in Attachment A;

Section 6. If any portion of this ordinance is found unlawful, all other portions remain in effect.

Section 7. This ordinance is effective [February 1, 2013 \_\_\_\_\_].

**Witness Our Hands and the Official Seal of Our Office this \_\_ day of \_\_\_\_\_, 2013.**

**Board of County Commissioners  
Skagit County, Washington**

---

Sharon D. Dillon, Chair

---

Ron Wesen, Commissioner

---

Kenneth A. Dahlstedt, Commissioner

ATTEST:

---

Linda Hammons, Clerk  
Skagit County Board of Commissioners

APPROVED AS TO CONTENT:

---

Dale Pernula, Director  
Planning & Development Services

APPROVED AS TO FORM:

---

Ryan Walters, Civil Deputy  
Skagit County Prosecutor's Office

**Attachment A**  
**Changes to Skagit County Code Chapters 2.80, 14.02, and 14.08**

***New Chapter 2.80, Administrative Departments***

**2.80.100 Planning and Development Services Department.**

- (1) Created. There is hereby reconstituted and created an administrative department called the Planning and Development Services Department.
- (2) Functions. Department functions are authorized pursuant to Article XI, Section 11 of the State Constitution [\[and the Growth Management Act, RCW 36.70A,\]](#) and not state planning enabling statutes. Department functions include:
  - (a) Advising the Board of County Commissioners and other departments regarding the Comprehensive Plan, land use planning and policy, and growth management;
  - (b) Administering and enforcing the unified development code and building codes, including the fire code;
  - (c) Providing administrative support to the Planning Commission; and
  - (d) Performing environmental review pursuant to the State Environment Policy Act.
- (3) Director. The Board of County Commissioners may appoint a director of the department, who is directly responsible to the Board of County Commissioners for the following:
  - (a) the proper operation of the department;
  - (b) employing, supervising, and dismissing the personnel of the department;
  - (c) issuing decisions as the Administrative Official pursuant to SCC Title 14;
  - (d) issuing decisions as the SEPA responsible official pursuant to SCC Chapter 14.12;
  - (e) providing administrative and technical assistance to the Planning Commission.
- (4) Building Official. The Director may appoint a Building Official, who is directly responsible to the Director and for decisions as the Building Official pursuant to SCC Title 15.

- (5) Fire Marshal. The Director may appoint a Fire Marshal, who is directly responsible to the Director and for decisions as the Fire Marshal pursuant to SCC Title 15.

## **Chapter 14.02, General Provisions**

### **14.02.010 — 14.02.070**

[No change.]

### **14.02.100 Planning Commission — Created — Membership**

- (1) Created. The Skagit County Planning Commission is hereby reconstituted and created pursuant to Article XI, Section 11 of the Washington State Constitution.
- (2) Purpose. Consistent with RCW 36.70.040, the Planning Commission’s mission is to “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...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.”
- (3) Authority. The Planning Commission is authorized and required to assist the Department and make recommendations on proposed land use plans, policies, regulations, and amendments, and conduct public hearings as specified in this Title and assigned by the Board of County Commissioners. The Planning Commission may also perform such other duties as are assigned by the Board and not inconsistent with this Title.
- (4) Membership. The Planning Commission is composed of nine members, with three residing in each commissioner district.
- (5) Term.
  - (a) Each term begins on [February 1] following the expiration of the previous term.
  - (b) Each term lasts three years.
  - (c) For initial appointments following adoption of this ordinance, the Board must appoint three planning commissioners to fill one-year terms, three to fill two-year terms, and three to fill three-year terms. Each commissioner district should have a one-year, a two-year, and a three-year appointment.

