CITY OF NEWCASTLE

ORDINANCE NO. ______


WHEREAS, the City of Newcastle places a high value on Lake Boren as an important part of the City of Newcastle’s aesthetic qualities, recreational opportunities, and environmental health; and

WHEREAS, Chapter 14.10 of the Newcastle Municipal Code (hereinafter, “NMC” or “City code”) adopts King County Code (“KCC”) Title 25, shoreline management code; and

WHEREAS, the City of Newcastle has no shorelines of the state within its geographic boundaries; and

WHEREAS, Title 25 KCC, which was otherwise intended to regulate shorelines in Newcastle, no longer exists; and

WHEREAS, Section 18.12.160 of the NMC requires rear setbacks in all zones; and

WHEREAS, strict enforcement of this provision in the City code would not allow development of waterfront structures; and

WHEREAS, in addition, City code does not provide adequate standards for waterfront development, which results in potential undesirable aesthetic and environmental impacts; and

WHEREAS, in response to these issues, staff drafted waterfront development standards have been drafted that would:

A. Provide property owners with guidelines for construction of waterfront structures;
B. More specifically define regulation of waterfront structures;
C. Ensure environmental protection of the City’s aquatic areas; and

WHEREAS, NMC 18.46.030 sets forth four criteria for amending the zoning code, and the City Council determined that the proposed zoning code amendment adopting the proposed waterfront development amendments meets each of the four criteria of section 18.46.030 as described in section 1, below;

WHEREAS, the City Council finds that these proposed amendments are consistent with the The Growth Management Act of the State of Washington (GMA), and contains goals and requirements, such as consistency with the local City’s Comprehensive Plan, that pertain to zoning
code amendments and the proposed zoning code amendments in this ordinance are consistent with the GMA; and

WHEREAS, in accord with the requirement 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 ordinance on June 25, 2019; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments on October 11, 2019 and, after considering public comment and review of the entire record, found the proposal to be consistent with the criteria in NMC 18.02.030 for amending the zoning code and with the Growth Management Act; and

WHEREAS, the City Council finds that the proposed amendments are consistent with the City’s Comprehensive Plan and other goals and objectives of the City and that; and

WHEREAS, the adoption of this Ordinance will promote the public health, safety, and general welfare within the City of Newcastle.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWCASTLE, WASHINGTON DOES ORDAIN AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are hereby adopted and incorporated as Findings of Fact and/or Conclusion of Law of the City Council pursuant to the requirements of Newcastle Municipal Code 18.46.030. The City Council bases its findings and conclusions on the entire record of testimony and exhibits, including all written and oral testimony before the Planning Commission. In addition, the Council finds the proposed ordinance is consistent with the review criteria of 18.46.030 as follows:

Criterion A. The amendment is consistent with the purposes of the Comprehensive Plan. The proposal is consistent with the following goals and policies of the Comprehensive Plan:

Goal LU-G2. The City should encourage development that creates and maintains a safe, healthy, physically active, and diverse community providing affordable housing and employment opportunities, while protecting the natural environment and significant cultural resources.

Goal LU-G3. The City should strive to preserve the existing character, scale, and neighborhood quality as new development occurs.

Goal LU-G6. The City should identify and preserve open space, wildlife habitats, recreational areas, trails, connection of critical areas, natural and scenic resources, as well as shoreline areas.
Goal LU-G7. The City should maintain, preserve, and enhance the historic, cultural, and archaeological resources to provide a sense of local identity and history to the visitors and residents of the community.

Goal LU-G8. The City should strive to preserve and enhance the natural environment, including air quality, water resources, natural features that contribute to the city’s scenic beauty, and critical areas as defined by the Growth Management Act.

Goal LU-G11. The City should protect and enhance habitat that contributes to the maintenance and restoration of threatened or endangered species.

Policy LU-P9. Mitigating measures should be encouraged to serve multiple purposes, such as habitat, drainage control, ground water recharge, stream protection, open space, cultural and historic resource protection and landscaping.

Policy LU-P33. The City shall seek to preserve and enhance open space throughout the City.

Policy LU-P43. The City shall use acquisition, enhancement, incentive programs, and appropriate regulations to protect land where development would pose hazards to health, property, important ecological functions, or environmental quality. Incentives may include buffer averaging, density credit transfers, and other appropriate non-regulatory measures.

Policy LU-P45 – The City shall coordinate with its citizens and with other jurisdictions (federal, tribal, state, and local) in protecting and enhancing the natural environment.

Policy LU-P75. The City shall strive to preserve, replace, or enhance native vegetation that contributes to the City’s scenic beauty. The City shall preserve its visual identify as a small town situated in a lush green setting.

Criterion B. The amendment is consistent with the purpose of this title [Title 18]. The purposes of Title 18 are defined in NMC 18.02.030(A) through (F). The proposal is consistent with said purposes as follows:

Purpose A. The proposal encourages land use decision making in accordance with the public interest and applicable laws of the state of Washington by protecting natural features of the environment.

