

## ORDINANCE NO. 23-1278

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AMENDING SECTION 16.16.250 OF THE LAKE FOREST PARK MUNICIPAL CODE, REASONABLE USE EXCEPTION TO ALLOW FOR REASONABLE ECONOMIC USE; PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

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**WHEREAS**, section 16.16.250 of the Lake Forest Park Municipal Code (LFPMC) provides a process by which an applicant may apply for a reasonable use exception from Chapter 16.16 LFPMC, Environmentally Critical Areas, when the application of regulations in the Chapter prevents all reasonable economic use of the property; and

**WHEREAS**, given the importance of critical areas in our community and recent experiences with a lack of compliance with orders granting reasonable use exceptions, the Lake Forest Park Planning Commission (Planning Commission) was tasked with reviewing the relevant provisions in the LFPMC; and

**WHEREAS**, the Planning Commission received input from the community and held public meetings to consider possible amendments to LFPMC 16.16.250 on July 12, August 17, and September 13 of 2022; and

**WHEREAS**, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act, Chapter 43.21C RCW, pursuant to Chapter 197-11 WAC, and a Determination of Non-Significance (“DNS”) was issued on September 18, 2023; and

**WHEREAS**, in accordance with the requirements set forth in RCW 36.70A.106, the City provided the Washington State Department of Commerce notice of the City’s intent to adopt the proposed amendments and notice was received that the Department had granted expedited review on October 3, 2023; and

**WHEREAS**, the City Council held public meetings to review amendments to LFPMC 16.16.250 on February 23, 2023, August 14, 2023, and October 26, 2023; and

**WHEREAS**, the City Council held a public hearing on October 26, 2023, regarding the proposed ordinance;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. AMENDMENT. The City Council of the City of Lake Forest Park hereby amends section 16.16.250 LFPMC, Reasonable use exception to allow for reasonable economic use, as follows:

A. Policy. The policy behind this reasonable use exception is to provide a mechanism that protects critical areas and approves the bare minimum amount of use and disturbance when strict application of this chapter would deny all reasonable economic use of a property. This policy recognizes that the city's comprehensive plan and the Washington State Growth Management Act mandate the adoption of policies and development regulations that protect the functions and values of critical areas, and the use of best available science when developing such policies and regulations. These mandates are at times juxtaposed with the obligation to not unconstitutionally take private property. Especially when avoiding conflicts between new development and protecting critical areas is becoming increasingly difficult in urban areas like Lake Forest Park.

The City starts from the premise that alteration or work in, or development of, critical areas and their buffers is prohibited. Critical areas in Lake Forest Park include a variety of environmental features important to the community and beyond. For example, there are approximately 50 acres of wetlands that range from large and complex wetland systems to small pockets of wetlands. Streams range from large, containing a variety of fish species, to small, intermittent creeks. Steep slopes are also prevalent in areas of the City and vary from stable to prone to landslides. The City recognizes that some critical areas may constitute an ecosystem or part of ecosystems that transcend the boundaries of individual lots and the City. The City also respects and recognizes that private property owners should not be required to bear the entire economic burden of the benefits afforded to the community at large by protecting critical areas.

B. Purpose and intent. The purpose and intent of this section is to:

1. Protect critical areas;
2. Preserve the existing functions and values of critical areas;
3. Limit and minimize disturbance to critical areas;
4. Protect public and private property from damage due to landslides, seismic hazards, flooding, sedimentation, or erosion;
5. Safeguard the public from hazards to health and safety;
6. Prevent the unconstitutional taking of private property rights;

7. Require use of innovative construction techniques, products and design that minimize to the greatest extent possible net loss of critical area functions and values while also supporting reasonable economic use of a lot;
8. Require compensatory mitigation for unavoidable harm done to critical areas;
9. Require and implement conditions that ensure, for the life of the project, that the minimal disturbance and mitigation authorized by this section are strictly maintained; and
10. Provide the following guidelines for consideration when applying the criteria in D below, with the understanding that the specific conditions of each lot must be taken into consideration:
  - a. Advances have been made in the design and market acceptance of single-family dwellings with smaller footprints and square footage. The reasonable economic use guideline for footprint and gross floor areas are a single-family dwellings with a footprint no greater than 750 square feet and a maximum gross floor area of 1500 square feet, including cantilevered areas, and an attached garage not to exceed a footprint and gross floor area of 250 square feet. Under this guideline, if no garage is provided, the square footage of the garage would not be allocated to the square footage allowance of the primary residence.
  - b. To minimize the area of critical area disturbance area, consider limiting the maximum amount of disturbance to the dwelling's footprint, minimum walkways and driveways needed to access the lot, associated utilities, and a 10-foot buffer around the dwelling footprint necessary for repair and maintenance.

CA. If the application of this chapter will prevent any reasonable economic use of the owner's property, then the applicant may apply to the planning department for an exception from the requirements of this chapter and the application shall be processed pursuant to the provisions of Chapter 16.26 LFPMC. ~~B.~~The planning director shall forward the application, along with the record submitted to the city and the director's recommendation, to the hearing examiner for decision.

DC. The hearing examiner shall grant an exception only if:

1. Application of the requirements of this chapter will deny all reasonable economic use of the property; and
2. There is no other reasonable economic use with less impact on the critical area; and

3. The proposed development does not pose an unreasonable threat to the public health, safety, or welfare, on or off the proposed site, and is consistent with the general purposes of this chapter and the comprehensive plan; and

4. Any alteration is the minimum necessary to allow for reasonable economic use of the property; and

5. The inability to derive reasonable use is not the result of an action or actions taken by the applicant's actions or that of a previous property owner, such as by altering lot lines that result in an undevelopable condition.

~~D. The hearing examiner shall grant an exemption from the requirements of this chapter only to the minimum necessary extent to allow for reasonable economic use of the applicant's property.~~

E. The hearing examiner shall condition any exception from the requirements of this chapter upon conditions ~~recommended by the city~~ and upon compliance with any mitigation plan necessary to satisfy the criteria in this section.~~approved by the city.~~

F. For any in-water or wetland work it is the applicant's responsibility to obtain all state and federal approvals before beginning work.

G. All exceptions shall be conditioned on the property owner providing a financial security guarantee, in a form approved by the City, for the required critical area mitigation performance and maintenance. The amount of the financial guarantee shall be subject to approval of the City and based on a qualified professional's cost estimate of the current market value of labor and materials for the approved mitigation and monitoring plan as well as a thirty percent contingency.

H. The hearing examiner's decision granting an exception and all other mitigation documents shall be recorded against the real property in question with the King County Recorder's Office.

Section 2. SEVERABILITY. Should any portion of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. EFFECTIVE DATE. This ordinance shall take effect five (5) days after passage and publication.

**APPROVED BY A MAJORITY** the Lake Forest Park City Council this XXX day of XXX, 2023.

APPROVED:

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Jeff Johnson  
Mayor

ATTEST/AUTHENTICATED:

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Matthew McLean  
City Clerk

APPROVED AS TO FORM:

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Kim Adams Pratt  
City Attorney

Introduced:  
Adopted:  
Posted:  
Published:  
Effective: