

ORDINANCE NO. 4017

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE CRITICAL AREAS REGULATIONS CONTAINED IN EDMONDS COMMUNITY DEVELOPMENT CODE CHAPTERS 23.40 ENVIRONMENTALLY CRITICAL AREAS GENERAL PROVISIONS, 23.50 WETLANDS, 23.60 CRITICAL AQUIFER RECHARGE AREAS, 23.70 FREQUENTLY FLOODED AREAS, 23.80 GEOLOGICALLY HAZARDOUS AREAS, AND 23.90 FISH AND WILDLIFE HABITAT CONSERVATION AREAS, AND AMENDING ECDC SECTION 19.00.025, A PROVISION OF THE BUILDING CODE RELATED TO FREQUENTLY FLOODED AREAS.

WHEREAS, the City of Edmonds is required to plan under RCW 36.70A.040; and

WHEREAS, RCW 36.70A.130(1) requires City of Edmonds to take legislative action to review and, if needed, revise its comprehensive plan and development regulations, including its policies and regulations designating and conserving natural resource lands and designating and protecting critical areas to comply with the requirements in chapter 36.70A RCW (the Growth Management Act or GMA); and

WHEREAS, on June 16, 2015, the city council of the City of Edmonds reviewed its comprehensive plan and conducted a public hearing on the 2015 update to the City of Edmonds comprehensive plan; and

WHEREAS, the City of Edmonds adopted the 2015 update to the City of Edmonds comprehensive plan with Ordinance 4003; and

WHEREAS, based on early direction from the City Council, the 2015 update did not involve a major policy shift, but instead focused on consistency and streamlining, including the latest data, as well as the addition of several performance measures; and

WHEREAS, it was determined during this review process that, with the exception of the critical areas regulations, the City of Edmonds' development regulations remained consistent with and would continue to implement the comprehensive plan and the proposed update to it so that no other development regulations would need to be revised at this time; and

WHEREAS, the Growth Management Act (GMA) defines “critical areas” to include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas; and

WHEREAS, the GMA requires that each city adopt development regulations that protect critical areas; and

WHEREAS, cities in Snohomish County are expected to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the GMA on or before June 30, 2015, and every eight years thereafter; and

WHEREAS, cities must include the best available science in developing policies and development regulations to protect the functions and values of critical areas; and

WHEREAS, cities must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries; and

WHEREAS, City has not comprehensively reviewed its critical areas ordinance and best available science since 2005 when current version of the critical area regulations became effective; and

WHEREAS, the City selected environmental consultants ESA to assist the City in updating the 2004 City's Best Available Science Report (Exhibit 1 to September 8, 2015 agenda memo 7969) and to evaluate the City's critical area regulations given the changes in science; and

WHEREAS, the Best Available Science addendum prepared by ESA reviewed the current science related to critical areas as it has changed since 2004 (see Exhibit 2 to September 8, 2015 agenda memo 7969); and

WHEREAS, ESA also prepared a memo for the City’s review that outlines certain provisions that may deviate from Best Available Science, as required by WAC 365-195-915; and

WHEREAS, the Planning Board reviewed proposed changes to the critical area regulations over the course of five Planning Board meetings between March 25 and July 22, 2015; and

WHEREAS, the Board's review included a July 8, 2015 public hearing; and

WHEREAS, the Planning Board forwarded its recommended changes to the City's critical area regulations to the City Council; and

WHEREAS, the Planning Board also forwarded a recommendation for some modifications to the building code Title 19 ECDC and definitions in Title 21 ECDC, in conjunction with its recommendations on critical areas and frequently flooded area regulations; and

WHEREAS, the City Council reviewed the draft updated critical area regulation as recommended by the Planning Board at the September 8, 2015 Council meeting and continued that review at the September 22, 2015 Council meeting; and

WHEREAS, the City Council held a public hearing at the October 6, 2015 City Council meeting and continued to review the critical area regulations at the November 2, 2015 City Council meeting; and

WHEREAS, the City Council directed the City Attorney to prepare an ordinance to adopt the updated critical areas regulations as amended by the City Council during the December 15, 2015 City Council meeting; and

WHEREAS, the Mayor asked the City Council to reconsider the amendments that were approved during the December 15, 2015 City Council meeting; and

WHEREAS, the Mayor forwarded to the City Council a December 22, 2015 memo that addresses the implications of the December 15, 2015 amendments; and

WHEREAS, this ordinance serves as the final legislative action required by the City under RCW 36.70A.130 for the 2015 review and update; NOW, THEREFORE,

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

Section 1. The following chapters of the Edmonds Community Development Code, which make up the City's critical areas ordinance, are hereby amended to read as set forth in **Attachment A** hereto, which is incorporated herein by this reference as if set forth in full (new

text is shown in underline; deleted text is shown in ~~strike-through~~): chapter 23.40, entitled “Environmentally Critical Areas General Provisions;” chapter 23.50, entitled “Wetlands;” chapter 23.60, entitled “Critical Aquifer Recharge Areas;” chapter 23.70, entitled “Frequently Flooded Areas;” chapter 23.80, “Geologically Hazardous Areas;” and chapter 23.90 entitled, “Fish and Wildlife Habitat Conservation Areas.”

