



**CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA**

Tues., March 7, 2017 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Pledge of Allegiance & Roll Call

2. COUNCIL BUSINESS

A. Review/Discussion (pg. 2) - Critical Areas Code Contract

B. Review/Discussion (pg.31) - Code Enforcement Code Updates

3. OTHER COUNCIL ITEMS

4. ADJOURN

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact City Hall at (253) 952.3299, 24 hours in advance.



**CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: CRITICAL AREAS CODE
CONTRACT**

Date: March 7, 2017

Title: Critical Areas Code/Best Available Science Update Contract

Attachments: Draft Contract with Environmental Science Associates (ESA) and RFP/Q submittal received by City staff from ESA

Submitted By: Aaron C. Nix, ACA – Municipal Services

Approved For Agenda By: Daryl Eidingen, Mayor

Discussion: An update to the City's Critical Areas Ordinance is periodically required of local jurisdictions, with the most recent update required in 2008. Local jurisdictions were asked to not only take a look at their current regulations, but also to integrate a Best Available Science element that supported and justified these updated regulations. As is often the case, each jurisdiction, each ecosystem, each development proposal bring their own amount of complexity, in which Staff is tasked in attempting to regulate development in order protect life safety, welfare, property and the environment within these defined sensitive areas, while balancing property rights and the freedoms ingrained in our culture. Often this is turbulent and the intent of spending these resources are to aide Staff in providing clearer direction for those affected by these required regulations.

Fiscal Impact: City Staff had budget \$40,000 within the Community Development Budget in order to help Staff fund the scientific background work needed in order defend the required code changes that both the Consultant and City Staff will be bringing forward to the Planning Commission and the City Council for their consideration. The State of Washington, Department of Ecology, the Building Industry and others have mandated that local jurisdictions justify their critical areas regulations with the integration of Best Available Science in order to justify the parameters in which the established regulations require of development.

CITY OF EDGEWOOD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 15th day of March, 2017, by and between the City of Edgewood, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF EDGEWOOD, WASHINGTON (hereinafter the “CITY”)

2224 - 104th Avenue E.

Edgewood, Washington 98372

Contact: Mayor Daryl Eiding Phone: 253-952-3299 Fax: 253-952-3537

and Environmental Science Associates (ESA), a Corporation, organized under the laws of the State of Washington, doing business at:

Environmental Science Associates (ESA) (hereinafter the “CONSULTANT”)

5309 Shilshole Avenue NW, Suite 200

Seattle, WA 98107

Contact: _____

Phone: 206-789-9658

Fax: 206-789-9684

for professional services in connection with the following Project:

City of Edgewood Critical Areas and Best Available Science Update

TERMS AND CONDITIONS

1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

2. Schedule of Work.

A. Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit “A.” If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. **Terms.** This Agreement shall commence on March 15, 2017, (“Commencement Date”) and shall terminate on July 1, 2017 unless extended or terminated in writing as provided herein.

Revised 2/27/17

4. Compensation.

- ☐ LUMP SUM. Compensation for these services shall be a Lump Sum of \$_____, which includes all applicable tax.
- TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$38,890.00, including all applicable tax, without written authorization and will be based on billing rates and reimbursable expenses attached hereto as Exhibit A.
- ☐ TIME AND MATERIALS. Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "_____."
- ☐ OTHER. _____

5. Payment.

A. Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

6. Discrimination and Compliance with Laws

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. Consultant shall obtain a City of Edgewood business license prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

7. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

8. Suspension and Termination of Agreement

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. Termination with cause. The Agreement may be terminated upon the default of the Consultant.

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

2. **Default.** If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

D. **Suspension.** The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. **Notice of Termination or Suspension.** If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

9. Standard of Care. Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Indemnification. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or

suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is Subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

13. Insurance. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability Insurance.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability insurance each accident \$1,000,000; Employer's Liability Disease each employee \$1,000,000; and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

14. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

15. Notice. Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Daryl Eidinger
Mayor
2224 - 104th Avenue E.
Edgewood, WA 98372

Phone: 253-952-3299
Fax: 253-952-3537

Environmental Science Associates
Attn: _____
5309 Shilshole Avenue NW, Suite 200
Seattle, WA 98107

Phone: 206-789-9658
Fax: 206-789-9684

16. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Administrator's determination in a reasonable time, or if the Consultant does not agree with the Mayor or Administrator's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

17. General Provisions.

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the

City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF EDGEWOOD, WASHINGTON

CONSULTANT

By: _____
Daryl Eidinger
Mayor

By: _____
Name: _____

Date: _____

Title: _____

Date: _____

Attest:

By: _____
Rachel Pitzel
City Clerk

APPROVED AS TO FORM:

By: _____
Carol A. Morris
City Attorney

Exhibit A

(Scope of Work and Fee Schedule)



5309 Shilshole Avenue NW
Suite 200
Seattle, WA 98107
206.789.9658 **phone**
206.789.9684 **fax**

www.esassoc.com

February 9, 2017

Kirk Rappe
City of Edgewood Community Development Department
2224 104th Avenue East
Edgewood, WA 98372-1513

Subject: Critical Areas & Best Available Science Update

Dear Kirk:

The City of Edgewood's (City's) Critical Areas Ordinance (CAO) update effort offers a great opportunity to review the workings of the CAO since the last update while ensuring that the City maintains its consistency with the State's updated criteria and the requirements of the GMA. It also gives the City the chance to address any other terms, procedures, or standards that require greater clarity or are challenging to administer and to ensure compatibility with the City's Comprehensive Plan. Achieving these outcomes requires a consultant that understands the specifics of CAO implementation and can successfully integrate scientific analyses and public input to recommend sensible and defensible policies and regulations. Environmental Science Associates (ESA) will bring that expertise to the City.

Our ecologists, hydrologists, planners, GIS analysts, and policy experts are well respected for helping local governments tackle difficult land use and environmental challenges through thoughtful, disciplined, and objective means. We have a wealth of critical areas, resource management, and public involvement expertise to dedicate to this effort. ESA has assisted numerous cities and counties with their CAO update processes, and have developed many Best Available Science (BAS) reports and CAO update recommendation reports. For example, we have completed updates in Kent, Edmonds, Federal Way, Renton, Tukwila, and Gig Harbor, as well as for Whatcom and Pierce counties.

ESA's staff has joined forces with Associated Earth Sciences, Inc. (AESI) to support the Geologically Hazardous Areas CAO update component. AESI has conducted critical areas regulation review for several Puget Sound communities, including Kitsap County and the cities of Gig Harbor and Burien, and has also completed numerous projects in the Edgewood area.

In response to your insurance question, ESA's current insurance limits are \$1,000,000 for personal and advanced injury coverage, and \$2,000,000 dollars for generate aggregate coverage.

