
WHEREAS, in 1972, the public adopted the Shoreline Management Act, codified at Chapter 90.58 RCW (SMA), by way of referendum to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines"; and

WHEREAS, RCW 90.58.080 requires local governments to develop or amend master programs for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (Ecology); and

WHEREAS, RCW 90.58.020 directs local governments developing shoreline master programs to give preference to uses in the shorelines in the following order of preference which: 1) recognize and protect the State-wide interest over local interest; 2) preserve the natural character of the shoreline; 3) result in long-term over short-term benefit; 4) protect the resources and ecology of the shorelines; 5) increase public access to publicly-owned areas of the shorelines; 6) increase recreational opportunities for the public in the shoreline; and 7) provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary; and

WHEREAS, in 2003, Ecology adopted new rules, pursuant to RCW 90.58.200, which gave procedural and substantive direction to local jurisdictions for updating shoreline uses and regulations, which became effective January 17, 2004; and

WHEREAS, when it incorporated in 1998, the City of Kenmore (City) adopted King County's original 1978 Shoreline Master Program (SMP). Pursuant to RCW 90.58.080, the City is required to adopt a comprehensive master program update consistent with the criteria set forth in Ecology's guidelines (SMP Update); and

WHEREAS, three bodies of water within the City are regulated under the City's SMP, including Lake Washington, Sammamish River and Swamp Creek. Lake Washington is the only
shoreline designated as a "shoreline of statewide significance" under the SMA as it is a lake with a surface acreage over 1,000 acres; and

WHEREAS, in the fall of 2007, the City began its SMP Update with the assistance of grant funding from Ecology; and

WHEREAS, the City conducted a comprehensive inventory of the ecological functions and conditions within its shoreline jurisdiction to provide a scientific foundation for application of the shoreline environment criteria and assignment of the appropriate shoreline designations; and

WHEREAS, the results of this comprehensive inventory are contained in the document entitled, Kenmore Shoreline Master Program Update Inventory and Analysis, dated February 2010 (Inventory); and

WHEREAS, consistent with the requirements of WAC 173-26-186(8)(d), the City conducted an analysis of potential cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the SMA. The cumulative impact analysis is contained in the memorandum entitled, City of Kenmore, Shoreline Master Program Update - Cumulative Impacts, dated February 4, 2010 (Cumulative Impact Analysis); and

WHEREAS, consistent with the requirements of WAC 173-26-224(4)(c), the City conducted a public access analysis, as set forth in a January 6, 2009 Memorandum entitled, "Shoreline Public Access - Demand, Opportunities and Priorities ("Public Access Planning Memo"), which plans for an integrated shoreline public access system that identifies public needs and opportunities to provide public access; and

WHEREAS, consistent with the requirements of WAC 173-26-186(8)(c) and 173-26-201(2)(f), a document entitled City of Kenmore Shoreline Master Program Update, Restoration Plan, dated February 3, 2010 ("Restoration Plan") has been formulated so that the City's master program includes goals, policies and actions for restoration of impaired shoreline ecological functions; and

WHEREAS, the City has utilized the scientific information from the Inventory and the Cumulative Impact Analysis to draft the proposed SMP Update; and

WHEREAS, over two years, the City's Planning Commission reviewed and revised a number of documents, including: the Inventory; the Shoreline Sub-Element of the Comprehensive Plan; proposed revisions to shoreline regulations; the Restoration Plan; the Public Access Planning Memo; the Cumulative Impacts Memorandum; and a matrix of responses to public comments; and

WHEREAS, throughout the SMP Update process, the City has made a concerted effort to generate public involvement, including holding two public open houses; creating a citizen advisory committee to work with the Planning Commission; creating a comprehensive and regularly-updated web page devoted to the SMP Update; sending mailings to all shoreline property owners soliciting
comments on the SMP Update and maintaining a large mailing list in order to keep interested parties informed; and

WHEREAS, on July 22, 2009, the Planning Commission presented their preliminary recommendations for the proposed SMP Update to the City Council, and

