

ORDINANCE NO. 659

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Titles 14A and 18A relative to Floodplain and Critical Area Regulations.

WHEREAS, the City of Lakewood is a participating jurisdiction in the National Flood Insurance Program (NFIP), and is therefore required to maintain a floodplain management program and associated ordinances that meet the requirements of the NFIP as established by the Federal Emergency Management Agency (FEMA) which have changed since the City last reviewed its regulations; and,

WHEREAS, the Planning Commission has held public hearings and meetings on January 18, 2017. The Planning Commission has found that the proposed changes to the Land Use and Development Code and Environmental Protection Regulations are consistent with the adopted Lakewood Comprehensive Plan and will not adversely affect the public health, safety and general welfare of the citizens of the city; and,

WHEREAS, the Planning Commission has found affirmatively that the proposed amendments satisfy the applicable findings of LMC 18A.02.415;

WHEREAS these proposed amendments were submitted to FEMA and the Washington State Department of Ecology for review and comment, and the Washington State Department of Commerce as required by RCW 36.70A.106;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

Section 1: Section 18A.40.120 LMC entitled "Applicability – Flood Hazard Overlay" is amended to read as follows:

A. Establishment of Flood Zones. ~~This section shall apply to the areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific engineering report entitled "The Flood Insurance Study for the Unincorporated Areas of Pierce County, WA, Vols. 1 and 2," dated August 19, 1987, as amended with an accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary Maps, and any revisions thereto, and all Protected Areas within the City are hereby adopted by reference and declared to be a part of this section.~~ The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Pierce County, and Incorporated Areas" dated March 7, 2017, and any revisions thereto, with an accompanying Flood Insurance Rate Map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and the FIRM are on file at the City of Lakewood, 6000 Main Street SW, Lakewood, WA. The Flood Insurance Study shall be kept on file by the City Engineer. The best available information for flood hazard area identification, as outlined in this section, shall be the basis for regulation until a new FIRM is issued which

~~incorporates the data utilized in administration of this section.~~

B. Noncompliance. No structure or land shall hereafter be developed, converted, altered, constructed, or located without full compliance with the terms of this section and other applicable regulations. Violations of the provisions of this section are subject to the penalties identified in this title.

C. Abrogation and Greater Restrictions. This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and other code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

D. Interpretation of FIRM Boundaries. The Community Development Director shall make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards. In the interpretation and application of this section, all provisions shall be:

1. Considered to constitute minimum requirements.
2. Liberally construed in favor of the public trust.
3. Deemed neither to limit nor repeal any other powers granted under state statutes. A party contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretations as provided in this code.

E. Disclaimer of Liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the City of Lakewood, or any officer or employee thereof, or FEMA for any flood damages that result from reliance on this section or any administrative decision lawfully made hereunder.

Section 2: Section 14A.154.050 LMC entitled "Habitat Protection for Rivers and Streams" is amended to read as follows:

Regulated activities proposed along rivers and streams shall provide for habitat protection.

A. Habitat Protection for Rivers and Streams Shall be Provided Through Buffers.

1. The buffer, consisting of undisturbed natural vegetation, shall be required along all streams, as classified by the DNR water typing classification system (WAC 222-16-030). The buffer shall extend landward from the ordinary high water mark of the water body.
 - a. Outside of the buffer removal of native vegetation shall not exceed 35 percent of the surface area of the portion of the site in the Regulatory Floodplain. Native vegetation within the buffer portion of the property can be counted toward this requirement.

2. The buffer of a river or stream shall not extend landward beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent structure which reduces the impact proposed activities would have on the river or stream.

3. Buffer widths shall be as established by the City of Lakewood Shoreline Master Program (SMP) as contained in Chapter 4, Section C of the SMP.

4. If a proposed project does not meet the criteria established in LMC 18A.40.180.A. and B. a habitat impact assessment shall be conducted in accordance with Section 14A.154.050.CB, and if necessary, a habitat mitigation plan shall be prepared and implemented in accordance with the provisions of this chapter.