The attached proposal provides more information about our qualifications and approach. Please feel free to contact me at 206.789.9658 or amerrill@esassoc.com. We welcome questions and further discussion about how we can help you tackle this important project.

Sincerely,
ESA

A handwritten signature in blue ink that reads "Adam Merrill". The signature is fluid and cursive, with the first name "Adam" and last name "Merrill" clearly distinguishable.

Adam Merrill
Project Manager & Principal Contact

Project Approach & Scope Consideration

Our Philosophy

Through our recent work supporting other Puget Sound communities, we have established an efficient and step-wise approach that will guide us through your critical area regulations update. Each of the following lessons will be applied as we work to deliver an efficient, successful project:

- Meet early and often : We will plan focused and early conversations with City staff to fully understand critical areas implementation challenges and project objectives.
- Get feedback from the counter: We believe that feedback from permit counter staff is necessary to understand and address on-the-ground challenges and areas of confusion.
- Use a streamlined approach to identify and highlight key issues: We use a concise, defensible process and product for updating CAOs and GIS inventory data layers.

Value to the City

We are committed to making the City's project a success by using a process that:

- Provides credible scientific information to meet BAS criteria;
- Produces focused, defensible, and easy to understand updates to regulations;
- Complements and integrates updates to other City development standards; and
- Results in useful critical areas inventory mapping and data tools for customers and City staff and is conducted efficiently and cost effectively.

Approach to the Project

Our approach to meeting the City of Edgewood's objectives will capitalize on our combined knowledge of BAS for critical areas protection, State guidelines and key areas of review, and real-world understanding of CAO implications for both public infrastructure projects and private development. We understand that the City needs a targeted assessment of its current regulations in order to achieve its deadline in the first half of 2017. To do this and meet all tasks specified in your RFP, ESA's approach to the CAO update will involve the following steps:

- Review of BAS with an emphasis on wetland science, critical aquifer recharge areas, geologically hazardous areas, and habitats and species of local importance;
- Prepare a gap analysis and needs assessment that compares the City's existing regulations with GMA requirements and BAS;
- Identify code deficiencies and recommendations for improvements to existing regulations based on the gap analysis and needs assessments and also input from staff;
- Review and update existing biological and physical GIS data relating to critical areas within the City; and
- Prepare a redline/strikeout draft of the proposed revisions for public and City review.

The Scope of Work in the RFP describes four separate tasks for the project. However, we propose to combine Task 2 (BAS Review) and Task 3 (Gap Analysis). In our experience, the BAS review and gap analysis work are closely linked and can be completed more efficiently if performed concurrently. The following discussion provides several key considerations for a successful update to the Critical Areas standards.

Key Scope Considerations

Perform BAS Review & Gap Analysis

ESA will review the City's current CAO (EMC Title 14 Critical Areas) in detail to determine which areas of the code are not consistent with BAS and may need modification to be compliant with GMA. Our scientists and planners have keen awareness and understanding of the current body of scientific literature through our work on multiple recent CAO updates, and we can quickly “hone in” on areas of the code that may need to be updated.

We have already performed an initial review of the current regulations and found that the general provisions, including purpose, applicability, maps, and definitions should only require minor updates, but several of the wetland provisions are out-of-date and not consistent with current BAS. For example, the code refers to an outdated (and obsolete) wetland delineation methodology and an old wetland rating system. We also observed that the definition and designation of fish and wildlife habitat areas may not be consistent with the GMA definition and may need revision. Finally, we noticed that the code is based on the Pierce County CAO and is not tailored to the City of Edgewood. While this is not a BAS-related issue, there are several provisions and regulations that likely do not apply in Edgewood and could potentially be removed to make the City's CAO more clear, streamlined, and useful to applicants and City staff.

The in-depth code review, along with a literature review focused on the key topics highlighted in the RFP performed during this task will help guide our efforts in developing focused and concise recommendations in Task 3. In developing the BAS review, we will leverage our knowledge and familiarity of the relevant documents for wetlands, fish, and wildlife habitats, and frequently flooded areas as well as relevant climate science to develop the background for a scientifically defensible CAO update. AESI, our subconsultant, will ensure BAS consistency for geologically hazardous areas and critical aquifer recharge areas.

To meet the City's expectations for a focused update, we propose to conduct a “checklist” style analysis of the current regulations with key input from the City regarding administrative considerations. We will summarize our assessment in a cover memorandum and an easy-to-understand matrix format that highlights areas of inconsistency and clearly identifies the pertinent scientific source. We have successfully used this approach on multiple CAO updates to rapidly review codes and conduct consistency reviews. We have received positive feedback from multiple local jurisdictions who have appreciated the clarity of the format and the ease of implementation.



The City of Tacoma was challenged before the Growth Management Hearings Board for the adequacy of its critical marine fish and wildlife habitats. ESA reviewed Tacoma's adopted Critical Areas Preservation Ordinance, prepared a BAS review of critical habitats, and summarized protection measures. The revised ordinance was adopted and the challenge was resolved.

Review & Update Critical Areas GIS Shapefile Data

We understand that the City is currently relying on critical areas mapping prepared in 2005 which should be updated. ESA will compile existing biological and physical data relating to critical areas within the City. Our team of resource and GIS experts will work efficiently to review your existing GIS data providing critical areas inventory, along with inventory mapping from County and State sources. We are regional leaders in using GIS to analyze resources and inform land use decisions, and have key Pierce

County, WDFW, and WDNR layers for wetlands, streams, wildlife habitats, geologically hazardous areas, floodplains, and critical aquifer recharge areas already available in-house. For example our WDFW data indicates the presence of several species of salmon in Jovita and Wapato Creeks within the City, including fall chinook, coho, pink, and fall cum as well as winter steelhead. We will verify all available geospatial data, and coordinate with you to establish attributes and standards for a critical areas geodatabase that meets City needs.

After City review and approval of initial updated inventory layers, ESA will provide updated and/or new data layers and maps as an integrated geodatabase for all critical areas. Critical areas inventory layers will be provided as an ESRI file geodatabase, including full metadata (in FGDC format) detailing layer sources, attributes, and development methods. ESA will also include layer files storing symbology for inventory layers.

