

**TOWN OF YARROW POINT
ORDINANCE NO. 733**

AN ORDINANCE OF THE TOWN OF YARROW POINT ADOPTING YARROW POINT MUNICIPAL CODE (YPMC) CHAPTER 20.23, "PRIVATE HEDGE CODE", AMENDING YPMC SECTION 17.18.010 "DEFINITIONS"; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN IE EFFECTIVE DATE.

WHEREAS, Title 20 of the Yarrow Point Municipal Code ("YPMC") sets forth regulations for site development within the Town of Yarrow Point; and

WHEREAS, the Town Council is aware that many Town constituents maintain hedges on their private property; and

WHEREAS, the Town Council is also aware that from to time disputes may arise between neighbors and owners over issues such as hedge maintenance and hedge height; and

WHEREAS, the Town Council wishes to adopt a new code that will create a voluntary mechanism for the fair resolution of disputes involving hedges on private properties; and

WHEREAS, over the last six months, the Planning Commission has held three public meeting to review the proposed code amendments; and

WHEREAS, on March 21, 2023 the Planning Commission, after considering staff recommendations and reviewing the record, voted to recommend approval of proposed amendments to the Town Council for review; and

WHEREAS, on May 3, 2023 a State Environmental Policy Act (SEPA) environmental checklist was prepared for the proposed amendments and a Determination of Non-Significance (DNS) was issued; and

WHEREAS, on May 3, 2023 the Town provided a Notice of Intent to Adopt Code Amendments to the Washington State Department of Commerce (Commerce) in accordance with RCW 36.70A.106; and

WHEREAS, on May 30, 2023 the Town published a legal notice in the Seattle Times for a public hearing on June 13, 2023 before the Yarrow Point Town Council to solicit and receive additional public testimony regarding the Planning Commission's recommendation on the proposed amendments and additional changes and amendments thereto; and

WHEREAS, the Town Council has considered and reviewed the proposed amendments, Town Staff recommendations, and public testimony, and hereby finds that the proposed code reflected herein are consistent with the requirements of the Yarrow Point Comprehensive Plan, will enhance the public health, safety and welfare, and will advance the public interest; and

WHEREAS, the Town Council therefore desires to amend the YPMC sections and chapters as set forth in this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF YARROW POINT, WASHINGTON AS FOLLOWS:

SECTION 1. Findings. The foregoing recitals are hereby adopted as findings of fact in support of the adoption of this Ordinance.

SECTION 2. Amendment to YPMC Section 17.08.010. YPMC Section 17.18.010 is hereby amended by the amendment of one new definition as set forth herein:

17.08.010 Definitions.

~~"Hedges" exist whenever a row of two or more trees, shrubs, or other plants constitute a barrier in excess of six linear feet and establish a boundary, or hinder free passage of humans or animals on the surface of the ground, or screen or obscure vision, or baffle sound are defined pursuant to YPMC Section 20.23.020(D).~~

SECTION 3. Repeal of YPMC Section 17.32.015. YPMC Section 17.32.015 is hereby repealed in its entirety.

SECTION 4. Amendment of YPMC Title 20. YPMC Title 20 is hereby amended by the adoption of a new Chapter 20.23 as set forth in Exhibit A of this Ordinance, attached and incorporated herein.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this Ordinance.

SECTION 6. Corrections. The Town Clerk-Treasurer and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

SECTION 7. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the Town. This Ordinance shall take full force and effect five (5) days after the date of publication.

APPROVED BY THE TOWN COUNCIL OF THE TOWN OF YARROW POINT ON THE 11th DAY OF JULY, 2023 AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THE 12th DAY OF JULY 2023.



Approved as to form
Town Attorney

David [Signature]

Katy Kinney Harris
Katy Kinney Harris, Mayor

Attest/Authenticated:

Bonnie [Signature]

PUBLISHED BY THE TOWN COUNCIL: July 11, 2023
PUBLISHED: July 18, 2023
EFFECTIVE DATE: July 19, 2023
ORDINANCE NO.: 733

EXHIBIT A

CHAPTER 20.23. Private Hedge Code

20.23.010 Purpose and Intent

ORD. 733 PRIVATE PROPERTY HEDGE CODE

EXHIBIT A

CHAPTER 20.23. Private Hedge Code

- 20.23.010 Purpose and Intent
- 20.23.020 Definitions
- 20.23.030 General Requirements
- 20.23.040 Rights Established
- 20.23.050 Private Nuisance
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- 20.23.070 Hedge Dispute Resolution Process
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- 20.23.090 Hedge Claim Preparation
- 20.23.100 Binding Arbitration
- 20.23.110 Litigation
- 20.23.120 Apportionment of Costs
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CHAPTER 20.23. Private Hedge Code

20.23.010 Purpose and Intent.

This chapter is enacted to provide a voluntary mechanism for the resolution of disputes involving the height of hedges. It shall not be construed to provide rights beyond those entitled under Washington law. The Town has no right nor obligation to enforce any of the provisions of this chapter.