B. Habitat Impact Assessment.

Unless allowed under Sec. 18A.40.180, a permit application to develop in the Regulatory Floodplain Special Flood Hazard Area (SFHA), for that portion of any parcel located within the area between the boundary of a buffer as established in the SMP, Chapter 4, Table 2, and the boundary of any buffer as required by the National Marine Fisheries Services' Puget Sound Biological Opinion of September 22, 2008, shall include an assessment of the impact of the project on water quality and aquatic and riparian habitat. The assessment shall be:

1. A biological evaluation or biological assessment that has received concurrence from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, pursuant to Section 7 of the Endangered Species Act; or
2. Documentation that the activity fits within a habitat conservation plan approved pursuant to Section 10 of the Endangered Species Act; or
3. Documentation that the activity fits within Section 4(d) of the Endangered Species Act; or
4. An assessment prepared in accordance with the most current Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA (Federal Emergency Management Agency) Region X. The assessment shall determine if the project would adversely affect:
 - a. The primary constituent elements identified when a species is listed as threatened or endangered,
 - b. Essential fish habitat designated by the National Marine Fisheries Service,
 - c. Fish and wildlife habitat conservation areas,
 - d. Vegetation communities and habitat structures,
 - e. Water quality,
 - f. Water quantity, including flood and low flow depths, volumes and velocities,
 - g. The channel's natural planform pattern and migration processes,
 - h. Spawning substrate, if applicable, and/or,
 - i. Floodplain refugia, if applicable.

C. Habitat Mitigation Plan

1. If the assessment conducted under Sec. 14A.154.050.CB concludes the proposed project is expected to have an adverse effect on water quality and/or aquatic or riparian habitat or habitat functions, the applicant shall provide a plan to mitigate those impacts, in accordance with the current Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA (Federal Emergency Management Agency) Region X.

a. If the proposed project is located outside of the protected area, the mitigation plan shall include such avoidance, minimization, restoration, or compensation measures as are appropriate for the situation.

b. If the proposed project is located within the protected area, the mitigation plan shall include such appropriate measures as are needed to ensure that there is no adverse effect due to the project. Minimization measures are not allowed in the protected area, unless they, in combination with other measures result in no adverse effect. No compensatory mitigation is allowed in the Protected Area.

2. The plan's habitat mitigation activities shall be incorporated into the proposed project. The floodplain development permit shall be based on the redesigned project and its mitigation components.

3. A certificate of occupancy or final inspection approval for a project shall not be issued until all work identified in the biological evaluation, biological assessment, or mitigation plan has been completed or the applicant has provided the necessary assurances that unfinished portions of the project will be completed.

D. Compensatory Storage

New development shall not reduce the effective flood storage volume of the Regulatory Floodplain. A development proposal shall provide compensatory storage if grading or other activity displaces any effective flood storage volume. Compensatory storage shall:

1. Provide equivalent volume at equivalent elevations to that being displaced. For this purpose, "equivalent elevation" means having similar relationship to ordinary high water and to the best available 10-year, 50-year and 100-year water surface profiles;
2. Be hydraulically connected to the source of the flooding; and
3. Provide compensatory storage in the same construction season as when the displacement of flood storage volume occurs and before flood season begins.
4. The newly created storage area shall be graded and vegetated to allow fish access during flood events without creating fish stranding sites.

Section 3: Section 14A.158.020 LMC entitled "Designation" is amended to read as follows:

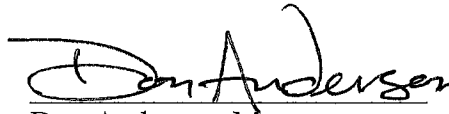
~~All Areas of Special Flood Hazard shall be as identified in the scientific and engineering report entitled "The Flood Insurance Study for Pierce County," dated August 19, 1987, or as amended, with accompanying Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA). A copy of which shall be maintained with the City Clerk. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Pierce County, and Incorporated Areas" dated March 7, 2017, and any revisions thereto, with an accompanying Flood Insurance Rate Map (FIRM), and any revisions thereto, are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and the FIRM are on file at the City of Lakewood, 6000 Main Street SW, Lakewood, WA. The Flood Insurance Study shall be kept on file by the City Engineer.~~

Section 4: 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.

Section 5: Effective Date. This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

ADOPTED by the City Council this 21st day of February, 2017.

CITY OF LAKEWOOD


Don Anderson, Mayor

Attest:


Alice M. Bush, MMC, City Clerk

Approved as to Form:


Heidi A. Wachter City Attorney MK