



# AGENDA

## Lynnwood Planning Commission

### Meeting

Thursday, January 28, 2016 — 7:00 pm

Council Chambers, Lynnwood City Hall  
19100 44<sup>th</sup> Ave. W, Lynnwood, WA 98036

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#### A. CALL TO ORDER – ROLL CALL

#### B. APPROVAL OF MINUTES

1. January 14, 2016 meeting

#### C. CITIZEN COMMENTS – (on matters not scheduled for discussion or public hearing on tonight's agenda) Note: Citizens wishing to offer a comment on a non-hearing agenda item, at the discretion of the Chair, may be invited to speak later in the agenda, during the Commission's discussion of the matter. Citizens wishing to comment on the record on matters scheduled for a public hearing will be invited to do so during the hearing.

#### D. PUBLIC HEARINGS

#### E. WORK SESSION TOPICS

1. Critical Areas Code Amendments (Chapter 17.10 LMC)
2. Low Impact Development Regulations
3. Mobile Vendors (New Chapter 5.18 LMC)

#### G. OTHER BUSINESS

#### H. COUNCIL LIAISON REPORT

#### I. DIRECTOR'S REPORT

#### J. COMMISSIONERS' COMMENTS

#### K. ADJOURNMENT

*The public is invited to attend and participate in this public meeting. Parking and meeting rooms are accessible to persons with disabilities. Upon reasonable notice to the City Clerk's office (425) 670-5161, the City will make reasonable effort to accommodate those who need special assistance to attend this meeting.*

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<b>CITY OF LYNNWOOD PLANNING COMMISSION MINUTES January 14, 2016 Meeting</b>
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<b>Commissioners Present:</b>	<b>Staff Present:</b>
Chad Braithwaite, Chair	Todd Hall, Planning Manager
Robert Larsen, First Vice Chair	
Michael Wojack, Second Vice Chair	
Maria Ambalada	
Richard Wright	
<b>Commissioners Absent:</b>	<b>Other:</b>
Doug Jones (Excused)	Councilmember George Hurst

**Call to Order**

The meeting was called to order by Chair Wright at 7:00 p.m.

**Election of Officers**

Chair:

Commissioner Wojack nominated Commissioner Braithwaite as Chair.

Commissioner Larsen nominated Commissioner Wright as Chair.

*Commissioner Braithwaite was elected as Chair.*

First Vice Chair:

Commissioner Ambalada nominated Commissioner Larsen.

*Commissioner Larsen was elected as First Vice Chair.*

Second Vice Chair:

Commissioner Wright nominated Commissioner Wojack.

*Commissioner Wojack was elected as Second Vice Chair.*

1 **Approval of Minutes**

2  
3 **1. Approval of Minutes of the December 10, 2015 Meeting**

4  
5 *Motion made by Commissioner Larsen, seconded by Commissioner Ambalada,*  
6 *to approve the December 10, 2015 Planning Commission minutes as presented.*  
7 *Motion passed unanimously (5-0).*

8  
9 **Citizen Comments**

10  
11 None

12  
13 **Public Hearing**

14  
15 **1. Outdoor Lighting Standards (CAM-001429-2014)**

16  
17 The public hearing was opened at 7:08 p.m.

18  
19 Staff Presentation: Planning Manager Todd Hall introduced the ordinance which  
20 would create an entirely new chapter of Title 21 (Title 17 – Outdoor Lighting  
21 Standards). Staff is seeking a recommendation of approval of the ordinance.  
22 Staff will be presenting the proposed ordinance at next week’s Council work  
23 session and at a future public hearing at City Council.

24  
25 Planning Manager Hall explained that the purpose of the proposed ordinance is  
26 to:

- 27
- 28 • Provide uniform outdoor lighting standards to ensure public safety, utility  
29 and security of private and public property
  - 30 • Minimize the impact of exterior lighting on views of the night sky by  
31 minimizing glare, obtrusive light, and artificial sky glow, and limiting  
32 outdoor lighting that is misdirected, excessive, or unnecessary
  - 33 • Implement the Energy Conservation Policies of the Comprehensive Plan
  - 34 • Regulate the type of light fixtures, lamps and standards
  - 35 • Protect low and medium density residential zones from the ill effects  
36 associated with non-residential and multi-family exterior lighting
  - 37 • Ensure exterior lighting is in compliance with the State of Washington  
38 Energy Code.

39 He explained the Planning Commission has been briefed several times on this  
40 ordinance. Some of the key features of the new ordinance include the following:

- 41
- 42 • Several new definitions are included in the chapter.
  - 43 • Exemptions are listed.
  - 44 • Specific regulations for lighting are listed in or within close proximity to  
45 residential zones.
  - 46 • New lighting zones are defined.
  - Tables are included.

- Proposed amendments to other chapters in which lighting is referenced are included.

An environmental review on the proposed ordinance was conducted, and a determination of non-significance was issued. No comments were received. He reviewed options available to the Planning Commission following the public hearing.

Public Testimony: Chair Braithwaite solicited public comments. Seeing none, the public comment portion of the public hearing was closed at 7:13 p.m.

Staff Comments: Planning Manager Hall distributed and reviewed proposed revisions resulting from comments submitted by Chair Braithwaite, especially highlighting a new table titled 21.17.08 was inadvertently omitted, but needs to be included.

Commissioner Larsen referred to page 14, line 68 and noted this should say “and” not “or”. He then referred to page 17, at 21.17.050 General Regulations, and asked how this would be accomplished. Planning Manager Hall explained it would likely be handled with Code Enforcement like any other nuisance.

Commissioner Ambalada asked about the possibility of using lights at schools as a means of notifying public of emergency situations at schools. Planning Manager Hall explained that the code directly relates to lighting in terms of making sure the school is safe. He noted that what she was referring to would be more of a safety protocol that the school district might implement.

Commissioner Wojack said he appreciated the elimination of LZ4, the super bright lighting zone. He expressed appreciation for the work staff has done and for incorporating the Planning Commission’s comments.

Commissioner Braithwaite asked about lighting standards for private roads. Planning Manager Hall was not certain, but said they could be encouraged through the development process to use cut off fixtures. He said he wasn’t aware of any issues associated with this. Commissioner Braithwaite commented that if outdoor porch lights were cut off type fixtures it would have an impact.

Commissioner Larsen referred to the zones LZ1 through 3 on page 19 and asked how these would be incorporated to the zoning maps. Planning Manager Hall explained that the chart would be used to show the lighting zone that would apply to the different zones of the map. They would not necessarily be incorporated to the maps.

Regarding 21.17.030, item 3, Commissioner Larsen recommended having staff add language indicating that when a conflict arises, the outcome would be determined by the Director. There was consensus that this would provide

1 flexibility while still maintaining the intent of the other regulations and design  
2 standards.

3  
4 *Motion made by Commissioner Larsen, seconded by Commissioner Wright, to*  
5 *approve the lighting ordinance subject to two changes: one as submitted by*  
6 *Chair Braithwaite, and the other under 21.17.030, A(3) subject to the changes*  
7 *recommended there. The motion passed unanimously (5-0).*

## 8 9 **Work Session**

### 10 11 **Other Business**

#### 12 13 1. Proclamation in Appreciation of the service of George Hurst

14  
15 Chair Braithwaite read the proclamation expressing appreciation for the service  
16 of George Hurst to the Planning Commission.

17  
18 *Motion made by Commissioner Wright, seconded by Commissioner \_\_\_\_\_*  
19 *[inaudible], to approve the proclamation. Motion passed unanimously (5-0).*

#### 20 21 2. 2015 Annual Report

22  
23 Planning Manager Hall presented the 2015 Annual Report of the Lynnwood  
24 Planning Commission as contained in the Planning Commission's packet. He  
25 explained that this will be going to the Council within the next month.

26  
27 Commissioner Wright thanked the other members of the Planning Commission  
28 and Councilmember Hurst for their dedication and hard work over the last year.  
29 Chair Braithwaite thanked Commissioner Wright also.

### 30 31 **Council Liaison Report**

32  
33 Councilmember George Hurst noted that there will be a Council retreat with an  
34 agenda item regarding the Council's relationship with commissions and boards.  
35 He intends to draw attention to the hard work of the Planning Commission.

### 36 37 **Director's Report**

38  
39 Planning Manager Hall had the following comments:

- 40 • Director Krauss is out of town due to the passing of a good friend in  
41 Florida.
- 42 • On January 28, Gloria Rivera will be discussing the proposed  
43 amendments to Chapter 21.46. Jared Bond will possibly also be coming to  
44 that meeting to give updates regarding the Critical Areas Code and a Low  
45 Impact Development Code that will be required this year as well.
- 46 • The meeting on February 11 will be cancelled since he will be out of town.

- 1 • On February 28, staff will begin bringing a long list of code amendments  
2 for the Planning Commission to work through.
- 3 • In April the docket for annual Comprehensive Plan amendments will be  
4 coming to the Planning Commission. Staff will be proposing some  
5 amendments to the College District.
- 6 • In terms of development, staff is working hard at getting permits out the  
7 door. Lynndale Elementary will be starting their project soon. The tower  
8 cranes are up for the senior living apartments. More housing will be  
9 coming behind the Harley Davidson site on Highway 99. CarMax has said  
10 they are just about ready to submit permits to demolish the last building  
11 and start grading. Another apartment building is being submitted behind  
12 Kentucky Fried Chicken. The Cosmos building next to Toys R Us is  
13 planned to be demolished and replaced with an 11-story building. He  
14 summarized that there are a lot of housing projects happening as well as  
15 potential redevelopment sites around the city.

### 16 **Commissioners' Comments**

17  
18  
19 Commissioner Wojack commented he would have like to have seen Christmas  
20 lights on the cranes in Lynnwood.

21  
22 Commissioner Larsen thanked Commissioner Wright for his leadership over the  
23 past many years as Chair of the Planning Commission. The other commissioners  
24 concurred. Commissioner Wright expressed appreciation to the Commission and  
25 staff for all their hard work. He is looking forward to sitting back, asking more  
26 questions, and being part of the process in a different way.

### 27 **Adjournment**

28  
29  
30 The meeting was adjourned at 7:56 p.m.

31  
32  
33  
34 \_\_\_\_\_  
35 Chad Braithwaite, Chair

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**Topic: Critical Areas Code  
Amendments (Chapter 17.10 LMC)**

Agenda Item: E.1

- 
- Public Hearing
- 
- 
- Work Session
- 
- 
- Other Business
- 
- 
- Information
- 
- 
- Miscellaneous

**Staff Report**Staff Contact: Jared Bond, Environmental and Surface Water Supervisor,  
Public Works Department**Summary**

The purpose of this agenda item is to introduce draft legislation updating Lynnwood Municipal Code 17.10, the Critical Areas Regulations. Numerous changes are being proposed, all of which meet the GMA requirement of using best available science (BAS) in doing so.

This briefing will discuss the reasons behind the change, the proposed updates, and next steps prior to adoption.

**Action**

None required.

**Background**

Growth Management Act (1990) requires identification, designation, and protection of critical areas. Critical areas include:

- Frequently flooded areas
- Geologically hazardous areas
  - Landslide, erosion, seismic hazards
- Fish and wildlife habitat conservation areas (FWHCAs)
  - Streams
  - Lakes <20 acres
  - Habitat for listed and sensitive fish and wildlife species
- Wetlands
- Critical aquifer recharge areas (CARAs)

**Previous Planning Commission / City Council Action**

The Lynnwood Critical Areas Regulations was last updated in 2005.

**Attachments**

1. Lynnwood CAO Planning Commission Presentation
2. CAR Update Matrix and Maps
3. Lynnwood CAO – January 2016 Draft

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# City of Lynnwood Critical Areas Ordinance Update

Planning Commission Meeting

Jared Bond, Environmental and Surface Water Supervisor

Aaron Booy, ESA

January 28, 2016



## Presentation Overview

- Background
- Definitions
- Update process
- Best available science
- Proposed substantive changes
- Next steps



## Background and Purpose

- Growth Management Act (1990) requires identification, designation, and protection of critical areas
- Protection for:
  - natural environment
  - public health and safety
- Existing CAO – established from comprehensive update in 2005

## What are Critical Areas?

- Frequently flooded areas
- Geologically hazardous areas
  - Landslide, erosion, seismic hazards
- Fish and wildlife habitat conservation areas (FWHCAs)
  - Streams
  - Lakes <20 acres
  - Habitat for listed and sensitive fish and wildlife species
- Wetlands
- Critical aquifer recharge areas (CARAs)



## How does the CAO protect critical areas?

- Prohibiting, limiting, and/or allowing certain activities
- Requiring buffers or setbacks around critical areas
- Requiring mitigation sequencing for impacts
  - Avoidance
  - Minimization / Reduction
  - Rectification
  - Compensation (for unavoidable impacts)
  - Monitoring

## CAO Update Process

- GMA requires update every 8-years (same as Comprehensive Plan update timeline)
- Consideration of **Best Available Science** (BAS)
- Revise code
- Review
- Adopt revised code

## What is Best Available Science?

- Research and guidance
  - Conducted by qualified individuals
  - Documented methodologies
  - Verifiable results and conclusions
- Published bibliographies; state guidance; primary research publications
- 1995 Amendment to the GMA requires consideration of “best available science” for protecting critical areas



## BAS Review and Update

- BAS Consistency Review (March 2015 memo)
  - Focused on new science and guidance in last decade
- Wetlands
  - Delineation and rating
  - Buffer approach
  - Alternative mitigation strategies; mitigation guidance
- FWHCAs
  - Stream typing and buffer approach



*Scriber Creek Trail and wetlands*

## BAS Review and Update

- Floodplains
  - Climate change
  - Compensatory storage
- Geologically hazardous areas
  - Updated typing system (landslide, erosion, and seismic hazards)
- CARAs
  - New standards (previous code did not include)



## Proposed Changes to CAO

- Refer to attachment for highlights and discussion





## Next Steps

- Comments from state and tribal agencies (Commerce, Ecology, WDFW)
- Stakeholder Outreach (Developers, Environmental Organizations, Concerned Citizens)
- SEPA Approval
- City Council Public Hearing and Consideration for Adoption

# City of Lynnwood Critical Areas Regulations Substantial Updates

Section	Section Title	Proposed Updates/Removals/Additions
17.10.010	Purpose	Add frequently flooded areas and critical aquifer recharge areas (CARAs) to what constitutes a critical area.
17.10.030	Definitions	Add "installing a culvert or other crossing structure" to definition of "Alteration". Removed stand-alone section 17.10.065 addressing culverts.
17.10.030	Definitions	Expanded the definition of "Compensation," to include creation, re-establishment, rehabilitation, and enhancement.
17.10.041	Mitigation Sequencing	New section adding "Mitigation Sequencing." Instructs applicants proposing mitigation to demonstrate they followed the provided mitigation sequencing steps. (17.10.030.M)
17.10.042	Variations	New section adding "Variations." Allows for variations from the standards of the title if specific criteria is met. Variance applications will be reviewed by the hearing examiner and will be subject to a public hearing before approval.
17.10.043.C	Exemptions Criteria	Added criteria that requires all "impacts are avoided to the maximum extent feasible."
17.10.044.D	Exemptions	If an existing drainage ditch meets the criteria for a fish and wildlife priority habitat, normal and routine maintenance will no longer be exempt. Maintenance will still be allowed, but will have to undergo normal approvals.
17.10.044.K	Exemptions	Modify the amount of invasive species coverage requirement for exemption, previously > 80%, to a simple majority in Category III and IV wetlands under 2,500 square feet. Exemptions would still be conditional.
17.10.045	Allowable low impact uses and activities	New section adding "Allowable Low Impact Uses and Activities." This section allows for certain low-impact uses and activities within critical areas and buffers subject to the directors approval. Replaces and expands previous section 17.10.110.

Section	Section Title	Proposed Updates/Removals/Additions
17.10.050	Wetland delineation and rating system	Update the procedure by which wetlands are delineated and rated. The new procedure is in accordance with approved state guidelines and best available science.
17.10.051	Wetland report requirements	New section specifying elements required in a wetland report.
17.10.052	Standard wetland buffers	Modified wetland buffer widths have been proposed in accordance with habitat score. This is in accordance with Ecology guidelines, and in-line with BAS. In general, buffers widths will largely be the same as they are now.
17.10.053.A.4	Wetland and buffer alteration criteria	Allows for off-site compensatory wetland mitigation banking, and fee-in-lieu with Ecology certified banks.
17.10.055.C	Wetland buffer and mitigation plan	Proposes mitigation plan will need to include baseline information of surface and subsurface hydrologic conditions, and an analysis of future hydrologic regime changes from proposed development and proposed hydrologic regime for enhanced, created, or restored wetlands mitigation areas.
17.10.056	Wetland alteration compensation	Specifies that mitigation bank and in-lieu fee programs will now be preferred as compensation for wetland impacts. Establishes ratios for creation / re-establishment, rehabilitation, and enhancement.
17.10.057	Increased wetland buffer width	Removes specific widths, and allows the Director the authority to increase a wetland buffer width up to 50% if the wetland meets any of the criteria listed in the section.
17.10.057 (old)	Decreased wetland buffer width	Removes previous section, replaced with 17.10.059 (Buffer width reductions through enhancement).
17.10.059	Buffer width reductions through enhancement	Proposes that buffer widths in Category III and IV wetlands would be allowed to be reduced by no more than 25% through wetland enhancements.
17.10.070	Stream typing	Adopts the Washington State Department of Natural Resources Stream Typing criteria. This is in accordance with BAS.

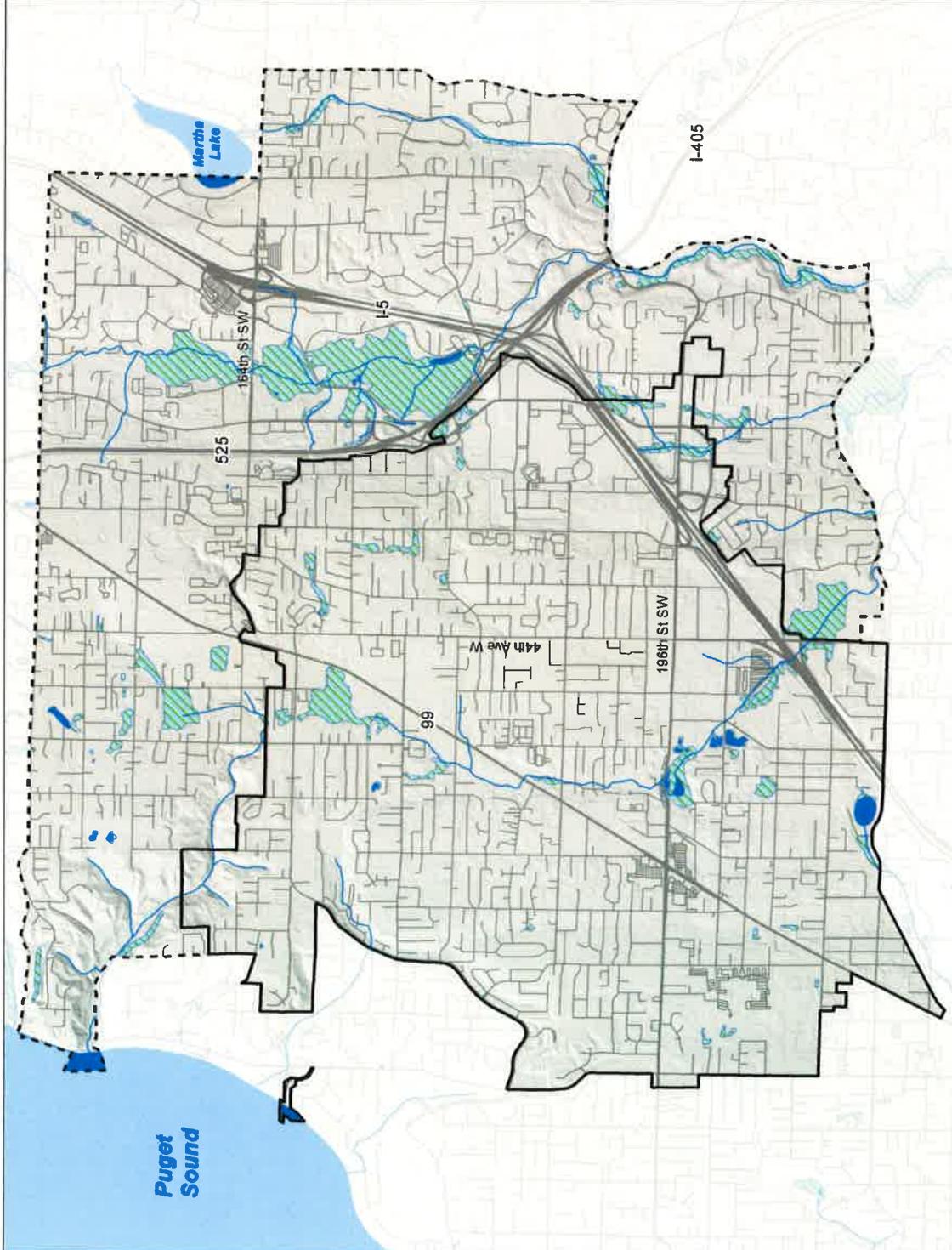
Section	Section Title	Updates/Removals/Additions
17.10.071	Stream buffers	Proposes that any stream that is relocated or replaced because of stream alterations would be required to have at least the standard buffer width of its correlating class. Includes a buffer width of 150' for Type S streams (none currently in City limits).
17.10.072	Stream report - Requirements	New section adding "Stream report requirements." Specifies elements to include in a stream reports required by a submittal.
17.10.073	Stream alteration allowed	Proposes that alterations of all natural watercourses and streams should be avoided if possible, and if unavoidable, alterations would need to be approved by director.
17.10.065 (old)	Culverting	Section removed. Culverting is addressed as an alteration in 17.10.073 and 17.10.074.
17.10.080	Fish and wildlife priority habitat	Clarified the definition of fish and wildlife priority habitat areas.
17.10.081	Fish and wildlife priority habitat assessment	Specifies elements to include in a fish and wildlife priority habitat report, in accordance with BAS.
17.10.090	Geologically hazardous areas - identification	Expands the definition of areas classified as potentially geologically hazardous areas, in accordance with BAS.
17.10.091	Geologically hazardous areas - setbacks and buffers	Specifies the setbacks, buffers, and protections for all identified geologically hazardous areas.
17.10.093.C.3	Geologically hazardous areas - alteration conditions	Proposes the City would be able to require development proposals, on sites containing potential erosion hazard areas, to include temporary erosion and sediment control plans that are consistent with adopted manuals.