Existing CAO Provision POMC Chapter / Section	Degree of Consistency with BAS, GMA, & Guidance	Reason For Lack of Consistency	Suggested Change	Rationale/ Basis for Suggested Change
Wetlands (Chapter 18.04)				
18.04.010 Purpose	Consistent with BAS			
18.04.020 Wetland categories	N/A Inconsistent with BAS	Subsections 1 and 2 reference outdated wetland delineation and rating manuals.	For clarity, consider changing the name of the section to "Wetland Identification and Rating." Revise Subsections 1 and 2 to refer to the approved federal wetland delineation manual and applicable regional supplements, and the 2014 version of the Washington State Rating System for Western Washington.	Clarity and ease-of-use. The federal wetland delineation manual and regional supplements, and the updated 2014 wetland rating manual constitute BAS for wetland identification, delineation, and rating (WAC 173-22-035, WAC 365-190-090).
18.04.030 Regulated and nonregulated wetlands classification	Could be revised to be more consistent with BAS	The section exempts small Category III and IV wetlands without requiring mitigation.	Limit exemption to isolated Category III and IV wetlands less than 1,000 square feet in area that are not associated with riparian areas or buffers, are not part of a wetland mosaic, and do not contain habitat for priority species.	Scientific literature does not support exempting wetlands based on size or category alone, since small wetlands may perform important functions. However, Ecology has developed a strategy for exempting small wetlands when additional criteria are considered (Bunten et al., 2012).
18.04.040 Development standards Subsection 1	Inconsistent with GMA	If recommended changes to 17.04.050 are made (as detailed below), then this subsection	Remove subsection.	<i>Wetlands and CAO Updates: Guidance for Small Cities</i> (Bunten et al., 2012)

Above: Example BAS Review Matrix

ESA is a leader in providing GIS data in formats that are easily accessible to multiple audiences. If desired to meet City needs, we could provide additional Critical Areas GIS support focused on communication of the updated GIS data. This support could range from PDF inventory maps and Google Earth (KMZ) layers to a new web-based interactive mapping platform.

Development of Revised Critical Areas Code

After the BAS review and gap analysis has been reviewed by City staff, ESA will prepare a redline/strikeout draft of the code with the proposed revisions. We expect that the majority of the revisions will be to the wetland portion of the code (EMC 14.30) based on the wetland protection and management guidance material released since the City's last CAO update. We will address provisions relating to specific species protection, wetland ratings, buffers and buffer management, mitigation standards and ratios, and allowed activities, among others.

Schedule

The proposed project schedule below was developed consistent with our approach and the parameters established by your RFP. ESA will coordinate with the City during the scoping period, refining this schedule to provide specific task periods, deliverable deadlines, and meeting and outreach dates. All deliverables - maps, data analysis, reports, and draft code updates - will be scheduled to include sufficient review by City staff. Assuming we get notice-to-proceed in mid-March, we could meet this schedule.

2017			
	APRIL	MAY	JUNE
BAS Review & Task Analysis			
Draft Report			
Final Report			
Critical Areas GIS Data Validation			
Review, Update, and/or Create New GIS Layers & Maps			
Revised Critical Areas Code			
Draft Redline			
Final Redline			

CLIENT TESTIMONIAL:

“ESA helped us greatly over the past 14-months and the accolades from our electeds are a reflection of the hard work they put into the project. Their work with our public outreach gave us the credibility to stand before the Council and Mayor and assure them we properly solicited feedback and vetted likely changes to stakeholders before the start of the legislative process. ESA’s thorough analysis of our existing ordinance to identify the gaps in BAS that we needed to fix and provide solutions made our job so much easier as we prepared the amendments. Not only their hard work, but their availability to talk through technical issues relieved a lot of pressure on me as I tried to wrap my head around so many facets of this project. Their responsiveness is superb!”

- Matthew Herrera, City of Renton (Formally with City of Federal Way)

Cost Summary

The ESA team is organized to provide cost-effective services so that we maximize the value of the available funds. Our budget allows for 322 hours of staff time. Our cost proposal is based on the task descriptions described in this proposal, our understanding of the City, and previous experience with similar projects.

Task	Hours	Cost
BAS Review & Gap Analysis	164	\$18,270
Critical Areas GIS Data Validation	64	\$7,680
Revised Critical Areas Code	112	\$13,690
Subtotals	322	\$39,640
Reimbursables		\$250
	Total	\$39,890

Project Team

Prime Consultant

Since the early 1990s, **Environmental Science Associates (ESA)** has been engaged in CAO updates and has a wealth of experience crafting policies and regulations that address community needs, reflect BAS, provide flexibility, and meet GMA requirements. We have recently supported Federal Way, Renton, Kent, Edmonds, and Lynnwood through successful adoption of updated critical areas standards, and we are currently working with the cities of Duvall, Port Orchard, Olympia, and Snoqualmie to update wetland, stream, habitat, floodplain, critical aquifer recharge area, and geohazard regulations. We have also helped Whatcom and Pierce Counties evaluate and update their CAOs and are currently assisting Island, Kittitas, and Jefferson Counties with similar endeavors. Our role on these projects has ranged from comprehensive policy and regulatory updates to minor amendments to select portions of the code. We know that no two jurisdictions are the same; each has its own unique natural resources, stakeholder groups, political climate, and land use issues and opportunities. We have worked with a wide range of City and County staff to develop approaches to the update process that meet their needs, and we are able to adapt our strategy as the update process moves along.

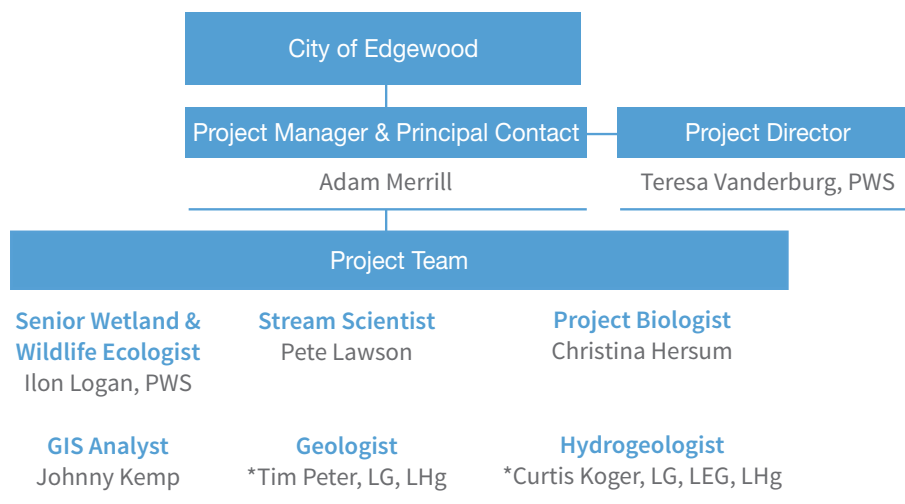
The scientists and planners assigned to this project have worked on CAOs for many small and moderately-sized cities throughout the Puget Sound, understand the issues that are pertinent to Edgewood, are skilled communicators and facilitators, and have a detailed knowledge of the City's CAO issues. We have selected staff members for this project based upon their expertise and availability.