WHEREAS, the Planning Commission held a public hearing on the SMP Update and fifteen interested parties testified and a number of comments were received, including from the Muckleshoot Tribe, Friends of St. Edward State Park, Waterfront Construction, the Lakepointe development, Futurewise and a number of private individuals; and

WHEREAS, on August 25, 2009 the City’s Responsible Official under the State Environmental Policy Act issued a determination of non-significance for the proposed SMP Update; and

WHEREAS, on August 25, 2009 the City provided notice to the Washington State Department of Commerce regarding the proposed amendments to the shoreline regulations and SMP Update pursuant to RCW 36.70A.106; and

WHEREAS, Ecology completed its initial review of the proposed SMP Update and submitted comments to the City. The Planning Commission and City Staff have spent several months considering the recommendations and comments received from Ecology as demonstrated in the Public Comment Matrix; and

WHEREAS, on January 20, 2010, the Planning Commission made their final recommendation to the City Council for approval of the SMP Update; and

WHEREAS, on March 29, 2010, the City Council held a public hearing on the proposed SMP Update, which was continued for additional public comment on May 27, 2010 and September 13, 2010; and

WHEREAS, on September 13, 2010, the City Council adopted Ordinance No. 10-0312 (shoreline policies) and Ordinance No. 10-0313 (shoreline regulations), which adopted the SMP Update and authorized City Staff to forward the proposed SMP Update to Ecology for approval; and

WHEREAS, Ecology reviewed the City’s SMP Update and issued Findings and Conclusions for Proposed Amendments to the City of Kenmore Shoreline Master Program, dated July 25, 2011 (“Findings & Conclusions”) which conditioned approval of the City’s SMP Update upon the adoption of certain "required" revisions, and which also included "recommended" changes to the City’s SMP Update; and

WHEREAS, the City Council has considered public testimony and comments, City staff and consultant input, and certain documents and information, including: 1) Overview of Draft Shoreline Master Program, Feb. 4, 2010 (ESA Adolfson); 2) the Inventory; 3) the Cumulative Impacts Memorandum; 4) the Shoreline Sub-Element of the Comprehensive Plan; 5) City of Kenmore Shoreline Master Program, Comprehensive Plan Policies, Shoreline Sub-Element; 6) City of

WHEREAS, the City Council considered Ecology's Findings & Conclusions and the required and suggested changes at its September 26, 2011, November 14, 2011, and November 21, 2011 regular meetings, and pursuant to RCW 90.58.090(2)(e)(ii) directed that four alternative proposals be submitted to Ecology for review and inclusion within the City's SMP Update; and

WHEREAS, on November 22, 2011, the City submitted its four alternatives to Ecology, and City staff has received verbal notice from Ecology staff that a recommendation for approval of all four of the City's alternative proposals would be going forward to Ecology's director for final action; and

WHEREAS, the City Council desires to incorporate the Findings and Conclusions, as amended by the four alternatives, in the City's SMP Update by adopting this ordinance and repealing Ordinance No. 10-0313 (shoreline regulations) to avoid duplication and confusion; and

WHEREAS, the City Council has considered the Findings & Conclusions and Ecology's required changes and desires to amend Exhibit 2 of Ordinance No. 10-0312, the Shoreline Environment Designation Map, to designate Tax Parcels 1426049013 and 1426049014 as "Natural"; and

WHEREAS, the City Council finds that the SMP Update includes the necessary master program elements required by WAC 173-26-191(b), the master program basic requirements set forth in WAC 173-26-191(2) and the general master program provisions set forth in WAC 173-26-221; and

WHEREAS, RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the City's comprehensive plan adopted under the Growth Management Act, codified at Chapter 36.70A RCW. All other portions of the City's shoreline master program, including shoreline use regulations, are considered a part of the City's development regulations; and

WHEREAS, the City Council desires to repeal Chapters 16.05, 16.10, 16.15., 16.20, 16.25, 16.30, 16.35 and 19.15 of the KMC; and

WHEREAS, the City Council desires to renumber and revise Chapter 16.40 KMC, relating to Flood Damage Prevention as Chapter 16.90 KMC; and