Section	Section Title	Updates/Removals/Additions
17.10.094	Geotechnical report content requirements	Proposes that geotechnical reports would potentially be subject to a third party review when determined necessary by the director.
17.10.100	Frequently flooded areas	New section added "Frequently flooded areas." Reiterates that activities in frequently flooded areas would need to be in compliance with FEMA floodplain regulations. (LMC 16.46)
17.10.100 (old)	Buffer credits	Removed buffer credits section.
17.10.110 (old)	Low-impact use of buffer -allowed	Section deleted as it was replaced and expanded in new section 17.10.045.
17.10.110 - 17.10.114	Critical aquifer recharge areas	New section added "Critical aquifer recharge areas (CARAs)." These section area required to be addressed and protected by GMA, and are taken from the model ordinances recommended by the Department of Commerce. They are in accordance with BAS. These regulations would affect the northeast portion of the City, see attached maps.

**Legend** **DRAFT**

-  City Limits
-  Municipal Urban Growth Area
-  Wetland
-  Water Body
-  Stream

This figure is intended for planning purposes only. Environmentally critical areas layers depicted in this figure are based on available City of Lynnwood, Snohomish County, and Washington State inventory information, and do not represent surveyed boundaries. The City makes no representation or warranty as to this product's accuracy or location of any mapped features. For more information, contact the City of Lynnwood.



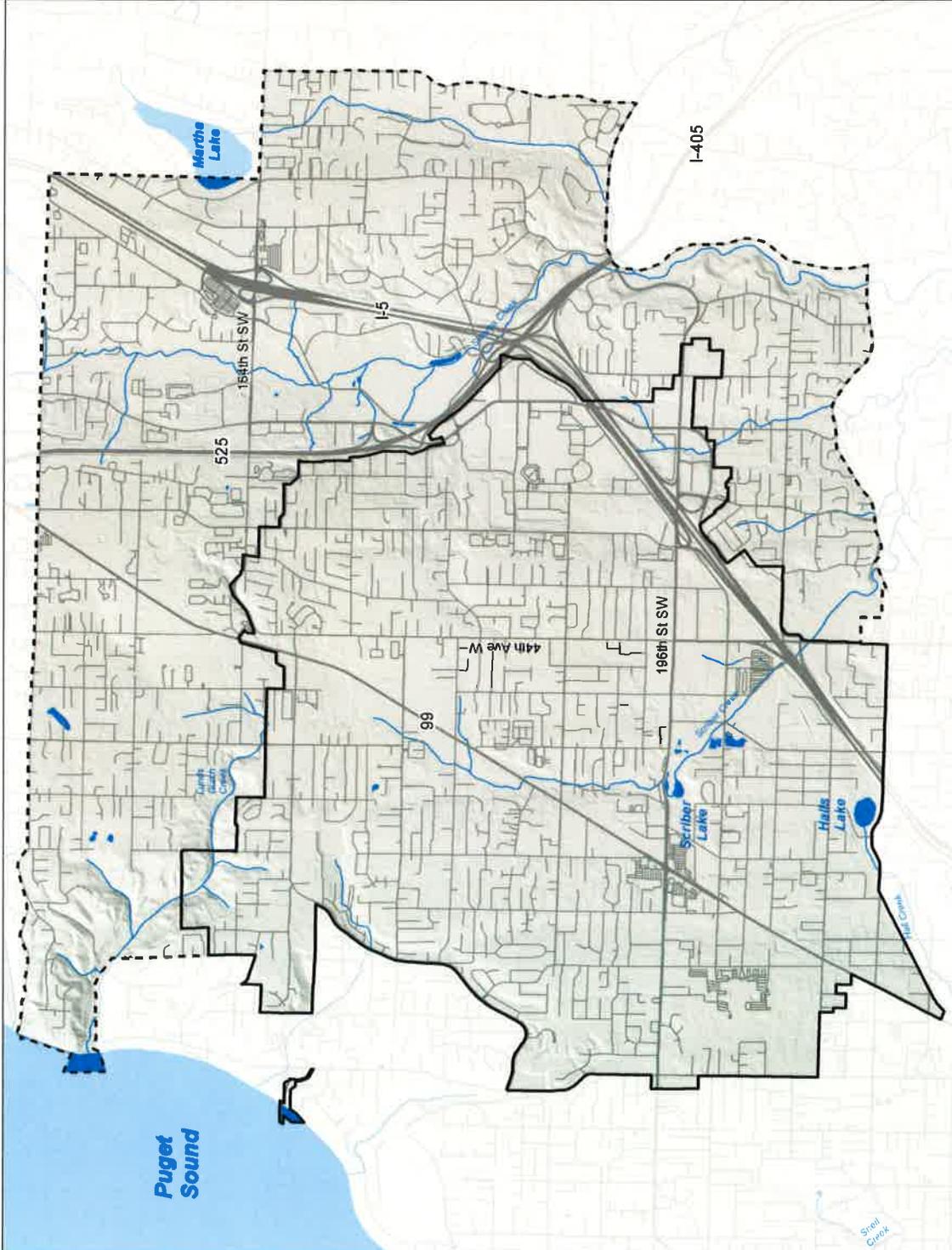
SOURCE: Snohomish County, 2013, City of Lynnwood, 2014, ESA, 2015.

### Figure 3 Streams

**Legend** **DRAFT**

-  City Limits
-  Municipal Urban Growth Area
-  Water Body
-  Stream

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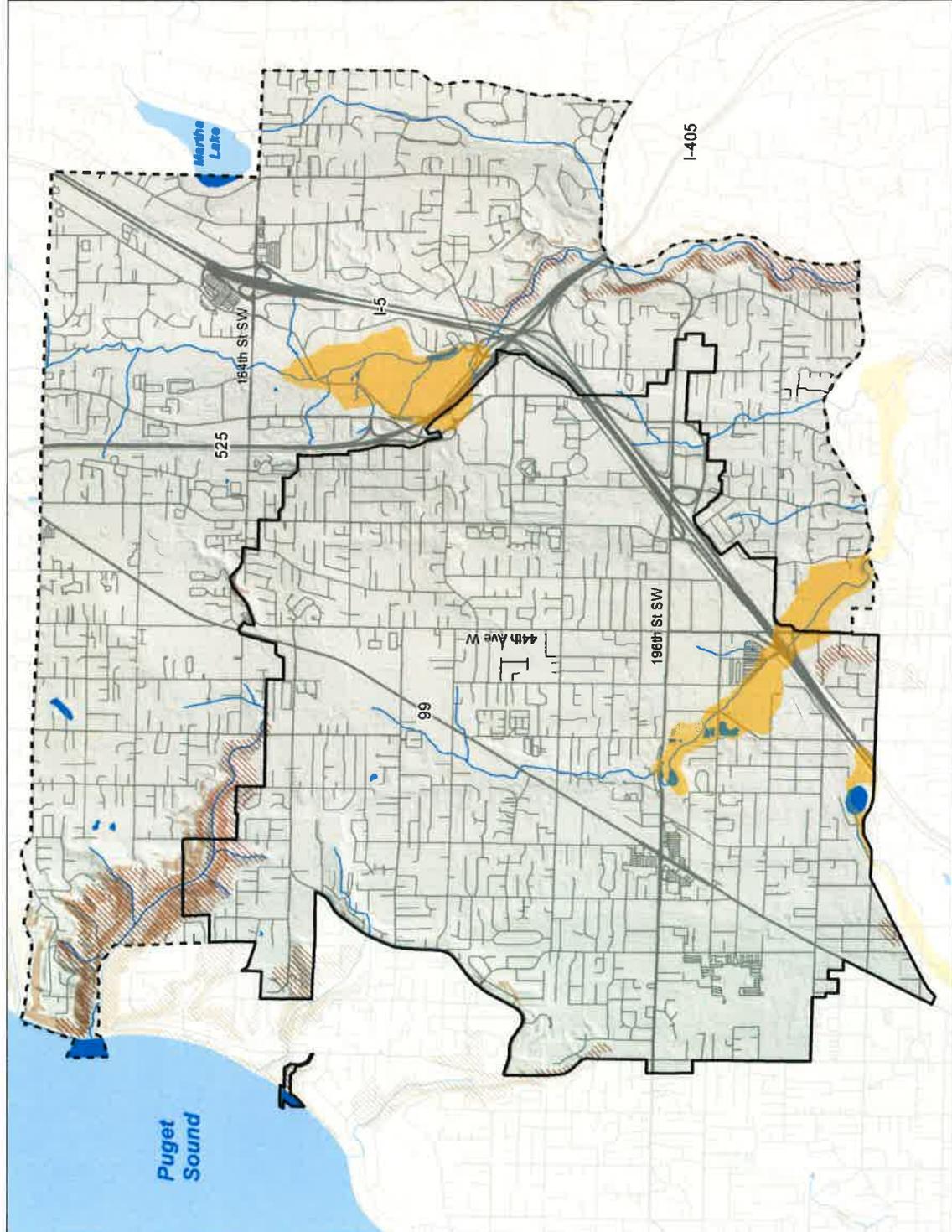
SOURCE: Snohomish County, 2013, City of Lynnwood, 2014, ESA, 2015

**Figure 4**  
Geologically Hazardous Areas

**Legend** **DRAFT**

-  City Limits
-  Municipal Urban Growth Area
-  Erosion Hazard Area
-  Potential Landslide Hazard Area
-  Seismic Hazard Area
-  Water Body
-  Stream

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SOURCE: Snohomish County, 2013; City of Lynnwood, 2014; ESA, 2015

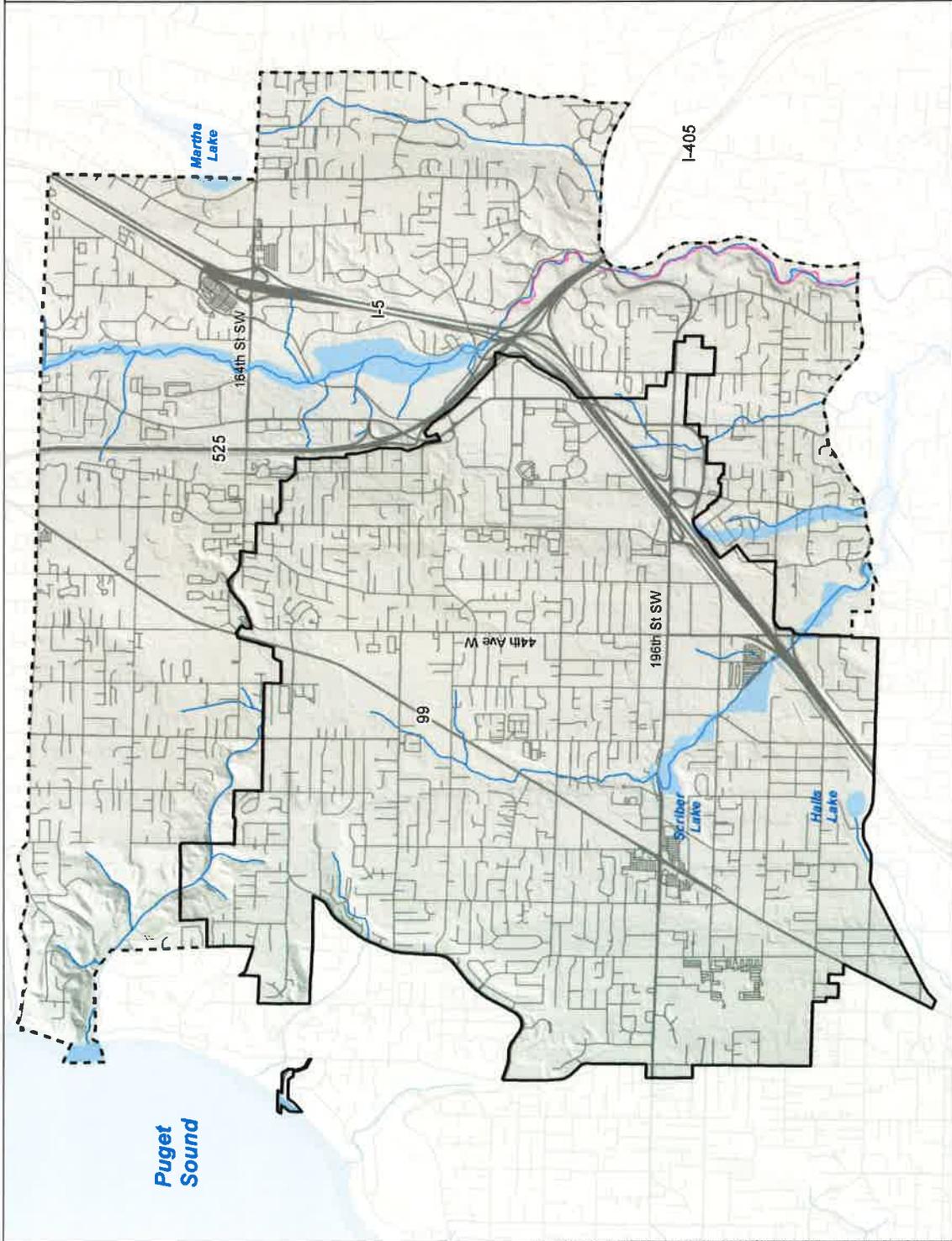
**Legend** **DRAFT**

-  City Limits
-  Municipal Urban Growth Area
-  Floodplain
-  Floodway
-  Stream

This figure is intended for planning purposes only. Environmentally critical areas layers depicted in this figure are based on available City of Lynnwood, Snohomish County, and Washington State inventory information, and do not represent surveyed boundaries. The City makes no representation or warranty as to this product's accuracy or location of any mapped features. For more information, contact the City of Lynnwood.



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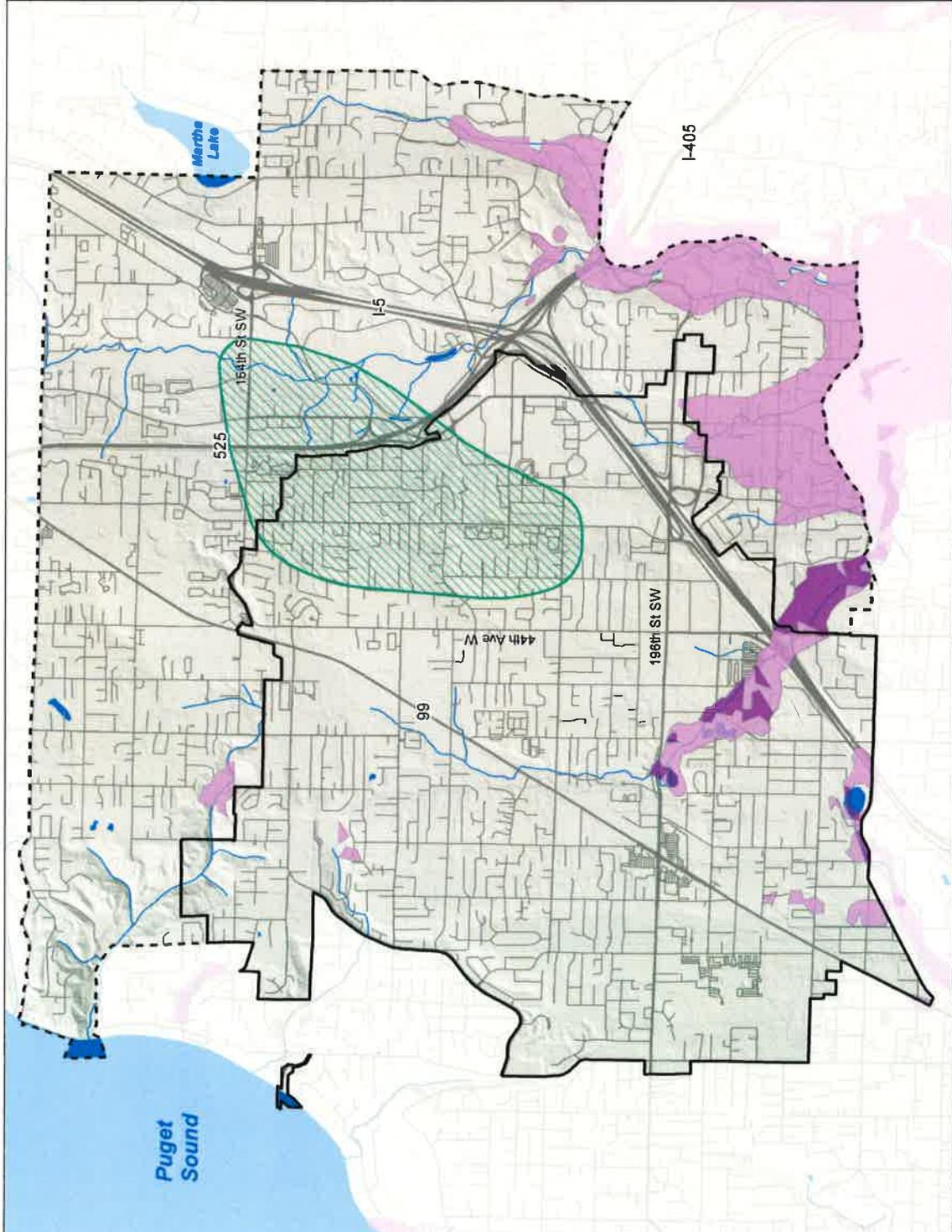


SOURCE: Snohomish County, 2013, City of Lynnwood, 2014, ESA, 2015

**Figure 6**  
Critical Aquifer Recharge Areas

- Legend** **DRAFT**
- City Limits
  - Municipal Urban Growth Area
  - Water Body
  - Stream
  - Wellhead Protection Area for 164th Street Artesian Well
- USGS Aquifer Sensitivity**
- Moderate, 40 to 100 ft Deep
  - High, 0 to 40 ft Deep

This figure is intended for planning purposes only. Environmentally critical areas layers depicted in this figure are based on available City of Lynnwood, Snohomish County, and Washington State inventory information, and do not represent surveyed boundaries. The City makes no representation or warranty as to this product's accuracy or location of any mapped features. For more information, contact the City of Lynnwood.



