

## ORDINANCE NO. 031-21

### **AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, ESTABLISHING A PLANNED ACTION FOR THE DOWNTOWN SUBAREA PURSUANT TO THE STATE ENVIRONMENTAL POLICY ACT; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the State Environmental Policy Act (SEPA) and implementing rules provide for the integration of environmental review with land use planning and project review through designation of "Planned Actions" by jurisdictions planning under the Growth Management Act (GMA); and

**WHEREAS**, the City of Port Orchard ("City") has adopted a Comprehensive Plan complying with the GMA; and

**WHEREAS**, in 2019, the State Legislature passed E2SHB 1923 creating RCW 36.70A.600 and providing for grant funding to jurisdictions taking specific actions to increase residential building capacity; and

**WHEREAS**, the City received a grant from the Washington State Department of Commerce under E2SHB 1923 to prepare a subarea plan and the development regulations as described in this chapter (Contract C081-19); and

**WHEREAS**, the City previously had conducted planning for the Downtown Center and the County Campus area; and

**WHEREAS**, this updated planning initiative combined both areas into a single area and updated the comprehensive plan and land use code applicable to these areas consistent with Chapter 36.70A RCW; and

**WHEREAS**, on August 14, 2020, under RCW 43.21C.440, the City issued a SEPA Determination of Significance (DS) for the Subarea Plan and updated regulations as a Planned Action based on the likelihood that the proposals may have significant adverse environmental impacts, and identified three alternative subarea proposals for analysis in an Environmental Impact Statement (EIS), including a no-action alternative; and

**WHEREAS**, on April 26, 2021, the City issued a Final Environmental Impact Statement (FEIS) for the Subarea Plan and updated regulations, which addressed issues of current land uses, development capacity, future development mix and location of densities and uses, transportation, utilities, public facilities and amenities, cultural resources, and natural resources, and there have been no appeals; and

**WHEREAS**, the FEIS adequately addresses the significant impacts of the updated Subarea Plan

and regulations; and

**WHEREAS**, on June 22, 2021, the City Council adopted the Downtown Subarea Plan, and amendments to the City's Comprehensive Plan and development regulations to implement the Subarea Plan in conjunction with this Planned Action Ordinance; and

**WHEREAS**, in accordance with RCW 43.21C.440, the City desires to designate a Planned Action for the Downtown Subarea Plan; and

**WHEREAS**, consistent with RCW 43.21C.440(1)(b)(i), the Planned Action is in conjunction with a subarea plan adopted under Chapter 36.70A RCW and has had its significant impacts adequately addressed by an EIS under the requirements of SEPA, Chapter 43.21C RCW; and

**WHEREAS**, this Planned Action is for the purpose of implementing development projects in the subarea; and

**WHEREAS**, these projects will be located within the Urban Growth Area and will not include essential public facilities; and

**WHEREAS**, designation of a Planned Action expedites the permitting process for subsequent, implementing projects consistent with the Subarea Plan because those impacts have been previously addressed in a planned action environmental impact statement, and thereby adoption of this Planned Action Ordinance encourages desired growth, investment, and economic development; and

**WHEREAS**, the Downtown Subarea Plan FEIS identifies impacts and mitigation measures associated with planned development in City's Downtown countywide center; and

**WHEREAS**, the City has adopted Comprehensive Plan amendments and development regulations specific to the Downtown Subarea Plan which will guide the allocation, form, and quality of desired development; and

**WHEREAS**, the City's SEPA Rules, set forth in POMC Chapter 20.160, provide for Planned Actions within the City; and

**WHEREAS**, the City as lead agency provided public comment opportunities through an EIS scoping period from August 14 through September 4, 2020, and a public comment period for the Draft Downtown Subarea Plan and Draft EIS from January 19 through February 18, 2021, and held public meetings and hearings as part of a coordinated Downtown Subarea Plan public participation and outreach program during 2020 and 2021; and

**WHEREAS**, the City held an EIS public scoping meeting on September 1, 2020, and provided notice of the meeting on August 13, 2020, by mail to all businesses and property owners located within the boundaries and within 1,000 feet outside of the boundaries of the area included in the Downtown Subarea Plan, which exceeds the minimum notice requirements contained in RCW 43.21C.440; and

**WHEREAS**, the City provided notice of the September 1, 2020 EIS scoping meeting on August 14, 2020, by emailing all affected federally recognized tribal governments and agencies with jurisdiction over the future development anticipated for the planned action, in compliance with RCW 43.21C.440; and