Section 2. Section 19.00.025 of the Edmonds Community Development Code, entitled “International Building Code section amendments,” is hereby amended to read as set forth in **Attachment B** hereto, which is incorporated herein by this reference as if set forth in full (new text is shown in underline; deleted text is shown in ~~strike-through~~).

Section 3. 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 4. 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 DAVE EARLING

ATTEST/AUTHENTICATED:

CITY CLERK, SCOTT PASSEY

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
JEFF TARADAY

FILED WITH THE CITY CLERK: January 22, 2016
PASSED BY THE CITY COUNCIL: January 26, 2016

PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

January 31, 2016
February 5, 2016
4017

SUMMARY OF ORDINANCE NO. 4017

of the City of Edmonds, Washington

On the 26th day of January, 2016, the City Council of the City of Edmonds, passed Ordinance No. 4017. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE CRITICAL AREAS REGULATIONS CONTAINED IN EDMONDS COMMUNITY DEVELOPMENT CODE CHAPTERS 23.40 ENVIRONMENTALLY CRITICAL AREAS GENERAL PROVISIONS, 23.50 WETLANDS, 23.60 CRITICAL AQUIFER RECHARGE AREAS, 23.70 FREQUENTLY FLOODED AREAS, 23.80 GEOLOGICALLY HAZARDOUS AREAS, AND 23.90 FISH AND WILDLIFE HABITAT CONSERVATION AREAS, AND AMENDING ECDC SECTION 19.00.025, A PROVISION OF THE BUILDING CODE RELATED TO FREQUENTLY FLOODED AREAS.

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

DATED this 27th day of January, 2016.

CITY CLERK, SCOTT PASSEY

From: [Earling, Dave](#)
To: [Council](#)
Cc: ["Neil Tibbott" \(neil.tibbott@frontier.com\)](#); [Dave Teitzel \(kathydave52@hotmail.com\)](#); [Taraday, Jeff](#); [Hope, Shane](#); [Hite, Carrie](#); [Lien, Kernen](#)
Subject: Critical Areas
Date: Wednesday, December 30, 2015 4:46:52 PM

Council.....

I hope you are enjoying the Holidays.

I want to let you know since my return from my break, I have reviewed the work which took place on the critical area ordinance at the last council meeting, as well as had a briefing from staff on the amendments made by council during the meeting. And after giving the issue considerable thought, I cannot accept the dramatic changes provided by the amendments, which in my opinion neuters the work staff and the Planning Board intended and agreed to. In current condition, I would be forced to veto an ordinance which include the amendments made by council. My hope is council will take the time to meet with staff in the next couple of weeks to better understand the impact of the amendments approved at the meeting and adjustments can be made.

Thanks for your consideration,
Dave

From: [Earling, Dave](#)
To: [Buckshnis, Diane](#); [Mesaros, Thomas](#); [Nelson, Michael](#); ["Neil Tibbott" \(neil.tibbott@frontier.com\)](#); [Dave Teitzel \(kathydave52@hotmail.com\)](#); [Monillas, Adrienne](#); [Johnson, Kristiana](#)
Cc: [Taraday, Jeff](#); [Hope, Shane](#); [Lien, Kernen](#); [Hite, Carrie](#)
Subject: Critical Areas Ordinance
Date: Thursday, December 31, 2015 2:10:13 PM
Attachments: [CouncilAmendmentImplications_20151222.pdf](#)

Almost Happy New Year.....

Diane asked to better understand which of the amendments proposed for the critical areas ordinance were most problematic. I have attached the analysis Kernen did for me before he left on vacation this week. The amendments of most concern are; #1, 2, 3, 4 and 8. There needs to be some more consideration on #7.....so stay tuned. I hope this helps. Again, I encourage you to meet with staff to clear up any questions you may have in the next couple of weeks. See you Tuesday! (or before)

Dave



MEMORANDUM

Date: December 22, 2015
To: Shane Hope, Development Service Director
From: Kernen Lien, Senior Planner
Subject: Council CAO Amendment Implications

At the December 15, 2015 Council meeting, the Council proposed a number of amendments to the recommended draft of the updated critical area regulations. Below is a summary of the proposed amendments by Council and my interpretation of the potential impact of each amendment.

1. Council Amendment: 23.40.010 Authority: **change** “development services director or designee” to “...development services director, the director may designate the planning manager under specific circumstances...”

Implications: The proposed change would lead to inefficiencies processing development review proposals while not providing any greater protection of critical areas or real change in staff review. The Development Services Director is already responsible for decisions made by Development Services staff. The effect of the code change would be having the Development Services Director sign off on reviews without full knowledge of what she (or he) is signing. The Director has responsibilities beyond development review. Line staff is hired to review development and become intimately versed in the code. The Director is responsible to ensure staff is doing their job. Having the Director sign decisions adds nothing to review, but takes time away from other more appropriate Director responsibilities.