**14.02.110 Planning Commission — Appointment — Eligibility — Removal**

- (1) Appointment. For each planning commissioner position, the County Commissioner elected from that commissioner district must nominate a current resident of that district. To complete the appointment, the Board of County Commissioners must confirm the nomination.
  - (a) At least 45 days before the expiration of a term, or upon a vacancy before the expiration of a term, the Clerk of the Board of County Commissioners must advertise that the Board is seeking letters of interest and statements of qualifications for the Planning Commission position.
  - (b) Within 60 days of the vacancy, the County Commissioner must nominate the incumbent planning commissioner, nominate a person who submitted a letter of interest, nominate another person, or re-advertise the position.
  - (c) If the County Commissioner does not nominate a person within 90 days of the vacancy, the Board of County Commissioners may appoint any current resident of the district.
- (2) Vacancies. The Board must fill a vacancy that occurs during a term with an appointment for only the unexpired portion of that term.
- (3) Eligibility. The Board of Commissioners should appoint Planning Commission members who—
  - (a) represent varying geographic, demographic, and socioeconomic perspectives;
  - (b) ensure effective representation of unincorporated areas of the county;
  - (c) collectively, represent a broad range of local opinion, experience, and expertise, and are entrusted to make recommendations reflecting the broad interests of the community;
  - (d) are free of incompatibility and conflict of interests with other municipal organizations, agencies, and entities within Skagit County;
  - (e) are able to comply at all times with county ethics and conflicts of interest policies; and
  - (f) are able to receive meeting materials electronically.
- (4) Removal. The Board of County Commissioners may remove any planning commissioner for inefficiency, negligence of duty, or malfeasance of office.

#### 14.02.120 Planning Commission — Officers

- (1) Chair and Vice Chair.
  - (a) Election. The Planning Commission must elect its Chair and Vice Chair from among its membership at the first regular meeting after February 1 of each calendar year. The Planning Commission must fill an officer vacancy at the first regular meeting following announcement of the vacancy.
  - (b) Duties. The Chair presides at all meetings of the Planning Commission, enforces the rules of procedure, and signs recorded motions on behalf of the Planning Commission. The Vice Chair has no duties but to serve as Chair in the absence of the Chair.
- (2) Secretary. The Director of the Planning and Development Services Department or the Director's designee serves as secretary to the Planning Commission and is responsible to:
  - (a) maintain the Planning Commission calendar, public notices, and records;
  - (b) set the Planning Commission agenda, in consultation with the Planning Commission chair;
  - (c) notify planning commissioners of meetings and schedule changes;
  - (d) take minutes or create an electronic recording of all meetings and hearings, and create transcripts when appropriate to maintain an adequate record of proceedings.

#### 14.02.130 Planning Commission — Meetings

- (1) Rules of Procedure. The rules contained in the current edition of Robert's Rules of Order Newly Revised govern the Planning Commission in all cases to which they are applicable. The Planning Commission may adopt [special rules of order] [(bylaws)] consistent with this Title, such as some or all of the procedures in Robert's Rules applicable to small boards.
- (2) Quorum. A quorum consists of a majority of the current membership of the Planning Commission.
- (3) Voting. Pursuant to RCW 42.30, the Open Public Meetings Act, all votes must be public, not secret, and not by ballot.
- (4) Staff Participation. [When recognized by the chair.] County staff members are authorized to raise points of order and [interject] points of information.

#### 14.02.140 Planning Commission — Duties — Ethics

(1) Duties. Each planning commissioner must:

- (a) attend all regular meetings, whenever possible;
- (b) notify Planning Commission secretary in advance when unavailable to attend a meeting;

(c) [be prepared to participate in meetings by reading proposals, staff reports, and other provided materials in advance;]

~~(e)~~(d) \_\_\_\_\_ participate in at least one Department-sponsored ~~[continuing education or]~~ training event per year [through at least the planning commissioner's first term];

~~(d)~~(e) \_\_\_\_\_ comply at all times with the following rules and policies:

- (i) County ethics and conflicts of interest policies;
- (ii) The Public Records Act, RCW 42.56;
- (iii) The Open Public Meetings Act, RCW 42.30.

~~(e)~~(f) \_\_\_\_\_ for quasi-judicial actions, comply with the Appearance of Fairness Doctrine, RCW Chapter 42.36.

(2) Conflict of Interest. If a planning commissioner is an applicant; is [currently] a paid or unpaid advocate, agent, or representative of an applicant; or has a [financial] [direct personal or pecuniary] interest in or for a comprehensive plan amendment or land use application before the Planning Commission, the planning commissioner may not participate in a decision or recommendation on the application, and may not be present in the meeting room during discussion of the application.