WHEREAS, the City Council desire to amend KMC 18.55.030, 18.55.040, 18.55.120, 18.55.160, 18.55.170, 18.55.180, 18.55.210, 18.55.320, 18.55.330, 18.55.530, 19.25.020, and 19.30.070 in order to make those sections consistent with the City's SMP Update; and
WHEREAS, the City Council finds that the proposed SMP Update complies with the policies and mandates of the SMA and the guidelines adopted by Ecology under Chapter 173-26 WAC, and desires to adopt the proposed SMP Update; now therefore,

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

Section 1. Findings. The City Council adopts the foregoing recitals as findings for this Ordinance, which are incorporated by reference as if set forth in full.


Section 3. Adoption of Comprehensive Shoreline Master Program Update - Development Regulations. The City Council adopts the City of Kenmore Shoreline Master Program Update, Shoreline Regulations, as set forth in Exhibit 1, attached hereto and incorporated by reference.

Section 4. Map Adopted. The City Council adopts Map 1, Shoreline Environment Designations Map, attached hereto as Exhibit 2, and incorporated by reference.

Section 5. Renumber & Amendment. The City Council hereby renumbers Chapter 16.40 KMC, Flood Damage Prevention, as Chapter 16.90 KMC, Flood Damage Prevention and amends the chapter as set forth in Exhibit 3, attached hereto and incorporated by reference.

Section 6. Map Amended. Exhibit 2 to Ordinance No. 10-0312, the Shoreline Environment Designations Map, is hereby amended as set forth in Exhibit 4 to this ordinance, attached hereto and incorporated by reference, to designate Tax Parcels 1426049013 and 1426049014 as Natural.

Section 7. Amendment. KMC 18.55.030 is amended to read as follows:

18.55.030 Relationship to other regulations.

A. These critical areas regulations shall be in addition to zoning and other regulations adopted by the city. Compliance with other regulations does not exempt the applicant from critical areas regulations.

B. The critical area regulations set forth in KMC 16.05.060.B shall apply to all critical areas located within the jurisdiction of the Kenmore Shoreline Master Program.

C. These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA) (Chapter 19.35 KMC).
D. Any individual *critical area* adjoined by another type of *critical area* shall have the *buffer* and meet the requirements that provide the most protection to the *critical areas* involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the *critical areas* shall apply.

E. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, shoreline substantial development or conditional use permits, shoreline variances, the Washington State Department of Fish and Wildlife *hydraulic project approval* (HPA), Army Corps of Engineers *Section 404 permits*, and National Pollution Discharge Elimination System (NPDES) permits). The *applicant* is responsible for complying with these requirements, apart from the process established in this chapter.

**Section 8. Amendment.** KMC 18.55.040 is amended to read as follows:

**18.55.040 Administrative Procedures.**

The administrative procedures followed during the *critical area* review process shall conform to the standards and requirements of the city development regulations, except that, where *critical areas* are located within the jurisdiction of the Kenmore Shoreline Master Program, administrative procedures shall conform to the standards and requirements of KMC 16.75. This shall include, but not be limited to, timing, permits, variances, exemptions, exceptions, appeals, and fees associated with applications covered by this chapter.

**Section 9. Amendment.** KMC 18.55.120.B is amended to read as follows:

**18.55.120 Applicability.**

B. The *city* shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or *vegetation*, or to construct or alter any *structure* or improvement in, over, or on a *critical area* or associated *buffer*, without first assuring compliance with the requirements of this chapter. For development on lands regulated under the Kenmore Shoreline Master Program, compliance with this chapter includes compliance with the requirements of the shoreline master program as well as with the requirements of this chapter.

**Section 10. Amendment.** KMC 18.55.160.A is amended to read as follows:

**18.55.160 Exception — Public agency and utility.**

A. If the application of this chapter would prohibit a development proposal by a *public agency* or public utility, the agency or utility may apply for an exception pursuant to this section, unless the project is located on lands regulated under the Kenmore Shoreline Master Program. Projects on lands regulated under
the Kenmore Shoreline Master Program are regulated under the procedures of Chapter 16.75 KMC.