**WHEREAS**, on May 4, 2021, the Planning Commission held a public hearing on the Downtown Subarea Plan after due notice provided on April 15, 2021, to all parties of record and all affected federally recognized tribal governments and agencies with jurisdiction over the future development for the Subarea Plan; and

**WHEREAS**, on May 21, 2021 the City Council provided notification of a public hearing to be held on May 25, 2021, by newspaper publication, publication on the City's website and outreach on social media channels; and

**WHEREAS**, the City Council held a public hearing on May 25, 2021, on the Downtown Subarea Plan, and considered public comment; and

**WHEREAS**, the City provided notice of intent to adopt a Planned Action Ordinance for the Final EIS on June 11, 2021 to all parties of record and all affected federally recognized tribal governments and agencies with jurisdiction over the future development for the Downtown Subarea Plan;

**WHEREAS**, the City Council reviewed the Planned Action Ordinance at its work-study meeting on June 15, 2021; now, therefore,

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The recitals set forth in this ordinance are hereby incorporated as if fully set forth herein.

**SECTION 2. Purpose.** The City Council declares that the purpose of this ordinance is to:

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- A. Designate the Downtown Countywide Center, as adopted in the Downtown Subarea Plan (Appendix D) of the City's Comprehensive Plan, as a Planned Action Area for the purposes of environmental review and permitting of subsequent, implementing projects pursuant to SEPA, RCW 43.21C.440;
  - B. Combine environmental analysis, land use plans, development regulations, City codes and ordinances together with the mitigation measures in the Downtown Subarea Plan EIS to mitigate environmental impacts and process planned action development applications within the Planned Action Area;
  - C. Determine that the EIS prepared for the Downtown Subarea Plan meets the requirements of a Planned Action EIS pursuant to SEPA;
  - D. Establish criteria and procedures, consistent with state law, that will determine whether subsequent projects within the Planned Action Area qualify as Planned Actions;
  - E. Provide the public with information about Planned Actions and how the City will process implementing projects within the Planned Action Area;
  - F. Streamline and expedite the land use permit review process by relying on the EIS completed for the Planned Action; and
  - G. Apply the City's development regulations together with the mitigation measures described in the EIS and this Ordinance to address the impacts of future development contemplated by this Ordinance.

**SECTION 3. Findings.** The City Council finds as follows:

- A. The City is subject to the requirements of the GMA (RCW 36.70A), and is applying the Planned Action to an Urban Growth Area (UGA); and
- B. The City has adopted a Comprehensive Plan in compliance with the GMA, and has amended the Comprehensive Plan to incorporate a subarea plan (Downtown Subarea Plan - Appendix D) specific to the Downtown Countywide Center; and
- C. The City is adopting development regulations concurrent with the Downtown Subarea Plan to implement the Plan, including this ordinance; and
- D. An EIS has been prepared for the Planned Action Area, and the City Council finds that the EIS adequately identifies and addresses the probable significant environmental impacts associated with the type and amount of development planned to occur in the

designated Planned Action Area; and

- E. The mitigation measures identified in the Downtown Subarea Plan EIS, incorporated herein by reference, together with adopted City development regulations, will adequately mitigate significant impacts from development within the Planned Action Area; and
- F. The Downtown Subarea Plan and Final EIS identify the location, type and amount of development that is contemplated by the Planned Action; and
- G. Future projects that are implemented consistent with the Planned Action will protect the environment, benefit the public, and enhance economic development; and
- H. The City provided several opportunities for meaningful public involvement in the Downtown Subarea Plan and EIS, including a public scoping meeting prior to the publication of notice for the planned action ordinance; have considered all comments received; and, as appropriate, have modified the proposal or mitigation measures in response to comments; and
- I. Essential public facilities defined in RCW 47.06.140 are excluded from the Planned Action and not eligible for review or permitting as Planned Actions unless they are accessory to or part of a project that otherwise qualifies as a planned action; and
- J. The Planned Action applies to a defined area that is smaller than the overall City boundaries and smaller than the overall County designated UGA; and
- K. Public services and facilities are adequate to serve the proposed Planned Action, with implementation of Subarea Plan and mitigation measures identified in the EIS.