### Chapter 14.08, Legislative Actions

#### 14.08.010 Purpose — Applicability

The purpose of this Chapter is to establish roles and responsibilities of the Department, the Planning Commission, and the Board of County Commissioners related to adoption and amendment of the Comprehensive Plan, subarea plans, functional plans, and development regulations pursuant to the requirements of RCW Chapter 36.70A, including the public participation program requirements of RCW 36.70A.130(2)(a) and RCW 36.70A.140 and WAC 365-196-600. This Chapter does not apply to review of development permits or the amendment of Countywide Planning Policies.



**14.08.020 Comprehensive Plan Amendments — Petition.**

[No change.]

**14.08.030 Comprehensive Plan Amendments — Initiation of review.**

[No change.]

**14.08.040 Comprehensive Plan Amendments — Environmental review.**

[No change.]

**14.08.050 Comprehensive Plan Amendments — Docketing exceptions.**

A comprehensive plan amendment that qualifies for the exception in RCW 36.70A.130(2)(a), or adoption or amendment of a functional plan, such as an open space or parks plan, need not be considered concurrently with other comprehensive plan amendments in the same calendar year, and is not subject to the requirements of SCC 14.08.020 and 14.08.030.

**14.08.060 Development Regulations — Initiation of review.**

- (1) The Board may initiate the process of adopting or amending development regulations at any time. To do so, the Board must adopt a resolution adding the project to the Department's legislative work program.
- (2) Pursuant to RCW 36.70A.470, any interested person may suggest development regulation amendments consistent with the process for initiating a comprehensive plan amendment petition. No fee is required. The Board must consider any such suggestions consistent with the process for docketing comprehensive plan amendment petitions.

**14.08.070 Public participation requirements.**

- (1) Purpose. RCW 36.70A.140 requires the County to provide for "early and continuous public participation" in the consideration of comprehensive plans and development regulations, including "broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments." This section is intended to meet and exceed these requirements.
- (2) Early notice. Upon Initiation of Review described above, the Department must create a page on the Department website describing the issue and the Department's proposed approach to the project. The Department must provide public notice of the new project, consistent with SCC 14.08.210.

- (3) Planning Commission consultation. The Department must make an initial presentation on the project to the Planning Commission and provide an opportunity for discussion of approaches and alternatives.
- (4) Draft proposal. The Department must generate the text of the proposal, include any maps or other material that constitute part of the proposal, and may include as options the alternatives that the Planning Commission identified.
- (5) Staff report. When the Department releases the complete draft proposal, it must also release a staff report that includes the following elements:
  - (a) Background: statement of issue and statutory requirements.
  - (b) Summary: description of proposed plan or code amendment.
  - (c) Analysis: assessment and evaluation of proposal.
  - (d) Recommendation: a recommendation for adoption of one of the approaches.
  - (e) Consistency: a comparison of the proposal to relevant plans and policies (e.g. Comprehensive Plan, subarea plans) and evaluation for consistency.
  - (f) Process:
    - (i) dates and description of all public notices,
    - (ii) description of SEPA threshold determination,
    - (iii) information on how the public can comment on the proposal,
    - (iv) deadlines for public comment, and
    - (v) address of project webpage.
- (6) Formal public comment. The Department must provide public notice of the release of the draft proposal consistent with SCC 14.08.210 and must provide a written comment period and a public hearing consistent with SCC 14.08.220.

**14.08.080 Review by Planning Commission.**

- (1) Public Hearing.
  - (a) The Planning Commission must hold at least one public hearing before issuing a recommendation on the proposal.

- (b) If necessary due to the number of people present to comment, the Planning Commission may continue the public hearing to another date, time, or location. If the proposal evolves substantially during deliberations, the Planning Commission may request that the Department schedule an additional public hearing before continuing deliberations.