SOURCE: Snohomish County, 2013; City of Lynnwood, 2014; ESA, Washington Department of Health, 2015; USGS, 2012

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Chapter 17.10

ENVIRONMENTALLY CRITICAL AREAS

Sections:

17.10.010	Purpose.	Deleted: 17.10.040 Permitted uses.¶
17.10.015	General provisions.	Deleted: 5
17.10.020	Applicability.	Deleted: standard
17.10.030	Definitions.	Deleted: 6
17.10.040	Submittal requirements.	Deleted: 7
17.10.041	Mitigation sequencing	Deleted: 8
17.10.042	Variances	Deleted: 9
17.10.043	Exemptions allowed.	Deleted: 1
17.10.044	Exemptions.	Deleted: 2
17.10.045	Allowed activities	Deleted: 3
17.10.046	Reasonable use exception – Allowed.	Deleted: 4
17.10.047	Reasonable use application and process.	Deleted: 5
17.10.050	Wetland delineation and rating system.	Deleted: 6
17.10.051	Wetland report – Requirements.	Deleted: 17.10.057 Decreased wetland buffer width.¶
17.10.052	Standard wetland buffers.	Deleted: 59
17.10.053	Alterations to wetlands and buffers – Allowed.	Deleted: 6
17.10.054	Wetland and buffer alteration criteria.	Deleted: Rating
17.10.055	Wetland and buffer mitigation plan.	Deleted: 061
17.10.056	Wetland alteration compensation.	Deleted: 2
17.10.057	Increased wetland buffer width.	Deleted: 3
17.10.058	Averaging of wetland buffer widths.	Deleted: 4
17.10.059	Buffer width reductions through enhancement	Deleted: 5
17.10.060	Building setback lines – Wetlands.	Deleted: Culverting
17.10.070	Stream – Typing.	Deleted: 6
17.10.071	Stream buffers.	Deleted: 7
17.10.063	Stream report – Requirements.	Deleted: 68
17.10.064	Stream alteration allowed.	Deleted: 69
17.10.065	Stream alteration criteria.	Deleted: 0
17.10.066	Stream mitigation plan.	Deleted: W
17.10.067	Stream crossing structures.	Deleted: habitat assessment
17.10.068	Increased stream buffer width.	Deleted: Buffer credit
17.10.069	Decreased stream buffer width.	Deleted: Low-impact use of buffer – Allowed
17.10.070	Averaging of stream buffer widths.	Deleted: 11
17.10.071	Riparian wetland.	Deleted: 0
17.10.072	Building setback line – Streams.	Deleted: 25
17.10.080	Fish and wildlife priority habitat.	Deleted: 30
17.10.081	Fish and wildlife priority habitat assessment.	
17.10.090	Geologically hazardous areas – Identification.	
17.10.091	Geologically hazardous areas – Setbacks and Buffers.	
17.10.092	Geologically hazardous areas – Alteration allowed.	
17.10.093	Geologically hazardous areas – Alteration conditions.	
17.10.094	Geotechnical report content requirements.	
17.10.100	Frequently flooded areas.	
17.10.110	Critical aquifer recharge areas - Identification.	
17.10.111	Critical aquifer recharge areas – Alteration conditions	
17.10.112	Critical aquifer recharge areas – Report requirements	
17.10.120	Critical areas signs, monuments and fencing.	
17.10.125	Appeals.	
17.10.130	Notice, performance securities, bonds, administration.	
17.10.140	Unauthorized alterations.	

91 | 17.10.145 Enforcement, violations and penalties.  
92 | 17.10.150 Severability.  
93 | \* Editor's Note: Ordinance 2598 § 4 specifies that the "regulations included in this ordinance shall take effect March 13th, 2006..."

Deleted: 31  
Deleted: 40

94 | **17.10.010 Purpose.**

95 | The purpose of this chapter is to identify critical areas and to supplement the development requirements contained in  
96 | the Lynnwood Municipal Code by providing for additional controls as required by the Washington State Growth  
97 | Management Act and other laws. Wetlands, streams, fish and wildlife priority habitat areas, geologically hazardous  
98 | areas, frequently flooded areas, and critical aquifer recharge areas, as defined in LMC 17.10.030, constitute critical  
99 | areas that are of special concern to the city of Lynnwood. The standards and mechanisms established in this chapter  
100 | are intended to protect the functions and values of these environmentally critical features for the public benefit, while  
101 | providing property owners with reasonable use of their property. By regulating development and alterations to critical  
102 | areas this chapter seeks to:

Deleted: and

- 103 | A. Protect the public health, safety and welfare by preventing adverse impacts of development;
- 104 | B. Educate the public as to the long-term importance of environmentally critical areas and the responsibilities of the  
105 | city to protect and preserve the natural environment for future generations;
- 106 | C. Effectively manage environmentally critical areas by regulating development within and adjacent to them;
- 107 | D. Mitigate unavoidable impacts to environmentally critical areas by regulating alterations in and adjacent to critical  
108 | areas;
- 109 | E. Protect the city's critical areas using best available science;
- 110 | F. Prevent, to the extent practicable, adverse cumulative impacts to all critical areas;
- 111 | G. Encourage improvements to all surface water bodies and watercourses;
- 112 | H. Protect the public, and public resources and facilities from injury, loss of life, property damage or financial losses  
113 | due to flooding, erosion, landslides, soil subsidence or steep slope failure;
- 114 | I. Alert appraisers, assessors, owners and potential buyers or lessees to the potential development limitations of  
115 | environmentally critical areas;
- 116 | J. Allow the city of Lynnwood to obtain all information necessary to approve, condition, or deny public or private  
117 | development proposals;
- 118 | K. Provide predictability and consistency to the city of Lynnwood's development review process; and
- 119 | L. Implement the policies of the State Environmental Policy Act, the Growth Management Act, and all city functional  
120 | plans and policies. (Ord. 2598 § 2, 2005)

Deleted: the water quality, wetlands, streams, stream corridors and fish and wildlife habitat  
Deleted: Improve streams and watercourses, particularly those associated with Scriber Creek and Swamp Creek to a more natural condition wherever possible, and establish reasonable development incentives to encourage such improvement;

Deleted: Provide  
Deleted: with

121 | **17.10.015 General provisions.**

- 122 | A. Abrogation and Greater Restriction. It is not intended that this chapter repeal, abrogate or impair any existing  
123 | regulation, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the  
124 | provisions of this chapter shall prevail.
- 125 | B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and  
126 | application and shall be liberally construed to serve the purposes of this chapter.
- 127 | C. Rule-Making Authority. The director is authorized to adopt written rules and procedures for the implementation of  
128 | the provisions of this chapter. (Ord. 2598 § 2, 2005)

141 **17.10.020 Applicability.**

142 This chapter establishes regulations for the protection of properties which contain or are adjacent to environmentally  
143 critical areas. Environmentally critical areas include those which meet the definitions and requirements of this chapter.  
144 The city may inventory critical areas on maps for reference and potential indicator purposes. All critical areas shall be  
145 verified by separate studies to indicate the extent of such areas. Development proposals for properties which contain or  
146 are adjacent to designated or regulated environmentally critical areas shall comply with the provisions and  
147 requirements of this chapter.

**Deleted:** or sites which are environmentally critical.

148 A. A permit shall be obtained from the city for any activity which alters or disturbs an environmentally critical area or  
149 buffer, including, but not limited to, clearing, grading, draining, filling, dumping of debris, demolition of structures  
150 and installation of utilities.

151 B. ~~A permit shall be obtained from the city for any proposed activity adjacent to a critical area.~~

**Deleted:** Further, a permit

152 C. No boundary line adjustments or development permits including subdivisions, short plats, conditional use permits,  
153 rezones or variances shall be granted for any lot which contains or is adjacent to an environmentally critical area until  
154 approvals as required by this chapter have been granted by the city.

155 D. A permit shall be considered valid for two years. The director, upon request by the applicant, may extend the  
156 validity of such permit for an additional year.

157 The provisions of this chapter apply to projects proposed by private and public entities. No permit granted pursuant to  
158 this chapter shall remove an applicant's obligation to comply in all respects with other federal, State, and local  
159 regulations and permit requirements that may be required, including but not limited to the Washington Department of  
160 Fish and Wildlife hydraulic project approval (HPA), Army Corps of Engineers Section 404 permits, Ecology Section  
161 401 permits, and National Pollution Discharge Elimination System (NPDES) permits. The applicant is responsible for  
162 complying with these requirements, in addition to this chapter. (Ord. 2622 § 2, 2006; Ord. 2598 § 2, 2005)

**Deleted:** the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval.

163 **17.10.030 Definitions.**

164 Terms used in this chapter shall have the meaning given to them in this chapter, unless where used the context thereof  
165 clearly indicates to the contrary. Words and phrases used herein in the past, present or future tense shall include the  
166 past, present and future tenses; and phrases used herein in masculine, feminine or neuter gender shall include the  
167 masculine, feminine and neuter genders; and words and phrases used herein in the singular or plural shall include the  
168 singular and plural; unless the context shall indicate to the contrary.

169 A. "Adjacent" means within 200 feet of an environmentally critical area, measured from the edge of the  
170 environmentally critical area.

171 "Adjacent wetland" means the entire area of the wetland under consideration and not just the portion within 200 feet of  
172 an environmentally critical area.

173 "Alteration" means any human-induced action which impacts the conditions of a critical area or buffer. Alterations  
174 include but are not limited to increasing buffer; decreasing buffer; averaging buffer; grading; filling; dredging;  
175 draining; channelizing; installing a culvert or other crossing structure; cutting of trees; clearing; paving; construction;  
176 dumping; and demolition.

177 "Areas of special flood hazard" means the land in the flood plain within a community subject to a one percent or  
178 greater chance of flooding in any given year.

179 B. "Best available science" means current scientific information used in the process to designate, protect, or restore  
180 critical areas that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925.

181 "Buffer" means a designated or regulated area contiguous with an area designated or regulated as a critical area that  
182 also maintains the functions and/or structural stability of the critical area. Buffers are typically well vegetated and do  
183 not include areas that are separated and functionally isolated from a critical area by a legally established structure or  
184 use (for example, areas are separated by a road).

**Deleted:** adjacent to

193 C. “City” means the city of Lynnwood.

194 “Clearing” means the removal of vegetation or other organic plant materials by physical, mechanical, chemical or  
195 other means.

196 “Compensation” means the replacement, enhancement, or creation of an environmentally critical area or buffer  
197 equivalent in functions, values and area to those being altered or destroyed, and includes, but is not limited to the  
198 following:

199 1. “Creation” means bringing a critical area and associated buffer into existence at a site in which a critical area and  
200 associated buffer did not formerly exist.

201 2. “Re-establishment” means actions performed to restore processes and functions to an area that was formerly a  
202 wetland or other critical area, where the former critical area was lost by past alterations and activities.

203 3. “Rehabilitation” means improving or repairing processes and functions to an area that is an existing wetland or other  
204 critical area that is highly degraded because one or more environmental processes supporting the wetland area have  
205 been disrupted.

206 4. “Enhancement” means actions performed to improve the condition of existing degraded wetlands or other critical  
207 areas so that the functions they provide are of a higher quality; enhancement activities usually attempt to change plant  
208 communities within existing wetlands from non-native communities to native scrub-shrub or forested communities.

209 “Creation” means bringing a critical area into existence at a site in which a critical area did not formerly exist.

Deleted: existence

210 “Critical areas” means the following areas:

211 1. Wetlands;

212 2. Streams;

213 3. Fish and wildlife priority habitat;

214 4. Geologically hazardous areas;

215 5. Frequently flooded areas;

216 6. Critical aquifer recharge areas; and 7. Any additional areas defined or established as critical areas under the  
217 provisions of the Washington State Growth Management Act or the provisions of this chapter.

Deleted: and¶

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218 D. “Department” means the Public Works Department.

Deleted: department of

219 “Development proposal site” means the legal boundaries of the parcel or parcels of land for which the applicant has  
220 applied to the city for development permits.

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Deleted: w

221 “Director” means the Director of Public Works and/or the Director’s designee.

Deleted: d

222 “Drainage facility” means the system of collecting, conveying, treating, and storing surface and stormwater runoff.  
223 Drainage facilities shall include but not be limited to all surface and stormwater runoff conveyance and containment  
224 facilities including streams, pipelines, channels, ditches, infiltration facilities, filtration and treatment facilities,  
225 retention/detention facilities, and other drainage structures and appurtenances, both natural and manmade.

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226 E. “Enhancement” means an action which increases the functions and values of a critical area or its buffer.

227 “Erosion hazard areas” means those areas containing soils which, according to the U.S. Soil Conservation Service Soil  
228 Survey, have severe to very severe erosion hazard potential.

229 “Essential habitat” means habitat necessary for the survival of species listed as “threatened” or “endangered” under the  
230 Federal Endangered Species Act, species listed as “threatened” or “endangered” by the Washington State Department

241 of Fish and Wildlife, species listed as “candidate” or “species of concern” by the U.S. Fish and Wildlife Service or  
242 NOAA Fisheries, and species listed as “sensitive” or “state candidate” by the Washington State Department of Fish  
243 and Wildlife.

244 F. “Functional values” and/or “functions” means the beneficial roles that critical areas and their buffers serve,  
245 including but not limited to water quality protection and enhancement, fish and wildlife habitat, food chain support,  
246 flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, aesthetic values and  
247 recreation.

248 G. “Geologically hazardous areas” means those areas that are naturally susceptible to geologic events such as  
249 landslides, seismic activity and severe erosion. Areas shall be designated as geologically hazardous areas consistent  
250 with identification criteria in LMC 17.10.110.H. “Hydrologically connected” means a critical area has a surface water  
251 connection to another critical area, is within 200 feet of another critical area, or lies within the flood plain of another  
252 critical area, and whose hydrology is directly affected by changes in the other critical area.

253 I. “In-lieu fee program” means a certified program which sells compensatory mitigation credits to permittees whose  
254 obligation to provide compensatory mitigation is then transferred to the in-lieu fee program sponsor, a governmental  
255 or non-profit natural resource management entity.

256 L. “Legally documented” means any legally recorded document, on file with the county, which designates an area on  
257 the site as a critical area or buffer.

258 “Lot coverage” has the meaning as defined in Chapter 21.02 LMC.

259 M. “Mitigation” means a negotiated action involving the use of one or more of the following:

- 260 1. Avoiding impacts altogether by not taking a certain action or parts of an action;
- 261 2. Minimizing impacts by limiting the degree of magnitude of the action and its implementation by using  
262 appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- 263 3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;
- 264 4. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the  
265 development proposal; or
- 266 5. Compensating for the impact by replacing, enhancing, or providing substitute critical areas.

267 “Mitigation bank” means a property that has been protected in perpetuity, and approved by appropriate City, state, and  
268 federal agencies expressly for the purpose of providing compensatory mitigation in advance of authorized impacts  
269 through restoration, creation, and/or enhancement of wetlands and, in exceptional circumstances, preservation of  
270 adjacent wetlands, wetland buffers, and/or other aquatic resources.

271 “Monitoring” means evaluating the impacts of development on the biological, hydrologic and geologic elements of  
272 natural systems and assessing the performance of required mitigation through the collection and analysis of data by  
273 various methods for the purposes of understanding and documenting changes in natural ecosystems and features.

274 O. “Ordinary high water mark” means a mark that has been found where the presence and action of waters are  
275 common, usual and maintained in an ordinary year, long enough to create a distinction in character between a water  
276 body and the abutting upland.

277 P. “Person” means an individual, firm, partnership, association or corporation, governmental agency, or political  
278 subdivision.

279 “Priority species” means those species of concern due to their population status and their sensitivity to habitat  
280 manipulation. Priority species include those which are listed as “threatened” or “endangered” under the Federal  
281 Endangered Species Act, species listed as “threatened” or “endangered” by the Washington State Department of Fish  
282 and Wildlife, species listed as “candidate” or “species of concern” by the U.S. Fish and Wildlife Service or NOAA

**Deleted:** ¶  
1. Have naturally occurring slopes of 40 percent or more;¶  
2. Other areas which the city has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazard.¶

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**Deleted:** N. “Net development area” means the total horizontal area of a project site, less any or all of the following:¶  
1. Areas within a project site which are required to be dedicated for public rights-of-way, or otherwise set aside for roads;¶  
2. Areas required by the city of Lynnwood to be dedicated or reserved as separate tracts, which may include, but not be limited to:¶  
a. Critical areas and their buffers to the extent they are required by this chapter to remain undeveloped;¶  
b. Areas required for stormwater control facilities other than facilities which are completely underground, including but not limited to retention/detention ponds, biofiltration swales and setbacks from such ponds and swales;¶  
c. Regional utility corridors;¶  
d. Other areas, excluding setbacks, required by the city of Lynnwood to remain undeveloped.¶

311 Fisheries, species listed as “sensitive” or “state candidate” by the Washington State Department of Fish and Wildlife,  
312 or are designated as such by the Priority Habitat and Species Program of the Washington State Department of Fish and  
313 Wildlife.

314 Q. “Qualified professional” means a qualified scientific expert with expertise appropriate to the relevant critical areas  
315 as determined by the person’s professional credentials and/or certifications, or as determined by the Director.

Deleted: d

316 R. “Reasonable use” means a mechanism by which a local jurisdiction may grant relief from code requirements where  
317 compliance leaves no reasonable use of the property.

Deleted:

318 “Restoration” means actions to return an environmentally critical area to a state in which its stability, functions and  
319 values approach its unaltered state as closely as possible.

320 “Riparian” means the lands adjacent to and functionally related to a river or stream.

321 S. “Stream” means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined  
322 channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to  
323 bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain  
324 water year-round. For the purposes of this chapter, streams shall include both natural channels and manmade channels  
325 that were constructed to replace a natural stream. This definition is not meant to include irrigation ditches, canals,  
326 storm or surface water runoff devices or other entirely artificial watercourses unless they are used by salmonids or  
327 used to convey streams naturally occurring prior to development in such watercourses.

Deleted: construction

328 W. “Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency or duration  
329 sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life  
330 in saturated soils conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not  
331 include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation  
332 and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and  
333 landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the  
334 construction of a road, street, or highway. Wetlands do include those artificial wetlands intentionally created from  
335 non-wetland areas to mitigate conversion of wetlands. (Ord. 2622 § 3, 2006; Ord. 2598 § 2, 2005)

Deleted: ponds

336 **17.10.040 Submittal requirements.**

337 A. Critical Areas Permit Application Required. Any application for land use, boundary line adjustments or  
338 development proposals by private or public entities, including rezones, subdivisions, building permits, clearing and  
339 grading permits, tree permits, or other activities which will result in any alteration or modification within or adjacent  
340 to an environmentally critical area or its standard buffer width shall include an application for a critical areas permit.  
341 The critical areas permit application shall be submitted to the department of public works for processing as required by  
342 LMC 2.44.040. The director or the director’s designee shall review the information submitted by the applicant  
343 together with any other available information. If the director determines that there is insufficient environmental  
344 information to evaluate the proposal, the applicant shall be notified that additional environmental studies are required.  
345 The director reserves the right to refuse to accept an incomplete application. The director may waive the requirement  
346 for a special study if there is substantial evidence showing that there will be no alteration of the critical area or buffer  
347 and that there will be no significant adverse impacts on the critical area as a result of the proposed development. At all  
348 times, critical area reports and decisions shall rely on the best available science.

Deleted: 17.10.040 . Permitted uses.¶  
Uses permitted on properties subject to this chapter shall be the same as those permitted in the zoning district in which the property is located. (Ord. 2598 § 2, 2005)¶

Deleted: 5

349 B. Contents of Special Studies. Special environmental studies shall be prepared by a qualified person with expertise in  
350 the area of concern in accordance with the requirements of this chapter and to the satisfaction of the department.  
351 Special studies are valid for two years; after such date the city will determine if a revision or additional assessment is  
352 necessary. Such studies shall:

353 1. Rely on the best available science; and

354 2. Provide a site plan and written report describing the conditions of the property, illustrating the proposed  
355 development and the environmentally critical area; and

366 3. Identify and characterize any critical area and associated buffer on or adjacent to the site. Such  
 367 characterizations shall comply with the methods described and accepted in this chapter; and

368 4. Describe how the proposed development will impact the critical area(s) and associated buffer(s) which are  
 369 present on or which are adjacent to the property; and

370 5. Describe any plans for alteration or modification of the critical area(s) and associated buffer(s), and provide  
 371 appropriate chapter citations allowing for such alteration or modification; and

372 6. A statement of the resources and methodology used in the reporting reflecting the use of "best available  
 373 science"; and

374 7. Provide recommended methods for mitigating any identified impacts consistent with mitigation sequencing  
 375 steps required by LMC 17.10.041.

376 C. Previous Critical Area Review. Any development proposals which are proposed to occur on sites that previously  
 377 underwent critical or sensitive areas review and either: a) have an established and legally documented critical area  
 378 buffer, or b) possess a valid critical or sensitive areas permit issued by a governing municipal agency; shall not be  
 379 subject to additional critical areas review and requirements, provided:

380 1. The development proposal would not encroach into the previously established buffer or protection area; and

381 2. The development proposal will not increase the existing level of impact on the critical area or the buffer. (Ord.  
 382 2622 § 4, 2006; Ord. 2598 § 2, 2005)

384 **17.10.041 Mitigation sequencing**  
 385 Proposed impacts to critical areas and their buffers shall adhere to the mitigation sequencing steps defined in section  
 386 LMC 17.10.030. Applicants proposing mitigation are required to demonstrate that mitigation sequencing steps have  
 387 been followed.

388 **17.10.042 Variances.**  
 389 A. Variances from the standards of this title may be authorized through the process of hearing examiner review in  
 390 accordance with the procedures set forth in Chapter 21.26 LMC. The hearing examiner shall review the request and  
 391 make a written finding that the request meets or fails to meet variance decision criteria of this section.

