

ORDINANCE NO. 3931

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, ADOPTING AN INTERIM ZONING ORDINANCE TO AMEND THE CRITICAL AREAS ORDINANCE, SPECIFICALLY SECTIONS ECDC 23.40.210 AND 23.40.320, TO REPEAL THE DEFINITION OF REASONABLE ECONOMIC USE AND REFERENCES THERETO.

WHEREAS, the definition for “reasonable economic use” in the Environmentally Critical Areas General Provisions Section of the Edmonds Community Development Code contains language that is atypical when compared to the critical areas ordinances of many other jurisdictions in the vicinity of Edmonds; and

WHEREAS, many jurisdictions do not define “reasonable economic use” at all, preferring to rely upon guidance provided by state and federal law; and

WHEREAS, urgent action should be taken to correct the unnecessary confusion and difficulty caused by the definition of “reasonable economic use” in the processing of reasonable use variances; and

WHEREAS, the City of Edmonds may adopt an interim zoning ordinance for a period of up to six months pursuant to RCW 36.70A.390, provided that the City Council holds a public hearing on the interim ordinance within sixty days of adoption;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 23.40.210 of the Edmonds Community Development Code, entitled “Variances,” is hereby amended to read as follows (new text is shown in underline; deleted text is shown in ~~strike-through~~):

23.40.210 Variances.

A. Variances from the standards of this title may be authorized through the process of hearing examiner review in accordance with the procedures set forth in Chapter 20.85 ECDC only if an applicant demonstrates that one or more of the following two conditions exist:

1. The application of this title would prohibit a development proposal by a public agency or public utility. A public agency and utility exception may be granted as a variance if:

a. There is no other practical alternative to the proposed development with less impact on the critical areas;

b. The application of this title would unreasonably restrict the ability to provide utility services to the public;

c. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

d. The proposal attempts to protect and mitigate impacts to the critical area functions and values consistent with the best available science; and

e. The proposal is consistent with other applicable regulations and standards.

2. The application of this title would deny all reasonable economic use (~~see the definition of “reasonable economic use(s)” in ECDC 23.40.320~~) of the subject property. A reasonable use exception may be authorized as a variance only if an applicant demonstrates that:

a. The application of this title would deny all reasonable economic use of a property or subject parcel;

b. No other reasonable economic use of the property consistent with the underlying zoning and the city comprehensive plan has less impact on the critical area;

c. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;

d. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of the ordinance codified in this title or its predecessor;

e. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;

f. The proposal minimizes net loss of critical area functions and values consistent with the best available science; and

g. The proposal is consistent with other applicable regulations and standards.

B. Specific Variance Criteria. A variance may be granted if the applicant demonstrates that the requested action conforms to all of the following specific criteria:

1. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands in the same district;

2. The special conditions and circumstances do not result from the actions of the applicant;

3. A literal interpretation of the provisions of this title would deprive the applicant of all reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this title, and the variance requested is the minimum necessary to provide the applicant with such rights;

4. Granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings under similar circumstances;

5. The granting of the variance is consistent with the general purpose and intent of this title, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property; and

6. The decision to grant the variance is based upon the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

C. Hearing Examiner Review. The city hearing examiner shall, as a Type III-A decision (see Chapter 20.01 ECDC), review variance applications and conduct a public hearing. The hearing examiner shall approve, approve with conditions, or deny variance applications based on a proposal's ability to comply with general and specific variance criteria provided in subsections (A) and (B) of this section.

D. Conditions May Be Required. The director retains the right to prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this title for variances granted through hearing examiner review.

E. Time Limit. The director shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance, unless the applicant files an application for an extension of time before the expiration. An application for an extension of time shall be reviewed by the director as a Type II decision (see Chapter 20.01ECDC).

F. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of a variance application and upon which any decision has to be made on the application.

Section 2. Section 23.40.320 of the Edmonds Community Development Code, entitled “Definitions pertaining to critical areas,” is hereby amended to read as follows (new text is shown in underline; deleted text is shown in ~~strike-through~~):

23.40.320 Definitions pertaining to critical areas.

For the purposes of this chapter and the chapters on the five specific critical area types (Chapters 23.50, 23.60, 23.70, 23.80 and 23.90 ECDC) the following definitions shall apply:

“Adjacent” means those areas located within 200 feet of a development proposal or subject parcel and those areas located within 800 feet of a documented bald eagle nest.

“Alteration” means any human-induced action which changes the existing condition of a critical area or its buffer. Alterations include, but are not limited to: grading; filling; dredging; draining; channelizing; cutting, pruning, limbing or topping, clearing, relocating or removing vegetation; applying herbicides or pesticides or any hazardous or toxic substance; discharging pollutants; paving, construction, application of gravel; modifying for surface water management purposes; or any other human activity that changes the existing landforms, vegetation, hydrology, wildlife or wildlife habitat value of critical areas.

“Best management practices” means a system of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, and toxics;
2. Control the movement of sediment and erosion caused by land alteration activities;
3. Minimize adverse impacts to surface and ground water quality, flow, and circulation patterns; and
4. Minimize adverse impacts to the chemical, physical, and biological characteristics of critical areas.