Section 11. Amendment. KMC 18.55.170.A is amended to read as follows:

18.55.170 Variances.

A. Variance from the buffer width and building setback standards of this chapter may be authorized by the city in accordance with the procedures set forth in the city’s zoning code, unless the project is located on lands regulated under the Kenmore Shoreline Master Program. Projects on lands regulated under the Kenmore Shoreline Master Program are regulated under the procedures of Chapter 16.75 KMC.

Section 12. Amendment. KMC 18.55.180.A of the Kenmore Municipal Code is amended to read as follows:

18.55.180 Exception — Reasonable use.

A. If the application of this chapter pertaining to critical areas will prevent the applicant from making any reasonable use of the subject property, the applicant may apply for an exception pursuant to this section unless the project is located on lands regulated under the Kenmore Shoreline Master Program. Projects on lands regulated under the Kenmore Shoreline Master Program are regulated under the procedures of Chapter 16.75 KMC. The An application for a reasonable use exception must accompany a development permit application through the city’s review and decision process.

Section 13. Amendment. KMC 18.55.210 is amended to read as follows:

18.55.210 Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for as outlined by WAC 197-11-768, in the following order of preference:

A. Avoiding the impact altogether by not taking a certain action or parts of actions;
B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and/or
E. Compensating for the impact by replacing or providing substitute resources or environments; and/or
F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
Mitigation for individual actions may include a combination of the above measures.

Section 14. Amendment. Section KMC 18.55.320.F.2 is amended as follows:

18.55.320 Performance standards – General requirements.
F. Wetland Buffers.
2. Measurement of Wetland Buffers. Wetland buffers shall be measured from the wetland edge as delineated and marked in the field using the 19971987 U.S. Army Corps of Engineers Wetland Delineation Manual and current Regional Supplements Washington State Wetland Identification and Delineation Manual (Ecology) or as may be revised in WAC 173-22-035 and WAC 173-22-080 or the most recent approved federal manual and regional supplements.

Section 15. Amendment. KMC 18.55.330.A is amended to read as follows:

18.55.330 Performance standards – Mitigation requirements.
A. Mitigation Shall Achieve Equivalent or Greater Ecological Functions. Mitigation for alterations to wetlands and buffers shall achieve equivalent or greater ecological functions than exist in the impacted wetland and buffer. Mitigation plans shall be generally consistent with the Department of Ecology Guidelines found in Wetland Mitigation in Washington State – Part 2, Version 1, March 2006, Publication #06-060-011b—for Developing Freshwater Wetlands Mitigation Plans and Proposals, 1994, as revised.

Section 16. Amendment. KMC 18.55.330.G.1 is amended to read as follows:

18.55.330 Performance standards – Mitigation requirements.
G. Mitigation Ratios.
1. Acreage Replacement Ratios. The following ratios shall apply to creation or restoration that is in-kind, on-site, the same class, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply on a case-by-case basis. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

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<tr>
<th>Class</th>
<th>Ratio</th>
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<tr>
<td>1</td>
<td>3 to 1</td>
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<td>2</td>
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<tr>
<td>3</td>
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The required acreage replacement ratios for wetlands within the jurisdiction of the Kenmore Shoreline Master Program are different from these standards. See KMC 16.65.010.C for required wetland mitigation ratios in the shoreline jurisdiction.

Section 17. Amendment. KMC 18.55.530.A.1 is amended to read as follows:

18.55.530 Performance standards — Specific habitats.
A. Endangered, Threatened, and Sensitive Species.
1. No development shall be allowed within a fish and wildlife habitat of importance or buffer with which state or federally endangered, threatened, or sensitive species have a primary association except as otherwise approved through this chapter. For fish habitat of importance on lands regulated under the Kenmore Shoreline Master Program, development also must meet the use and development requirements of the Kenmore Shoreline Master Program.