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

- 394 1. Such variance is necessary because of special circumstances relating to the size, shape, topography, location or  
 395 surroundings of the subject property to provide it with use rights and privileges permitted to other properties in the  
 396 vicinity and in the land use district of the subject property;
- 397 2. The special circumstances of the subject property make the strict enforcement of the provisions of this code an  
 398 unnecessary hardship to the property owner;
- 399 3. The special circumstances of the subject property are not the result of the actions of the applicant or a  
 400 predecessor in interest;
- 401 4. The variance requested is the minimum necessary to fulfill the purpose of a variance and the need of the  
 402 applicant; provided, granting the variance requested will not confer on the applicant any special privilege that is  
 403 denied by this title to other lands, structures, or buildings under similar circumstances;

**Deleted:** 6. A statement of any plans to utilize buffer credit, and provide a detail of the calculations; and¶  
7

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

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

422 C. Hearing Examiner Review. The city hearing examiner shall review variance applications and conduct a public  
423 hearing. The hearing examiner shall approve, approve with conditions, or deny variance applications based on a  
424 proposal's ability to comply with general and specific variance criteria provided in subsections (A) and (B) of this  
425 section.

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

429 E. Time Limit. The Hearing Examiner shall prescribe a time limit within which the action for which the variance is  
430 required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit  
431 shall void the variance, unless the applicant files an application for an extension of time before the expiration.

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

434 **17.10.04~~3~~ Exemptions ~~criteria~~.**

435 Certain activities set forth in LMC 17.10.04~~4~~ are exempt from the requirements of this chapter. The director may  
436 exempt such activities, as well as others, provided:

437 A. No person shall conduct any activity within or adjacent to any critical area or critical area buffer that is exempt from  
438 the provisions of this chapter until such person has given 10 days advance written notice (~~unless~~ for an emergency per  
439 LMC 17.10.04~~4~~(A)) to the director. The notice shall identify the activity to be conducted and the exemption(s) relied  
440 upon by the person who intends to conduct such activity; and

441 B. Such exemptions shall be verified by ~~the Director~~ and acknowledged ~~in a~~ written notice prior to the commencement  
442 of the activity; and

443 C. ~~Impacts are avoided to the maximum extent feasible; and~~

444 ~~D. Any unavoidable~~ impacts to critical areas and their buffers are minimized; and

445 D. Impacted areas are immediately restored. (Ord. 2598 § 2, 2005)

446 **17.10.04~~4~~ Exemptions.**

447 Subject to the conditions and requirements of LMC 17.10.04~~3~~, the following situations are exempt from the operation  
448 of this chapter:

449 A. Emergency actions necessary to prevent an immediate threat to public health, safety or welfare, or that pose an  
450 immediate risk of damage to private or public property, and that require action in a timeframe too short to allow for  
451 normal processing of the requirements of this chapter.

452 After the emergency action is taken, the director shall be notified of these actions within ~~48-hours~~. The director may  
453 require the person or agency relying on this exemption to then restore and/or mitigate for any impacts to critical areas  
454 and or buffers in accordance with an approved critical areas study and/or mitigation plan.

455 B. All existing developed areas located within critical areas or their associated buffers have a legal nonconforming  
456 status as to use and setback requirements.

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472 C. Existing structures, facilities, landscaping or other improvements that because of their existing location do not meet  
473 the setback requirements of this chapter, may be remodeled, reconstructed or replaced, or maintained or repaired,  
474 providing that any such activity does not further intrude or encroach into a critical area or buffer, or adversely affect  
475 critical area functions. Maintenance and repair does not include any modification that increases the amount of  
476 impervious surface, and does not include construction of an additional access road. Nothing herein releases the site  
477 from compliance with the provisions of LMC Title 21.

Deleted: increase the building footprint more than 10 percent,

478 D. Normal and routine maintenance of existing drainage ditches that do not meet the criteria for being considered a  
479 fish and wildlife priority habitat area, drainage retention/detention facilities, or ornamental landscape ponds; provided,  
480 that none of these are part of a critical area mitigation plan required by this chapter.

481 E. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated  
482 voltage of 55,000 volts or less, and relocation of natural gas, cable communications, telephone facilities, and water  
483 sewer or storm lines, pipes, mains, equipment or appurtenances, only when required and approved by the city, and  
484 subject to the following:

Deleted: or

485 1. No practical alternative location is available; and

486 2. The applicant demonstrates such construction is necessary for gravity flow (if applicable); and

487 3. Construction is accomplished using best management practices; and

488 4. The critical area and buffer environment is protected to the maximum extent possible during construction and  
489 maintenance; and

Deleted: wetland

490 5. The original grade is replaced; and

491 6. Joint use of a utility corridor by other utilities may be allowed and is strongly encouraged.

492 F. Installation, construction, replacement, repair, operation or alteration of electric facilities, lines equipment or  
493 appurtenances (not including substations) with an associated voltage of 55,000 volts or less in publicly owned  
494 right-of-way (which may be within or adjacent to a critical area or its buffer), subject to full review and approval of the  
495 director, including any mitigation and restoration requirements established by the Director.

Comment [ABooy1]: Deleting "improved" here broadens this exemption considerably. Is this your intent Jared?

Deleted: improved

Deleted: city road

496 G. Installation, construction, replacement, repair, operation or alteration of natural gas, cable and telecommunication  
497 facilities, water sewer or storm lines, pipes, mains, equipment or appurtenances in publicly owned right-of-way  
498 (which may be within or adjacent to a critical area or its buffer), subject to full review and approval of the director,  
499 including any mitigation and restoration requirements established by the Director.

Comment [ABooy2]: Same comment as above

If the intent was to broaden this exemption to include any publically owned right-of-way, whether or not it is already improved, Ecology will likely have concern, especially as it reads now.

Deleted: or

Deleted: improved

Deleted: City road

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Deleted: city road right-of-way

500 H. Repair or overlay of improved public road and trail surfaces, which may be within or adjacent to a critical area or its  
501 buffer, so long as it does not further encroach into the critical area or its buffer.

502 I. Minor site investigation work necessary for land use submittals, such as surveys, delineations, soil logs, percolation  
503 tests, and other related activities where such activities do not require construction of new access roads or significant  
504 amounts of excavation or vegetation removal. In every case, impacts to critical areas and buffers shall be minimized  
505 and disturbed areas shall be immediately restored.

506 J. Removal of the following non-native vegetation with hand labor from critical areas and buffers provided that  
507 appropriate erosion-control measures are used, and the area is revegetated with native vegetation. This exemption does  
508 not apply to mechanical removal.

Deleted: :

509 1. Himalayan blackberry (Rubus discolor, R. armeniacus, R. procerus);

510 2. Evergreen blackberry (R. laciniatus);

511 3. English ivy (Hedera helix);

512 4. Japanese knotweed (Polygonum cuspidatum);

525 5. Any plant identified as noxious on the Washington State Noxious Weed List.

526 | K. Isolated Category III and IV wetlands under 2,500 square feet which have majority cover by invasive species, and  
527 have been determined by a qualified professional to be of low function, may be exempted from the requirements of  
528 this chapter, provided that action is taken to mitigate for the lost functions. Adequate and appropriate mitigation  
529 measures shall be submitted by the applicant, prepared by a qualified professional, subject to the approval of the  
530 director, and may include, but is not limited to, stormwater quality and quantity treatment, and/or native landscaping  
531 enhancements. Please note that state and federal permits may still apply. (Ord. 2598 § 2, 2005)

**Deleted:** Mechanical equipment may be used for removal of the above listed vegetation, subject to prior director approval by the director.¶

**Deleted:** 80 percent or greater areal

532 **17.10.045 Allowed low impact uses and activities**

533 Certain low impact uses and activities may be approved by the director consistent with this section. These uses must be  
534 mitigated for according to the applicable terms and conditions detailed in this chapter. The following are allowed  
535 low-impact uses and activities:

537 A. Conservation and restoration activities that intend to protect the soil, water, vegetation, or wildlife.

538 B. Passive recreation and educational facilities within stream buffers and wetland buffers, including permeable  
539 walkways, trails, and viewing platforms.

540 C. Educational and scientific research activities.

541 D. Normal and routine maintenance and repair of any existing public or private facilities.

542 E. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the  
543 harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by  
544 changing existing topography, water conditions, or water sources.

545 F. Enhancement of a wetland buffer through the removal of non-native invasive plant species, and planting beneficial  
546 native species. Removal of invasive plant species shall be restricted to hand removal.

547 **17.10.046 Reasonable use exception**

548 If the application of this chapter would deny all reasonable economic use of the subject property, the applicant may  
549 apply for a reasonable use exception pursuant to the following provisions:

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**Deleted:** – Allowed.

**Deleted:** If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of the chapter and the public interest, provided:

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550 A. An application for a reasonable use exception containing the elements required in LMC 17.10.047 shall be filed  
551 with the department and shall be considered by the hearing examiner at a public hearing under Process I (LMC  
552 1.35.100 through 1.35.180).

553 B. The hearing examiner must determine that:

554 1. Application of this chapter would deny all reasonable use of the property; and

555 2. There is no reasonable use with less impact on the critical area; and

556 3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare; and

557 4. Any alteration to the critical areas or buffers must be the minimum necessary to allow for the reasonable use of  
558 the property; and

559 5. Impacts to critical areas and buffers are mitigated consistent with the purpose and standards of this chapter to  
560 the greatest extent feasible; and

561 6. The inability of the applicant to derive reasonable use of the property is not the result of actions of the property  
562 owner or some predecessor, which thereby created the condition after March 13, 2006.

575 C. The burden of proof shall be on the applicant to bring forth substantial evidence in support of the application for the  
576 hearing examiner in support of a decision on the application.

577 D. If the hearing examiner grants a reasonable use exception, the examiner may impose any condition(s) to ensure that  
578 the development is consistent with the intent of this chapter. (Ord. 2622 § 5, 2006; Ord. 2598 § 2, 2005)

579 **17.10.047. Reasonable use application and process.**

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580 Whenever an applicant requests a reasonable use exception, the applicant shall submit a complete application to the  
581 director for review. The applicant is strongly encouraged to schedule a submittal appointment with the department  
582 when submitting the application. This meeting will ensure that the applicant has a complete application, containing all  
583 of the elements required by this section. The department may refuse to accept an incomplete application.

584 The director shall prepare a recommendation to the hearing examiner based on review of the submitted information.

585 The reasonable use application shall include the following information, which will be used to evaluate whether a  
586 reasonable use exception shall be allowed:

587 A. A complete application and special study, as required by LMC 17.10.040; and

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588 B. A map and narrative describing the development proposal, and proposed impacts and reductions being requested;  
589 and

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590 C. A mitigation plan specifying the measures taken to mitigate for the impacts; and

591 D. A map showing the other setbacks required by other standards of the zoning code and any modification to those  
592 standards being requested; and

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Deleted: amount of the lot which is within

593 E. An analysis of the impact that the proposed development would have on the environmentally critical area(s) and/or  
594 their buffer(s); and

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595 F. A design of the proposal so that the amount of development proposed as "reasonable use" will have the least impact  
596 practicable on the environmentally critical area(s), including a narrative as to why the applicant believes this is so; and

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597 G. A description of the design modifications proposed by the applicant in order to minimize impacts on the critical  
598 area(s) and buffer(s). This includes, but is not limited to, a description of the modified building footprint, reduced  
599 building setback from the buffer, parking modifications, reduced total building square feet, modified location to  
600 preserve trees, and any other measures taken by the applicant; and

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601 G. A description of the needed modifications to the standards of all applicable chapters to accommodate the proposed  
602 development, including chapter citations; and

603 H. Any other related projects documents, such as permit applications to other agencies, special studies, and  
604 environmental documents prepared pursuant to the State Environmental Policy Act; and

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605 I. Such other information as the director or hearing examiner determines is reasonably necessary to evaluate the issue  
606 of reasonable economic use as it relates to the proposed development. (Ord. 2622 § 6, 2006; Ord. 2598 § 2, 2005)

607 **17.10.050. Wetland delineation and rating system.**

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608 A. Wetlands shall be identified and delineated in accordance with the approved federal wetland delineation manual  
609 and applicable regional supplements as detailed in the WAC 173-22-035.

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610 B. Wetland delineations are valid for three years, after such date the city will determine if a revision or additional  
611 assessment is necessary.

612 C. The wetland boundaries established by this process shall be used to meet the requirements of this chapter.

625 D. The total area of wetlands shall be used for the purpose of classification regardless of whether a proposed  
626 development site includes all or only a portion of the wetland.

627 E. Wetlands shall be categorized using the Department of Ecology's 2014 Washington State Wetland Rating System  
628 for Western Washington as detailed in the WAC 365-190-090. (Ord. 2598 § 2, 2005)

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629 **17.10.051 Wetland report - Requirements**

630 A. Critical areas report requirements for wetlands may be met in "stages" or through multiple reports. The typical  
631 sequence of potentially required reports that may in part or in combination fulfill the requirements of this section  
632 include:

633 1. Wetland reconnaissance report documenting the existence and general location of wetlands in the vicinity  
634 of a project area;

635 2. Wetland delineation report documenting the extent and boundary of a jurisdictional wetland per RCW  
636 36.70A.175; and

637 3. Wetland mitigation report documenting potential wetland impacts and mitigation measures designed to  
638 retain or increase the functions and values of a wetland.

639 B. A wetland critical areas report may include one or more of the above three report types, depending on the  
640 information required by the director and the extent of potential wetland impacts. The Director maintains the authority  
641 and discretion to determine which report(s) alone or combined are sufficient to meet the requirements outlined below  
642 and to waive report requirements based upon site conditions and the potential for project impacts.

643 C. Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified  
644 professional who is a certified professional wetland scientist or a noncertified professional wetland scientist with a  
645 minimum of five years of experience in the field of wetland science and with experience preparing wetland reports.

646 D. Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for  
647 wetlands:

648 1. The project area of the proposed activity;

649 2. All wetlands and recommended buffers within 200 feet of the project area; and

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650 3. All shoreline areas, water features, floodplains, and other critical areas, and related buffers within 200 feet  
651 of the project area. The location and extent of wetlands and other critical areas existing outside of the project  
652 area or subject parcel boundary may be shown in approximation as practical and necessary to provide an  
653 assessment of potential project effects.

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654 F. Wetland Analysis. In addition to the minimum required contents of LMC 17.10.040, Submittal requirements, a  
655 critical areas report for wetlands shall contain an analysis of the wetlands, including the following site and  
656 proposal-related information at a minimum:

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657 1. A written assessment and accompanying maps of the wetlands and buffers within the project area as well as a  
658 200 foot area surrounding the project area, including the following information at a minimum:

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659 a. Wetland delineation and required buffers; and

660 b. Existing wetland acreage; and

661 c. Wetland category; and

662 d. Vegetative, faunal, and hydrologic characteristics; and

663 e. Soil and substrate conditions; and

669 f. A discussion of the water sources supplying the wetland and documentation of hydrologic regime  
 670 (locations and discussion of contributing upstream water sources both within the project area and outside of  
 671 the project area, discussion of downstream features that could be impacted by changes to wetland hydrologic  
 672 regime, locations of inlet and outlet features, water depths throughout the wetland, evidence of water depths  
 673 throughout the year: drift lines, algal layers, moss lines, and sediment deposits, and evidence of recharge or  
 674 discharge).

**Deleted:** f. A discussion of watershed context and landscape position for wetland areas; and g

675 g. A description of the proposed stormwater management plan for the development and consideration of  
 676 impacts to drainage alterations.

677 The location, extent and analyses of wetlands not contiguous with the subject parcel existing outside of the  
 678 immediate project area may be described in approximation as practical and necessary to provide an assessment of  
 679 potential project effects and hydrologic/ecological connectivity to on-site wetlands and other critical areas.

680 2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing  
 681 wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.

682 3. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site  
 683 habitat and wetland functions.

684 4. Functional evaluation for the wetland and adjacent buffer using a local or state agency staff-recognized method  
 685 and including the reference of the method and all data sheets.

686 5. Proposed mitigation, if needed, including a written assessment and accompanying scale maps / drawings of the  
 687 impacts and mitigation site and adjacent areas consistent with LMC 17.10.055.

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688 **17.10.052 Standard wetland buffers.**

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689 Any wetland relocated or replaced because of wetland alterations shall have at least the standard buffer width  
 690 identified in the table below. Standard buffer widths have been established in accordance with best available science  
 691 based on wetland category and habitat scores; they shall be as follows:

**Deleted:** Wetland buffer widths will be established using three factors: the wetland category; the intensity of impacts; and the functions or special characteristics of the wetland that need to be protected, as determined through the rating system.

**Deleted:** The standard buffer widths

**Deleted:** shall be as follows:

Wetland Category	Minimum Buffer Width (Wetland scores 3-4 habitat points)	Buffer Width (Wetland scores 5 habitat points)	Buffer Width (Wetland scores 6-7 habitat points)	Buffer Width (Wetland scores 8-9 habitat points)
Category I: Based on total score	75 ft	105 ft	165 ft	225 ft
Category I: Bogs and Wetlands of High Conservation Value	190 ft	190 ft	190 ft	225 ft
Category I: Forested	75ft	105 ft	165 ft	225 ft
Category II (all)	75 ft	105 ft	165 ft	225 ft
Category III (all)	60 ft	105 ft	165 ft	225 ft
Category IV (all)	40 ft	40 ft	40 ft	40 ft

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Measures to minimize the impacts of the land use adjacent to the wetlands shall be applied:

Disturbance	Required Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• immediately adjacent to the out wetland buffer</li> </ul>
Toxic runoff	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 feet of wetlands</li> <li>• Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use Low Impact Development techniques (per PSAT publication on LID techniques)</li> </ul>
Change in water regime	<ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>
Disruption of corridors or connections	<ul style="list-style-type: none"> <li>• Maintain connections to offsite areas that are undisturbed</li> <li>• Restore corridors or connections to offsite habitats by replanting</li> </ul>

**Deleted:** . These measures must be agreed upon by the director, and the maximum number of such measures must be used

**Deleted:** Examples of such measures may be found in the Washington Department of Ecology's manual on protecting and managing wetlands, and/or may be suggested by a qualified professional.

**Deleted:** These buffer widths may be increased if the wetland scores highly for habitat. The criteria and distances for such increased buffer widths are identified in LMC 17.10.056.¶  
These buffer widths may be reduced to the decreased buffer widths identified in LMC 17.10.057, but nothing less, under the following conditions:¶  
A. There is a corridor of undisturbed native vegetation at least 100 feet wide between the wetland and any adjacent essential habitat.¶  
B. Measures to minimize the impacts of the land use adjacent to the wetlands are applied. These measures must be agreed upon by the director, and the maximum number of such measures must be used. Examples of such measures may be found in the Washington Department of Ecology's manual on protecting and managing wetlands, and/or suggested by a qualified professional.¶  
C. Any wetland restored, relocated, replaced or enhanced because of wetland alterations shall not be eligible for decreased buffer widths. (Ord. 2622 § 7, 2006; Ord. 2598 § 2, 2005)¶

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708 **17.10.053 Alterations to wetlands and buffers**

709 Alteration, modification, or enhancement of wetlands and buffers may be allowed by this chapter, subject to the  
710 review and approval by the director. The applicant shall submit to the department a plan detailing the alteration,  
711 modification and/or enhancement proposal, along with any proposed mitigation. This plan shall be prepared by a  
712 qualified professional. The plans shall meet the criteria of LMC 17.10.054, 17.10.055, 17.10.056, 17.10.120, and  
713 17.10.130, (as applicable).

714 All wetlands and buffers, regardless of category, shall be preserved unless the applicant can demonstrate the  
715 following:

716 A. There is no feasible and reasonable alternative to making the alteration; and

753 B. Alteration will preserve, improve, or protect the functions of the wetland system including water quality,  
754 stormwater detention capabilities, and fish and wildlife habitat; and

755 C. The mitigation for such alteration has a high probability of success. (Ord. 2598 § 2, 2005)

756 **17.10.054 Wetland and buffer alteration criteria.**

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757  
758 A. Alteration Criteria. Wetland and buffer alteration allowed by this chapter shall be subject to the following  
759 requirements:

760 1. Each activity or use shall be designed so as to minimize overall wetland and buffer alteration to the greatest  
761 extent reasonably possible; and

Deleted: 1. Measures to minimize the impacts of the land use adjacent to the wetlands are applied. These measures must be agreed upon by the director, and the maximum number of such measures must be used. Examples of such measures may be found in the Washington Department of Ecology's manual on protecting and managing wetlands, and/or suggested by a qualified professional; and¶

762 2. Construction techniques shall be approved by the city prior to any site work; and

763 3. A mitigation plan shall be approved by the city prior to the issuance of any construction permits; and

764 4. Compensatory wetland mitigation shall be within the same drainage area (as defined within the city's  
765 comprehensive flood and drainage management plan) or within the service area of a certified in-lieu fee program  
766 or mitigation bank; and

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767 5. All mitigation work shall be timed prior to or concurrent with the proposed alterations; and

768 6. When adding to an existing wetland as a result of compensation for wetland losses, the characteristics of the  
769 existing wetland shall be maintained.