**SECTION 4. Procedures and Criteria for Evaluating and Determining Planned Action Projects within the Planned Action Area.**

A. Planned Action Area. This Planned Action designation shall apply to the area shown in **Exhibit A**, incorporated herein by reference.

B. Environmental Document. A Planned Action determination for a site-specific project application within the Planned Action Area shall be based on the environmental analysis contained in the Final EIS issued by the City on April 26, 2021. The mitigation measures contained in the findings of the Final EIS shall, along with adopted City regulations, provide the framework that the City will use to apply appropriate conditions to qualifying Planned Action projects within the Planned Action Area.

C. Planned Action Designated. Land uses and activities described in the Final EIS, subject to the thresholds described in Subsection 4(D) and the mitigation measures contained in the findings of the final EIS, are designated Planned Actions or Planned Action Projects pursuant to RCW 43.21C.440. A development application for a site-specific Planned Action project located within Planned Action Area shall be designated a Planned Action if it complies with the mitigation measures contained in the findings of the final EIS and meets the criteria set forth in Subsection 4(D) of this Ordinance and all other applicable laws, codes, development regulations and standards of the City are met.

D. Planned Action Qualifications. The following thresholds shall be used to determine if a site-specific development proposed within the Planned Action Area was contemplated as a Planned Action and has had its environmental impacts evaluated in the Planned Action EIS:

(1) Qualifying Land Uses.

(a) Planned Action Categories: The following general categories/types of land uses are defined in the Downtown Subarea Plan and are considered Planned Actions:

- i. Single-family detached (including new manufactured homes).
- ii. Designated manufactured home, manufactured or mobile home (except for new designated manufactured home).
- iii. Two-family.
- iv. Single-family attached (2 units).
- v. Single-family attached (3 or 4 units).
- vi. Single-family attached (5-6 units).
- vii. Multifamily (3 or 4 units).
- viii. Multifamily (5 or more units).
- ix. Public use (includes a community event center and county campus/courthouse expansion as shown in the subarea plan).
- x. Museum, library.
- xi. Park, recreation field.
- xii. Special Event Facilities (limited to the community event center described in the subarea plan).
- xiii. All overnight lodging.
- xiv. Business Services.
- xv. Conference Center (limited to the community event center described in the subarea plan).
- xvi. All Restaurants.
- xvii. All retail establishments (not to exceed 50,000 square feet).
- xviii. Convenience Store without fuel pumps.
- xix. Brewery (under 15,001 square feet).

(b) **Planned Action Uses:** A land use shall be considered a Planned Action Land Use when:

- i. it is located within the area shown in Exhibit A;
- ii. it is one of the land uses included under Section 4(D)(1)(a) above;
- iii. it is listed in development regulations applicable to the zoning classifications applied to properties within the Planned Action Area.
- iv. the application for development is submitted after the effective date of this ordinance.

A Planned Action may be a single Planned Action use, or a combination of Planned Action uses together in a mixed-use development. Planned Action uses include accessory uses.

(c) **Public Services:** The following public services, infrastructure, and utilities are also Planned Actions: Multi-modal transportation improvements, water and sewer improvements, and stormwater improvements, considered in capital plans associated with the Downtown Subarea Plan.

- i. Applicants for public services, infrastructure, and utility projects shall demonstrate consistency with the Downtown Subarea Plan, Port Orchard Shoreline Master Program, and POMC 20.162 (Critical Areas Regulations).
- ii. Essential public facilities defined in RCW 47.06.140 are excluded from the Planned Action and not eligible for review or permitting as Planned Actions unless they are accessory to or are part of a project that otherwise qualifies as a planned action.

(2) **Development Thresholds:**

(a) **Land Use:** The following amounts of various new (net increase in) land uses are contemplated by the Planned Action:

- i. 848,600 square feet of nonresidential uses. Under this category, the following square footages are reserved for the following land uses:
  - a. Community events center – 24,000 square feet of gross indoor floor area.
  - b. Kitsap County Courthouse Campus – 580,000 square feet of gross indoor floor area.
- ii. 1,288 units or 753,283 square feet gross of indoor floor area of residential household living, whichever threshold is reached first. Residential household living is defined in POMC 20.39.100.

iv. Public park and recreation facilities included in the City of Port Orchard Comprehensive Plan.

(b) Further environmental review may be required pursuant to WAC 197-11- 172, if any individual Planned Action or combination of Planned Actions exceed the development thresholds specified in this Ordinance and/or alter the assumptions and analysis in the Final EIS.

(3) Transportation Thresholds:

(a) **Concurrency.** All Planned Actions shall meet the transportation concurrency requirements and the level of service (LOS) thresholds established in the Port Orchard Comprehensive Plan. All applicants under this Planned Action shall submit a transportation concurrency application that meets the requirements of POMC Chapter 20.180.

(b) **Traffic Impact and Mitigation.** The responsible City official shall require the project to mitigate impacts consistent with the mitigation measures contained in the findings of the final EIS.

(4) Elements of the Environment and Degree of Impacts. A proposed project that would result in a significant change in the type or degree of adverse impacts to any element(s) of the environment analyzed in the Final EIS, would not qualify as a Planned Action.

(5) Changed Conditions. Should environmental conditions change significantly from those analyzed in the Final EIS, the City's SEPA Responsible Official may determine that the Planned Action designation is no longer applicable until supplemental environmental review is conducted.

(6) Substantive Authority. Pursuant to SEPA Substantive Authority as provided in POMC 20.60, impacts shall be mitigated through the measures included in the findings of the Final EIS.

E. Planned Action Review Criteria.

(1) The City's SEPA Responsible Official may designate as "planned actions", pursuant to RCW 43.21C.030, applications that meet all of the following conditions:

(a) The proposal is located within the Planned Action area identified in Exhibit A of this ordinance;

(b) The proposed uses and activities are consistent with those described in the Final EIS and Subsection 4(D) of this ordinance;



- (c) The proposal is within the Planned Action thresholds and other criteria of Subsection 4(D) of this ordinance;
- (d) The proposal is consistent with the Port Orchard Comprehensive Plan and the Downtown Subarea Plan;
- (e) The proposal's significant adverse environmental impacts have been identified in the Final EIS;
- (f) The proposal's significant impacts have been mitigated by application of the mitigation measures identified in the findings of the Final EIS, and other applicable City regulations, together with any modifications or variances or special permits that may be required;
- (g) The proposal complies with all applicable local, state and/or federal laws and regulations, and the SEPA Responsible Official determines that these constitute adequate mitigation; and
- (h) The proposal is not an essential public facility as defined by RCW 36.70A.200(1), unless the essential public facility is accessory to or part of a development that is designated as a planned action under this ordinance.

(2) The City shall base its decision on review of a SEPA checklist or an alternative form prepared by the City for use in this Planned Action area pursuant to state law, the mitigation measures in the findings of the Final EIS, and review of the application and supporting documentation.

(3) A proposal that meets the criteria of this section shall be considered to qualify and be designated as a planned action, consistent with the requirements of RCW 43.21C.030, WAC 197-11-164 et seq., and this ordinance.

F. Effect of Planned Action.

(1) Designation as a Planned Action Project by the SEPA Responsible Official means that a qualifying proposal has been reviewed in accordance with this Ordinance and found to be consistent with the development parameters and thresholds established herein, and with the environmental analysis contained in the Planned Action EIS.

(2) Upon determination by the City's SEPA Responsible Official that the proposal meets the criteria of Subsections 4(D) and (E) and qualifies as a planned action, the proposal shall not require a SEPA threshold determination, preparation of an EIS, or be subject to further review

pursuant to SEPA.

G. Planned Action Permit Process. Applications for planned actions shall be reviewed pursuant to the following process:

(1) Development applications shall meet all applicable requirements of the Port Orchard Municipal Code (POMC). Applications for planned actions shall be made on forms provided by the City and shall include a SEPA checklist.

(2) The City's SEPA Responsible Official shall determine whether the application is complete, as provided in POMC Chapter 20.24.

(3) If the application is for a project within the Planned Action Area defined in Exhibit A, the application will be reviewed to determine if it is consistent with the criteria of this ordinance and thereby qualifies as a Planned Action project.

(4) SEPA Decision.

(a) The decision of the City's SEPA Responsible Official regarding qualification of a project as a Planned Action will be the same decision type as the underlying permit for which the Planned Action is evaluated. The SEPA Responsible Official shall notify the applicant of his/her decision. Notice of the determination on decisions involving a planned action shall also be mailed or otherwise verifiably delivered to federally recognized tribal governments and to agencies with jurisdiction over the planned action project, pursuant to RCW 43.21C.440.

(b) If the project is determined to qualify as a Planned Action, it shall proceed in accordance with the applicable permit review procedures specified in POMC Chapter 20.22, except that no SEPA threshold determination, EIS or additional SEPA review shall be required.

(c) Notice of the application for a planned action project shall be consistent with Chapter 20.22 POMC.

(5) If notice is otherwise required for the underlying permit, the notice shall state that the project has qualified as a Planned Action. If notice is not otherwise required for the underlying permit, no special notice is required by this ordinance. See Subsection 4(G)(3)(a) regarding notice of the Type 1 decision.

(6) To provide additional certainty about applicable requirements, the City or the applicant may request consideration and execution of a development agreement for a Planned Action project, consistent with RCW 36.70B.170 et seq and Chapter 20.26 POMC.

(7) If a project is determined to not qualify as a Planned Action, the SEPA Responsible Official shall so notify the applicant and prescribe a SEPA review procedure consistent with the City's SEPA regulations and the requirements of state law. The notice shall describe the elements of the application that result in failure to qualify as a Planned Action.

(8) Projects that fail to qualify as Planned Actions may incorporate or otherwise use relevant elements of the Final EIS, as well as other relevant SEPA documents, to meet their SEPA requirements. The SEPA Responsible Official may limit the scope of SEPA review for the non-qualifying project to those issues and environmental impacts not previously addressed in the Final EIS.

### **SECTION 5. Monitoring and Review.**

A. The City should monitor the progress of development in the designated Planned Action area as deemed appropriate to ensure that it is consistent with the assumptions of this Ordinance and the Final EIS regarding the type and amount of development and associated impacts, and with the mitigation measures and improvements planned for the Planned Action Area.

B. This Planned Action Ordinance shall be reviewed by the SEPA Responsible Official no later than eight years from its effective date. The review shall determine the continuing relevance of the Planned Action assumptions and findings with respect to environmental conditions in the Planned Action area, the impacts of development, and required mitigation measures. Based upon this review, the City may propose amendments to this ordinance and/or may supplement or revise the Final EIS.

C. The ability to utilize the Planned Action process for development under this Ordinance shall terminate on April 26, 2031, unless extended following the review in subsection B above. For purposes of utilizing the planned action process, submittal of a complete permit application (deemed complete under POMC 20.24) of the following types prior to the termination date shall be considered a Planned Action for the life of the permit:

1. Conditional Use Permit (POMC 20.50)
2. Building Permits (includes Residential, Commercial, Plumbing & Mechanical, Demolition) (POMC Title 20, Subtitle X)
3. Shoreline Substantial Development Permit (POMC 20.164)
4. Shoreline Conditional Use Permit (POMC 20.164)
5. Shoreline Variance (POMC 20.164)
6. Variances (POMC 20.28)
7. Land Disturbing Activity Permit (POMC 20.140 and POMC 20.150.100)
8. Stormwater Drainage Permit (POMC 20.150)

9. Preliminary Plat (POMC 20.88)
10. Short Plat (POMC 20.86)
11. Binding Site Plan (POMC 20.94)
12. Street Excavation Permit (POMC 12.04)
13. Street Use Permit (POMC 12.24)
14. Final Plat (POMC 20.90)
15. Development Agreement (POMC 20.26)
16. Right of Way Permit (POMC 12.04)

**SECTION 6. Conflict.** In the event of a conflict between this Ordinance or any mitigation measures imposed thereto, and any Ordinance or regulation of the City, the provisions of this Ordinance shall control, except that the provisions of the City's critical areas code, shoreline master program or any International Building Code shall supersede.

**SECTION 7. Corrections.** Upon the approval of the city attorney, the city clerk and/or code publisher is authorized to make any necessary technical corrections to this ordinance, including but not limited to the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.


**SECTION 8. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

**SECTION 9. Effective Date.** This ordinance shall be published in the official newspaper of the city and shall take full force and effect five (5) days after the date of publication. A summary of this ordinance in the form of the ordinance title may be published in lieu of publishing the ordinance in its entirety.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 22<sup>nd</sup> day of June 2021.

  
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Robert Putaansuu, Mayor

ATTEST:

  
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Brandy Rinearson, MMC, City Clerk



APPROVED AS TO FORM:



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Charlotte A. Archer, City Attorney

SPONSOR:



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Scott Diener, Council Member

PUBLISHED: June 25, 2021

EFFECTIVE DATE: June 30, 2021

EXHIBIT A: Map of Planned Action Area