Subconsultant



Associated Earth Sciences, Inc. (AESI) is a professional consulting engineering company serving the Pacific Northwest since 1981 with offices in Kirkland, Everett, and Tacoma. With 65 employees, AESI specializes in providing geotechnical engineering, hydrogeology, environmental consulting, geology, and low impact development support to clients in both the public and private sectors. AESI has a recent portfolio of critical area regulation review and geologically hazardous areas projects for municipalities including (partial list) Critical Areas Review for the City of Burien, Critical Areas Review for the City of Gig Harbor, and the Port Orchard/South Kitsap County Sub-Area/EIS for Kitsap County. Additionally, AESI has completed numerous projects for both public and private entities throughout the Edgewood area, including but not limited to: 36th and Meridian Park for the City of Edgewood, Northwood Elementary School, Edgewood Evergreen Housing, Jovita Heights Landslide Mitigation, Hedden Elementary School and Wolf Point Plat.

The chart below illustrates our proposed project team.



Subconsultant Legend: *AESI

Staff Name & Role	Qualifications & Experience	Reference
Adam Merrill Project Manager & Principal Contact	12 years of experience in natural resource management including CAO/SMP regulations and NEPA/SEPA compliance. - Project Manager for Port Orchard's CAO Update and Kittitas County SMP/CAO Update.	Robert "Doc" Hansen <i>Kittitas County</i> 509.962.7046 doc.hansen@co.kittitas.wa.us
Teresa Vanderburg, PWS Project Director	25 years of experience in CAO and SMP review - Has assisted 10 local city jurisdictions with updates to their CAO regulations, including: Tacoma, Kent, Burien, Kenmore, Kirkland, Tukwila, Renton, Federal Way, Sumner, and Gig Harbor.	Isaac Conlen <i>SDOT</i> 206.233.7186 isaac.conlen@seattle.gov
Ilon Logan, PWS Senior Wetland & Wildlife Ecologist	16 years of experience in CAO review; authored multiple BAS reviews for local governments and has assisted with the legislative process. - Project Manager for the Olympia, Federal Way, Renton, and Kent CAO Updates and the Island and Jefferson Counties updates. - Senior scientist for the Edmonds CAO Update and Woodinville SAO Update.	Matthew Herrera <i>City of Renton</i> 425.430.6593 mherrera@rentonwa.gov
Pete Lawson Stream Scientist	19 years of experience including preparation of environmental documentation such as Critical Areas Studies, NEPA/SEPA documents (EISs and EAs), and Habitat Conservation Plans (HCPs). - Senior scientist on the previous Duvall SAO Update and Lewis County CAO Update (while at another firm).	Analiese Burns <i>City of Bellingham</i> 360.778.7968 acburns@cob.org
Christina Hersum Project Biologist	4 years of experience in biological and regulatory monitoring, intensive fieldwork, species identification, and data collection. - Project scientist on the Olympia, Jefferson County, and Island County CAO Updates.	Linda Bentley <i>City of Olympia</i> 360.570.3746 lbentley@ci.olympia.wa.us
Jonny Kemp GIS Analyst	4 years of experience analyzing visual data and spatial analytics and providing GIS support. - GIS analyst on the Duvall Watershed-Based Planning Project and Edmonds CAO Update.	Kernen Lien <i>City of Edmonds</i> 425.771.0220 Kernen.Lien@edmondswa.gov
Tim Peter, LG, LHg (AESI) Geologist	24 years of geotechnical and geologic consulting experience in critical area ordinance review and studies. - Providing field exploration and review for Kirkland's Geologic Hazard Area Updates. - Completed numerous Critical Area Studies and Geologic Assessments for large developments and private residential clients.	Jason Filan <i>Kirkland Parks & Community Services</i> 425.587.3341 JFilan@kirklandwa.gov
Curtis Koger, LG, LEG, LHg (AESI) Hydrogeologist	35 years of experience completing geologic/hydrogeologic studies providing BAS reports, gap analysis, and code review. - Project Manager and/or Principal-in-Charge for the Centralia and Burien Critical Area Updates and Kirkland Geologic Hazards Area Update. - Project Manager and/or Principal-in-Charge for numerous geologic hazards assessments for private development projects.	John Phillips <i>King County Wastewater Treatment Division</i> 206.477.5489 John.Phillips@kingcounty.gov

Relevant Experience

ESA has recently supported seven local governments with updates to sensitive areas standards. ESA has a successful track record of producing high-quality deliverables that convey complex natural resource and land use management information to diverse audiences.

Project Examples

Renton, Federal Way, Edmonds, Kent, Lynnwood, Port Orchard, & Olympia CAOs, WA (ESA)

Year Completed: 2015 (Renton, Federal Way, and Kent) and 2016 (Edmonds, Lynnwood, and Olympia). The Port Orchard CAO Update project is ongoing.

Client Contact : City of Renton

Renton City Hall, 1055 S. Grady Way, Renton, WA 98057

Client Project Manager: Matthew Herrera, Senior Planner, 425.430.6593, mherrera@rentonwa.gov (formally with the City of Federal Way)

Over the past two decades, ESA has assisted numerous jurisdictions with their CAO updates as required under the GMA for use of BAS and special consideration for salmonids. Currently we are working with these seven cities with their CAO updates and are in various stages of completion. For each project, ESA is reviewing the CAO for consistency with BAS, providing recommendations for revising the regulations, and supporting public communication during the legislative process. ESA has seen the Edmonds, Kent, Federal Way, and Renton updates through City Council adoption and met schedules for compliance. Olympia, Port Orchard, and Lynnwood are close to adoption.



Elements Common to Scope:

- BAS Review
- Code Updates
- Local Critical Areas Knowledge

Kittitas County CAO, WA (ESA)

Year Completed: This project is ongoing.

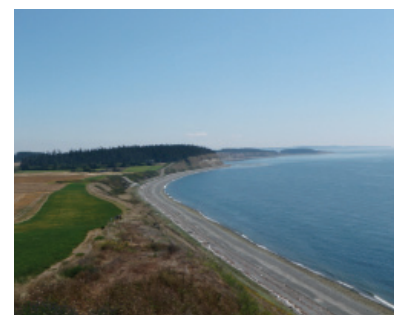
Client Contact : Kittitas County

411 N. Ruby Street, Suite 2

Ellensburg, WA 98926

Client Project Manager: Robert "Doc" Hansen, Planning Official, 509.962.7046, doc.hansen@co.kittitas.wa.us

ESA is reviewing Kittitas County's Comprehensive Plan and CAO to identify connections between land use planning policies and practices and watershed processes and functions. We reviewed BAS, documented existing conditions, and conducted a needs assessment and gap analysis to identify options for policy and regulatory changes. Our integrated team of scientists, planners, and GIS analysts are working closely with the County to complete a CAO update that meets respective land-use, economic development, and environmental protection objectives consistent with Comprehensive Plan goals.



Elements Common to Scope:

- BAS Review
- Needs Assessment
- GIS Data Analysis



Elements Common to Scope:

- Local Wetland/Stream & Habitat Knowledge
- Critical Areas Regulations Application
- Environmental Permitting & Review Support

On-Call Third-Party Review for Local Jurisdictions, WA (ESA)

Year Completed: These projects are ongoing.