2. Council Amendment: 23.40.215 Critical area restoration projects: **delete** subsection B.3 which would have allowed buffer reduction of restoration projects to 50% of the newly expanded buffer.

Implications: Deleting this subsection essentially removes the purpose of this whole section. The intent of the restoration project section was to encourage restoration projects. The portion of this code section that remains allows a 25% reduction of the buffer, which is already allowed in certain circumstances by other code sections. In order to reduce expanded buffers for restoration projects further, the project applicant would have to apply for a variance. Variances are intended for limited situations where special circumstances exist. The special circumstances have to be existing and not be something created by the property owner (or previous owner). Since the restoration project is creating the special circumstance, any applicant with a restoration project would not meet this criterion and could not receive a variance.

One specific project that will be impacted by this change is the Marina Beach Master Plan which has been developed via a public process. Without subsection B.3, the Marina Beach Master Plan and daylighting of Willow Creek will have to be redesigned or abandoned.

3. Council Amendment: 23.40.220.C.4 Physically separated/functionally isolated: **delete** the physically separated/functionally isolated provision

Implications: This was a new section proposed with this update to address situations staff has seen over the years. Edmonds is a largely urbanized area, which was mainly developed prior to any environmental regulations. As a result, properties are technically included in a critical area “buffer” when measured from the edge of a stream or wetland. In many cases, there is a road, structure or other development between a property within a “buffer” and the critical area which create a physical and functional break between the property and the critical area. Since there is this break, any development within the physically separated and functionally isolated area will, by definition, not have any impact on the critical area. The result of this amendment will be to maintain the status quo and property owners will be restricted even when additional development will not impact the critical area.

4. Council Amendment: 23.40.220.C.7.b.iv Hazard Tree Removal: **change** the required diameter of deciduous replacement trees from one inch dbh to one and one-half to two inches dbh

Implications: One comment I have consistently heard from critical area consultants is larger trees are not necessarily better when it comes to restoration. The larger the tree, the smaller the root ball, which makes it more difficult for the trees planted for mitigation to get established. This amendment would require larger trees than currently required in the code, which critical area consultants have already indicated may be too large.

5. Council Amendment: 23.40.320 definitions: **change** definition of footprint of existing development to “...legally established buildings and paved roads, driveways, and parking lots.”

Implications: This amendment further confines what may be considered the development footprint. The original proposal would have also included roads, driveways, parking lots, storage areas, and walkways with compacted gravel; swimming pools; and patios. The development within the developed foot provision will still be an improvement over what exists in the code; this amendment just tightened where the provision can be applied.

6. Council Amendment: 23.40.320 definitions: **change** normal maintenance of vegetation from ...trees less than 3-inch dbh to trees less than 4-inch dbh

Implications: This provision basically would allow the clearing of saplings in critical areas. The amendment allows the clearing of slightly larger saplings as a critical area exemption.

7. Council Amendment: 23.90.040.C.1 Native vegetation: **change** “...native trees over 10 inches in dbh make up more than 70 percent of the canopy cover” to “...native trees over 6 inches in dbh make up more than 40 percent of the canopy cover.”

Implications: The changes may trigger the requirements of this provision in more areas than the original proposal. Even with the amendments, this provision is improved over what currently exists in the code. The type of habitat and canopy cover goals for the City is something that should be considered in the development of the Urban Forest Management

Plan. Information developed with the Urban Forest Management Plan could be used to further refine the native vegetation provision in the critical area regulations.

8. Council Amendment: Frequently flooded areas: **delete** the amendment to the definition of height in ECDC 21.40.030 that would have height in the coastal flood hazard zones measured from 2 feet of base flood elevation.

Implications: The council amendment would result in structures constructed within the coastal flood hazard zones losing height otherwise allowed by the zone. As part of the critical areas update, two provisions were proposed for development within frequently flooded areas. The first is an addition to the building code that requires structures to be constructed two feet above the base flood elevation in the coastal flood hazard zone. The second proposal was a change to the definition of height which would have structures within the coastal flood hazard zone measure the allowed zoning height from two feet above base flood elevation (this proposal was recommended for deletion by the Council).

Where existing grade along the waterfront is at or below the base flood elevation, requiring structures to be built 2 feet above base flood elevation would effectively eliminate 2 feet of the allowable height for a structure. In order to maintain existing height allowances, the Planning Board recommended modifying the definition of height contained in ECDC 21.40.030 to allow for the height of structures within the Coastal High Hazard Areas to be measured from two feet above base flood elevation thus compensating for the impact of the building code change.

The Council amendment to delete the height definition change while keeping the requirement to building two above base flood elevation penalizes properties designing projects for the impacts of sea level rise and flooding by essentially eliminating a portion of the allowable zoning height.