

ORDINANCE NO. 23-1272

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LAKE FOREST PARK, WASHINGTON, AMENDING
ADOPTED INTERIM DEVELOPMENT REGULATIONS AS
AUTHORIZED BY THE GROWTH MANAGEMENT ACT
RELATING TO RETAINING WALLS; DECLARING AN
EMERGENCY; PROVIDING FOR SEVERABILITY, AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's police power and is specifically authorized by RCW 35A.63.100 and RCW 36.70A.040; and

WHEREAS, within the express terms of the Growth Management Act, the Washington State Legislature has specifically conferred upon the governing bodies of Washington cities the right to establish and adopt interim development regulations; and

WHEREAS, large scale retaining walls in or adjacent to publicly owned rights-of-way can result in visual and physical blight, tree and vegetation removal, and become de facto landmarks identifying the City of Lake Forest Park (the "City")

WHEREAS, it is imperative that negative impacts of these retaining walls be mitigated with structural and aesthetic design, planting, and other mitigation measures; and

WHEREAS, it is imperative that these retaining walls that become significant, recognizable features in the City be integrated with and support the community identity; and

WHEREAS, chapter 12.50 of the Lake Forest Park Municipal Code ("LFPMC") would establish regulations for retaining walls in or adjacent to publicly owned right-of-way;

WHEREAS, an Environmental Checklist for a non-project action was prepared under the State Environmental Policy Act, Chapter 43.21C RCW, pursuant to Chapter 197-11 WAC, and a Determination of Non-Significance ("DNS") was issued on April 12, 2023; and

WHEREAS, in accordance with the requirements set forth in RCW 36.70A.106, the City provided the Washington State Department of Commerce notice of the City's

intent to adopt the proposed amendments on April 6, 2023, and received notice that the Department had granted expedited review on April 20, 2023; and

WHEREAS, the City Council held public meetings to review the proposed regulations during meetings on January 26, 2023; February 6, 2023, February 23, 2023, April 13, 2023, May 11, 2023, June 5, 2023, June 8, 2023, and June 22, 2023; and

WHEREAS, the City Council held a public hearing on May 11, 2023, and June 22, 2022 regarding the proposed regulations; and

WHEREAS, the City Council adopted interim retaining wall regulations in Ordinance No. 23-1270 on June 8, 2023, and after the public hearing on June 22, 2023, adopted an amendment to Ordinance No. 23-1270, Section 2, LFPMC 12.50.020(C)(6).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. PRELIMINARY FINDINGS. The recitals and findings set forth above are hereby adopted as the City Council's preliminary findings in support of the interim development regulations imposed by this ordinance.

Section 2. ADOPTION OF INTERIM DEVELOPMENT REGULATIONS. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, interim development regulations are hereby enacted creating Chapter 12.50 of the Lake Forest Park Municipal Code (LFPMC) as follows:

12.50.010 Purpose and intent.

The purpose and intent of this chapter is to:

- A. Recognize that while at the basic level, a retaining wall is a structure that holds or retains soil behind it, retaining walls can also result in visual and physical blight, tree and vegetation removal, impairment of gateway areas, and other impacts that require visual design, planting, and topographic, and aesthetic mitigation.
- B. Recognize that retaining walls can be built from different materials to achieve the strength required and achieve aesthetic goals;
- C. Require aesthetic design features that reflect the character of the community as adopted in Retaining Wall Design Standards;
- D. Recognize that retaining walls are frequently adjacent to noise sensitive areas such as residential dwelling units and other land uses that are noise sensitive and subject to inequitable noise impacts, which can be intensified by removal of vegetation and trees and/or by the reflected noise from retaining wall surfaces;
- E. Require proof of compliance with state regulations for noise attenuation, absorption, and transmission; recognize that compliance may be achieved through a variety of

techniques and materials such as the use of tilted retaining walls to direct noise upward, large and small variations of façade to break up low to high frequencies, and sound reflection mitigation;

F. Require landscaping to avoid visual dominance of the retaining wall, potentially discourage graffiti, and add visual quality;

G. Encourage building material choices that ensure aesthetics, durability, maintenance, and cost; and

H. Promote cooperation between the State of Washington Department of Transportation ("WSDOT"), the City, and the project proponent.

12.50.020 Retaining wall construction and design.

A. Public benefit. Retaining walls located within the right-of-way shall be installed to benefit the general public by supporting or protecting public transportation infrastructure and shall not be for private development gain.

B. Application type.

1. An application for retaining wall construction and design approval shall be processed pursuant to the requirements in chapter 16.26 LFPMC for a Type III permit, administrative decision made by the code administrator. The Public Works director shall be the "code administrator" for the Type III permit decision.

2. For proposed retaining walls 25 feet or more in length and that propose removal of 10 or more trees that are either exceptional, landmark, or significant trees as defined in Chapter 16.14 LFPMC, a Neighborhood meeting shall be held pursuant to the requirements in LFPMC 16.26.050, provided however, that the Neighborhood meeting is not required to be held prior submittal of the application for the retaining wall.

3. For purposes of sending notice of the Neighborhood meeting under LFPMC 16.26.050(B), notice shall be mailed to owners of real property within 500 feet of either side of the right-of-way for the entire length of the retaining wall project. For purposes of sending the notice of application under LFPMC 16.26.040(D)(1)(b), notice shall be mailed to owners of real property within 500 feet of either side of the right-of-way for the entire length of the retaining wall project.