Client Contact: City of Sammamish

801 228th Avenue SE, Sammamish, WA 98075

Client Project Manager: Lindsey Ozbolt, Associate Planner,
425.295.0527, lozbolt@sammamish.us

ESA currently provides on-call consulting services to the cities of Federal Way, Sammamish, Duvall, Snohomish and Mill Creek. Services include providing third-party review of wetland delineations, wetland classifications, and stream assessments; reviewing SEPA checklists; and supporting permit review for both private development and City-sponsored projects. Other issues include wetland delineation verifications, proposed buffer modifications, critical areas exemptions, and shoreline permit compliance reviews.

Elements Common to Scope:

- CAO Review & Update Consistent With BAS Practice
- GIS Data Review & Documentation
- City Staff & Public Outreach

Kirkland Geologic Hazard Areas Update, WA (AESI)

Year Completed: This project is ongoing.

Client Contact: City of Kirkland Department of Planning & Building Department

123 5th Avenue, Kirkland, WA 98033

Client Project Manager: Jeremy McMahan, Planning Manager,
425.587.3229, jmcman@kirklandwa.gov

AESI is in the process of updating the City of Kirkland's Geological Hazardous Areas chapter of the Kirkland Zoning Code (Chapter 85) as part of the Critical Areas Ordinance update to be in compliance with the Growth Management Act. AESI is currently reviewing existing maps, data and facts to improve clarity of the intent of the ordinance and technical consistency with geologic data. Additionally, AESI will produce a Technical Report, utilizing the updated geologic hazards maps and develop best management practices for the identification and mitigation of potential geologic hazards. AESI will also assist in developing code amendments when appropriate. Finally, AESI will participate in two open house events to present our findings to the public, summarizing the results of our Technical Report and proposed code amendments.

Appendix

Staff Resumes



Adam Merrill

Project Manager & Principal Contact

EDUCATION

M.S., Resource Management, Central Washington University

B.S., Environmental Science, Western Washington University

13 YEARS OF EXPERIENCE

WORKPLACE LOCATION
Seattle, WA

CERTIFICATION/REGISTRATION

Fluvial Ordinary High Water Mark (OHWM) Certification

Washington State (Eastern and Western) Wetland Rating System (Revised) Certifications

Adam has over 13 years of experience in natural resource management in the Pacific Northwest, with a focus on science-based land use planning. He has managed and supported a diverse set of interdisciplinary projects involving environmental permitting and compliance, aquatic habitat and watershed restoration, and community land use planning. He has performed hundreds of wetlands delineations and assessments and has successfully assisted clients with obtaining Corps Section 404 permits, Ecology 401 water quality certifications, and development permits from local agencies. He has also authored NEPA/SEPA compliance documents, Shoreline Master Program regulations, and critical areas regulations. Adam is highly experienced working closely and directly with clients, staff from regulatory agencies, and the public on complex projects.

Relevant Experience

Kittitas County CAO & SMP Updates, WA. *Project Manager.* Funded through an Ecology SMA grant, ESA is currently assisting Kittitas County and three of its cities with comprehensive updates of their SMPs. ESA is also assisting the County with updates to its CAO. This work includes preparation of a comprehensive shoreline inventory and characterization report; shoreline jurisdiction maps; and a review of BAS for wetlands, fish, and wildlife habitats, critical aquifer recharge areas, frequently flooded areas, and geologically hazardous areas. Adam has managed the development of several SMP-related documents, including the shoreline inventory and characterization report, SMP cumulative impact analysis, and shoreline restoration plan. He also developed the SMP regulations for critical areas within shoreline jurisdiction.

City of Port Orchard CAO Update, WA. *Project Manager.* Adam is leading an update of the City's CAO (Port Orchard Municipal Code Title 18) regulations as required under the Growth Management Act (GMA) for use of best available science (BAS) and special consideration for salmonids. To date, Adam has reviewed Port Orchard's CAO regulations for consistency with the recent science for wetlands, streams, critical aquifer recharge areas, and frequently flooded areas and provided recommendations for revising the code. Adam will also provide the code revisions and assist City staff during the legislative process of the CAO update.

City of Lynnwood CAO Update, WA. *Project Scientist.* The City of Lynnwood has contracted ESA to provide technical support to update the City's CAO (Lynnwood Municipal Code Chapter 17.10) regulations as required under the GMA for use of BAS and special consideration for salmonids. As part of the CAO update, Adam reviewed Lynnwood's CAO regulations for consistency with the recent science for wetlands, streams, and their buffers and provided recommendations for revising the code.

City of Westport Wetland & Stream Inventory, WA. *Project Scientist.* Adam conducted an inventory of wetlands and streams within the City in support of their CAO update. Work included compiling and reviewing existing inventory information, conducting a field survey, and developing revised city-wide wetland and stream inventory maps. Adam presented the findings of the inventory effort to the City Council.



Teresa Vanderburg, PWS

Project Director

EDUCATION

M.S., Environmental Science,
Washington State University

B.S., Biology,
Eastern Kentucky University

26 YEARS OF EXPERIENCE

WORKPLACE

LOCATION

Seattle, WA

CERTIFICATION/REGISTRATION

Jurisdictional Delineation of Wetlands in the Pacific Northwest, National Wetlands Science Training Cooperative (1990)

Certified Wetland Biologist, Pierce County (current)

Society of Wetland Scientists, Professional Wetland Scientist (PWS), #735

PROFESSIONAL AFFILIATIONS

Senior Advisor for the UW Wetland Management Certificate Program

Teresa has 26 years of professional experience in natural resource management and scientific analyses. She is the Practice Lead for the Biological Resources and Land Management Group and an Officer for the company. Teresa is an experienced project manager and has managed environmental permitting and mitigation planning for several large-scale public infrastructure projects, including the Seattle Public Utilities Tolt Water Supply Pipeline No. 2 in King County, and the North Fork Clover Creek Regional Detention Pond in Pierce County, Washington. She has reviewed and/or performed hundreds of wetland delineations, functional assessments and wetland mitigation projects. Teresa's expertise includes developing CAOs using BAS for Tukwila, Kent, Burien, Kenmore, Sumner, and Tacoma. Teresa has served as a scientific expert witness in hearings, trials, and other legal proceedings. She participated in a Local Government Wetland Advisory Team assisting Washington State Department of Ecology in development of management regulations for wetlands statewide. She also serves as a senior advisor to the University of Washington Wetlands Management Certificate program.

Relevant Experience

City of Federal Way CAO Update, WA. *Principal Reviewer.* ESA managed an update to the City's stream inventory, reviewed the CAO regulations for consistency with the recent science for wetlands, streams, and their buffers; provided recommendations for revising the code; and assisted with public outreach during the code update process. ESA assisted with exploring the feasibility of implementing a mitigation bank or in-lieu fee program.

City of Kent CAO Update, WA. *Project Manager.* Teresa prepared a BAS report for the City and recommended code revisions to meet the scientific requirement. Teresa assisted with presentations to the Planning and Economic Development Committee and City Council. She also assisted with Wetland Focus Group meetings, and meetings with CTED and Washington Department of Ecology. Teresa conducted an additional analysis of 20 wetlands in the City rated using the 2004 Ecology rating system and compared these to existing ratings.

City of Tukwila SAO and BAS Review, WA. *Project Manager.* Teresa assisted with review of the City's critical areas regulations as required under the GMA for use of BAS and special consideration for salmonids. Teresa worked with city staff to prepare several white papers that summarize the state of science for wetlands, streams and buffer requirements. The project also included review and revision to the critical area code language for consistency with BAS. She assisted City planning staff with Planning Commission meetings, public hearings, and City Council workshops.



Ilon Logan, PWS

Senior Wetland & Wildlife Ecologist

EDUCATION

M.M.A., Marine & Environmental Affairs, University of Washington

B.A., English, University of Washington

Certificate of Wetland Science and Management, University of Washington

16 YEARS OF EXPERIENCE

WORKPLACE

LOCATION

Seattle, WA

CERTIFICATIONS

Certified Professional Wetland Scientist (PWS) Society of Wetland Scientists: #1605

Master Birder, Seattle Audubon Society

Certified Wetland & Wildlife Specialist, Pierce County

Ilon is a senior ecologist with sixteen years of experience as an environmental consultant in the Pacific Northwest and brings an interdisciplinary approach to complex environmental and natural resource issues. Ilon is versed in restoration planning and policies for degraded freshwater and marine nearshore systems. She has authored a full range of scientific and regulatory compliance documents including BAS reviews for city and county governments. Ilon is proficient in all aspects of wetland assessment, delineation, and regulation at the local, state, and federal levels. She has successfully assisted clients with obtaining Corps Section 404 permits, Ecology 401 water quality certifications, and development permits from local agencies. She is also well qualified in wildlife studies involving habitat survey and assessment, bird survey, threatened and endangered species, and impact evaluation. Ilon is a skilled project manager who has consistently provided high quality products and responsive service to her clients.

Relevant Experience

City of Olympia CAO Update, WA. Project Manager. Ilon assisted the City with an update of their CAO (Olympia Municipal Code Chapter 18.32) regulations as required under the GMA for use of BAS and special consideration for salmonids. The City last updated its CAO in 2005 and several new scientific studies regarding wetlands, buffers, and wetland mitigation have been released since that time. Ilon reviewed Olympia's regulations for consistency with the recent science for wetlands, streams, and their buffers and provided recommendations for revising the code.

City of Federal Way CAO Update, WA. Project Manager. Ilon managed an update to the City's stream inventory, reviewed the CAO regulations for consistency with the recent science for wetlands, streams, and their buffers; provided recommendations for revising the code; and assisted with public outreach during the code update process. Ilon assisted with exploring the feasibility of implementing a mitigation bank or in-lieu fee program.

City of Kent CAO Update, WA. Project Manager. Ilon was the manager and lead scientist for this project which reviewed the CAO for consistency BAS, provided recommendations for revising the regulations, and supported the City's public communication during the legislative process. ESA also supported the City in achieving compliance with the National Marine Fisheries Service BiOp of the FEMA NFIP.

City of Renton CAO Update, WA. Project Manager. Ilon reviewed the City's CAO regulations for consistency with recent science for wetlands, streams, and buffers and provided recommendations for revising the code. She facilitated a half-day workshop to help City staff better understand wetlands in Renton, federal and state regulations, and implications of the recommendations. Ilon has provided a set of code revisions and will provide technical support to City staff during the legislative process of the CAO update.

City of Edmonds CAO Update, WA. Senior Scientist. ESA is reviewing the City's CAO for consistency with BAS, providing recommendations for revising the regulations, and supporting public communication during the legislative process. Ilon is assisting with code review, BAS assessment, and the code update effort.



Pete Lawson

Stream Scientist

EDUCATION

M.S., Environmental Science, Western Washington University

B.S., Biology, Western Washington University

19 YEARS OF EXPERIENCE

WORKPLACE LOCATION
Seattle, WA

CERTIFICATION/REGISTRATION

Washington Department of Transportation Biological Assessment Qualified Senior Author

PROFESSIONAL AFFILIATIONS

American Fisheries Society

Pete is a senior fisheries biologist with over 19 years of experience managing and executing projects in the disciplines of fisheries biology and environmental science. He has performed extensive field studies and has knowledge of the life history and ecology of Pacific salmonids and the relationships of these species with physical instream habitat. Pete has led and participated in assessing and characterizing physical and chemical fish habitat parameters and is well versed in habitat and population-level assessment techniques. He is also adept in the preparation of environmental documentation such as Critical Areas Studies, NEPA/SEPA documents (EISs and EAs), and Habitat Conservation Plans (HCPs). Pete has offered a unique fisheries perspective for the revision of local municipality CAOs and in multiple environmental permitting scenarios (including JARPAs, SEPA checklists, 401 certifications, etc.).

Relevant Experience

Kittitas County CAO & SMP Updates, Ellensburg, WA. *Senior Scientist.* ESA is helping Kittitas County and three of its cities with comprehensive updates of their SMPs; ESA is also helping the County with an update its CAO. This work included preparation of a comprehensive shoreline inventory and characterization report, shoreline jurisdiction maps, and a review of BAS for wetlands, fish and wildlife habitats, critical aquifer recharge areas, frequently flooded areas, and geologically hazardous areas.

Diane's Faithful Lane Subdivision, Puyallup, WA. *Senior Scientist.* ESA assisted the City of Puyallup with a third-party environmental review for a project to develop 14 single-family residential lots in the Diane's Faithful Lane Subdivision, adjacent to Deer Creek, a perennial salmon-bearing stream. Pete reviewed the potential impacts of the project under the local Critical Areas and the floodplain development code, as well as the project's consistency with FEMA Region X's Regional Guidance for NFIP compliance with the Endangered Species Act.

CAO Updates for Lewis County & the City of Shelton, WA. *Senior Scientist.* Prior to his work at ESA, Pete assisted Lewis County and the City of Shelton (two separate projects) in revising their CAOs for compliance with GMA requirements. He inventoried and classified stream segments and made stream buffer recommendations for inclusion into CAO codes. He authored the Fish Habitat BAS reports and worked closely with a Critical Areas Technical Group to develop an innovative functional approach to formulating biologically and ecologically relevant ordinances, while allowing Lewis County maximum flexibility. For the City of Shelton, the buffer widths and development restrictions were based on a functional analysis of streams, and attempted to conserve instream/riparian habitat in those areas (e.g., the Snoqualmie River floodplain) which offer the most potential benefit to fish species. This unique approach allowed the City maximum flexibility while protecting key aquatic habitat and providing consistency with Endangered Species Act guidelines and policies and BAS provisions. Pete also conducted field investigations of area streams, to evaluate existing conditions and identify stream and critical area functions and values.



