

ORDINANCE NO. 2009-03-007

AN INTERIM EMERGENCY ORDINANCE ESTABLISHING A MORATORIUM ON THE FILING, ACCEPTANCE, AND PROCESSING OF APPLICATIONS FOR DIVISIONS OF LAND, BUILDING PERMITS AND LAND DISTURBANCE ACTIVITIES WITHIN THE LAKE WHATCOM WATERSHED.

WHEREAS, Lake Whatcom is the City of Bellingham's drinking water reservoir. The City provides water from the lake to more than 75,000 people; and

WHEREAS, in addition to the City of Bellingham water customers, approximately 25,000 other Whatcom County residents obtain their drinking water from Lake Whatcom; and

WHEREAS, the federal Clean Water Act requires the State of Washington to set water quality standards and prepare a list of waterbodies, called the 303(d) list of impaired waterbodies, that fail to meet those standards, based on tests for specific polluting substances; and

WHEREAS, for each waterbody on the list, the State Department of Ecology (DOE) must determine how much of those pollutants the waterbody can process and still meet the state water quality standards. The amount of allowable pollutants is called the total maximum daily load, or TMDL; and

WHEREAS, data shows that Lake Whatcom's water quality has been deteriorating for the last 20 years; and

WHEREAS, continued deterioration in Lake Whatcom's water quality harms the health, safety, and welfare of the public; and

WHEREAS, in 1998, DOE listed Lake Whatcom as an impaired water body under section 303(d) of the federal Clean Water Act for low levels of dissolved oxygen, and in 2004, DOE listed the lake as also impaired for total phosphorous, dieldrin, mercury, and total PCBs; and

WHEREAS, the increase in phosphorus levels in the lake is caused by a variety of factors, including exposed sediment from construction, lawn fertilizers, automobile exhaust and car washing, failing septic systems, pet and wildlife droppings, and phosphorus-based soaps and detergents; and

WHEREAS, researchers have determined that phosphorus levels that exceed state standards in Lake Whatcom are the main cause of declining oxygen levels in the lake; and

WHEREAS, phosphorus is a nutrient that feeds plant and algae growth in the lake. When the plants and algae die, bacteria feeding on the dead plants and algae consume oxygen that is dissolved in the lake, leaving less oxygen available for aquatic life and also causing the release of additional phosphorus from lake sediments; and

WHEREAS, the increased phosphorus levels, decreased dissolved oxygen, and other deterioration in the lake's water quality directly impact the City's ability to meet internal, state, and federal drinking water standards; and

WHEREAS, increased development in the Lake Whatcom Watershed has contributed to the high levels of phosphorus and low levels of dissolved oxygen in Lake Whatcom; and

WHEREAS, the City has dedicated significant resources toward preventing further deterioration in Lake Whatcom's water quality; and

WHEREAS, many of the City's efforts have focused on reducing development potential in the Lake Whatcom Watershed, as increased development leads to increased phosphorus levels in the lake; and

WHEREAS, the Lake Whatcom Monitoring 2006/2007 Final Report produced by Huxley's Institute for Watershed Studies and released on April 2, 2008 documents the continued decline in dissolved oxygen levels and increase in algae levels in Lake Whatcom; and

WHEREAS, DOE's draft Lake Whatcom Watershed Total Phosphorus and Bacteria Total Maximum Daily Loads Water Quality Study Findings (draft TMDL Study) dated April 21, 2008 quantifies how much phosphorus the lake can process naturally and still supply enough oxygen to meet state water quality standards; and

WHEREAS, the draft TMDL study shows that phosphorus-laden stormwater runoff into the lake must be decreased by at least 74 percent; and

WHEREAS, the City is legally required to develop an implementation plan showing how it will comply with the goals of the final TMDL Study; and

WHEREAS, the State's vested rights doctrine could enable applications for divisions of land, building permits, and land disturbance activities in the portion of the Lake Whatcom Watershed that is located within the City of Bellingham to vest while the City studies what actions it must take to meet the loading goals established by the TMDL Study; and

WHEREAS, RCW 36.70A.390 authorizes the City to adopt a moratorium on the filing, acceptance, and processing of new applications for divisions of land, building permits, and land disturbance activities in the City's portion of the watershed and to hold a public hearing on the moratorium within 60 days of the commencement of the moratorium; and

WHEREAS, on May 19, 2008, the City adopted an interim moratorium on divisions of land and building permits in the City's portion of the Lake Whatcom Watershed to limit further deterioration in Lake Whatcom's water quality while the City evaluates what actions it must take to meet the loading goals established by the TMDL Study; and

WHEREAS, on June 23, 2008, the City adopted changes to the moratorium to include land disturbance activities, such as clearing and grading, in the City's portion of the watershed; and

WHEREAS, on July 14, 2008 a Public Hearing was held on the interim moratorium as required by RCW 36.70.390; and

WHEREAS, staff from the Planning and Community Development and Public Works Departments have reviewed and presented to the City Council proposed amendments to the City's development regulations to help the City meet the loading goals established by the TMDL study; and

WHEREAS, these proposed amendments to development regulations are a legislative action and must be initiated and reviewed per Bellingham Municipal Code (BMC) Chapters 20.22 and 21.10; and

WHEREAS, on September 8, 2008, the City Council initiated the legislative process to consider the proposed amendments to the Lake Whatcom Reservoir Regulatory Chapter (BMC 16.80); and

WHEREAS, the existing moratorium on the divisions of land, building permits, and land disturbance activities is scheduled to expire on March 19, 2009; and

WHEREAS, if the interim moratorium expires before the City completes its public review process to amend the Lake Whatcom Reservoir Regulatory Chapter, applications for divisions of land, building permits and land disturbance activities could result in further deterioration in Lake Whatcom's water quality; and

WHEREAS, the potential adverse impacts to the public health, safety, and welfare of a further deterioration in Lake Whatcom's water quality justify passage of an interim emergency ordinance continuing the moratorium on the divisions of land, building permits and land disturbance activities while the City considers the amendments to the Lake Whatcom Reservoir Regulatory Chapter,

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Findings of Fact. The City Council adopts the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW 36.70A.390.

Section 2. Moratorium Imposed. A moratorium is imposed on the filing, acceptance, and processing of new applications for divisions of land, building permits and any land disturbance activity exceeding 500 square feet and subject to permitting under the City's Stormwater Ordinance, BMC Chapter 15.42, in the portion of the Lake Whatcom Watershed located within the City of Bellingham, as identified on the map attached as Exhibit A, unless the applications:

1. Were complete prior to the effective date of this ordinance;
2. Are for building permits for remodels or repairs of existing structures where no new or additional impervious surfaces are proposed; or
3. Are for public or private projects that the Public Works and Planning Department Directors jointly decide are intended to mitigate for phosphorus or fecal coliform loading in Lake Whatcom; or
4. Are for projects to protect the public health, safety, welfare, or environment or to prevent imminent damage to private or public property as jointly determined by the Public Works and Planning Department Directors; or
5. Are for a property whose stormwater does not drain into Lake Whatcom.

Section 3. Duration. This moratorium shall be in effect for four (4) months, beginning on March 19, 2009 and ending on July 19, 2009, unless an Ordinance is adopted amending the Lake Whatcom Reservoir Regulatory Chapter and the Stormwater Management Code and rescinding the moratorium before July 19, 2009. This moratorium may be renewed as provided by law.

Section 4. Public Hearing Required. As required by RCW 36.70A.390, within sixty (60) days of passage of this ordinance the City Council will hold a public hearing on this moratorium.

Section 5. Work Plan. During the moratorium, the City's Planning and Community Development and Public Works Departments will conduct the public review process as required for amendments to the Lake Whatcom Reservoir Regulatory Chapter.

Section 6. Emergency Declared -- Immediate Effect. For the reasons set forth above, and to promote the objectives stated above, the City Council finds that a public emergency exists, necessitating that this ordinance take effect immediately upon its passage by five (5) Bellingham City Council Members in order to protect the public health, safety, and general welfare.

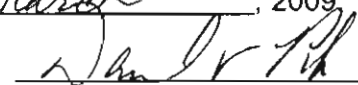
Section 7. Severability – Construction.

- (1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance.
- (2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Bellingham Municipal Code, this ordinance shall control.

PASSED by the Council this 9th day of March, 2009.



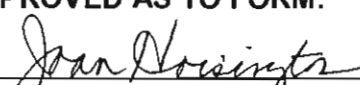
Council President

APPROVED by me this 12th day of March, 2009.


Mayor

ATTEST: 

Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published:
March 13, 2009

EXHIBIT A

