

ORDINANCE NO. 1373

CITY OF LACEY

AN ORDINANCE RELATING TO THE REQUIREMENTS FOR COVENANTS AND CONDITIONS OF PROPOSED PLATS, SHORT PLATS, BINDING SITE PLANS, CONDOMINIUMS AND CONDOMINIUM CONVERSIONS, AMENDING SECTION 15.14.010, REPEALING SECTION 15.14.050 AND ADOPTING A NEW SECTION 15.14.050 ALL OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, the Council has determined it to be in the benefit of the citizens of the City of Lacey that adequate provisions be made for long term maintenance of common facilities in proposed plats, short plats, binding site plans, condominiums and condominium conversions, and

WHEREAS, the Washington State Legislature has declared a similar intent by passage of Laws of 2011, Chapter 189, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY,

WASHINGTON, as follows:

Section 1. Section 15.14.010 is hereby amended to read as follows:

15.14.010 Requirements.

- A. All streets, highways and parcels of land shown on the final map and intended for any public use shall be offered for dedication for public use. ~~except where the provisions of this title provide for private streets.~~
- B. Streets intended for future use as access to adjoining properties must be dedicated and constructed even though their immediate use is not required.
- C. Easements being dedicated shall be so indicated in the certificate of dedication and on the face of the plat, short plat, or binding site plan map.
- D. Every final plat, short plat or binding site plan map filed for record must contain a certificate giving a full and correct description of the lands divided and common areas delineated as they appear on the plat, short plat, or binding site plan, including a statement that the subdivision, short subdivision or binding site plan, has been made with the free consent and in accordance with the desires of the owner or owners. If the plat, short plat, or binding site plan, includes a dedication, the certificate shall also contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or

societies or to any corporation, public or private, as shown on the plat, short plat, or binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate shall be signed and acknowledged before a notary public by all parties having any interest in the lands subdivided or homes established through a condominium form of ownership.

E. Every plat, short plat and binding site plan containing a dedication filed for record must be accompanied by a title report confirming that the title of the lands as described and shown on said plat, short plat or binding site plan, is in the name of the owners signing the certificate.

F. An offer of dedication may include a waiver of right of direct access to any street from any property, and if the dedication is accepted, any such waiver is effective. Such waiver may be required by local authorities as a condition of approval. Roads not dedicated to the public must be clearly marked on the face of the plat, short plat or binding site plan. Any dedications, donation or grant as shown on the face of the plat, short plat or binding site plan shall be considered, to all intents and purposes, as a quit claim deed to the said donee or donees, grantee or grantees for his, her or their use for the purpose intended by the donors or grantors as aforesaid.

G. All wetland and buffer areas shall be shown dedicated to the city of Lacey or other entity approved by the city of Lacey on the final plat, short plat or binding site plan map.

Section 2. Section 15.14.050 is hereby repealed.

Section 3. There is hereby added to the Lacey Municipal Code a new Section

15.14.050 to read as follows:

15.14.050 Exemption – corporate membership and responsibilities – conditions. Any property owner creating a land division, condominium or condominium conversion, who wishes to make a conveyance as permitted by Section 15.14.040 of the Lacey Municipal Code shall, at or prior to the time of filing a final plat, short plat or binding site plan for approval, supply the city with copies of the grantee organization's articles of incorporation, protective covenants, conditions and restrictions (CCR's), bylaws, rules and regulations, and collection and enforcement policies, (hereafter referred to as Governing Documents) applicable to the land together with evidence of the conveyance or a binding commitment to convey. These Governing Documents shall satisfy the requirements of state law RCW 64.38 or RCW 64.34, whichever is applicable, and the requirements of this chapter.

It is the intent of this section to Supplement Laws of 2011, Chapter 189 and provide standards for development of homeowner or lot owner associations to promote financial sustainability. The City shall require that the standards of this section be fulfilled prior to approval of the final land division or condominium application. However, home owner and lot owner associations are self governing independent bodies and after control is transferred to resident owners, an association may change budgeting particulars according to procedures specified within its governing documents. The City does not review such decisions and will not be

responsible or liable for an association's failure to maintain responsible financial procedures as described herein or any financial problems that result as a consequence.