“Buffer” means the designated area immediately next to and a part of a steep slope or landslide hazard area and which protects slope stability, attenuation of surface water flows and landslide hazards reasonably necessary to minimize risks to persons or property; or a designated area immediately next to and part of a stream or wetland that is an integral part of the stream or wetland ecosystem.

“Chapter” means those sections of this title sharing the same third and fourth digits.

“City” means the city of Edmonds.

“Class” or “wetland class” means descriptive categories of wetland vegetation communities within the wetlands taxonomic classification system of the U.S. Fish and Wildlife Service (Cowardin, et al., 1979).

“Clearing” means the act of cutting and/or removing vegetation. This definition shall include grubbing vegetation and the use or application of herbicide.

“Compensation project” means an action(s) specifically designed to replace project-induced critical area or buffer losses. Compensation project design elements may include, but are not limited to: land acquisition procedures and detailed plans including functional value assessments, detailed landscaping designs, construction drawings, and monitoring and contingency plans.

“Compensatory mitigation” means replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

1. “Restoration” means actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.

2. “Creation” means actions performed to intentionally establish a wetland at a site where it did not formerly exist.

3. “Enhancement” means actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality.

4. “Preservation” means actions taken to ensure the permanent protection of existing high-quality wetlands.

“Creation” means a compensation project performed to intentionally establish a wetland or stream at a site where one did not formerly exist.

“Critical areas” for the city of Edmonds means wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas as defined in Chapters 23.50, 23.60, 23.70, 23.80 and 23.90 ECDC, respectively.

“Development proposal” means any activity relating to the use and/or development of land requiring a permit or approval from the city, including, but not limited to: commercial or residential building permit; binding site plan; conditional use permit; franchise; right-of-way permit; grading and clearing permit; mixed use approval; planned residential development; shoreline conditional use permit; shoreline substantial development permit; shoreline variance; short subdivision; special use permit; subdivision; flood hazard permit; unclassified use permit; utility and other use permit; variance; rezone; or any required permit or approval not expressly exempted by this title.

“Director” means the city of Edmonds development services director or his/her designee.

“Division” means the planning division of the city of Edmonds development services department.

“Enhancement” means an action taken to improve the condition and function of a critical area. In the case of wetland or stream, the term includes a compensation project performed to improve the conditions of an existing degraded wetland or stream to increase its functional value.

“Erosion” means the process in which soil particles are mobilized and transported by natural agents such as wind, rain, frost action, or stream flow.

Erosion Hazard Areas. See ECDC 23.80.020(A).

Fish and Wildlife Habitat Conservation Areas. See Chapter 23.90 ECDC.

“Floodplain” means the total area subject to inundation by a “100-year flood.” “One-hundred-year flood” means a flood having a one percent chance of being equaled or exceeded in any given year.

Frequently Flooded Areas. See Chapter 23.70 ECDC.

“Functions” means the roles served by critical areas including, but not limited to: water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; aesthetic value protection; and recreation. These roles are not listed in order of priority.

Geologically Hazardous Areas. See Chapter 23.80 ECDC.

“Geologist” means a person licensed as a geologist, engineering geologist, or hydrologist in the state of Washington who has earned a degree in geology from an accredited college or university and has at least five years of experience as a practicing geologist or four years of experience and at least two years of postgraduate study, research or teaching. The practical experience shall include at least three years of work in applied geology and landslide evaluation in close association with qualified, practicing geologists and geotechnical/civil engineers.

“Geotechnical engineer” means a practicing geotechnical/civil engineer licensed as a professional civil engineer in the state of Washington who has at least four years of professional employment as a geotechnical engineer in responsible charge including experience with landslide evaluation.

“Grading” means any one or a combination of excavating, filling, or disturbance of that portion of the soil profile which contains decaying organic matter.

“Habitats of local importance” include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the

species will maintain and reproduce over the long term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, shorelines, coastal beaches, mudflats, eel-grass beds, and wetlands. [See ECDC 23.90.010(A)(4).]

Landslide Hazard Areas. [See ECDC 23.80.020(B).]

“Mitigation” means the use of any or all of the following actions, which are listed in descending order of preference:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps such as project redesign, relocation, or timing to avoid or reduce impacts;
3. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
4. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods;
5. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
6. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
7. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

“Native vegetation” means vegetation comprised of plant species which are indigenous to the Puget Sound region and which reasonably could have been expected to naturally occur on the

site. “Native vegetation” does not include noxious weeds as defined by the state of Washington or federal agencies.

“Noxious weeds” means any plant which, when established, is highly destructive, competitive or difficult to control by cultural or chemical practices, as further listed in Chapter 16-750 WAC.

“Planning staff” means those employed in the planning division of the city of Edmonds development services department.