770 B. Time for Completion.

771 1. When alteration is allowed, the city may require that the relocated or compensatory wetland and buffer be  
772 completed and functioning prior to allowing the existing wetland to be filled or altered.

773 2. Mitigation shall be completed prior to granting of temporary or final occupancy, or the completion or final  
774 approval of any development activity for which mitigation measures have been required.

775 3. If the mitigation work is not completed within three years of the city approval of the mitigation plan, the city  
776 may require that a reevaluation of the plan be conducted by a qualified wetland professional. The city may require  
777 additional requirements based on the recommendations. (Ord. 2622 § 8, 2006; Ord. 2598 § 2, 2005)

778 **17.10.055 Wetland and buffer mitigation plan.**

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779 A mitigation plan shall be approved by the city prior to the issuance of any permits for development activity occurring  
780 on a lot upon which wetland and/or buffer alteration, reduction, averaging, restoration, creation or enhancement is  
781 allowed. The mitigation plan shall:

782 A. Be prepared by a qualified wetland professional using best available science and the following Washington  
783 Department of Ecology accepted guidance: Wetland Mitigation in Washington State—Part 2: Developing Mitigation  
784 Plans (Ecology, 2006); and Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology, 2009); and

Deleted: Washington Department of Ecology accepted methodologies

785 B. Include a baseline study that quantifies the existing functional values and the relationship to the watershed and  
786 existing hydrologically connected waterbodies; and

787 C. Include baseline information of surface and subsurface hydrologic conditions, and include an analysis of future  
788 hydrologic regime changes from proposed development and proposed hydrologic regime for enhanced, created, or  
789 restored wetland mitigation areas; and

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790 D. Specify how functional values will be replaced and when mitigation will occur relative to project construction; and

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814 | E. Include provisions for adequate monitoring to ensure success of the mitigation plan. The monitoring plan shall  
 815 outline the approach for monitoring construction of the mitigation project, and for assessment of the completed  
 816 project, and shall include a monitoring schedule. A monitoring report shall be submitted annually for a period up to  
 817 five years to the department unless a more frequent time period is required as a condition of the permit, or a longer  
 818 period is required by an outside agency. The monitoring report, shall document successes, problems and contingency  
 819 actions of the mitigation project. Monitoring activities may include, but are not limited to:

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820 | 1. Establishing vegetation monitoring plots to track changes in plant species composition and density over time;  
 821 | and

822 | 2. Measuring base flow rates and stormwater runoff to model and evaluate hydrologic predictions; and

823 | 3. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and

824 | 4. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural  
 825 | variability of background conditions.

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826 | F. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful;  
 827 | and

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828 | G. Include provisions for an assurance device, which may include a bond, to assure that work is completed in  
 829 accordance with the mitigation plan, and to assure that restoration or rehabilitation is performed in accordance with the  
 830 contingency plan if mitigation fails within five years of implementation. (Ord. 2598 § 2, 2005)

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831 | **17.10.056. Wetland alteration compensation.**

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832 | As a condition of approving the alteration or relocation of a wetland (or portion of wetland), the city shall require that  
 833 | an area equal to or larger than the altered portion of the wetland be provided as compensation for wetland impacts, so  
 834 | that there is no net loss of wetlands. All wetlands which are created as mitigation for filling shall be relocated either  
 835 | within the same drainage areas defined by the city's comprehensive flood and drainage management plan, or using  
 836 | mitigation banks and in-lieu fee programs. Mitigation banks and in-lieu fee programs are preferred as compensation  
 837 | for wetland impacts over permittee-responsible mitigation if the wetland alteration falls within the service area of an  
 838 | existing mitigation bank of in-lieu fee program. In the case of permittee responsible mitigation, mitigation actions are  
 839 | preferred to follow this order: restoration, creation, and enhancement.

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840 | The ratios listed in the table below apply to creation or re-establishment, rehabilitation only, or enhancement only of  
 841 | the altered or relocated wetlands. The first number specifies the acreage of replacement wetlands required, and the  
 842 | second number specifies the acreage of wetlands altered or relocated.

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<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Rehabilitation only</u>	<u>Enhancement only</u>
<u>Category IV</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>
<u>Category III</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>
<u>Category II</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>
<u>Category I: Based on functions</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>
<u>Category I: Mature and old growth forest</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>
<u>Category I: _____</u>	<u>Not considered</u>	<u>Not considered</u>	<u>Not considered</u>

<u>High conservation value / Bog</u>	<u>possible</u>	<u>possible</u>	<u>possible</u>
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The city may increase the ratios under the following circumstances:

1. Uncertainty as to the probable success of the proposed restoration or creation;
2. Significant period of time between destruction and replication of wetland values;
3. Projected losses in functional value;
4. The compensatory mitigation is off-site. (Ord. 2622 § 9, 2006; Ord. 2598 § 2, 2005)

**17.10.057 Increased wetland buffer width.**

The director has the authority to increase a wetland buffer width up to 50% if the wetland contains a threatened or endangered species or the buffer or adjacent uplands has a slope greater than fifteen percent (15%) or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland and a larger buffer is needed to protect these critical areas. (Ord. 2598 § 2, 2005)

**17.10.058 Averaging of wetland buffer widths.**

Wetland buffer widths may be modified by averaging buffer widths. Buffer width averaging will be allowed only where the applicant can demonstrate that:

- A. The total area contained within the wetland buffer after averaging is not less than that contained within the approved buffer prior to averaging; and
- B. Averaging is necessary to avoid an extraordinary hardship to the applicant as a result of circumstances peculiar to the property; and
- C. The averaged buffer, at its narrowest point, shall not result in a width less than seventy-five percent (75%) of the approved buffer width; and
- D. A mitigation and enhancement plan is prepared for the proposed alteration.

**17.10.059 Buffer width reductions through enhancement**

At the discretion of the director, and only when buffer averaging would not provide adequate design flexibility, wetland buffer width reductions may be granted concomitant to the development and implementation of a wetland buffer enhancement plan for Category III and IV wetlands only. Approval of a wetland buffer reduction with enhancement proposal shall be limited to a width reduction of not less than seventy-five percent (75%) of the approved buffer width; provided that:

- A. The plan provides evidence that wetland functions and values will be:
  1. Increased or retained through plan implementation for those wetlands where existing buffer vegetation is generally intact; or
  2. Increased through plan implementation for those wetlands where existing buffer vegetation is inadequate to protect the functions and values of the wetland;
- B. The plan requires monitoring and maintenance to ensure success in accordance with LMC 17.10.055; and
- C. The plan specifically documents methodology and provides performance standards for assessing increases in wetland buffer functioning as related to:

**Deleted:** A. Category I: ...

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**Deleted:** Wetland buffer widths may be increased if the wetland provides high quality habitat. The requirement to increase buffer widths shall be supported by the adopted wetland rating system, which shall demonstrate that the wetland scores highly for habitat. The wetland buffers shall be increased according to the following table:¶

**Deleted:** B. Measures to minimize the impacts of the land use adjacent to the wetlands are applied. These measures must be agreed upon by the director, and the maximum number of such measures must be used. Examples of such measures may be found in the Washington Department of Ecology's manual on protecting and managing wetlands, and/or suggested by a qualified professional.

**Deleted:** surrounding land is susceptible to severe erosion and/or steep slopes

**Deleted:** 17.10.057 . Decreased wetland buffer width.¶

Any wetland restored, relocated, replaced or enhanced because of wetland alterations shall have at least the standard buffer width identified in LMC 17.10.051.¶

Buffer widths may be reduced to the following widths if the conditions allowing reduced buffer widths established in LMC 17.10.051 are met.¶

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967 1. Water quality protection;

968 2. Maintenance and/or improvements to wildlife habitat;

969 3. Maintenance of wetland hydrology; and

970 4. Restricting wetland intrusion and disturbance.

971 **17.10.060 Building setback lines – Wetlands.**

972 A building setback line of 15 feet shall be required from the edge of any wetland buffer. Following construction, this

973 helps to prevent encroachment into the buffer while maintaining such structures. The setback shall be identified on the

974 site plan approved by the city. Fences and minor structural intrusions as defined in LMC 21.02.105 into the area may

975 be allowed if the department determines that such intrusions will not negatively impact the wetland. Ord. 2598 § 2,

976 2005)

977 **17.10.070 Stream – Typing.**

978 Streams within the city shall be classified according to the following stream typing system, as established by the

979 Washington State Administrative Code (WAC) 222-16-030:

980 A. Type S. Type S represents any waters that are considered “Shorelines of the State”.

981 B. Type F. Type F represents all waters (perennial or seasonal) that are known to be used by fish or contain fish habitat

982 as defined by Department of Natural Resources criteria. This includes Scriber Creek, Swamp Creek, Lund’s Creek, and

983 Halls Creek.

984 C. Type Np. Type Np represents perennial waters that do not contain fish or fish habitat.

985 D. Type Ns. Type Ns represents intermittent waters that do not contain fish or fish habitat and have intermittent flows.

986 It does include stream reaches located downstream from any Type Np water.

987 **17.10.071 Stream buffers.**

988 Stream buffers shall be required for all regulated activities adjacent to regulated streams. Any stream which is

989 relocated or replaced because of stream alterations shall have at least the standard buffer width required for the class of

990 stream involved, unless the alteration is a beneficial restoration project allowed under 17.10.073. All stream buffers

991 shall be measured from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the

992 ordinary high water mark shall be determined so as to include the entire stream feature. Except as otherwise permitted

993 under this chapter, stream buffers shall be retained in a natural, unaltered condition.

994 The following standard buffer widths shall be required, unless modified and approved in accordance with the

995 provisions of this chapter:

996 A. Type S streams shall have buffers consistent with LMC Chapter 17.20 (Shoreline Master Program), or a 150-foot

997 buffer if no buffer is specified by LMC Chapter 17.20.

998 B. Type F streams shall have a 100-foot buffer.

999 C. Type Np streams shall have a 60-foot buffer.

1000 D. Type Ns streams shall have a 35-foot buffer. (Ord. 2598 § 2, 2005)

1001 **17.10.072 Stream report – Requirements**

1002 A. Preparation by qualified professional. If required by the director, the applicant shall submit a stream report prepared

1003 by a qualified professional as defined herein.

1004 B. Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for streams:

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- Deleted: The setback shall be identified on the site plan approved by the city
- Deleted: . In addition to these allowances, the following may also be allowed in the building setback area:¶
- A. Landscaping;¶
- B. Uncovered decks;¶
- C. Building overhangs, if such overhangs do not extend more than 30 inches into the setback area; and¶
- D. Impervious ground surfaces, such as driveways and patios; provided that such improvements may be subject to water quality regulations as adopted in the current editions of the International Residential Code and International Building Code, as adopted in LMC Chapter 16. ((
- Deleted: 6
- Deleted: Rating
- Deleted: receive a rating according to the following categories
- Deleted: It
- Deleted: n
- Deleted: A. Category I. The following streams are classified as Category I: Scriber Creek, Swamp Creek, Lunds Creek and Halls Creek.¶
- B. Category II. Category II streams are streams other than Category I streams and that flow year-round during years of normal rainfall or those streams that are used by salmonids.¶
- C. Category III. Category III streams are those streams that are naturally intermittent or ephemeral during years of normal rainfall and are not used by salmonids. (Ord. 2598 § 2, 2005)¶
- Deleted: 6
- Deleted: restored,
- Deleted: ,
- Deleted: or enhanced
- Deleted: top of the upper bank or, if that cannot be determined, from the
- Deleted: top of the bank or
- Deleted: A
- Deleted: Category I
- Deleted: B
- Deleted: Category II
- Deleted: C
- Deleted: Category III
- Deleted: 6

- 1057 1. The project area of the proposed activity;
- 1058 2. All streams and recommended buffers within 200 feet of the project area; and
- 1059 3. All shoreline areas, water features, floodplains, and other critical areas, and related buffers within 200 feet of
- 1060 the project area. The location and extent of streams and other critical areas existing outside of the project area or
- 1061 subject parcel boundary may be shown in approximation as practical and necessary to provide an assessment of
- 1062 potential project effects.

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1063 C. Stream Analysis. In addition to the minimum required contents of LMC 17.10.040, Submittal requirements, a

1064 critical areas report for streams shall contain an analysis of the streams, including the following site- and

1065 proposal-related information at a minimum:

1066 1. A written assessment and accompanying maps of the streams and buffers within 200 feet of the project area,

1067 including the following information at a minimum:

Deleted: 25

1068 a. Stream locations showing the ordinary high water mark(s), and required buffers;

1069 b. Stream type;

1070 c. Vegetative, faunal, and hydrologic characteristics;

1071 d. Soil and substrate conditions;

1072 f. A discussion of the water sources draining to the stream; and

Deleted: e. A discussion of watershed context and landscape position for stream areas.¶

1073 g. A description of the proposed stormwater management plan for the development and consideration of

1074 impacts to drainage alterations.

1075 The location, extent and analyses of streams not contiguous with the subject parcel existing outside of the

1076 immediate project area may be described in approximation as practical and necessary to provide an assessment of

1077 potential project effects and hydrologic/ecological connectivity to on-site streams, wetlands and other critical

1078 areas.

1079 2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing

1080 streams and riparian corridors and restore any streams that were degraded prior to the current proposed land use

1081 activity.

1082 3. A detailed description and functional assessment of the stream and stream buffer under existing conditions

1083 pertaining to the protection of stream functions, fish habitat and, in particular, potential anadromous fisheries;

1084 4. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site

1085 habitat and functions.

1086 5. Proposed mitigation, if needed, including a written assessment and accompanying scale maps / drawings of the

1087 impacts and mitigation site and adjacent areas consistent with LMC 17.10.065.

1088 D. Unless otherwise provided, a stream report may be supplemented by or composed, in whole or in part, of any

1089 reports or studies required by other laws and regulations or previously prepared for and applicable to the development

1090 proposal site, as approved by the director. A stream report may also be combined with a wetland report for sites that

1091 contain both critical areas.

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Deleted: A. All Category IType F streams shall be preserved. The city may only allow alteration of Category IType F streams when approved under LMC 17.10.0468 and 17.10.0479.¶  
B. The city may allow alteration of Category IType Np and/or Type NsCategory III streams when approved under LMC 17.10.0468 and 17.10.0479, or the director may approve alteration of such streams under the following circumstances:¶

1092 **17.10.073 Stream alteration allowed.**

1093 Alteration of natural watercourses and streams shall be avoided, if possible. If unavoidable, the director may approve

1094 alteration of natural watercourses and streams under the following circumstances:

1095 A. There is no feasible and reasonable alternative to making the alteration; and

Deleted: 1.

1112 B. Alteration will not result in a loss of any functions of the stream system (including habitat, water quality, erosion,  
1113 etc...); or

Deleted: 2.

Deleted: preserve, improve or protect the

1114 C. Such alteration will be a beneficial restoration project.

Deleted: and

1115 **17.10.074 Stream alteration criteria.**

1116 Whenever stream alteration is proposed, the applicant shall prepare a mitigation plan, shall follow the mitigation  
1117 sequencing requirements of LMC 17.10.041, and shall be subject to the following requirements:

Deleted: 3. When the applicant can demonstrate that the alteration or rerouting maintains or enhances the functional values of the stream in terms of water quality, erosion control, and/or fish and wildlife habitat. (Ord. 2598 § 2, 2005)¶

Deleted: 6

1118 A. Each proposal shall be designed so as to minimize overall stream or buffer alteration to the greatest extent  
1119 reasonably possible; and

1120 B. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site  
1121 disturbance to ensure minimal encroachment; and

1122 C. When stream relocation is allowed, the city shall require that the stream relocation be completed and functioning  
1123 prior to allowing the existing stream to be filled or altered; and

Comment [ABooy3]: NOTE TO CITY – We believe you need specific language detailing when stream relocation could be allowed, as well as some additional criteria for evaluating proposals for stream relocation.

Please see separate document “Lynnwood allowed activities – potential provisions” for listing of specific language dealing with stream relocations

Deleted: or compensation

1124 D. Additionally, when approving a stream alteration, the city may require:

1125 1. An area larger than the altered portion of the stream and its buffer be provided as compensation for destruction  
1126 of the functions of the altered stream and buffer and to assure that such functional values are replaced; and/or

1127 2. Development activities be limited to specific months in order to minimize impacts on water quality and  
1128 wildlife habitat; and/or

1129 3. The city may apply additional conditions or restrictions, or require specific construction techniques in order to  
1130 minimize impacts to stream systems and their buffers. (Ord. 2598 § 2, 2005)

1131 **17.10.075 Stream mitigation plan.**

Deleted: 6

1132 A mitigation plan shall be approved by the city prior to the issuance of any permits for development activity which  
1133 proposes stream and/or buffer alteration, reduction, averaging, restoration, creation or enhancement. The mitigation  
1134 plan shall:

Deleted: occurring on a lot upon

Deleted: is allowed

1135 A. Be prepared by a qualified professional using accepted methodologies; and

1136 B. Include a baseline study that quantifies the existing functional values of the system, as well as functional values that  
1137 may be lost, and the stream’s functional values after mitigation; and

1138 C. Specify how functional values will be replaced; and

1139 D. Specify when mitigation will occur relative to project construction; and

1140 E. Specify any requirements or permits required by other agencies, and the status of those permits; and

1141 F. Include provisions for adequate monitoring to ensure success of the mitigation plan. The monitoring plan shall  
1142 outline the approach for monitoring construction of the mitigation project and for assessment of the completed project,  
1143 and shall include a schedule. A monitoring report shall be submitted annually for five years to the department unless a  
1144 more frequent time period is required as a condition of the permit, and shall document successes, problems and  
1145 contingency actions of the mitigation project. Monitoring activities may include, but are not limited to:

1146 1. Establishing vegetation plots to track changes in plant species composition and density over time;

1147 2. Measuring base flow rates and stormwater runoff to model and evaluate hydrologic predictions;

1148 3. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and

1162 4. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural  
 1163 variability of background conditions; and

1164 G. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful;  
 1165 and

1166 H. Include provisions for an assurance device, which may include a bond, to assure that work is completed in  
 1167 accordance with the mitigation plan, and to assure that restoration or rehabilitation is performed in accordance with the  
 1168 contingency plan if mitigation fails within five years of implementation. (Ord. 2598 § 2, 2005)

1169 **17.10.074 Increased stream buffer width.**

1170 The Director may increase the standard buffer width required for the category of stream up to fifty percent (50%) when  
 1171 necessary to protect streams when the stream is particularly sensitive to disturbance, or the development poses unusual  
 1172 impacts. Circumstances which may require buffers beyond minimum requirements include, but are not limited to:

- 1173 A. The section of stream affected by the development proposal, and/or the adjacent riparian corridor contains essential  
 1174 habitat; or
- 1175 B. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area; or
- 1176 C. The riparian corridor provides a significant source of water, provides superior shading of stream waters or  
 1177 contributes organic material important to stream habitat areas; or
- 1178 D. A trail or utility corridor is proposed within the buffer; or
- 1179 E. A drainage improvement or water quality feature, such as a grass-lined swale, is proposed within the buffer; or
- 1180 F. There has previously been substantial alteration of the adjacent buffer, and an increased buffer is necessary to  
 1181 improve the functions and values of the buffer; or

1182 G. When the minimum buffer for a stream extends into an area with a slope of greater than 25 percent, the buffer shall  
 1183 be the greater of:

- 1184 1. The minimum buffer for that particular stream type; or
- 1185 2. Twenty-five feet beyond the point where the slope becomes 25 percent or less. (Ord. 2598 § 2, 2005)

1186 **17.10.075 Decreased stream buffer width.**

1187 Except for streams which were approved for alteration by this chapter, the director may reduce the standard stream  
 1188 buffer widths on a case-by-case basis where the applicant demonstrates that:

- 1189 A. The buffer is currently, or will become extensively vegetated, has less than a 15 percent slope, and that no adverse  
 1190 impact to the stream will result from the proposed reduction; and
- 1191 B. The proposal includes a buffer enhancement plan (if necessary) using native vegetation which substantiates that an  
 1192 enhanced buffer will improve the functional values of the buffer to provide additional protection of the stream; and
- 1193 C. A decreased buffer shall not result in buffer widths less than:

- 1. Type F streams: 75 feet
- 2. Type Np streams: 45 feet
- 3. Type Ns streams: 25 feet

**Deleted: 17.10.0675 - CulvertingStream crossing structures.¶**

A. Culverting Stream crossing structures within a stream shall only be permitted when necessary to provide access to a lot when no other feasible means of access exists.¶  
 B. Use of common access points shall be required for abutting lots which have no other feasible means of access. Stream crossing structuresCulverting shall be limited to the minimum number of stream crossings required to permit reasonable access. ¶  
 C. For all stream types, stream crossings shall be designed according to the 2013 Water Crossing Design Guidelines as established by Washington Department of Fish & Wildlife. (Ord. 2598 § 2, 2005)Category I streams, and Category II streams with the presence of salmonids, only open bottom, or box culverts shall be permitted. When feasible, the use of open bottom, box culverts shall be required on all other Category II, and Category III streams. (Ord. 2598 § 2, 2005)¶

**Deleted:** may be increased

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**Comment [JB4]:** Can this be worded better?