Governing Documents shall contain at a minimum the following provisions:

A. **Mandatory membership:** Membership in the lot or home owners association will be mandatory for all lot or home owners;

B. **Power to levy fees/dues:** The lot owners association shall have the power to levy fees and dues necessary to successfully maintain all common areas and improvements, including, but not limited to, utilities, shared parking facilities, open space, landscaped areas, fences, drainage infrastructure and ponds and streets;

C. **Assessments/fees assessed to every lot and home owner:** Assessments shall apply to every lot or home owner within the land division or condominium that owns a home, or a lot(s) that has been developed with a building or remains undeveloped. Provided, owners of lots that are undeveloped shall be responsible for payment of dues commensurate with lower benefits realized by the lot owner. Benefits will not be as extensive for lot owners without a building accommodating active use as they will not have comparable drainage impacts or residents utilizing common recreation improvements. However, some benefits are realized on undeveloped lots simply from maintenance of drainage infrastructure, attractive streetscapes and open space. Value shall be prorated to all lots based upon these benefits as determined by the developer of the land division or condominium and approved by the City of Lacey under the provisions of item 15.14.050 D through E below.

D. **Basis for setting fees/assessments "cost allocation study":** The developer shall be required to obtain a full cost allocation study by a recognized professional (trained in development of budgeting documents and reserve studies) to determine the ongoing annual maintenance costs of the lot owner's association's community areas and community facilities including a reserve study to determine the replacement costs of the common facilities conveyed to the lot or homeowners association. The cost allocation study shall be used as the basis for the establishment of both an operating budget and capital replacement budget that will set the initial annual dues for the lot owner's or home owner's association to adequately fund the maintenance of community areas and common facilities, and to fund a reserve for future replacement of common facilities.

A cost allocation study shall adhere to the provisions of item E. and be furnished prior to final plat, or any final land division or condominium approval. The conclusions of such study shall be incorporated into the governing documents, protective covenants, and articles of incorporation as appropriate.

E. **Amount of fees/assessments established:** The amount of the Initial annual fees or dues shall be subject to the approval of the city and established by the "cost allocation study", according to item D, and the itemization of a budget, prepared by a recognized professional, that includes at a minimum the following details and considerations:

- 1) The responsibility of the HOA in relationship to the maintenance of the various common facilities and areas.

- 2) The long term professional care and maintenance of all common open space areas shall be detailed and shall include such things as tree and vegetation care and maintenance.
- 3) The long term professional care and maintenance of planter strips and street trees within public right of way identified as the responsibility of the HOA. Professional care shall require work performed or supervised by an arborist certified by the International Society of Arboriculture.
- 4) Defined schedule of maintenance requirements for drainage areas and infrastructure based upon assumptions and example schedules and calculations provided in the City Drainage Manual; chapter 9 and appendix 9A currently existing at the time of this writing or as hereafter amended. This shall be developed as a guide for HOA drainage maintenance operations and shall detail expectations and costs for maintenance of the specific drainage facilities and areas of the land division, condominium or condominium conversion. This schedule shall be attached to the Governing Documents as an appendix.
- 5) Plats and other land divisions designed to provide maintenance of front yard areas shall include an appropriate schedule and budget reserves for professional maintenance of areas identified for this purpose.
- 6) Long term maintenance provisions and cost estimates shall include maintenance and repair of any common facilities, structures or improvements including such things as playground toys, recreation facilities, common fences, walls, common road areas that are not city right of way identified as the responsibility of the HOA, lighting, common private utilities and all other infrastructure, structures or facilities owned by the HOA.
- 7) Reserve contribution rate within the budget shall be based on a "full funding" method of reserve study funding calculation, as opposed to baseline and threshold funding methods, to ensure reserves for major components are attained and maintained at or near 100%.

F. Detailed budget: A budget incorporating operating budget and all of the proceeding HOA maintenance activities and responsibilities identified in section 15.14.050 B through E shall be included as an appendix to the Governing Documents to disclose the assumptions made for initial assessment requirements and provide a guide for HOA leadership to schedule and implement maintenance activities.