(2) Deliberation

- (a) Required consideration. The Planning Commission must consider the following in making its recommendation:

- (i) written comment and public hearing testimony received during any public comment period;
- (ii) recommendations and analysis from relevant County advisory groups;
- (iii) staff recommendations and analysis;
- (iv) legal advice;
- (v) consistency of the proposal with the comprehensive plan;
- (vi) for proposed Comprehensive Plan map changes, whether the proposal is justified by changed or changing conditions, whether the proposal would create an isolated land use designation unrelated to adjacent designations (a spot zone), and whether the proposal will be compatible with neighboring properties and not adversely affect the value of those properties.

- (b) Ability to ask follow-up questions. The Planning Commission may ask [specific] follow-up questions of those that testify or submit written comments in order to clarify their testimony or request [specific] further information.

- (c) Ability to continue deliberations. The Planning Commission may continue their deliberations to a subsequent meeting if it needs additional information or additional time to deliberate.

(3) Recommendation to Department.

- (a) Timing. At the conclusion of its deliberations, the Planning Commission must vote on the proposal.
- (b) Vote. The Planning Commission may vote to recommend approval, approval with modifications, or rejection of the proposal. The Planning Commission may recommend general modifications to the proposal and need not provide explicit textual edits.

- (c) Content. The Planning Commission's recommendation on a proposal must be by recorded motion, which must contain the following components:
  - (i) Findings of fact: a list of facts that the Planning Commission believes to be true and that are relevant to its recommendation on the proposal.
  - (ii) Reasons for action: an explanation of the Planning Commission's rationale in making its recommendation.
  - (iii) Recommendation: the recommendation resulting from the vote;
  - (iv) Vote: a record of the roll call vote on the entire recorded motion.
  - (v) Additional comments: [any] other [relevant] comments, suggestions, or recommendations, not strictly related to the [proposal][recommendation], that the Planning Commission desires to include.
  - (vi) Signatures of the chair and secretary attesting that the recorded motion reflects the Planning Commission's decision.
- (4) Transmission to Board.
  - (a) Timing. Within 14 days of receipt of the Planning Commission's signed recorded motion, the Department must formulate and transmit its recommendation to the Board of County Commissioners.
  - (b) Content. The Department's transmission must include:
    - (i) the Department's initial staff report;
    - (ii) the Planning Commission's recorded motion;
    - (iii) the Department's recommended changes to the proposal, if any, in response to the Planning Commission's recommendations;
    - (iv) an evaluation of what further process is required to adopt the proposal, consistent with SCC 14.08.090;
    - (v) a draft ordinance adopting the Department's recommendations.

**14.08.090 Review and decisions by Board.**

- (1) Upon receipt of a recommendation pursuant to SCC 14.08.080(4), the Board must consider and take action on the recommendation.

- (2) The Board may take final action with no further process in any of the following situations:
  - (a) when the plan, plan amendment, or development regulation adopted by the Board conforms substantially to the proposal as made available for public comment;
  - (b) pursuant to RCW 36.70A.035, when any of the following are true: if:
    - (i) An environmental impact statement (EIS) has been prepared under Chapter 43.21C RCW for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
    - (ii) The proposed change is within the scope of the alternatives available for public comment;
    - (iii) The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
    - (iv) The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
    - (v) The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.
  - (c) when the action is to preserve the status quo and reject any and all changes in their entirety;
- (3) The Board must allow additional public comment opportunity prior to final action to adopt a proposal with a substantial change from the draft made available for public comment. The Board must choose one or more of the following options to provide such opportunity:
  - (a) an additional written public comment period
  - (b) one or more public hearings before the Board;
  - (c) remand of issue(s) to the Planning Commission for further recommendations after an additional written public comment period, or an additional public hearing, or both.
- (4) If the Board adopts a substantial change without remand, it must adopt its own findings of fact and reasons for action, setting forth the factors considered in the public comment or at the hearing and its own analysis of findings considered by it to be controlling.