**Deleted:** Any stream which is restored, relocated, replaced or enhanced because of stream alterations shall have at least the standard buffer width required for the class of stream involved.

**Deleted:** For other development proposals besides those for stream mitigation areas,

**Deleted:** Category I

**Deleted:** Category II

**Deleted:** Category III

1194

1227 D. When a reduced buffer width is allowed, a mitigation, monitoring and contingency plan consistent with the  
1228 provisions of LMC 17.10.06~~3~~, 17.10.06~~4~~, 17.10.06~~5~~, 17.10.1~~20~~ and 17.10.1~~30~~ (as applicable) shall be required by the  
1229 city. (Ord. 2598 § 2, 2005)

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1230 **17.10.076 Averaging of stream buffer widths.**

1231 S stream buffer widths may be modified by averaging buffer widths. Buffer width averaging will be allowed only where  
1232 the applicant can demonstrate that:

1233 A. The total area contained within the stream buffer after averaging is no less than that contained within the approved  
1234 buffer prior to averaging; and

1235 B. Averaging is necessary to avoid an extraordinary hardship to the applicant as a result of circumstances peculiar to  
1236 the property; and

Deleted: D

Deleted: caused by

1237 C. The averaged buffer, at its narrowest point, shall not result in a buffer width less than seventy-five percent (75%) of  
1238 the buffer width allowed for that proposal; and

Deleted: E

Deleted: three-fourths

1239 D. A mitigation and enhancement plan is prepared for the proposal; and

Deleted: F

1240 E. Width averaging will not adversely impact the stream functional values. (Ord. 2598 § 2, 2005)

Deleted: G

1241 **17.10.077 Riparian wetland.**

1242 Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer  
1243 requirement is more protective, in which case the stream buffer requirement shall apply. (Ord. 2598 § 2, 2005)

1244 **17.10.078 Building setback line – Streams.**

1245 A building setback line of 15 feet shall be required from the edge of any stream buffers. Following construction, this  
1246 helps to prevent encroachment into the buffer while maintaining such structures. Fences and minor structural  
1247 intrusions as defined in LMC 21.02.105 into the area may be allowed if the department determines that such intrusions  
1248 will not negatively impact the stream. The setback shall be identified on the site plan approved by the city. (Ord. 2598  
1249 § 2, 2005)

1250 **17.10.080 Fish and wildlife priority habitat.**

1251 The following environmentally critical areas may be considered priority habitat for the protection of fish and wildlife  
1252 in the city:

Deleted: ¶  
A. Category I and Category II wetlands;¶  
B. Category I streams;¶  
C. Category II streams if used by salmonids;

1253 A. Category I and Category II wetlands;

1254 B. Type F streams

Deleted: D. Upland areas if one or more of the following criteria are met:¶  
1. The presence of essential habitat; or¶  
2. Areas contiguous with large blocks of distinct habitat extending outside of the city limits or providing a travel corridor to a significant resource; or¶  
3. Areas adjacent to or contiguous with Category I wetlands which enhance the value of those wetlands for wildlife. (Ord. 2598 § 2, 2005)

1255 C. Upland areas if one or more of the following criteria are met:

1256 1. The presence of essential habitat; or

1257 2. Areas contiguous with large blocks of distinct habitat extending outside of the city limits or providing a travel  
1258 corridor to a significant resource; or

1259 3. Areas adjacent to or contiguous with Category I wetlands which enhance the value of those wetlands for  
1260 wildlife.

1261 D. Areas where endangered, threatened, and sensitive species have a primary association;

1262 E. Habitats and species of local importance, as determined by the City of Lynnwood;

1263 F. Natural occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;  
1264 (Ord. 2598 § 2, 2005)

Deleted: ¶

1291 **17.10.081** Fish and wildlife priority habitat assessment.  
1292 For a development proposed within or adjacent to an identified “priority habitat area,” the applicant shall provide a  
1293 habitat assessment prepared by a qualified professional. The assessment shall include an inventory of the priority  
1294 species, an evaluation of the habitat, and recommendations for protection of the habitat and species of concern. The  
1295 city may ask appropriate resource agencies to review and comment on the proposal’s potential impact on habitat and  
1296 species. Based upon recommendations from resource agencies and qualified professionals, the city may attach  
1297 conditions to land use and development permits to prevent, minimize, or mitigate impacts to the habitat area.

- Deleted: Wildlife habitat assessment
- Deleted: If
- Deleted: is
- Deleted: wildlife
- Deleted: shall be provided

1298 In addition to the general critical areas report requirements of LMC 17.10.040, critical area reports for fish and wildlife  
1299 priority habitat areas shall meet the requirements of this section. Critical areas reports for two or more types of critical  
1300 areas shall meet the report requirements for each relevant type of critical area.

1301 A. Preparation by a Qualified Professional. A critical areas report for a fish and wildlife priority habitat area shall be  
1302 prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of  
1303 habitat.

1304 B. Areas Addressed in Critical Areas Report. The following areas shall be addressed in a critical areas report for fish  
1305 and wildlife priority habitat areas:

- 1306 1. The project area of the proposed activity;
- 1307 2. All fish and wildlife habitat conservation areas and recommended buffers within 200 feet of the project area;
- 1308 3. All shoreline areas, floodplains, other critical areas, and related buffers within 200 feet of the project area; and
- 1309 4. A discussion of the efforts to avoid and minimize potential effects to these resources and the implementation of  
1310 mitigation/enhancement measures as required.

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- Deleted: 25

1311 C. Habitat Assessment. A habitat assessment is an investigation of the project area to evaluate the potential presence  
1312 or absence of designated critical fish or wildlife species or habitat. A critical areas report for a fish and wildlife priority  
1313 habitat area shall contain an assessment of habitats, including the following site and proposal-related information at a  
1314 minimum:

- Deleted: -

- 1315 1. Detailed description of vegetation on and adjacent to the project area and its associated buffer;
- 1316 2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or  
1317 candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of  
1318 potential project impacts to the use of the site by the species;
- 1319 3. A discussion of any federal, state, or local special management recommendations, including Washington  
1320 Department of Fish and Wildlife habitat management recommendations, that have been developed for species or  
1321 habitats located on or adjacent to the project area. (Ord. 2598 § 2, 2005)

1322 **17.10.090** **Geologically hazardous areas – Identification.**

1323 The following are classified as potentially geologically hazardous areas:

1324 A. Geologically hazardous areas are those areas that are naturally susceptible to geologic events such as landslides,  
1325 seismic activity and severe erosion. Areas susceptible to one or more of the following types of hazards shall be  
1326 designated as geologically hazardous areas:

- 1327 1. Landslide Hazard Areas: Areas with slopes steeper than 40 percent. Areas with slopes between 15 to 40 percent  
1328 that are underlain by soils largely consisting of silt and clay. Areas with slopes steeper than 15 percent with zones  
1329 of emergent water such as groundwater seepage or springs. Areas of landslide deposits regardless of slope.
- 1330 2. Erosion Hazard Areas: Erosion hazards areas are lands underlain by soils identified by the U.S. Department of  
1331 Agriculture Natural Resources Conservation Service (NRCS) as having “severe” or “very severe” erosion  
1332 hazards.

1341 | 3. Seismic Hazard Areas: Seismic hazard areas are lands that are underlain by soft or loose saturated soils that are  
1342 | subject to liquefaction settlement or spreading during earthquake induced ground shaking. B. Other areas which the  
1343 | city has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazards,  
1344 | (Ord. 2598 § 2, 2005)

**Deleted:** A. Naturally occurring slopes of 40 percent or more;¶

**Deleted:** reaso

**Deleted:** as identified on an Environmentally Sensitive Areas Map

1345 | **17.10.091 Geologically hazardous areas – Setbacks and Buffers.**

1346 | Development proposals on lots which are designated as or which the city has reason to believe are geologically  
1347 | unstable or hazardous shall be set back consistent with the following criteria:

1348 | A. Landslide Hazard Areas and Erosion Hazard Areas setback: Except as allowed by LMC 17.10.092, a minimum of  
1349 | 25 feet from top, toe and sides of such areas. The setback requirement may be increased by the City when necessary to  
1350 | protect public health, safety and welfare, based upon information contained in a geotechnical report. The size of the  
1351 | setback should be determined by the director based on review and consideration of recommendations provided in a  
1352 | geotechnical report prepared by a qualified professional.

**Deleted:** (as applicable)

1353 | B. Landslide Hazard Areas and Erosion Hazard Areas buffer: A buffer may be established with specific requirements  
1354 | and limitations, including but not limited to, drainage, grading, irrigation, and vegetation. Buffer requirements shall be  
1355 | determined by the director based on review and consideration of recommendations provided in the geotechnical report  
1356 | prepared by a qualified professional.

1357 | C. Seismic Hazard Areas: Activities proposed to be located in seismic hazard areas shall not be required to establish  
1358 | setbacks or buffers. Activities within seismic hazard areas shall meet the standards of LMC Title 16 (Building) and  
1359 | Title 21 (Zoning).

1360 | (Ord. 2598 § 2, 2005)

1361 | **17.10.092 Geologically hazardous areas – Alteration allowed.**

1362 | Unless associated with a stream or wetland, the city may allow alteration of an area identified as a potentially  
1363 | geologically hazardous area, or its setback. In order to perform such alteration, the applicant shall submit to the  
1364 | department a geotechnical report, containing all elements described in LMC 17.10.094, and must demonstrate:

1365 | A. The proposed development will not create a hazard to the subject property, surrounding properties, or  
1366 | rights-of-way, nor will it cause severe erosion, or deposit excessive sedimentation to off-site properties or bodies of  
1367 | water; and

1368 | B. The proposed method of construction will reduce erosion, landslide, and seismic hazard potential, and will improve  
1369 | or not adversely affect the stability of slopes; and

1370 | C. The proposal uses construction techniques which minimize disruption of existing topography and natural  
1371 | vegetation; and

1372 | D. The proposal is consistent with the purposes and provisions of this chapter. (Ord. 2598 § 2, 2005)

1373 | **17.10.093 Geologically hazardous areas – Alteration conditions.**

1374 | Alteration allowed by this chapter shall be subject to the following requirements:

1375 | A. All proposed development be designed and located so as to require the minimum amount of modification to areas of  
1376 | potential geologic instability; and

1377 | B. All impacts identified in the geotechnical report be adequately mitigated so as to render the site containing a  
1378 | potential geologic hazard as safe as one not containing such a potential hazard; and

1379 | C. As a condition of any approval of development containing a geologically hazardous area or its required setbacks,  
1380 | the city may also require that:

1387 1. The applicant's geotechnical consultant be present on the site during clearing, grading, filling and construction  
1388 activities which may affect geological hazard or unstable areas, and provide the city with certification that the  
1389 construction is in compliance with his/her recommendations and has met with his/her approval; and

1390 2. Trees and groundcover be retained and additional vegetation or other appropriate soil stabilizing structures and  
1391 materials be provided.

1392 3. All development proposals on sites containing potential erosion hazard areas shall include temporary erosion  
1393 and sediment control plans consistent with adopted surface water design manual and a vegetation management  
1394 and restoration plan to ensure permanent stabilization of the site. (Ord. 2598 § 2, 2005)

1395 **17.10.094 Geotechnical report content requirements.**

1396 Geotechnical reports shall be prepared and stamped by a geotechnical engineer or engineering geologist licensed by  
1397 the State of Washington, as appropriate. Geotechnical reports shall be subject to independent (third party) review  
1398 when determined necessary by the director. Based on the characteristics of the site, the director may require any or all  
1399 of the following items to be addressed in the geotechnical report:

Deleted: Geotechnical reports shall be stamped and signed by an engineer.

1400 A. A site development plan drawn to scale which shows the boundary lines and dimensions of the subject property, the  
1401 geologically hazardous areas, the location, size, and type of any existing or proposed structures, impervious surfaces,  
1402 wells, drain fields, drain field reserve areas, roads, easements, and utilities located on site; and

1403 B. A site map identifying the location of springs, seeps, or other surface expressions of ground water, the location of  
1404 surface water or evidence of seasonal surface water runoff or ground water, and the location of any subsurface  
1405 explorations such as test pits or borings; and

Deleted: and

1406 C. A discussion of the geological properties of the soils, including any fill, sediment layers, and/or rocks on the subject  
1407 property and adjacent properties and their effect on the stability of the slope; and

1408 D. The extent and type of vegetative cover prior to development activity or site disturbance; and

1409 E. The proposed method of drainage and locations of all existing and proposed surface and subsurface drainage  
1410 facilities and patterns, and the locations and methods for erosion control; and

1411 F. A description of the soils in accordance with the Unified Soil Classification System; and

1412 G. Identification of all existing fill areas; and

1413 H. Evidence showing faults, significant geologic contacts, landslides, or downslope soil movement on the subject  
1414 property and adjacent properties; and

Deleted: H. Information demonstrating compliance with all applicable; and¶  
I

1415 J. Slope stability analyses in areas with potential risk of landsliding; and

Deleted: J

1416 L. Site seismic response evaluation in areas with the potential risk of soil liquefaction (potential seismic hazard areas);  
1417 and

Deleted: K

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1418 K. A vegetation management and restoration plan, or other means necessary for maintaining long-term stability of  
1419 slopes. (Ord. 2598 § 2, 2005)

Deleted: 17.10.100 - Buffer credit.¶  
Where buffers around critical areas are required by this chapter, the number of allowable lots or potential dwelling units in residential development proposals, and the amount of lot coverage in nonresidential proposals, may be increased as stated in subsections (A) and (B) of this section. This buffer credit is designed to provide incentives for the preservation of critical areas, flexibility in design, and consistent treatment of different types of development proposals.¶  
A. The following buffer credit calculations shall apply to all residential zones:¶  
1. Single-Family Residential and Duplex Residential Zones with Minimum Lot Standards.¶  
total amount of net development area

1420 **17.10.100 Frequently flooded areas.**

1421 Flood hazard areas are those areas of Lynnwood subject to inundation by the one percent (1%) chance annual flood,  
1422 defined as areas of special flood hazard by LMC 16.46. Areas of special flood hazard are identified by the Federal  
1423 Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Snohomish  
1424 County, Washington and Incorporated Areas," dated November 9, 1999, as amended, with accompanying flood  
1425 insurance rate maps, as amended. Activities in frequently flooded areas must be in compliance with floodplain  
1426 regulations as described in LMC 16.46.

1429

1455 **17.10.110 Critical aquifer recharge areas - Identification**

1456 **A. Critical aquifer recharge areas (CARAs) designation: CARAs are those areas with a critical recharging effect on**

1457 **aquifers used for potable water as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions**

1458 **associated with infiltration rates that create a high potential for contamination of ground water resources or contribute**

1459 **significantly to the replenishment of ground water. In the City of Lynnwood and vicinity, these areas include the**

1460 **following:**

1461 **1. Wellhead Protection Areas: Wellhead protection areas may be defined by the boundaries of the ten (10)**

1462 **year time of ground water travel or boundaries established using alternate criteria approved by the**

1463 **Washington State Department of Health in those settings where ground water time of travel is not a**

1464 **reasonable delineation criterion, in accordance with WAC 246-290-135.**

1465 **2. Susceptible Ground Water Management Areas: Susceptible ground water management areas are areas that**

1466 **have been designated as moderately or highly vulnerable or susceptible in an adopted ground water**

1467 **management program developed pursuant to WAC 173-100.**

1468 **B. Mapping of CARAs - The approximate location and extent of critical aquifer recharge areas are shown on the City**

1469 **critical areas inventory map for CARAs.**

1470 **17.10.111 Critical aquifer recharge areas – Activities allowed**

1471 **The following activities are allowed in critical aquifer recharge areas pursuant to this Section, and do not require**

1472 **submission of a critical area report:**

1473 **A. Construction of structures and improvements, including additions, resulting in less than five percent (5%) or 2,500**

1474 **square feet (whichever is greater) total site impervious surface area that does not result in a change of use or increase**

1475 **the use of a hazardous substance.**

1476 **B. Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less**

1477 **than five percent (5%) total site impervious surface area that do not increase the use of a hazardous substance.**

1478 **17.10.112 Critical aquifer recharge areas – Additional reporting requirements**

1479 **In addition to the general critical area report requirements of Section 17.10.040, critical area reports for critical aquifer**

1480 **recharge areas must meet the requirements of this Section. Critical area reports for two or more types of critical areas**

1481 **must meet the report requirements for each relevant type of critical area:**

1482 **A. Preparation by a Qualified Professional. An aquifer recharge area critical area report shall be prepared by a**

1483 **qualified professional who is a hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and**

1484 **has experience in preparing hydrogeologic assessments.**

1485 **B. Hydrogeologic Assessment. For all proposed activities to be located in a critical aquifer recharge area, a critical**

1486 **area report shall contain a level one (1) hydrogeological assessment. A level two (2) hydrogeologic assessment shall**

1487 **be required for any of the following proposed activities:**

1488 **1. Activities that result in five percent (5%) or more impervious site area;**

1489 **2. Activities that divert, alter, or reduce the flow of surface or ground waters, or otherwise reduce the**

1490 **recharging of the aquifer;**

1491 **3. The use of hazardous substances, other than household chemicals used according to the directions**

1492 **specified on the packaging for domestic applications;**

1493 **4. The use of injection wells proposed as part of a stormwater management system;**

1494 **5. Any other activity determined by the [director] likely to have an adverse impact on ground water quality or**

1495 **quantity or on the recharge of the aquifer.**

**Deleted:** 3. This credit shall be subject to the following:¶

a. Only that buffer area located within areas required by the city of Lynnwood to be dedicated or reserved as separate tracts shall be counted.¶

b. Use of this credit shall not waive nor modify any other required provision of the Lynnwood Municipal Code including, but not limited to, zoning or subdivision regulations or standards, except as noted in subsection (A)(3)(c) of this section.¶

c. To the extent that application of the buffer credit may result in lot sizes less than the minimum allowed in the zone in which the proposal is located:¶

i. In no case shall such lot sizes be less than 90 percent of the minimum allowed lot size, except in the RS-7 zone, which shall be no less than 95 percent; and¶

ii. In order to keep the relationship between lot width and area reasonable, lot width may be up to, but not more than, five feet narrower than the minimum allowed.¶

B. The following buffer credit shall apply to all nonresidential-zoned areas:¶

In nonresidential-zoned areas, the amount of the site that may be covered under the zoning code shall be calculated by applying the maximum allowed lot coverage to the combination of the net development area and the area in buffers.¶

Use of this credit shall not waive or modify any other required provision of the Lynnwood Municipal Code including, but not limited to, zoning or subdivision regulations or standards. (Ord. 2622 § 11, 2006; Ord. 2598 § 2, 2005)¶

1528 C. Level One Hydrogeologic Assessment. A level one hydrogeologic assessment shall include the following site-and  
1529 proposal-related information at a minimum:

1530 1. Available information regarding geologic and hydrogeologic characteristics of the site including the  
1531 surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and  
1532 permeability of the unsaturated zone;

1533 2. Ground water depth, flow direction, and gradient based on available information;

1534 3. Currently available data on wells and springs within 1,300 feet of the project area;

1535 4. Location of other critical areas, including surface waters, within 1,300 feet of the project area;

1536 5. Available historic water quality data for the area to be affected by the proposed activity; and

1537 6. Best management practices proposed to be utilized.

1538 D. Level Two Hydrogeologic Assessment. A level two hydrogeologic assessment shall include the following site-and  
1539 proposal-related information at a minimum, in addition to the requirements for a level one hydrogeological  
1540 assessment:

1541 1. Historic water quality data for the area to be affected by the proposed activity compiled for at least the  
1542 previous five (5) year period;

1543 2. Ground water monitoring plan provisions;

1544 3. Discussion of the effects of the proposed project on the ground water quality and quantity, including:

1545 a. Predictive evaluation of ground water withdrawal effects on nearby wells and surface water  
1546 features; and

1547 b. Predictive evaluation of contaminant transport based on potential releases to ground water.

1548 4. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans  
1549 shall include provisions for regular inspection, repair, and replacement of structures and equipment that could  
1550 fail.

1551 **17.10.113 Critical aquifer recharge areas – Performance standards, specific uses**

1552 A. Storage tanks. All storage tanks proposed to be located in a critical aquifer recharge area must comply with local  
1553 building code requirements and must conform to the following requirements:

1554 1. Underground tanks: All new underground storage facilities proposed for use in the storage of hazardous  
1555 substances or hazardous wastes shall be designed and constructed so as to prevent releases due to corrosion or  
1556 structural failure for the operational life of the tank; be protected against corrosion, constructed of  
1557 noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary  
1558 containment system to prevent the release or threatened release of any stored substances; and use material in  
1559 the construction or lining of the tank that is compatible with the substance to be stored.