Christina Hersum

Project Biologist

EDUCATION

B.S., Environmental Science, Western Washington University

4 YEARS OF EXPERIENCE

WORKPLACE LOCATION

Seattle, WA

CERTIFICATIONS/REGISTRATION

Wetland Science and Management Certificate, University of Washington

PROFESSIONAL AFFILIATIONS

Society of Wetland Scientists

Christina is an environmental scientist with experience in various biological and ecological projects throughout the Pacific Northwest. Her interdisciplinary background supports biological and regulatory monitoring, intensive fieldwork efforts, species identification, and other data collection. Recently, Christina received certification in the science and management of wetlands. She is skilled in the identification, delineation, and rating of wetlands as well as regulations at local, state, and federal levels.

Relevant Experience

Jefferson County CAO Update, WA. Associate Scientist. Jefferson County is reviewing its CAO in accordance with the requirements of the GMA. The County's approach to the current CAO Update process includes a comprehensive review of the effectiveness of its current programs and regulations that pertain to the protection and management of critical areas. The County expects to focus on wetland, frequently flooded areas, fish and wildlife habitat conservation area protections, and agricultural activities exemption changes. Christina is involved with a review of BAS, a watershed characterization report, and a recommendations report that identifies options for policy and regulatory changes.

City of Olympia CAO, WA. Associate Scientist. The City of Olympia has contracted ESA to provide technical support to update the City's CAO (Olympia Municipal Code OMC 18.32) regulations as required under the GMA for use of BAS; ESA will review portions of the CAO for consistency with BAS. Christina is currently involved with the gap analysis to develop recommendations for revising the CAO based on the review.

City of Lynnwood CAO Update, WA. Associate Scientist. The City of Lynnwood has contracted ESA to provide technical support to update the City's CAO (Lynnwood City Code LMC 17.10) regulations as required under the GMA for use of BAS; ESA will review portions of the CAO for consistency with BAS. Christina was involved with the gap analysis to develop recommendations for revising the CAO based on the review.

Island County CAO Update, WA. Associate Scientist. Island County is updating its CAO as required under the GMA. ESA has assembled a team of biologists, hydrologists, water rights specialists, hydrogeologists, and geologists to utilize a watershed-based approach to inform review of the County's Comprehensive Plan and CAO and to identify connections between land use planning policies and practices, and watershed processes and functions. The County expects to focus on wetland protections, agricultural activities exemption changes, groundwater protection, and landslide hazard areas. This project, currently underway, includes a review of BAS, documentation of existing conditions, and a needs assessment and gap analysis report that identifies options and provides recommendations for policy and regulatory changes. The ESA team will also support the County with revisions to the Comprehensive Plan, regulations, and the legislative process up to adoption.



Jonathan Kemp

GIS Analyst

EDUCATION

M.S., Geography,
Western
Washington
University

B.A., Natural
Resource
Management,
Western
Washington
University

4 YEARS OF EXPERIENCE

WORKPLACE
LOCATION
Seattle, WA

SOFTWARE EXPERIENCE

ESRI stack, Adobe
Suite, R, SPSS,
QGIS, Mapbox,
Leaflet, Wordpress.

SCRIPTING EXPERIENCE

R, CSS, Python,
HTML, JavaScript,
Excel Macros.

Jonathan “Jonny” Kemp is a GIS Analyst bringing four years of experience in analyzing visual data, spatial analytics, and providing GIS support for a variety of projects. Using ESRI or Open Source Geospatial software he has performed spatial analysis and created dynamic maps and graphics suited specifically toward each project’s needs. From simple geoprocessing analysis, to rich cartography, to writing python models, to designing/coding web maps; Jonny not only enjoys the work, but takes pride in the beautiful products this work creates.

Relevant Experience

City of Edmonds CAO Update, WA. *GIS Analyst.* ESA is preparing an update to the City’s BAS report to reflect current scientific research applicable to the Edmonds area, is reviewing the existing critical area regulations for consistency with the updated BAS report, and will recommend changes to the City’s critical area regulations needed for consistency with the current scientific thinking and legal requirements, while recognizing the urban environment and state agency guidance. The consultant will also significantly assist the City with SEPA review of the updated critical area regulations. Jonny aided in initial analyzing the city’s current CAO to identify key areas that need to be updated. Specifically Jonny was instrumental in finding gap areas of potential wetlands. To accomplish this, a supervised flow analysis using LIDAR and the latest NAIP aerial satellite imagery was used.

SR 516 Extension, King County, WA. *GIS Analyst.* The City of Covington is proposing to widen SE 272nd Street to relieve traffic congestion. ESA is preparing a WSDOT ECS form, a BA for potential impacts to Endangered Species Act listed species in Jenkins Creek, a SEPA Checklist for the City, and a JARPA for U.S. Army Corps of Engineers and WDFW permits. Main environmental issues addressed were wetland impacts, accommodation of a planned trail under the new bridge, and selection of a mitigation site. Jonny provided assistance in gathering relevant spatial datasets from a host of sources and assembling them into graphics for the documentation.

Eastside PSE Transmission Line Corridor, WA. *GIS Analyst.* This EIS is for a proposed new 18 mile long PSE transmission line corridor in King County that will affect the communities of Redmond, Bellevue, Kirkland, New Castle, and Renton. Jonny is the lead GIS analyst for this project and manages all relevant cartographic elements for the EIS. These elements include web applications to view complex data elements on the EIS website, as well as static content for the written EIS. In order to produce these static and web mapping elements Jonny efficiently coordinated data exchanges between ESA and all jurisdictions involved. Jonny has also provided coding support for the EIS website, building and deploying custom html/javascript applications.



Curtis J. Koger, L.G., L.E.G., L.Hg.

Senior Principal Geologist/Hydrogeologist

EDUCATION

B.S., Earth Sciences
(Geology), 1978,
Pacific Lutheran
University

M.S. Geology, 1981,
Baylor University

35 YEARS OF EXPERIENCE

WORKPLACE LOCATION

Kirkland, WA

CERTIFICATIONS/ REGISTRATION

Licensed Geologist:
Washington

Licensed
Engineering
Geologist:
Washington

Licensed
Hydrogeologist:
Washington

Certified
Professional
Geologist: American
Institute of
Professional
Geologists

PROFESSIONAL AFFILIATIONS

American Institute
of Professional
Geologists

National Ground
Water Association

Curtis has over 35 years of geologic/hydrogeologic experience in a wide variety of geologic settings and disciplines. His experience and expertise have been derived from extensive subsurface stratigraphic exploration evaluations, ground water projects, and from economic and geologic hazards studies. His experience in ground water resource development includes regional hydrogeologic, wellhead protection, source approval and CARA evaluations, design and analysis of pump tests, aquifer characterization, well siting studies, production well design for water supply, and dewatering analysis and design for building excavations. He has prepared comprehensive reports documenting hydrogeologic conditions for EISs and has provided expert testimony on ground water issues for major infrastructure/development projects located in environmentally critical areas.