Purpose B. The proposal protects the public health, safety and welfare by ensuring that aquatic habitats of the natural environment are protected, and by regulating waterfront development to the extent that property owners’ riparian rights are protected.

Purpose C. The proposal implements the City’s comprehensive plan policies and objectives through regulations aligned with said objectives, as described above.
Purpose D. The proposal provides for aesthetic advantages by preserving aquatic habitats, and social benefits by maintaining public and private qualities of waterfront features.

Purpose E. The proposal promotes adequate public facilities and services in conjunction with development in waterfront features of the City of Newcastle;

Purpose F. The proposal regulates development of waterfront lands such that physical hazards of development on aquatic habitat are reduced to a level consistent with State statutes.

Criterion C. **There have been significant changes in the circumstances to warrant a change.** The proposal is needed to address current challenges in regulating the construction of structures at Lake Boren. The existing municipal code reference no longer exists, and was never relevant to begin with due to the code’s direct reference to Shorelines of the State. Lake Boren is not a Shoreline of the State, therefore the City has no way to regulate new structures on Lake Boren.

Criterion D. **The benefit or cost to the public health, safety and welfare is sufficient to warrant the action.** The proposal promotes the health, welfare, and safety of the general public by implementing the goals and policies of the City’s comprehensive plan as described herein.

**Section 2, Repealed.** Chapter 14.10 of the Newcastle Municipal Code is hereby repealed.

**Section 3, Adoption.** A new chapter, 18.17 of the Newcastle Municipal Code, is hereby as adopted, to read as follows:

18.17 Development Standards – Waterfront

18.17.010 Definitions:

A. “Aquatic Area.” Any water feature including:
   1. All rivers, streams, and bodies of open water, such as lakes, ponds and reservoirs;
   2. Conveyance systems, such as a ditch, if any portion of the contributing water is from an aquatic area listed in subsection A.1 of this section;
   3. Impoundments, such as a reservoir or pond, if any portion of the contributing water is from an aquatic area listed in subsection A.1, above.

"Aquatic area" does not include water features where the source of contributing water is entirely artificial, including, but not limited to, a ground water well.

B. “Docks” are structures that are fixed to the shoreline but floating upon the water

C. “Piers” are fixed, piling-supported structures located over water

D. “Floats” (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline.
E. “Replacement Structure.” A structure must have been usable at the site within the twelve months immediately before the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

18.17.020 Purpose:
The purpose of this chapter is to establish requirements relative to development of docks, piers, and/or floats on Lake Boren, maintain the low-profile character of existing development, and to promote protection of habitat for native plants and animals.

18.17.030 Applicability:
The provisions of this chapter shall apply to construction and renovation of dock, floats, and piers within the City’s aquatic areas.

18.17.40 Development Guidelines:
Any dock, pier, or float authorized by this chapter shall be subject to the following conditions:

A. These development standards are meant to be consistent with or more stringent than the Washington Administrative Code (WAC). All proposals shall be compliant with WAC 220-660-140.
B. All docks, piers, and floats must receive Hydraulic Permit Approval (HPA) from Washington Department of Fish and Wildlife (WDFW) prior to acceptance of building permit.
C. Proposals are subject to SEPA review.
D. Proposals must be accompanied by a critical area report.
E. Docks, piers, and floats are allowed only for aquatic areas.
F. All aquatic structures shall be the minimum size required to accommodate the intended function.
G. Only one dock, pier, or float may be allowed for a single detached residential lot.
H. For residential subdivisions, short subdivisions or for multi-unit dwelling unit development proposals, only one joint use dock, pier, float, or launching facility is allowed unless the subdivision, short subdivision, or multi-unit dwelling unit development has more than 300 feet of shoreline. Developments may have two docks, piers, floats or launching facilities if they have 300 or more feet of shoreline.
I. Private boat launch ramps, mooring buoys, and mooring piles are not allowed.
J. New bulkheads or other “hard armoring” structures are not permitted.
K. Canopies are not permitted.
L. Skirting is not permitted.
M. No improvement shall exceed six-feet above the top of the decking.
N. Setbacks:
   1. All new docks, piers, and floats are subject to 5-foot side setbacks. If the property line does not extend into the lakebed, side yard distance shall be measured between the side of the dock, pier, or float nearest and the extension of the upland side-yard lot line.
   2. No pier, dock, float or other structure shall block or close the access to any other pier, dock, float or other structure.
3. Docks, piers and floats may be constructed within a rear-yard setback and extend beyond the rear property line of the upland property.