Section 18. Amendment. KMC 19.25.020.B and Exhibit A are amended to read as follows:

19.25.020 Classifications of land use decision processes

B. Except as provided in KMC 16.35.060, 16.75.060 and 19.35.160 or unless otherwise agreed to by the applicant, all Type 2, 3 and 4 decisions included in consolidated permit applications that would require more than one type of land use decision process may be processed and decided together, including any administrative appeals, using the highest-numbered land use decision type applicable to the project application. KMC 16.75.060 sets out the combined hearing authority for shoreline exemptions, shoreline substantial development permits, shoreline variances, and shoreline conditional use permits.

<table>
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<tr>
<th>Exhibit A LAND USE DECISION TYPES</th>
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<tbody>
<tr>
<td>TYPE 1²</td>
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<tr>
<td>Building; demolition; moving; engineering; clearing and grading; sign; change of use and/or classification under KMC Title 15; accessory dwelling unit; home occupation; boundary line adjustment; right-of-way; street standards variance; adjustment under Chapter 13.35 KMC; shoreline exemption; temporary use; binding site plan; preliminary subdivision or short subdivision revision if not a substantial change; short plat alteration if not a substantial change.</td>
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<tr>
<td>TYPE 2</td>
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<tr>
<td>Home industry; short subdivision; preliminary short subdivision revision; short plat alteration; zoning variance; conditional use permit; shoreline substantial development permit; shoreline variance; shoreline conditional use permit; site plan review for uses allowed by zone; communication facilities permit under Chapter 18.60 KMC; approval of residential density incentives or transfer of development credits; reuse of public schools; reasonable use exceptions under KMC 18.55.180; public agency and utility exceptions under KMC 18.55.160; other critical areas exceptions, variances and decisions to require studies or to approve, condition or deny a development proposal based on Chapter 18.55 KMC.</td>
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<tr>
<td>TYPE 3</td>
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<tr>
<td>Preliminary subdivision; plat alteration; preliminary</td>
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<td>TYPE 4</td>
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| TYPE 5 | Hearing and recommendation by planning commission or other city council-appointed advisory body; decision by city council on the record. Appealable to Growth Management Hearings Board pursuant to Chapter 36.70A RCW. | Comprehensive plan amendment; development regulation amendment; zoning map amendment related to a site-specific comprehensive plan land use map amendment; master plans required in order to obtain a comprehensive plan amendment or related zoning map or text amendment pursuant to Chapter 18.120 KMC. |

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1 All shoreline permits, including shoreline variances and conditional uses, are appealable to the State Shorelines Hearings Board and not to the hearing examiner.

2 Type 1 land use decisions that are not categorically exempt from environmental review under Chapter 43.21C RCW (State Environmental Policy Act) shall provide a notice of application per KMC 19.25.060 and a notice of decision per KMC 19.25.090. The notice of decision may be a copy of the permit.

3 Approvals that are consistent with the comprehensive plan may be considered by the city council at any time. Zone reclassifications that are not consistent with the comprehensive plan land use map require a site-specific comprehensive plan land use map amendment and the city council’s hearing, and consideration shall be considered a Type 5 land use decision and scheduled with the amendment to the comprehensive plan under Chapter 19.20 KMC.
4 If the proposal is being considered as part of the annual docket work program as described in Chapter 19.20 KMC. If the proposal is not part of the annual docket, the city council conducts the public participation process and makes the decision on the record.

5 Decisions on shoreline variance and shoreline conditional use permits require approval by the Department of Ecology.

Section 19. Amendment. KMC 19.30.070.A.11 is amended to read as follows:

19.30.070 Appeals.

11. Appeals of flood hazard area boundaries under KMC 16.4090.140;

Section 20. Effective Date. This Ordinance shall be published in the official newspaper of the City, and pursuant to RCW 90.58.090(7) shall take effect and be in full force fourteen days from the date of Ecology's written notice of final action to the City approving the Kenmore Shoreline Master Program.


CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Lynn Suskin, City Clerk

Approved as to form:

Rod P. Kaseguma, City Attorney

Filed with the City Clerk: February 3, 2012
Passed by the City Council: February 13, 2012
Ordinance No.: 12-0334
Date of Publication: