

**AN ORDINANCE AMENDING ORDINANCE 397-2007 IMPOSING A 180-DAY MORATORIUM ON THE ACCEPTANCE OF NEW APPLICATIONS FOR DEVELOPMENT PERMITS IN THE 2006 “EXPANSION AREAS” OF THE FOLLOWING UGAS: SILVERDALE, CENTRAL KITSAP, WEST BREMERTON, GORST, AND PORT ORCHARD; ESTABLISHING A DATE FOR A PUBLIC HEARING ON SUCH MORATORIUM; DECLARING AN EMERGENCY AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.**

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**WHEREAS**, the Growth Management Act (GMA) requires Kitsap County to comprehensively plan for growth under Chapter 36.70A RCW; and

**WHEREAS**, RCW 36.70A.130 requires Kitsap County to, at least every ten years, review its designated urban growth area (UGA) or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area; and

**WHEREAS**, Kitsap County adopted the Ten Year Comprehensive Plan Update on December 11, 2006, which, *inter alia*, expanded the UGA boundaries of the Silverdale, Central Kitsap, West Bremerton, Gorst, and Port Orchard UGAs; and

**WHEREAS**, this action was appealed to the Central Puget Sound Growth Management Hearings Board (“Growth Board”) and a decision rendered on August 15, 2007 in *Suquamish II v. Kitsap County*, CPSGMHB Case No. 047-3-0019c, Final Decision and Order (August 15, 2007). In part, the Kitsap County Capital Facilities Element was found to be noncompliant and invalid; and

**WHEREAS**, appellants in *Suquamish II* requested reconsideration and the Growth Board, in *Suquamish II v. Kitsap County*, CPSGMHB Case No. 07-3-0019c, Order on Motion for Reconsideration (September 13, 2007), declared the expansion areas of the Silverdale, Central Kitsap, West Bremerton, Gorst, and Port Orchard UGAs invalid; and

**WHEREAS**, RCW 36.70A.302 mandates, with limited exceptions, that under a determination of invalidity, applications received after September 14, 2007 do not and cannot vest to the invalidated plan or regulation; and

**WHEREAS**, the Kitsap County Board of Commissioners (“Board”) determined that a moratorium was necessary to reduce possible confusion over the effect of the Central Puget Sound Growth Management Hearings Board’s decision and to prevent the unnecessary expenditure of resources by preventing the County from accepting developments permits within the invalidated areas; and

**WHEREAS**, Kitsap County is authorized by RCW 36.70.795 and RCW 36.70A.390 to impose a moratorium.

**WHEREAS**, the Board imposed a 180-day moratorium on September 24, 2007 and directed that a hearing on the moratorium be held within 60 days in accordance with RCW 36.70A.390; and

**WHEREAS**, on October 11, 2007, Kitsap County filed a “Request for Clarification, Modification, or Rescission of the Orders of Invalidity” with the Growth Board; and

**WHEREAS**, on October 25, 2007, the Growth Board issued an Order denying the County’s Request for Clarification, Modification, or Rescission; and

**WHEREAS**, within its October 25, 2007 Order, the Growth Board indicated that the lands within the expanded UGAs are “rural lands” until such time as the County achieves compliance with the GMA; and

**WHEREAS**, Kitsap County Ordinance No. 370- 2006 did not include a savings clause reviving rural zoning standards in the case the Ordinance was found invalid; and

**WHEREAS**, the Growth Board’s October 25, 2007 Order created some confusion regarding which standards are to be applied to the areas exempt from this moratorium and the Orders on Invalidity; and

**WHEREAS**, the Board finds that RCW 36.70A.302(3)(b) addresses this issue and that specific types of projects are not subject to invalidity pursuant to that statute, and that the moratorium ordinance previously adopted should be clarified.

**NOW THEREFORE THE KITSAP COUNTY BOARD OF COMMISSIONERS DO ORDAIN AS FOLLOWS:**

**Section 1. Preliminary Findings.** The recitals set forth above are hereby adopted as the Kitsap County Board of Commissioner’s findings in support of the moratorium imposed by this Ordinance.

**Section 2. Moratorium.** A moratorium is hereby imposed upon the acceptance of any new applications for permits within the portions of the following UGAs that were expanded by the Ten Year Comprehensive Plan Update adopted on December 11, 2006: Silverdale, Central Kitsap, West Bremerton, Gorst, and Port Orchard. The expansion areas are shown in color on the attached maps.

RCW 36.70A.302(3)(b) states that a determination of invalidity does not apply to certain development permits. Therefore, consistent with RCW 36.70A.302(3)(b), this moratorium shall not apply to development permit applications for:

(a) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before September 14, 2007;

(b) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before September 14, 2007;

(c) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before September 14, 2007.

Additionally, because the determination if invalidity does not apply to the above development permits, applications for these permits shall still be reviewed under the zoning regulations adopted in Ordinances 367-2006 and 370-2006.

**Section 3. Recent Application Submittal.** Because such applications cannot vest under RCW 36.70A.302, any application for a development permit that was received by the Kitsap County Department of Community Development after September 14, 2007, that is within one of the invalidated expansion areas, and that does not qualify as one of the exceptions identified in Section 2 above, may be returned upon request along with a refund of the application fees.

**Section 4. Effective Period for the Moratorium.** The Kitsap County Board of County Commissioners hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve public welfare and to prevent the potential for urban levels of development in the rural areas of Kitsap County. Accordingly, the moratorium set forth in this ordinance shall be in effect immediately and shall expire on March 23, 2008, unless terminated or amended sooner by the Kitsap County Board of County Commissioners.

**Section 5. Public Hearing.** Pursuant to RCW 36.70.795 and RCW 36.70A.390, the Kitsap County Board of Commissioners held a public hearing on November 5, 2007.

**Section 6. Declaration of Emergency.** The Kitsap County Board of Commissioners hereby declares for the public interest, safety and welfare reasons set forth above, that an emergency exists necessitating that this ordinance take effect immediately upon its passage.

**Section 7. Severability.** If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance.

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**ENACTED** this \_\_\_\_ day of \_\_\_\_\_, 2007.

BOARD OF COUNTY COMMISSIONERS  
KITSAP COUNTY, WASHINGTON

\_\_\_\_\_  
JOSH BROWN, Chair

\_\_\_\_\_  
JAN ANGEL, Commissioner

\_\_\_\_\_  
STEVE BAUER, Commissioner

ATTEST:

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Opal Robertson,  
Clerk of the Board

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Approved as to form:

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Deputy Prosecuting Attorney