C. Transportation design manuals and regulations. Retaining walls located on private property or right-of-way that support or protect public transportation infrastructure shall, at a minimum, meet the requirements set forth in the latest edition of the Washington State Department of Transportation (WSDOT) Design Manual, Bridge Design Manual, and the International Building Code. These manuals and codes provide policies, procedures, and methods for developing and documenting design improvements to the transportation network.

1. The retaining wall construction type shall be the same from the highest to the lowest portion of each independent wall segment. Where walls are terraced or tiered, all tiers/terraces shall consist of the same wall construction type for the length of each independent segment.
2. Concrete retaining walls shall be coated with a moisture barrier and anti-graffiti paint.
3. Total structural isolation is required for public and private retaining walls adjacent to each other.
4. The Public Works director may take into account long term maintenance requirements, constructability, and recommendations on same from the applicant's engineers and independent third-party engineers.
5. Easements may be required for the maintenance, operation, and replacement of the wall.
6. The applicant shall provide documentation of how the retaining wall design satisfies, or exceeds, applicable WSDOT traffic noise policy and procedures. The documentation should include an assessment of noise impacts from the proposed design, including consideration of tree and vegetation removal, reflected noise, and proximity to residences, as well as proposed reflection and absorption techniques such as the use of tilted retaining walls to direct noise upward and variations in the facade to break up low to high frequencies.
7. Prior to issuing a decision on the retaining wall, the Public Works Director shall obtain, at the applicant's expense, a written structural review and recommendation from an independent third party with professional expertise and no affiliation with the applicant.

D. Aesthetic design.

1. An architectural finish or engineered block shall be used that integrates with and supports the community identity of the City showing a strong relationship to the surrounding natural environment including native trees, flora, and fauna of the region. The architectural finishes included in Provision 1 of the Retaining Wall Design Standards dated June 8, 2023, are examples that satisfy this requirement. The Public Works Director will review and issue a decision on the architectural finish and engineered block consistent with this section after obtaining, at the applicant's expense, a written review and recommendation from an independent third party with professional expertise and no affiliation with the applicant.
2. Landscaping treatments shall be used on retaining walls that reduce the harshness of these walls. The landscaping standards included in Provision 2 of the Retaining Wall Design Standards dated June 8, 2023, are examples that satisfy this

requirement. The Public Works Director will review and issue a decision on landscaping treatments consistent with this section after obtaining, at the applicant's expense, a written review and recommendation from an independent third party with professional expertise and no affiliation with the applicant.

3. As a condition of permit approval, the Public Works Director shall require as needed, based on the impacts and circumstances related to a particular retaining wall, installation of a temporary irrigation systems, and the funding for or implementation of a 3-year tree and plant monitoring and maintenance plan, including the replacement of failed trees and plants.

Section 3. ADOPTION OF INTERIM DEVELOPMENT

REGULATIONS. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, interim development regulations are hereby enacted to amend LFPMC 16.26.010, as follows:

16.26.010 Purpose and application.

- A. This chapter establishes standard procedures for land use and related decisions made by the city of Lake Forest Park. They provide for an integrated and consolidated permit review process to promote timely and informed public participation and to eliminate redundancy and thereby minimize delay and expense.
- B. This chapter applies to all applications for land use and related decisions made under chapter 12.50 LFPMC, and LFPMC Titles 15, 16, 17 and 18 LFPMC.

Section 4. ADOPTION OF INTERIM DEVELOPMENT

REGULATIONS. Pursuant to the provisions of RCW 35A.63.220 and RCW 36.70A.390, interim development regulations are hereby enacted to amend LFPMC 16.26.030, as follows:

16.26.030 Classification of decisions.

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- C. Type III – Administrative Decisions Made by a Code Administrator.
 1. Threshold determinations under the State Environmental Policy Act (SEPA);
 2. Administrative variances;
 3. Shoreline exemption permits;
 4. Sensitive area permits issued pursuant to Chapter 16.16 LFPMC, with the exception of requests for exemption under LFPMC 16.16.250 and the exception of minor sensitive area permits as described under LFPMC 16.16.080(A)(2); and

5. Short subdivisions; and

6. Retaining wall permits pursuant to chapter 12.50 LFPMC.

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Section 5. EFFECTIVE DURATION OF INTERIM DEVELOPMENT

REGULATIONS. These interim development regulations set forth in this ordinance shall be in effect for a period of six (6) months from the date of Ordinance No. 23-1270 and shall automatically expire on December 8, 2023, unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the City Council.

Section 6. SET A PUBLIC HEARING. A public hearing shall be held by the City Council regarding interim development regulations for retaining walls within sixty days of passage as required by RCW 36.70A.390.

Section 7. REFERRAL TO STAFF. The Planning Director, or designees (the "Director") is hereby authorized and directed to investigate and obtain outside consulting services if necessary to research the WSDOT traffic noise policy and procedures, provide such information to the City Council, and make a recommendation regarding permanent retaining wall development regulations.

Section 8. SEVERABILITY. Should any portion of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 9. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 10. EFFECTIVE DATE. The City Council hereby finds and declares that pending retaining wall projects and their potential negative impacts in the City cause an emergency which necessitates that this ordinance become effective immediately in order to preserve the public health, safety and welfare. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641, 904 P.2d 317 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the "WHEREAS" clauses above, all of which are adopted by reference as findings of fact as if fully set forth herein. This ordinance shall become effective immediately upon passage. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.

APPROVED BY A MAJORITY PLUS ONE of the Lake Forest Park City Council this 22nd day of June, 2023.

APPROVED:

Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:



Matthew McLean
City Clerk

APPROVED AS TO FORM:



Kim Adams Pratt
City Attorney

Introduced:	June 22, 2023
Adopted:	June 22, 2023
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