- A. Among the features that contribute to the attractiveness and livability of the Town of Yarrow Point are its hedges and landscaping, both native and introduced.
- B. Hedges and landscaping provide a wide variety of psychological and tangible benefits for both residents and visitors to the Town.
- C. It is in the interest of the public welfare, health and safety to establish standards for the resolution of hedge code violation claims and to establish a structure for resolution of such claims.
- D. When a hedge dispute arises, the parties should act reasonably to resolve the dispute through friendly communication, thoughtful negotiation, compromise and other traditional means. Those disputes which are not resolved through such means may be resolved by following the procedures established herein.

20.23.020 Definitions.

- A. "Complainant" means a complaining property owner in the Town of Yarrow Point who alleges that hedge(s) are not compliant with this chapter.
- B. "Crown" means the portion of a planting containing leaf or needle bearing branches.
- C. "Hedge owner" means the owner of the real property on which a hedge is located.
- D. "Hedge" means 3 or more plantings planted or growing in: (1) a continuous row where the crowns of the plantings touch and/or overlap, AND (2) is 10 feet in length or longer, AND (3) that forms a physical and/or visual barrier, AND (4) has a height in excess of 3 feet.
- E. "Property Owner" means any individual, firm, partnership, corporation, trust or other legal entity owning property in the Town of Yarrow Point.
- F. "Plantings" means any flora on a property including but not limited to plants, grasses, trees, or shrubs.
- G. "Row" means a line which may be straight, curved, or otherwise irregular.

20.23.030 General Requirements

- A. A hedge or portion of a hedge located within a setback shall not exceed 6 feet 6 inches, or a height mutually agreed upon by current adjacent property owners and established in writing.
- B. Hedge height shall be measured from existing grade, immediately adjacent to the hedge.
- C. Plantings which are along or inside of a hedge that do not have overlapping crowns with other plantings shall not be regulated as part of a hedge.
- D. Removal or modification of a hedge comprised in part, or entirely, of significant trees as defined in YPMC Section 20.22.020 (H), shall also comply with Chapter 20.22 YPMC where applicable.

20.23.040 Rights Established

A complainant shall have the right to use the processes set forth in this chapter to limit the height of a hedge in a setback to the permissible height set forth herein, so long as the complainant establishes that the hedge alleged to violate this chapter is located adjacent to a property line that the complainant shares with the hedge owner.

20.23.050 Private Nuisance

A hedge located within a setback that exceeds the permitted height established in YPMC 20.23.030 constitutes a private nuisance subject to redress as provided in this chapter. If a property owner plants, maintains, or permits to grow any hedge which exceeds the permitted height established in YPMC 20.23.030, then a complainant shall have the rights set forth in this chapter.

20.23.060 Methods of relief.

Methods of relief that may be granted include pruning, thinning, windowing, topping, or removal of the hedge.

20.23.070 Process for resolution of hedge disputes.

- A. The following process shall be used in the resolution hedge code violations:
 - 1. Initial reconciliation. A complainant who believes that hedge growth does not meet the requirements of this chapter shall first notify the hedge owner in writing of such concerns. Notification should, if possible, be accompanied by a personal discussion to enable the complainant and hedge owner to attempt to reach a mutually agreeable solution.
 - 2. Mediation. If the initial reconciliation attempt fails, the complainant shall propose, in writing to the hedge owner, to submit the dispute to mediation.
 - 3. Binding arbitration. If mediation fails, the complainant shall propose, in writing to the hedge owner, to submit the dispute to binding arbitration.
 - 4. Litigation. If the hedge owner fails to participate in binding arbitration, the complainant may pursue civil action to resolve the dispute.

20.23.080 Mediation

- A. Acceptance of mediation by the hedge owner shall be voluntary however the hedge owner shall have no more than 30 days from service of notice to either accept or reject the offer of

mediation. If mediation is accepted, the parties shall mutually agree upon a mediator within 10 days of acceptance by the hedge owner of the mediation process.

B. It is recommended that the services of a professionally trained mediator be employed. Mediation may be arranged through the Seattle-King County Alternate Dispute Resolution Center.

C. The mediation meeting may be informal. The mediation process may include the hearing of the viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complainant and the hedge owner. The parties are encouraged to contact immediate neighbors and solicit input. The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. The mediator shall not have the power to issue binding orders for the methods of relief established by YPMC 20.23.060 but shall strive to enable the parties to resolve their dispute by written agreement in order to eliminate the need for binding arbitration or litigation.

20.23.090 Hedge claim preparation.

A. In the event that the initial reconciliation process fails, and mediation either is declined by the hedge owner or fails, the complainant must prepare a hedge claim and provide a copy to the hedge owner in order to pursue either binding arbitration or litigation as set forth in this chapter. A hedge claim shall consist of all of the following:

1. A description of the nature and extent of the alleged violation, including pertinent and corroborating physical evidence. Evidence may include, but is not limited to, digital photographs, photographic prints, negatives or slides.
2. Complainant's address and contact information.
3. A Site Plan with the location of the hedge alleged to cause the violation.
4. The address of the property upon which the hedge is located, and name of hedge owner.
5. Evidence of the failure of initial reconciliation to resolve the dispute. The complainant must provide evidence that written attempts at reconciliation have been made and have failed. Evidence may include, but is not limited to, email correspondence with both parties responses, copies of and receipts for certified or registered mail correspondence.
6. Evidence that mediation has been attempted and has failed, or has been declined by the hedge owner.
7. The specific relief proposed by the complainant to resolve the violation.