1560 2. Above ground tanks: All new above ground storage facilities proposed for use in the storage of hazardous  
1561 substances or hazardous wastes shall be designed and constructed so as to not allow the release of a  
1562 hazardous substance to the ground; have a primary containment area enclosing or underlying the tank or part  
1563 thereof ground waters, or surface waters; and have a secondary containment system either built into the tank  
1564 structure or a dike system built outside the tank for all tanks.

1565 B. Vehicle Repair and Servicing.

1566 1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure  
1567 capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle

1568 repair and servicing must be stored in a manner that protects them from weather and provides containment  
1569 should leaks occur.

1570 2. No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and  
1571 servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques  
1572 approved by the state Department of Ecology prior to commencement of the proposed activity.

1573 C. Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall  
1574 not exceed times and rates specified on the packaging.

1575 D. State and Federal Regulations. All of the above listed uses, and other uses where state and federal regulations apply,  
1576 shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and  
1577 federal regulation. In addition, any water reuse projects for reclaimed water must be in accordance with the adopted  
1578 water or sewer comprehensive plans that have been approved by the state departments of Ecology and Health, and  
1579 must meet the ground water recharge criteria given in Chapter 90.46.080(1) and Chapter 90.46.010(10) RCW. The  
1580 state Department of Ecology may establish additional discharge limits in accordance with Chapter 90.46.080(2) RCW.

1581 **17.10.114 Critical aquifer recharge areas – Prohibited Uses**

1582 The following activities and uses are prohibited in critical aquifer recharge areas:

1583 A. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, woodwaste, and inert and  
1584 demolition waste landfills;

1585 B. Wood Treatment Facilities - treatment facilities that allow any portion of the treatment process to occur over  
1586 permeable surfaces (both natural and manmade);

1587 C. Storage, Processing, or Disposal of Radioactive Substances;

1588 D. Other Prohibited Uses or Activities

1589 1. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable  
1590 water source;

1591 2. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow  
1592 to a regulated stream; and

1593 3. Activities that are not connected to an available sanitary sewer system, prohibited from critical aquifer  
1594 recharge areas associated with sole source aquifers

1595 **17.10.120 Critical areas signs, monuments and fencing.**

1596 A. The boundary of a critical area will be delineated by survey stakes, and/or tape at the time of the completion of the  
1597 critical area report. The buffer will be established as measured from that boundary. During construction, the buffer  
1598 edge will be delineated and identified using plastic tape and construction fence, or any other effective measure to  
1599 prohibit construction activities from encroaching into the critical area and its associated buffer. Those measures will  
1600 be maintained until completion of the project.

1601 B. Upon completion of the construction of the project, the boundary of the critical area and/or buffer will be designated  
1602 with permanent signs, monuments and fencing, the design and spacing of which will be left to the discretion of the  
1603 director.

1604 C. All critical areas and their buffers which have been protected through the application of this chapter, shall be  
1605 permanently protected by designating them as native growth protection areas (NGPAs). (Ord. 2598 § 2, 2005)

1606 **17.10.125 Appeals.**

1607 Any person who objects to the decision of the city under this chapter may file an appeal. An appeal of a Process III or  
1608 other administrative decision is appealable to the hearing examiner using the procedure under Process II (LMC

**Deleted: 17.10.110 - Low-impact use of buffer – Allowed.¶**  
Installation of low-impact permeable pedestrian trails and viewing platforms in critical areas and their buffers may be approved by the director. These uses must be mitigated for according to the applicable terms and conditions detailed in this chapter, and according to the type of critical area being affected. (Ord. 2598 § 2, 2005)¶

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1622 1.35.200 through 1.35.260). An appeal of a Process I, II, or other hearing examiner decision on a land use permit is  
1623 appealable to superior court using the procedure under Chapter 36.70C RCW. (Ord. 2957 § 15, 2012; Ord. 2622 § 12,  
1624 2006; Ord. 2598 § 2, 2005)

1625 | **17.10.130. Notice, performance securities, bonds, administration.**

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1626 A. Notice. The owner of any property found to contain **certain** critical areas or buffers, on which a development project  
1627 is **approved**, shall file for record with Snohomish County a notice approved by the city. Such notice shall identify in  
1628 the public record the presence of any critical areas or buffers, the application of this chapter to the property, and state  
1629 that limitations on actions in or affecting such areas may exist. **The notice shall run with the land and failure to provide**  
1630 such notice to any purchaser prior to transferring any interest in the property shall be a violation of this chapter.

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The owner shall submit proof to the director that the notice has been filed for record with Snohomish County before the city shall approve any development proposal for such site.

1631 B. Performance Securities. The director may require the applicant of a development proposal to post a cash  
1632 performance bond or other acceptable security in a form and amount determined sufficient to guarantee satisfactory  
1633 workmanship, materials, and performance of structures and improvements allowed or required by application of this  
1634 chapter. The director shall release the security upon determining that all requirements established by this chapter have  
1635 been satisfactorily completed.

1636 C. **Performance, Maintenance, and Monitoring Bonds.** The director may require the applicant whose development  
1637 proposal is subject to a mitigation plan to post a **performance, maintenance and monitoring** bond or other security  
1638 instrument in a form and amount determined sufficient to guarantee satisfactory performance for **the period of time of**  
1639 **the maintenance and monitoring period**. The bond amount shall be no less than 125 percent of the estimated cost of the  
1640 mitigation project including any plant materials, soil amendments, temporary irrigation, signs and monuments, and  
1641 monitoring proposed. The duration of maintenance **and monitoring** obligations shall be no less than five years, unless  
1642 determined otherwise by the director after consideration of the nature of the proposed mitigation and the likelihood  
1643 and expense of mitigation failures. The director shall release the security upon determining that the mitigation plan has  
1644 achieved satisfactory success. The performance standards of the mitigation plan shall be agreed upon by the director  
1645 and the applicant during the review process and shall be specified in the mitigation plan. (Ord. 2598 § 2, 2005)

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1646 | **17.10.140. Unauthorized alterations.**

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1647 When environmentally critical areas and/or their associated buffers have been illegally altered, the city may require  
1648 them to be restored to their unaltered condition, and subject them to all terms and conditions of this chapter, including  
1649 but not limited to increasing the area of the critical area and buffer as compensation for the alteration. (Ord. 2598 § 2,  
1650 2005)

1651 | **17.10.145. Enforcement, violations and penalties.**

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1652 It shall be unlawful for any person, firm, or corporation to violate any provision of this chapter. The director shall have  
1653 the authority to enforce any and all provisions of this chapter, by proceeding with the following actions in progressive  
1654 severity, except in cases where a delay would result in further loss and/or degradation of critical areas:

1655 A. Stop Work Orders. For any action which appears to be in violation of this chapter, the director shall have the  
1656 authority to order the party in question to immediately stop all work until such time as the director determines that the  
1657 action is in compliance with the terms and conditions of this chapter.

1658 B. Civil Remedies and Penalties. Any person, firm, corporation, or association or any agent thereof who violates any  
1659 of the provisions of this chapter may be subject to the following civil penalties:

1660 1. The city may issue a notice and order under Chapter 1.40 LMC stating any person, firm, corporation or  
1661 association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages  
1662 to public or private property arising from such violation, including the cost of restoring the affected area to an  
1663 equivalent or improved condition prior to the violation, and set a reasonable amount of time for compliance.

1664 2. The city may require restoration. Restoration may include but is not limited to, the replacement of all  
1665 improperly removed vegetation with species similar to those which were removed or other approved species such  
1666 that the biological and habitat values will be replaced or improved to the greatest extent reasonably possible. A

1681 study by a qualified expert(s) shall be conducted to determine the conditions which were likely to exist prior to  
1682 the illegal alteration. Restoration may also include installation and maintenance of erosion control measures.

1683 3. In addition to requiring restoration, the city may assess civil penalties as provided in LMC 1.01.085.

1684 4. The city may require a maintenance bond to insure compliance with the city's order, subject to the bonding  
1685 procedure established in LMC 17.10.130.

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1686 5. If the order requiring restoration is not complied with, then the property owner shall be subject to a civil fine of  
1687 \$500.00 per day.

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1688 6. If the noncompliance continues for more than 10 days, civil penalties shall be increased to \$1,000.00 per day  
1689 up to a maximum of \$75,000. Fines shall stop on the day that compliance with the order begins, pending  
1690 successful completion with the compliance order.

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1691 7. Any person who objects to a final order of the city under this section may file an appeal to the hearing examiner  
1692 using the procedure under Process II in LMC 1.35.200 through 1.35.260.

1693 8. Any unpaid civil fines may become a lien against the property, and the city may record said lien. (Ord. 2598 §  
1694 2, 2005)

1695 **17.10.150 Severability.**

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1696 If any paragraph, clause, sentence, section or part of this chapter or the application thereof to any person or  
1697 circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be  
1698 confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of  
1699 any part thereof to any other person or circumstances and to this end the provisions of each paragraph, clause,  
1700 sentence, section or part of this chapter are hereby declared to be severable. (Ord. 2598 § 2, 2005)

**Topic: Low Impact Development  
Regulations**

Agenda Item: E.2

**Staff Report**

- Public Hearing
- Work Session
- Other Business
- Information
- Miscellaneous

Staff Contact: Jared Bond, Environmental and Surface Water Supervisor  
Public Works Department**Summary**

The purpose of this agenda item is to introduce an upcoming effort to evaluate and modify (as necessary) development regulations to ensure that Low-Impact-Development (LID) techniques are allowed and incorporated into project design. This undertaking is required by the Washington State Department of Ecology through the NPDES Phase II Municipal Stormwater Permit.

Staff will briefly explain LID techniques, discuss Ecology's requirements, upcoming efforts and anticipated timelines.

**Action**

None required at this time.

**Background**

The NPDES Phase II Municipal Stormwater Permit requires all permittees to evaluate their development codes to ensure that Low-Impact Development Techniques are allowed and incorporated into new project design. All departments that are involved in permitting and development will be included in this effort, including Community Development (Planning and Building), Public Works, and Fire.

This effort should be completed by January 1, 2017.

**Previous Planning Commission / City Council Action**

None.

**Adm. Recommendation**

As draft regulation changes are prepared, Planning Commission briefing(s), and public hearing(s) will be necessary and scheduled at future meetings.

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**Topic: Mobile Vendors Code  
Amendments  
(File No. CAM-003470-2016)**

Agenda Item: E.3

- Public Hearing
- Work Session
- Other Business
- Information
- Miscellaneous

**Staff Report**

Staff Contact: Chanda Emery, AICP, Senior Planner, Community Development

**Summary**

This staff report is provided for your review for the briefing on January 28, 2016. The City Council was briefed on a proposal known as "Mobile Vendors" on October 19, 2015. The City Council recommended that staff move forward and prepare draft food truck regulations.

**Action**

Staff recommends that Planning Commission hold a public hearing at a future meeting to gather public testimony regarding the proposed ordinance.

**Introduction**

This is a nonproject proposal to amend Lynnwood Municipal Code (LMC) Titles 5 and 21 to provide for food trucks to do business in the City of Lynnwood not within the public right of way, but on private property with the permission of the property owner(s).

**Background**

This work stems from a grassroots level interest from the Hispanic community requesting if food truck operators can expand operations to serve the City of Lynnwood and from citizens asking about where they can access food trucks. Lynnwood is an ethnically and racially diverse community. While the City has not heard directly from other ethnic groups, such as the Asian American community, we know that there is a growing interest in allowing for food trucks to come to Lynnwood. Food truck dining is more than a national trend and local governments all over the country have worked on or are working on regulatory changes to address this use.

**Recent Updates: Food Truck Scene in the Pacific Northwest:** While mobile street food vendors have a long-standing tradition in major cities like New York,

Bangkok, and Berlin, the movement did not exist with much interest in the Northwest until the last decade. Research now indicates that a successful vendor can support a family, bringing in as much as \$50,000 a year (Burningham 2009; Quillen 2014). Several highly successful food trucks, like Salt and Straw, Pok Pok, and Whole Bowl, have even transitioned from this start-up business model to create brick-and-mortar restaurants.

In Seattle, in recent years there have been efforts to activate the public realm in parts of the city which have only recently led planners to rewrite the regulations that previously limited street food to hog dogs and coffee. The Seattle Departments of Planning, Parks, and Transportation are now working together to make it easier for vendors to operate in parks, plazas, parking lots, sidewalks, and designated locations in the right-of-way. Lunchtime around Amazon's campus in South Lake Union swarms with food trucks that roll in to feed the employees who now work in the neighborhood. These carts then roll out after the lunchtime rush.

### **Neighborhood Livability:**

Substantial research has demonstrated that urban design and surrounding land uses have a significant impact on the liveliness of streets and public interactions. A recent study found that personalization of storefront design increases pedestrian social behavior. One researcher came up with the term "optical leverage" which means that food trucks are spaces where people gather while waiting for food and when people are waiting for food, it will in turn attract more people. Vacant lots and parking lots can create 'gaps' in the pedestrian environment, reducing 'eyes on the street.' This decreases safety or perceptions of safety, deterring people from walking in these areas. Interim uses, such as creating regulations which allow for food trucks to utilize vacant land can benefit the public while the market may not support additional investments.

The following key findings are based on the results of recent research, data collection, as well as consultation with experts in this field:

- Food trucks have positive impacts on street vitality and neighborhood life in lower density residential neighborhoods as well as in the high density commercial areas. Food trucks promote walkability and help to create a sense of community
- The presence of food carts on a site does not appear to hinder its development.
- Food trucks represent beneficial employment opportunities because they provide an improved quality of life and promote social interactions between owners and customers.
- Food trucks promote entrepreneurship without interfering with current business owners
- Food trucks promote sustainable practices

**City of Lynnwood’s Comprehensive Plan – Economic Development Element:**

This proposal is in line with the Washington State Growth Management Act (GMA) goals and policies as well as the City of Lynnwood’s Economic Development Action Plan, 2015-2020. Specifically, this proposal addresses the following goals, strategies, and actions listed in the Economic Development Element of the City’s Comprehensive Plan:

***GOAL 1: Support and grow new and existing businesses in Lynnwood.***

***Strategy 1.2 Business Development: Support new and existing business development in the City of Lynnwood.***

***Action 1.2.6 Identify the unique needs of ethnic businesses and coordinate City policy with business associations and other stakeholders in the community.***

**Community Economic Development:**

Community economic development can be defined as, “actions taken by an organization representing an urban neighborhood or rural community in order to:

- Improve the economic situation of local residents (disposable income and assets) and local businesses (profitability and growth); and
- Enhance the community’s quality of life as a whole (appearance, safety, networks, gathering places, and sense of positive momentum)

Food trucks may fill a niche for workforce development strategies to offer equitable economic opportunities which is a major aim of the City of Lynnwood’s Comprehensive Plan.

**Benefits of Permitting Food Trucks:**

- Provides an opportunity to increase jobs and businesses
  - Travis County (Austin), Texas approved 1400+ mobile food vendor permits in 2012 and Portland, Oregon approved 800+ in 2014
- Offers opportunities to provide food choices where zoning precludes restaurants

- Can increase activity in struggling business districts
- Signals to other potential businesses that the community is adapting to a changing economy and supporting entrepreneurship
- They are a way for restaurants to test the local market for future bricks-and-mortar facilities

**Several Other Jurisdictions have adopted Mobile Vendor Regulations:**

- Lacey Municipal Code, Ch. 16.70 "Street Merchants"
- Des Moines Municipal Code, Ch. 5.57 "Mobile and Itinerant Vendor Code"
- Stanwood Municipal Code, Ch. 5.08 "Peddlers, Vendors and Temporary Merchants"
- Pasco Municipal Code, Ch. 5.10A "Itinerant Merchants and Vendors" -
- Pierce County Code, Ch. 5.10
- Quincy Municipal Code, Ch. 5.12 "Itinerant Vendors"
- Edmonds Municipal Code, Ch. 4.12 "Peddlers, Solicitors, and Street Vendors"
- Everett, Municipal Code, Ch. 5.84 "Mobile Food Units"
- Enumclaw Municipal Code, Ch. 5.60 "Solicitors and Mobile Vendors"
- Deer Park Municipal Code, Ch. 5.36, Temporary Merchants, Peddlers and Charitable Solicitations

Many cities across the country have already adopted regulations that provide a list of requirements required to operate a street food business. Regulations can vary from jurisdiction to jurisdiction.

Cities, towns, and counties have authority under their police power to license and regulate mobile vendors and to impose reasonable license fees. Such regulations are generally justified if they bear a reasonable relationship to public health, safety, and welfare concerns.

**Typical Checklist of Requirements:**

A recent article published in the Seattle Times on September 13th 2015, found that Washington State has some of the strictest inspection requirements enforced by Public Health – Seattle & King County in the country. In Washington, food trucks must have a constant, fresh water supply and a restroom within 200 feet. And they can't cook onboard. Most food trucks in Portland and in California can cook on board. Right now, there are more than 450 mobile food unit (which include carts, trailers and trucks) in King County.

Food truck businesses are typically subject to the following list of requirements:

- **Business Licensing**
  - Must obtain both a state and city business license
  - Business Name - Per WAC 246-215-121(16), the permit holder must provide the City a designated business name and ensure that name is posted on the mobile food truck or cart in a manner easily visible to customers during operation.
- **Mobile Food Truck Conversion**
  - Only applies to operators who are planning to do vending from a converted food truck
  - Applicants are required to create a plan for review and approval
- **County Health Department (Snohomish County Health - SHD)**
  - Must obtain a mobile food unit permit – to obtain a permit, all mobile units must be reviewed and approved by SHD. The plan review usually takes 7 to 30 days, sometimes longer. Until reviewed, approved and permitted, the mobile unit may not operate in Snohomish County.
  - Snohomish Health District (SHD) has a list of required documents, such as:
    - Plan Review Application
    - Use of Restroom Agreement
    - Food Preparation Flow Chart
    - Site or Route Information Form
    - A Detailed Menu; and
    - Description of the business operations plan.
- **Washington State Department of Labor & Industries (L&I) – L&I is like Washington's "Building Department" for mobile food trucks.** This agency regulates things such as electrical wiring, water supply and waste water systems and any mechanical systems such as gas piping or heating and cooling equipment. The mobile truck or trailer must pass inspection and be approved by L&I for electrical, structural and mechanical correctness.

- **Department of Motor Vehicles (DMV)** - the mobile truck or trailer must be currently licensed as a truck or trailer by the Washington State Department of Motor Vehicles. If a trailer is used, proof of ownership of a tow vehicle to move the trailer is also required.
- **City (Lynnwood) Fire Department**
  - Obtain City approval for external propane gas usage for food vending
- **City (Lynnwood) Community Development Department**
  - Vending on private property always requires the consent of the private property owner. Most jurisdictions do not require a permit for a street food truck, cart, or trailer parking in an area used for parking in an existing legal parking lot. In this case, the truck, cart, or trailer cannot remain there overnight.
- **City (Lynnwood) Parks and Recreation Department**
  - Obtain a Special Event Permit, if vending in a public park

### **Common Provisions of Mobile Vending Ordinances:**

Ordinances regulating peddlers, solicitors, temporary merchants and/or mobile vendors commonly include the following types of provisions:

- **License Fees** – Imposed on a yearly or daily basis
- **License Application Form** – Requiring information concerning the proposed location of the activity, the estimated length of time the activity will be carried on, descriptions of merchandise being offered for sale, the hours of operation, and the names of references
- **Background Check** – Primarily a check for any prior criminal records
- **License Revocation** – Conditions for license revocation and appeal procedures
- **License Display** – Requiring peddlers and solicitors to have in their possession and to display their license
- **Temporary Stands** – Standards and conditions for temporary stands
- **Time and Place Restrictions**- Include restrictions on hours of conducting business, prohibition where property owners post “No Peddling/Soliciting” signs, and requirements that temporary merchants locate their businesses in compliance with zoning codes

- **Exemptions** – For nonprofit, charitable, and religious organizations and for farmers and gardeners selling fruits, vegetables, or other similar farm produce raised, gathered, or produced by such persons (per RCW 36.71.090)

**Important Considerations in Drafting and Preparing Ordinances and Regulations:**

At the minimum, the proposed regulations would address:

1. defining this type of business;
2. indicating where the business can locate (in which zoning districts, for on-street and off- street); and
3. including appropriate operational standards (hours of operation, clean up requirements etc).