- (5) Reserved.
- (6) Final Disposition of Annual Docket. The Board must take action on the current year's docket before establishing a subsequent docket. The Board's decision to either approve, deny, or defer action on plans or plan amendments terminates that year's docket. Initiation of any new docket(s) must be established as required in SCC 14.08.030.
- (7) The Board may defer action on any specific plan or plan amendment to a future docket if:
  - (a) Additional time is needed to analyze the impacts of the proposal;
  - (b) Delaying action on the proposal would unfairly delay action on other proposals that are otherwise ready for a decision;
  - (c) Approval of the proposal depends on the implementation of other rules, standards or policies that either do not exist or are not official by the time the Board is ready to make its decision on the annual docket; or
  - (d) The Board determines that the proposed plan or plan amendment is more appropriately considered during a subsequent amendment process.

**14.08.100 Emergency or interim regulations.**

[No change.]

**14.08.110 Appeal.**

- (1) Skagit County does not provide an appeal process for legislative decisions of the Board of County Commissioners.
- (2) RCW Chapter 36.70A provides an appeal process for plans, development regulations, and amendments.

**14.08.210 Public Notice.**

- (1) Consistent with RCW 36.70A.035(1), "public notice" includes all of the following:
  - (a) publishing a native electronic copy of the document on the project's webpage on the Department's website;
  - (b) sending notice to the Department's e-mail list, including general lists or relevant lists for specific proposals or subject areas;
  - (c) notifying cities, towns, and tribes within the County;
  - (d) notifying the official newspaper of the County.

- (2) For written comment periods and public hearings, “public notice” also includes publishing a paid notice in the official newspaper of the County.
- (3) For site-specific proposals (e.g. site-specific Comprehensive Plan map amendments), the initial “public notice” of a project also includes all of the following:
  - (a) posting notice on the property;
  - (b) mailing notice directly to the owners of the subject property and to all property owners within 300 feet of the subject property.
- (4) Notices must include all of the following:
  - (a) a concise description of the project or proposal in plain English;
  - (b) information on how to provide comment on the proposal;
  - (c) deadlines for public comment;
  - (d) address of the project webpage.

#### **14.08.220 Public Comment**

- (1) Written comment periods.
  - (a) Length. ~~[A][Any]~~ written comment period must last at least 14 days from the date of advertisement. [An initial written comment period for the complete draft of a proposal ~~[[must/should]] last at least 30 days.]]~~[A longer comment period should be considered for more significant projects.]
  - (b) Consolidated end date. A written comment period offered concurrent with advertisement of a public hearing should conclude at the end of the public hearing.
- (2) Public hearings.
  - (a) Notice. A public hearing must be advertised at least 10 days prior to the date of the public hearing.
  - (b) Rules.
    - (i) The chair should read an opening statement describing the subject of the hearing and any rules for testimony.
    - (ii) A commissioner should not interrupt a person testifying except the chair may call the person to order.

(iii) Each person who testifies should receive an equal allotment of time.

**14.08.230 Citizen and Technical Advisory Committees.**

- (1) This Section addresses the creation and roles of Citizen Advisory Committees (CACs) and Technical Advisory Committees (TACs).
- (2) The Board may establish a CAC or TAC, or both, to participate and assist in the development of Comprehensive Plan elements, subarea plans, functional plans, and development regulations. The Board shall seek to have a variety of interests represented on such committees.
- (3) The Board may establish a procedure for taking applications and selecting membership to the CAC or TAC, including establishing a term of service and a method of reappointment (if any) or replacement of members. The Board may also establish by resolution rules of procedure and timeframes for recommendations by a CAC or TAC.
- (4) CACs and TACs must follow the requirements of Chapter 42.30 RCW, Open Public Meetings Act. All meetings of the CAC or TAC must be open to the public and held at a site and times when the working public can attend. The CAC and TAC must establish and publish a schedule of meeting days, times, and locations for main group and subcommittee meetings and must keep minutes of committee and subcommittee meetings.
- (5) A County staff person will be assigned to each CAC and TAC, and will provide staff support and maintain a copy of the record of such committee or subcommittee.
- (6) The Board may forward a CAC or TAC recommendation to the Planning Commission, or it may make suggested changes to such recommendation and either remand it to the CAC or TAC for further consideration, or forward the CAC or TAC recommendation to the Planning Commission with the Board's suggested changes.