20.23.100 Binding arbitration.

A. In those cases where the initial reconciliation process fails and where mediation is declined by the hedge owner or has failed, the complainant must offer in writing to submit the dispute to binding arbitration, and the hedge owner may elect binding arbitration.

B. The hedge owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific arbitrator within 10 days, and shall indicate such agreement in writing.

C. The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute and shall submit a complete written report to the complainant and the hedge owner. The report shall include the arbitrator's findings with respect to YPMC 20.23.030, a pertinent list of mandated relief with any appropriate conditions concerning such actions, and a schedule by which the mandates must be completed. A copy of the arbitrator's report shall be filed with the Town. The decision of the arbitrator is binding on the parties. Any decision of the arbitrator may be enforced by civil action, as provided by law.

20.23.110 Litigation.

- A. In those cases where binding arbitration is declined by the hedge owner, then civil action may be pursued by the complainant for resolution of the hedge dispute under the provisions and guidelines set forth in this chapter.
- B. The complainant must state in the lawsuit that mediation and binding arbitration were offered and not accepted. A copy of any final resolution of the litigation shall be filed with the Town.

20.23.120 Apportionment of costs.

- A. Mediation and arbitration. The complainant and hedge owner shall each pay 50 percent of mediation or arbitration fees, unless they agree otherwise or allow the mediator or arbitrator discretion to allocate costs.
- B. Relief. The costs of relief requested shall be determined by mutual agreement or through mediation, arbitration, court decision or settlement.

20.23.130 Limitation.

- A. This chapter shall not be construed to affect obligations imposed by easement, covenants or agreements.
- B. This chapter shall not apply to hedges located on Town property or right-of-way.
- C. Under no circumstances shall the Town have any responsibility or liability to enforce or seek any legal redress, civil or criminal, for any decision that any other person or entity makes concerning a hedge complaint, including, but not limited to, agreements arrived at during the initial reconciliation or mediation process. Failure of the Town to enforce provisions of this chapter shall not give rise to any civil or criminal liabilities on the part of the town. A failure to comply with the provisions of this chapter is not a misdemeanor, and the enforcement of this chapter shall be only by the affected and interested private parties.

The Seattle Times

AFFIDAVIT OF PUBLICATION

Bonnie Ritter
Town Of Yarrow Point
4030 95th Ave NE
Yarrow Point WA 98004

YARROW POINT, WASHINGTON ORDINANCE NO. 733

On the 11th day of July, 2023, the Town Council of the Town of Yarrow Point, Washington passed Ordinance No. 733. A summary of the content of said ordinance, consisting of the title is as follows:

ORDINANCE NO. 733: AN ORDINANCE OF THE TOWN OF YARROW POINT ADOPTING YARROW POINT MUNICIPAL CODE (YPMC) CHAPTER 20.23, "PRIVATE HEDGE CODE", AMENDING YPMC SECTION 17.18.010 "DEFINITIONS"; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Bonnie Ritter, Clerk-Treasurer

STATE OF WASHINGTON, COUNTIES OF KING AND SNOHOMISH

The undersigned, on oath states that he/she is an authorized representative of The Seattle Times Company, publisher of The Seattle Times of general circulation published daily in King and Snohomish Counties, State of Washington. The Seattle Times has been approved as a legal newspaper by orders of the Superior Court of King and Snohomish Counties.

The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

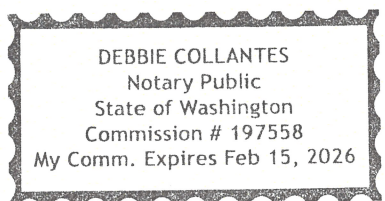
07/18/2023

Agent Sharon Seligman Signature Sharon Seligman

Subscribed and sworn to before me on 07/21/2023
Debbie Collantes Debbie Collantes

(Notary Signature) Notary Public in and for the State of Washington, residing at Seattle

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STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
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07/31/2023

Mr. Aleksandr Romanenko
Town Planner
Town of Yarrow Point
4030 - 95 Avenue NE
Yarrow Point, WA 98004

Sent Via Electronic Mail

Re: Town of Yarrow Point--2023-S-6293--Notice of Final Adoption

Dear Mr. Romanenko:

Thank you for sending the Washington State Department of Commerce the Notice of Final Adoption as required under [RCW 36.70A.106](#). We received your submittal with the following description.

Adopted Ordinance 733, adopting a new code to regulate hedges and amending existing hedge regulations.

We received your submittal on 07/31/2023 and processed it with the Submittal ID 2023-S-6293. Please keep this letter as documentation that you have met this procedural requirement.

If you have any questions, please contact Growth Management Services at reviewteam@commerce.wa.gov, or call Lexine Long, (360) 725-2904.

Sincerely,

Review Team
Growth Management Services