18.17.050 Development Standards

A. A new residential dock, float, or pier shall meet the following requirements:

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<td>1. Maximum Length inclusive of ells, floats, fingers, etc.</td>
<td>65 feet for single family homes 75 feet for multifamily or joint use dock structures for developments with 3 or more units. The dimension perpendicular to the shore shall not measure more than 65 feet in length for any proposed dock.</td>
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<td>2. Maximum Width</td>
<td>6 feet for the first 30 feet from the shoreline (measured from mean low water). 8 feet beyond the first 30 feet.</td>
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<td>3. Decking for piers, dock walkways, platform lifts, ells and fingers</td>
<td>A dock or float six feet wide or narrower must have at least thirty percent of the deck surface covered in functional grating. A dock or float wider than six feet (up to eight feet wide) must have at least fifty percent of the deck surface covered in functional grating. Additional requirements, including those for piers, are found in WAC 220-660-140.</td>
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<td>4. Pilings</td>
<td>Pilings shall not be treated with pentachlorophenol, creosote, chromated copper arsenate (CCA) or comparably toxic compounds. Steel pilings used to construct residential docks shall not exceed six inches in diameter unless otherwise permitted by the Department of Fish and Wildlife in writing and/or via an approved Hydraulic Permit Application (HPA).</td>
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B. Replacement of an entire existing pier or dock, including piles, and/or replacements or renovations meeting non-conformance standards in NMC18.32, shall constitute a new structure and shall be subject to all provisions for a new structure as defined in this chapter.

C. Repair proposals that require replacement of fewer structural elements listed as the threshold for subsection B, above, must comply with the following regulations:

1. Replacement pilings may use WDFW accepted treated wood to match existing pilings.
2. Replacement of more than 33% or two hundred fifty square feet of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only.

18.17.060 - Notes:

A. Public recreational docks are subject to standards in WAC 220-660-150.
B. Projects may require additional permitting through the Army Corps of Engineers (Joint Aquatic Resource Permit Application /JARPA) approval. It is the responsibility of the applicant to obtain all required permits.
C. Other repairs to existing legally established moorage facilities where the nature of the repair is not described in this subsection shall be considered minor repairs and are permitted, consistent with all other applicable codes and regulations.

D. Measurement of structure length shall be from the shoreline (OHWM) to the end of the portion perpendicular to the shoreline (long edge of the structure). Ells, fingers, and floats that are parallel to the shoreline shall be measured along the short edge of the ell, finger, or float.

**Section 3. Amendment.** Section 18.12.160 of the Newcastle Municipal Code is hereby amended as follows:

**18.12.160 Setbacks – Projections allowed.**

Projections may extend into required setbacks as follows:

A. Fireplace structures, bay or garden windows, enclosed stair landings, closets, or similar structures may project into any setback, provided such projections are:

1. Limited to two per facade;
2. Not wider than 10 feet; and
3. Not more than 24 inches into a side or rear setback or 30 inches into a front setback.

B. Uncovered porches and decks which exceed 18 inches above the finished grade may project:
   1. Eighteen inches into side and rear setbacks; and
   2. Five feet into the front setback.

C. Uncovered porches, patios and decks not exceeding 18 inches above the finished grade may project:
   1. Eighteen inches into side setback; and
   2. Fifteen feet into the rear setback; and
   3. Five feet into the front setback.

D. Eaves may not project more than:
   1. Eighteen inches into a side or rear setback; or
   2. Twenty-four inches into a front setback.

E. Fences with a height of six feet or less may project into any setback; provided, that the sight distance requirements of NMC 18.12.200 are maintained.

F. Rockeries and retaining walls no more than 30 inches in height may project to the property line.

G. Accessory structures may be located in the rear building setback area in residential (R) zones provided the following are met:
   1. The square footage of the accessory structure is less than the square footage threshold which would require a building permit for an accessory structure under the International Residential Code.
   2. The accessory structure is no greater than 10 feet in height measured to the peak of the roof.
   3. The placement of the accessory structure in the setback would not violate any standard or requirement of the city’s codes, including but not limited to impervious surface, building coverage, or critical areas.
   4. The accessory structure has a minimum of five feet separation from any adjacent property line. Accessory structures may be placed less than five feet from an adjacent rear property line if the applicant has secured a written mutual agreement, in a format approved by the city, with the abutting property owners of the property lines affected. The agreement shall be recorded with the King County Division of Records and Elections and the applicant shall provide a copy of the recorded agreement to the city.
H. Waterfront structures, including but not limited to docks, piers, and floats, may project into required setbacks in aquatic areas in accordance with chapter 18.17 NMC.

Section 7. Corrections. The City Clerk 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 8. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 9. Publication and Effective Date. This Ordinance, or a summary thereof consistent of the title, shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after its adoption and publication as required by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF NEWCASTLE this 18th day of February, 2020 and signed in authentication of its passage this 18th day of February, 2020.

Linda Newing, Mayor

ATTEST:

Rob Wyman, City Manager

APPROVED AS TO FORM:

Dawn Reitan, City Attorney