Finally, an easily overlooked issue might be the leasehold excise tax. If a food truck proposes to locate on public property such as a park or public space other than the street you may also need to consider the leasehold excise tax. Most leases of publicly-owned real and personal property in the state are subject to a leasehold excise tax in lieu of a property tax. See Ch. 82.29 RCW. An easy way to determine whether leasehold excise tax must be paid, is to ask the following question: "If the lessee owned the property, would the party have to pay property tax?" If the answer is "yes," then leasehold excise tax must be paid. If the answer is "no," then no tax is due. Since the food truck vendor is leasing space from the City, then they are subject to the leasehold excise tax.

**Status/Next Steps:**

1. City Council directed Staff to prepare a draft ordinance promoting economic development and livability by allowing for food trucks to vend in Lynnwood
2. City Council asked Staff to prepare a new Chapter (5.18) under Title 5 Business Regulations and Licenses of the LMC called "Mobile Vendors"
3. After Planning Commission reviews the attached ordinance and draft regulations, then Staff will forward the ordinance and regulations to the City Attorney. Next, a public hearing will be held to get public input and comments on the draft legislation. After new regulations are adopted by the City Council, the City is prepared to update the City's website to

include all of the information necessary for mobile vendors to do business in Lynnwood

**Attachments:**

1. Draft ordinance and regulations – Mobile Vending
2. Powerpoint Presentation – Mobile Vending





**ORDINANCE NO. XXXX**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, ADDING A NEW CHAPTER 5.18 TO TITLE 5 BUSINESS REGULATIONS AND LICENSES AND AMENDING LMC 21.02 DEFINITIONS OF TITLE 21 TO INCLUDE A NEW DEFINITION DEFINING MOBILE VENDORS (FOOD TRUCKS); PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION

---

**WHEREAS**, this is a non-project proposal to amend Lynnwood Municipal Code (LMC) to provide for the authorization of new legislation which will allow for mobile vendors (food trucks) to conduct business within the city limits of Lynnwood; and

**WHEREAS**, the City desires to provide for opportunities to increase jobs and businesses, promote positive impacts on street vitality and neighborhood life, promote a sense of community and entrepreneurship, to offer opportunities to provide food choices where zoning precludes restaurants and to increase activity in struggling business districts; and

**WHEREAS**, the City wishes to adapt to a changing economy and support small business opportunities, specifically for our ethnic groups within our diverse community; and

**WHEREAS**, Community Development briefed the Lynnwood City Council at a work session on October 19, 2015; and

**WHEREAS**, Community Development briefed the Lynnwood Planning Commission (the “planning commission”) at a public meeting on January 28, 2016; and

**WHEREAS**, the planning commission held a public hearing on February\_\_\_ 2016, to receive public testimony concerning the proposed code amendments; and

**WHEREAS**, on February\_\_\_2016, the planning commission deliberated on the proposed development regulations at an advertised public meeting; and

1  
2       **WHEREAS**, at the conclusion of its deliberations the planning commission voted to  
3 recommend that the City Council approve the proposed development regulations; and  
4

5       **WHEREAS**, on March \_\_\_\_, 2016, the City Council held a public hearing after proper  
6 notice, and considered public comments and the entire record related to the proposed  
7 ordinance contained in this ordinance.  
8

9       **NOW, THEREFORE**, THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO  
10 ORDAIN AS FOLLOWS:  
11

12       **Section 1.** The City Council adopts the following findings in support of this ordinance:  
13

- 14       A. The foregoing recitals are adopted as findings as if set forth in full herein.  
15  
16       B. This ordinance will amend Lynnwood Municipal Code (LMC) to provide for the  
17 authorization of new legislation which will allow for mobile vendors (food trucks) to  
18 conduct business within the city limits of Lynnwood. Accordingly, this ordinance  
19 does not create any inconsistencies with state law or the City Code.  
20

- 21       C. This ordinance complies with and implements the following Snohomish County  
22 General Policy Plan (GPP) goals, objectives, and policies related to the proposed  
23 regulations:  
24

25               Goal ED 1               Promote the maintenance and enhancement of a healthy  
26   economy.  
27

28               Goal ED 2               Provide a planning and regulatory environment which  
29   facilitates growth of the local economy.  
30

- 31  
32       D. This ordinance complies with and implements the following City of Lynnwood  
33 Comprehensive Plan Goals and Policies of the Economic Development Element  
34 related to the proposed regulations:  
35

1	ED GOAL	Support and grow new and existing businesses in Lynnwood.
2		
3	Strategy 1.2	Support new and existing business development in the City of Lynnwood.
4		
5		
6	Action 1.2.6	Identify the unique needs of ethnic businesses and coordinate City policy with business associations and other stakeholders in the community.
7		
8		
9		

- 10
- 11 E. Procedural requirements.
- 12
- 13 1. A State Environmental Policy Act (SEPA) threshold Determination of Non
  - 14 Significance (DNS) for the code amendments contained in this ordinance was
  - 15 issued on January \_\_, 2016.
  - 16
  - 17 2. The planning commission held a public hearing on \_\_\_\_\_, 2016, to receive
  - 18 public testimony concerning the code amendments contained in this
  - 19 ordinance.
  - 20
  - 21 3. Pursuant to RCW 36.70A.106, a notice of intent to adopt this ordinance was
  - 22 transmitted to the Washington State Department of Commerce for
  - 23 distribution to state agencies.
  - 24
  - 25 4. The public participation process used in the adoption of this ordinance has
  - 26 complied with all applicable requirements of the GMA and the LMC.
  - 27

- 28 F. The proposal is consistent with the record for this proposal.
- 29
- 30
- 31 1. The proposal allows for the establishment of new food truck businesses to be
  - 32 located on private property and not within the public right-of-way, unless
  - 33 participating in an approved special event. Food truck owners are required
  - 34 to get permission from the property owner prior to operation.
  - 35

1           2. The proposal provides for food trucks to conduct business within the city  
2           limits of Lynnwood provided that a business license application has been  
3           approved in accordance with LMC 5.18.  
4

5           3. The proposal should contribute to a significant impact on the liveliness of  
6           streets and public interactions by allowing for “optical leverage” which  
7           means that food trucks are spaces where people gather while waiting for  
8           food and when people are waiting for food, it will in turn attract more  
9           people. Positive impacts on street vitality and neighborhood life promote a  
10          sense of community.  
11

12                   **Section 2.** The City Council makes the following conclusions:  
13

14          A. The proposal is consistent with the goals, objectives and policies of the Growth  
15          Management Act (GMA).  
16

17          B. The proposal is consistent with Washington State law and the SCC.  
18

19          C. The proposal is consistent with the Lynnwood Municipal Code (LMC).  
20

21          D. The City has complied with all SEPA requirements in respect to this non-project  
22          action.  
23

24          E. The proposed amendments are needed to improve the economic situation of local  
25          residents (disposable income and assets) and local businesses (profitability and  
26          growth); and to enhance the community’s quality life as a whole by allowing for food  
27          trucks to do business within the city limits of Lynnwood thereby filling a niche for  
28          our community’s workforce and creating a positive impact on the liveliness of  
29          streets and public interactions.  
30

31                   **Section 3.** The City Council bases its findings and conclusions on the entire  
32                   record of the City Council, including all testimony and exhibits. Any finding

1 which should be deemed a conclusion, and any conclusion which should be  
2 deemed a finding, is hereby adopted as such.

3  
4 **Section 4.** Lynnwood Municipal Code (LMC) Chapter 21.02 Definitions of Title  
5 21, last amended by \_\_\_\_\_ Ordinance No. \_\_\_\_\_ on \_\_\_\_\_2016, is  
6 amended to include one (1) new definition as this definition relates to food  
7 trucks:

8  
9 **21.02.51X Mobile Food Vendor.**

10 “Mobile food vendor” means a seller of foods from a mobile food preparation truck, van, cart, or other conveyance,  
11 whether upon the public streets, alleys or public property or on private property.

12  
13 **Section 5.** A new section titled “Chapter 5.18 Mobile Vendors” is added to Title 5 Business  
14 Regulations and Licenses of the Lynnwood Municipal Code to read:

15  
16  
17  
18  
19 **Chapter 5.18**

20 **MOBILE VENDORS**

21  
22 **Sections:**

- 23 **5.18.010 Purpose.**
- 24 **5.18.020 Definitions.**
- 25 **5.18.030 Mobile vendor business – License required – Exemptions.**
- 26 **5.18.040 Display of license.**
- 27 **5.18.050 Restrictions applicable to all mobile vendors.**
- 28 **5.18.060 Director’s rules.**
- 29 **5.18.070 Mobile vendor license –Application.**
- 30 **5.18.080 License fee.**
- 31 **5.18.090 Compliance with regulations.**
- 32 **5.18.100 Violation – Penalty.**

1 **5.18.010 Purpose.**  
2 The purpose of this chapter is to allow for mobile food vendors (food trucks) to conduct business within the  
3 corporate limits of the City of Lynnwood and to reasonably accommodate new businesses, enhance street vitality,  
4 and support entrepreneurship.  
5

6 **5.18.020 Definitions.**  
7 A. "Cart" means a mobile, nonmotorized vehicle or conveyance which is intended to be pushed, pulled or otherwise  
8 used by a mobile vendor for the transport of any food, goods, wares or merchandise of any name, nature or  
9 description.

10 B. "City" means the city of Lynnwood.

11 C. "Food" shall have its usual and ordinary meaning, and shall include all items designed for human consumption,  
12 including, but not by way of limitation, candy, popcorn, hot dogs, tacos, sandwiches, peanuts, soft drinks, ice cream  
13 and dairy products.

14 D. "Mobile food preparation van" means a commercially manufactured motorized vehicle in which ready-to-eat  
15 food is cooked, wrapped, packaged, processed or portioned for service, sale or distribution.

16 E. "Mobile food vendor" means a seller of foods from a mobile food preparation van, cart or other conveyance,  
17 whether upon the public streets, alleys or public property or on private property.

18 F. "Mobile vendor" means a transient business selling or delivering food or goods in the city.

19 G. "Vending unit" means a mobile food preparation van, cart, or other conveyance, or any facility that is not on a  
20 permanent foundation that complies with the International Building Code, and which is used for the sale or delivery  
21 of food or goods.

22 **5.18.030 Mobile vendor business – License required – Exemptions.**  
23 No person, firm or corporation shall engage in a mobile vendor business without having first obtained a business  
24 license from the city clerk; provided, however, that no license shall be required of the following:

25 A. Persons who conduct a casual or isolated sale and who are not engaged in the business of selling the type of food  
26 or goods involved;

27 B. Associations, corporations or organizations not organized for profit, and any community fund or foundation  
28 organized and operated exclusively for religious, scientific, public or charitable purposes, no part of the earnings of  
29 which inures to the benefit of any private shareholder, owner, member or individual, and the net earnings of which  
30 are devoted exclusively to charitable, educational or recreational purposes.

31 C. Seasonal fresh fruits and vegetables that are unprepared and similar agricultural products, as exempted by RCW  
32 36.71.090.

33 D. Any "peddler," as those terms are defined in chapter 5.20 LMC, that is also licensed under that same chapter.

34 **5.18.040 Display of license.**  
35 All mobile vendor licenses shall be prominently displayed upon all carts, vehicles or locations from which a mobile  
36 vendor sells products.

1 **5.18.050 Restrictions applicable to all mobile vendors.**

2 A. Mobile vending on the public streets and public rights-of-way within the corporate limits of the city shall not be  
3 permitted unless approved as an authorized participants in a city-approved special event; including festivals, sports  
4 tournament or similar activity as outlined in chapter 5.30 LMC.

5 B. Mobile vending to serve local businesses' employees at the local businesses' location shall be permitted when  
6 authorized by the business, such as within the City Center, for the period of time that it takes to set up, serve, and  
7 close up.

8 C. It shall be a violation of this chapter for any mobile vendor to obstruct or cause to be obstructed the passage of  
9 any pedestrian or vehicle on any public sidewalk, street, fire lane, or any other public right-of-way, including  
10 customer queues or customers consuming any food sold by the mobile vendor at or near the place where any items  
11 are being sold or offered for sale. No items may be offered or sold, and no customers served, in any traveled portion  
12 of a public roadway.

13 D. No mobile vendor shall sell or deliver any food or goods from the mobile vendor's vending unit, cart, or other  
14 vehicle or conveyance if the conveyance is within 100 feet of the entrance of any business establishment which is  
15 open for business and offers for sale similar food or goods for sale, without the consent of said business.

16 E. If food trucks will be utilizing an external propane tank (not mounted on the food truck), external power  
17 connections and/or tent structures, it will be subject to additional review by the Lynnwood Fire Department.  
18

19 F. Notwithstanding any provision of this chapter to the contrary, the director of community development is  
20 authorized to adopt rules relating to the time, place, and manner in which a nonprofit organization may vend  
21 merchandise in which the organization's political, religious, sociological, or ideological message is inextricably  
22 intertwined if the sale exercises the permittee's rights guaranteed by the United States or the Washington  
23 Constitution. Such rules may address the issuance and duration of permits, the size and placement of tables and  
24 other equipment used, their siting and location on public property, the type of merchandise offered for sale,  
25 advertising and posting of prices, the display of licenses, the exclusion of ineligible merchandise, the documentation  
26 to accompany applications for registration, among other subjects.

27 **5.18.060 Director's rules.**

28 The community development director may promulgate rules to implement this chapter. The rules may address the  
29 subjects identified in this chapter and other subjects the director believes may aid in the implementation of this  
30 chapter.  
31

32 **5.18.070 Mobile vendor license – Application.**

33 A. The submittal requirements for technical committee include providing a site plan, a simple sketch of the site  
34 layout, depicting the following:

- 35 1. Ingress and egress.
- 36 2. Location of the vending unit.
- 37 3. A photograph of the mobile unit, proposed signs, and any equipment.
- 38 4. Written approval by the Snohomish Health District that the food preparation and service complies with  
39 health regulations.

- 1           5. Evidence of a current state of Washington vehicle registration.
- 2           6. Provide a written plan documenting appropriate disposal of wastewater generated by the vending unit.
- 3           7. Documentation that the vending unit has been approved by the state of Washington Department of Labor and  
4 Industries.
- 5           8. Evidence of necessary approvals from the Lynnwood fire department in the event *external* combustible fuels  
6 will be used.
- 7           B. The technical committee shall review and approve the proposal before it is submitted for approval of a new  
8 business license application. The technical committee will review the proposal for access, parking, signage,  
9 handling of wastewater, garbage disposal and other safety issues.
- 10          C. Comply with the standards of the state of Washington Department of Labor and Industries for electrical service to  
11 the mobile food preparation van. In no event shall the permittee locate electric lines overhead or on the ground  
12 surface in any location in which the public has access.
- 13          D. The site shall be left clean and vacant each day, including picking up trash and litter, whether or not generated by  
14 the customers.
- 15          E. The use of any portion of the vending unit as living or sleeping quarters is prohibited.
- 16          F. All attachments to the vending unit, including but not limited to signs, lights, overhangs, and awnings, shall be  
17 maintained in such a manner as to not create a hazard to pedestrians, customers or vehicles. Flashing lights and  
18 similar displays are prohibited.
- 19          G. All exterior trash receptacles not intended for customer use shall be screened from public view and securely  
20 covered.
- 21          H. Written permission from the property owner. This includes written permission for staff to use their restrooms. No  
22 portable restrooms are allowed on the site, provided that a portable restroom may be approved for interim use if  
23 there are no permanent restrooms available from an on-site business, as long as it is located at least 120 feet from an  
24 arterial street and screened.
- 25          I. Wastewater.
  - 26           1. Food vans shall be required to install an appropriate grease trap and maintain it.
  - 27           2. Grease shall be dumped in the garbage and wastewater in the sanitary sewer.
  - 28           3. There shall be no portable restrooms allowed on site.
- 29          J. One portable pop-up 10-foot-by-12-foot tent or umbrella may be used for cover for patrons, or up to three tables  
30 with beach type umbrellas. Cooking shall not take place under tent. Umbrellas and canopies must be removed at the  
31 end of each day.

1 K. Cooking with wood or other smoke-producing devices is strictly limited to residential size barbecues not located  
2 near residences with the concurrence of the neighbors and no complaints with approval of the community  
3 development and fire departments.

4 L. The hours of operation for mobile vending are limited to between 7:00 a.m. and 10:00 p.m.

5 M. Mobile vendors shall not use amplification or noise-making devices and the permittee shall comply with chapter  
6 10.12 LMC.

7 N. Mobile vendors shall be responsible for ensuring that customer queues do not encroach into any abutting  
8 roadway when the street is open for vehicular traffic.

9 O. The owner of real property on which a mobile vendor is located shall be responsible for overall site maintenance  
10 such as added landscaping, provision of a picnic shelter with a building permit on an interim basis, and making sure  
11 that the mobile vendor complies with the permit conditions.

12 P. Mobile food vendors may not serve alcoholic beverages.

13 **5.18.080 License fee.**

14 Business license fees shall be as fixed in an amount determined by council resolution of the city council. The city  
15 business license will serve as evidence that the applicant has applied for and obtained a Washington State  
16 Department of Revenue business registration number.

17 **5.18.090 Compliance with regulations.**

18 All food vendors engaged in the sale of food shall comply with all laws, rules and regulations regarding food  
19 handling, and all mobile food preparation vans and motor vehicles used by mobile vendors shall comply with all  
20 applicable laws, rules and regulations respecting such vehicles as established by the Snohomish County Health  
21 Department, the Washington State Motor Vehicle Code, and any applicable sections of the Lynnwood Municipal  
22 Code regarding the operation of the business. All mobile vendors and food vendors shall further be responsible for  
23 cleaning up each day all litter originating from their business and within a 150-foot radius of the location where any  
24 sales occur.

25 **5.18.100 Violation – Penalty.**

26 Failure to perform any act required by this chapter, or the performance of any act prohibited by this chapter, is  
27 designated as a civil infraction and may not be classified as a criminal offense. Any person, firm or corporation  
28 found to have committed an infraction under this chapter shall be assessed a monetary penalty. No penalty assessed  
29 for infractions under this chapter may exceed \$500.00 for each separate infraction.

30 **Section 6. Severability.** If any section, sentence, clause or phrase of this ordinance should  
31 be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or  
32 unconstitutionality shall not affect the validity or constitutionality of any other section,  
33 sentence, clause or phrase or word of this ordinance.

34  
35 **Section 7. Effective Date:** This ordinance or an approved summary thereof consisting of its  
36 title shall be published in the City's official newspaper of record and shall take effect and  
37 be in full force five days following its publication.

1  
2 PASSED this XX day of XXXXXXXX, 20XX, and signed in authentication of its passage this XX day of  
3 XXXXXXXX, 20XX.  
4

5  
6 APPROVED:  
7

8  
9  
10 \_\_\_\_\_  
11 Nicola Smith, Mayor

12 ATTEST/AUTHENTICATED:

13 APPROVED AS TO FORM:  
14

15 \_\_\_\_\_  
16 Sonja Springer, Finance Director

17 \_\_\_\_\_  
18 Rosemary Larson, City Attorney

19  
20 **APPROVED AS TO FORM:**  
21

22 \_\_\_\_\_  
23 Rosemary Larson  
24 City Attorney

25  
26  
27 ADOPTED BY THE CITY COUNCIL: 0X-XX-2016  
28 PASSED BY THE CITY COUNCIL:  
29 PUBLISHED:  
30 EFFECTIVE DATE:  
31 ORDINANCE NUMBER:

# Food Trucks & Street Food Carts

## Planning Commission

January 28, 2016

### Introduction

This work stems from a grassroots level interest from the **Hispanic community** requesting *“if food truck operators can expand operations to serve the City of Lynnwood”* and from citizens asking about where they can access food trucks. Food truck dining is more than a national trend and local governments all over the country have worked on or are working on regulatory changes to address this use.

**LATINO**  
**AMERICANS**  
500 YEARS OF HISTORY



## Executive Summary

- Initiative is supportive of the Economic Development Plan
- Studies show positive impacts on street vitality
- Increases jobs and businesses by filling a niche
- City to approve new food truck vendors with Business License application
- Allowable for off-street and with agreement to private property owners; City already allows for in public parks with special event permit

## Typical Food Truck – Interior/Exterior

- Food trucks must pass inspection and be approved by L&I for electrical, structural and mechanical correctness.
- Snohomish Health District does another plan review.





## Food Trucks – Community Togetherness



## Recommendations/Next Steps

- From the last City Council meeting (November 16, 2015), City Council provided the following direction to staff:
  - Requested staff to draft an Mobile Vending Ordinance
  - Requested staff to prepare a new Chapter 5.18 Mobile Vendors under Title 5 Business Regulations and Licenses of the LMC
  - Add a section to the City’s Business License Application forms for mobile vendors
  - Update City’s website to include all information necessary for mobile vendors to do business in Lynnwood

## Questions?



Early horse-vending cart in Pacific Northwest.

*Photo source: Oregon Historical Society*



Seafood vendor, 1903



Street food vendors, 1906

*Source: Historical New York City*