G. HOA assessment schedule established: Provisions shall be provided in the Governing Documents establishing a periodic assessment schedule and fees necessary to establish reserves to support expected maintenance responsibilities based upon itemized responsibilities and costs identified through the requirements of section 15.14.050 B through F.

H. Assessment schedule stabilized during development period: Provisions shall be provided in the Governing Documents that the initial assessment and fee structure may not be reduced until the Declarant control ends and the developer turns the responsibility for running the association over to the owners and the owners control the HOA and have the HOA responsibilities identified in budget document(s).

I. Authority granted to Board of Directors for annual adjustment of assessments: Provisions shall be provided in the HOA documents enabling the HOA Board of Directors to accomplish periodic reserve studies (recommended at least once every four years for full reserve study and annual updates) to determine maintenance needs and to help set and raise assessments on an annual basis necessary to support identified maintenance needs. Provided, any special assessments not related to maintenance responsibilities may be subject to approval by a vote of the general HOA membership according to the procedures established in the HOA Governing Documents. The intent is to ensure the HOA Board of Directors responsible for maintenance activities always have the ability to levy fees to pay for maintenance costs and that the HOA has adequate reserves for the purpose.

J. Collection of attorney fees: Provisions shall be provided in the Governing Documents for the collection of attorney and third party fees extended in collecting delinquent assessments from lot and home owners;

K. Shared parking: All agreements and requirements for shared parking shall be set forth;

L. Governing Documents subject to City approval: The Governing Documents applicable to the properties within the land division, condominium or condominium conversion shall be subject to approval of the city.

M. Content of Governing Documents consistent with GMA and Lacey Comprehensive Land Use Plan: The Governing Documents may have protective covenants that are more restrictive than City requirements pertaining to the use of land and activities permitted within the land division, condominium or condominium conversion. It is suggested that the governing documents do not contain language that will conflict with GMA strategies and concepts of Lacey's Comprehensive Land Use Plan for the development of neighborhoods.

N. Appropriate content: Governing Documents should address items appropriate to ongoing maintenance of common areas and replacement cost of community facilities and use of common property or establishment of the desired character, look and feel and functionality of a development. Governing Documents should not be used for purposes unrelated to the general intent and purpose of these legal instruments, such as requiring the collection of fees at closing of the sale of a home to reimburse a developer for expenses of development not related to future maintenance of common improvements, or loans to the association to reimburse Declarant/developer for subsidizing the association related expenses during the development period.

O. Necessary conditions: The city may impose such other conditions as it deems appropriate to assure that the property and improvements will be adequately constructed and maintained.

The Community Development Department may develop suggested language related to the mandatory provisions contained within this section. The applicant may choose to utilize such language or to propose documents which, although not utilizing such language, contain provisions meeting the requirements of this section.

Section 4. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,
WASHINGTON, at a regularly-called meeting thereof, held this 8th day of
September, 2011.

CITY COUNCIL

By: Tom Nelson
Mayor

Approved as to form:

[Signature]
City Attorney

Attest:

Carl Little
City Clerk

SUMMARY FOR PUBLICATION

ORDINANCE 1373

CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on September 8, 2011, Ordinance No. 1373, entitled "AN ORDINANCE RELATING TO THE REQUIREMENTS FOR COVENANTS AND CONDITIONS OF PROPOSED PLATS, SHORT PLATS, BINDING SITE PLANS, CONDOMINIUMS AND CONDOMINIUM CONVERSIONS, AMENDING SECTION 15.14.010, REPEALING SECTION 15.14.050 AND ADOPTING A NEW SECTION 15.14.050 ALL OF THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION."

The main points of the Ordinance are described as follows:

- 1. The ordinance supplements Laws of 2011, Chapter 189 and sets forth requirements for the governing documents, including covenants and conditions for plats, short plats, binding site plans, condominiums and condominium conversion projects in the City.**
- 2. The ordinance adopts this summary for publication.**

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: September 12, 2011.