“Qualified critical areas consultant” or “qualified professional” means a person who has the qualifications specified below to conduct critical areas studies pursuant to this title, and to make recommendations for critical areas mitigation. For areas of potential geologic instability, the qualified critical areas consultant shall be a geologist or geotechnical engineer. For wetlands and streams, the qualified critical areas consultant shall be a specialist in botany, fisheries, wetland biology, and/or hydrology with a minimum of two years’ field experience with wetlands and/or streams in the Pacific Northwest. Requirements defining a qualified critical areas consultant or qualified professional are contained within the chapter on each critical area type.

~~“Reasonable economic use(s)” means the minimum use to which a property owner is entitled under applicable state and federal constitutional provisions in order to avoid a taking and/or violation of substantive due process. “Reasonable economic use” shall be liberally construed to protect the constitutional property rights of the applicant. For example, the minimum reasonable use of a residential lot which meets or exceeds minimum bulk requirements is use for one single family residential structure. Determination of “reasonable economic use” shall not include consideration of factors personal to the owner such as a desire to make a more profitable use of the site.~~

“Redeveloped land(s)” means those lands on which existing structures are demolished in their entirety to allow for new development. The director shall maintain discretion to determine if the demolition of a majority of existing structures or portions thereof constitute the redevelopment of a property or subject parcel.

“Restoration” means the actions necessary to return a stream, wetland or other critical area to a state in which its stability, functions and values approach its unaltered state as closely as possible.

Seismic Hazard Areas. [See ECDC 23.80.020(C).]

“Species of local importance” means those species that are of local concern due to their population status, their sensitivity to habitat manipulation, or that are game (hunted) species. [See ECDC 23.90.010(A)(4).]

“Storm Water Management Manual” means the Storm Water Management Manual for the Puget Sound Basin by the Washington State Department of Ecology (as included in Chapter 18.30 ECDC).

“Streams” means any area where surface waters produce a defined channel or bed which demonstrates clear evidence, such as the sorting of sediments, of the passage of water. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices (drainage ditches) or other entirely artificial watercourses unless they are used by salmonids or used to convey streams naturally occurring prior to construction of such watercourse. Streams are further classified into Categories S, F, Np and Ns and fishbearing or nonfishbearing 1, 2 and 3. [See ECDC 23.90.010(A)(1).]

“Title” means all chapters of the City of Edmonds Development Code beginning with the digits 23.

“Undeveloped land(s)” means land(s) on which manmade structures or land modifications (clearing, grading, etc.) do not exist. The director retains discretion to identify undeveloped land(s) in those instances where historical modifications and structures may have existed on a property or subject parcel in the past.

“Wetlands” means those areas that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention

facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands if permitted by the city (WAC 365-190-030(22)). Wetlands are further classified into Categories 1, 2, 3 and 4. [See ECDC 23.50.010(B).]

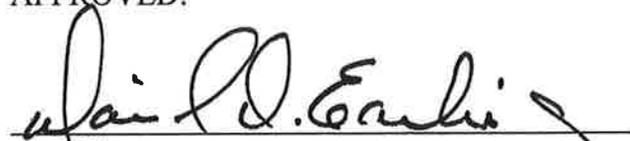
“Wetland functions” means those natural processes performed by wetlands, such as facilitating food chain production; providing habitat for nesting, rearing and resting sites for aquatic, terrestrial or avian species; maintaining the availability and quality of water; acting as recharge and/or discharge areas for ground water aquifers; and moderating surface water and storm water flows.

Section 3. Sunset. This ordinance shall remain in effect for 180 days from the effective date, after which point it shall have no further effect.

Section 4. Severability. If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

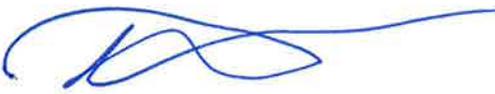


MAYOR DAVID O. EARLING

ATTEST/AUTHENTICATED:


CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
JEFF TARADAY

FILED WITH THE CITY CLERK:	06-28-2013
PASSED BY THE CITY COUNCIL:	07-02-2013
PUBLISHED:	07-07-2013
EFFECTIVE DATE:	07-12-2013
ORDINANCE NO. <u>3931</u>	

SUMMARY OF ORDINANCE NO. 3931

of the City of Edmonds, Washington

On the 2nd day of July, 2013, the City Council of the City of Edmonds, passed Ordinance No. 3931. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS,
WASHINGTON, ADOPTING AN INTERIM ZONING
ORDINANCE TO AMEND ECDC 23.40.210 AND
23.40.320 TO REPEAL THE DEFINITION OF
REASONABLE ECONOMIC USE.

The full text of this Ordinance will be mailed upon request.

DATED this 3rd day of July, 2013.


CITY CLERK, SANDRA S. CHASE

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH

} S.S.

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The full text of this Ordinance will be mailed upon request.
DATED this 3rd day of July, 2013.
CITY CLERK, SANDRA S. CHASE
Published: July 7, 2013.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Summary of Ordinance No. 3931

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

July 07, 2013

and that said newspaper was regularly distributed to its subscribers during all of said period.

Karen E. Zorn

Principal Clerk

Subscribed and sworn to before me this 8th

day of July, 2013

Diana L. Hendrix

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

