## STAFF REPORT

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| **Agenda Item:** | 6 | **Name:** | Jake Tracy |
| **Proposed No:** | 2019-0209 | **Date:** | August 26, 2019 |

**SUBJECT**

The proposed ordinance would remove minimum lot area requirements for properties created through the testamentary lot division process prior to January 1, 2019.

**SUMMARY**

State law exempts properties from the subdivision process if the land is lawfully divided and deeded as part of the owner's last will and testament. The King County Code recognizes lots deeded in this way as “legal lots”, but does not exempt these properties from meeting development standards, such as minimum lot area, in order to be built upon. King County Code currently does not exempt testamentary lots from zoning requirements.

Between 2000 and 2018, approximately 30 testamentary lots were created that are below the County's minimum lot area requirements, and therefore cannot be built on under the King County Code. The proposed ordinance would remove the minimum lot area requirement for testamentary lots created before January 1, 2019. Testamentary lots created on or after January 1, 2019 would still be required to meet minimum lot area requirements. All testamentary lots, regardless of time of creation, would still be required to meet all other zoning requirements and development standards.

**BACKGROUND**

RCW 58.17.040 exempts properties from the subdivision process if the land is lawfully divided and deeded as part of the owner's last will and testament. Although testamentary lots are exempt from the subdivision process, the Washington Appeals Court found in *Dykstra v. County of Skagit* that the exemption in RCW 58.17.040 does not exempt testamentary lots from any development standards, including minimum lot area.

Testamentary property divisions do not require any local land use approvals, and thus are not evaluated by the County for buildability or compliance with the zoning code until a development proposal is made (e.g. application to build a single-family house).

K.C.C. 19A.08.070.B.5.d. states that lots created through the testamentary division process are recognized as legal lots by the Code, and therefore may receive legal lot determinations from the County. However, K.C.C. 19A.08.070.E. states that a legal lot determination does not guarantee that the lot constitutes a *building site,* defined by K.C.C. 19A.04.060 as:

 *An area of land, consisting of one or more lots or portions of lots, that is:*

 *A. Capable of being developed under current federal, state, and local statutes,*

 *including zoning and use provisions, dimensional standards, minimum lot area, minimum lot area for construction, minimum lot width, shoreline master program provisions, critical area provisions and health and safety provisions; or*

 *B. Currently legally developed.*

According to Executive staff, since at least 2012, the Permitting Division has interpreted these code provisions to mean that testamentary lots, while legally existing, must meet all applicable development standards, including minimum lot area, in order to be developed.

The Permitting Division estimates that 106 lots have been created through the testamentary lot division process in unincorporated King County since 2000. Building permits have been issued for several properties that do not meet minimum lot area standards during this time.

**ANALYSIS**

According to data provided by Executive staff, there are 30 lots that:

 1. Were created through the testamentary lot division process between 2000 and January 1, 2019;

 2. Are in the rural area;

 3. Do not meet minimum lot area requirements for the zone in which they are located; and

 3. Are currently undeveloped.

The proposed ordinance would remove the requirement that testamentary lots meet minimum lot area standards in order to be developed. In addition to the 30 lots created between 2000 and 2018, lots created prior to 2000 would also be exempt from the minimum lot area requirements. The Permitting Division states that they do not have data on the number of undersized testamentary lots created prior to 2000. In order to be developed, all testamentary lots would need to meet all other zoning requirements and development standards, including minimum lot width and other dimensional standards.

Any testamentary lots created on or after January 1, 2019 would still be required to meet the minimum lot area of the zone in order to be considered buildable.

**INVITEES**

* John Taylor, Director, Department of Local Services
* Mark Rowe, Deputy Division Director, Permitting Division

**ATTACHMENTS**

1. Proposed Ordinance 2019-0209