Relevant Experience

Kirkland Geologic Hazard Areas Update. *Project Manager.* AESI is in the process of updating the City of Kirkland's Geological Hazardous Areas chapter of the Kirkland Zoning Code (Chapter 85) as part of the Critical Areas Ordinance update to be in compliance with the Growth Management Act. AESI is in the currently reviewing existing maps, data and facts to improve clarity of the intent of the ordinance and technical consistency with geologic data. Additionally, AESI will produce a Technical Report, utilizing the updated geologic hazards maps and develop best management practices for the identification and mitigation of potential geologic hazards. AESI will also assist in developing code amendments when appropriate. Finally, AESI will participate in two open house events to present our findings to the public, summarizing the results of our Technical Report and proposed code amendments.

Critical Areas Ordinance Review. *Project Manager.* As a part of the City of Burien's update to its critical area ordinance, AESI performed review and analyses of the critical aquifer recharge (CARA), landslide, steep slope, seismic, erosion and frequently flooded hazard area criteria. This work involved review of existing ordinance language, development of new code language and developing a geologically hazardous areas map.

City of Des Moines Critical Area Ordinance. *Project Manager.* As mandated by the State of Washington's Growth Management Act (GMA), the City of Des Moines was required to up-date their critical areas ordinance to use the BAS in determining their environmentally critical areas. AESI was the project team member responsible for review of the existing critical aquifer recharge area (CARA) and geologic hazard (seismic, landside, erosion) areas ordinances. AESI's scope of work included review of the existing critical area ordinances and landslide hazard area map. AESI provided recommended revisions to the landslide hazard map and the code language to reflect the BAS.

Timothy J. Peter, L.G., L.Hg.

Senior Project Geologist

EDUCATION

M.S., Geology
New Mexico
Institute of Mining
and Technology
B.S., Geology
CSU – Sacramento

24 YEARS OF EXPERIENCE

WORKPLACE LOCATION

Kirkland, WA

CERTIFICATIONS/ REGISTRATION

Licensed
Professional
Engineering
Geologist
(L.E.G.) State of
Washington
Licensed
Professional
Hydrogeologist
(L.Hg.)
State of
Washington

PROFESSIONAL AFFILIATIONS

Northwest
Geological Society

Tim has over 24 years of geotechnical and environmental consulting experience and is a registered Professional Geologist, Professional Engineering Geologist, and Hydrogeologist. Mr. Peter's experience includes critical area ordinance review, subsurface exploration, Phase I/II environmental site assessments, soil and ground water remediation, slope stability and liquefaction analysis, drainage, stormwater infiltration, erosion and sedimentation control, construction monitoring, and hydrogeologic studies. He has contributed in the design and field inspection of deep-pile foundations, soldier pile walls, tiebacks, mechanically stabilized earth (MSE) walls, earth dams, spread footing foundations, landslide repair, and underground utility and road construction.

Relevant Experience

Kirkland Geologic Hazard Areas Update. *Project Manager.* AESI is in the process of updating the City of Kirkland's Geological Hazardous Areas chapter of the Kirkland Zoning Code (Chapter 85) as part of the Critical Areas Ordinance update to be in compliance with the Growth Management Act. AESI is in the currently reviewing existing maps, data and facts to improve clarity of the intent of the ordinance and technical consistency with geologic data. Additionally, AESI will produce a Technical Report, utilizing the updated geologic hazards maps and develop best management practices for the identification and mitigation of potential geologic hazards. AESI will also assist in developing code amendments when appropriate. Finally, AESI will participate in two open house events to present our findings to the public, summarizing the results of our Technical Report and proposed code amendments.

City of Grand Coulee Landslide Mitigation. *Project Geologist.* AESI performed an extensive subsurface exploration, geologic hazard study, and geotechnical engineering evaluation for a major landslide that was threatening the local hospital, as well as several major businesses in Grand Coulee, Washington. AESI worked closely with the United States Bureau of Reclamation (USBR) to obtain and evaluate existing data on similar soils that was developed during previous remedial landslide work by the USBR below the Grand Coulee Dam.

Cape Disappointment State Park Landslide Study *Project Geologist.* AESI completed a subsurface exploration and geotechnical engineering study providing geotechnical design recommendations for the State Park addition, including the recommended building setback from the adjacent marine bluff. As part of this study, AESI evaluated and provided options for mitigation of two areas that were experiencing slope stability problems. We presented several options with varying levels of cost and risk to partially or fully mitigate the problem.



**CITY OF EDGEWOOD
STAFF REPORT**

STUDY SESSION AGENDA ITEM: CODE ENFORCEMENT

Date: March 7, 2017

Title: New Code Enforcement Section of EMC

Attachments: Draft Code Enforcement Ordinance from City Attorney and Draft Code Language from ACA Nix for Comparison.

Submitted By: Aaron C. Nix, ACA – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: As mentioned to the Council on several, occasions, Edgewood's code was an extension of Pierce County's code when the City incorporated back in the mid-nineties. As the newly formed City transitioned from Pierce County into Edgewood, many of the codes were formally rolled over from what the County had adopted and slowly tweaked as needed as the City transitioned. As growth has occurred, an audit conducted by current City Staff and comments received from the City Council, as well as the Public, has warranted a re-evaluation of the City's current codes and further refinements beginning with the addition of a code enforcement section to identify a process for Staff, as well as the residents of Edgewood, as problems arise throughout the City. This is essential in helping Staff provide fair and appropriate notice to the Public, an appeal process and an ability for Staff to react immediately, if warranted, in cases of emergencies. Two, Draft versions of code are included, one focused on enforcement issues associated with the subdivision/community development sections of our code and another that is more general, to address a broader range of issues. The merits of both of which will be discussed at the Council's Study Session.

Fiscal Impact: None at this time, as the intent with this code update is to help current Staff obtain some efficiencies and tools in carrying out their current duties, as requested by the Public, the Mayor and the City Council.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF _____, WASHINGTON, RELATING TO ZONING AND SUBDIVISION CODE ENFORCEMENT, ADOPTING NEW ZONING AND SUBDIVISION CODE ENFORCEMENT PROCEDURES WHICH DESCRIBE VIOLATIONS, EXPLAIN THE PROCESS FOR INVESTIGATION AND ENFORCEMENT OF VIOLATIONS, LISTING THE ELEMENTS OF A NOTICE OF VIOLATION, DESCRIBING THE PROCEDURES FOR ISSUANCE AND SERVICE OF NOTICES OF VIOLATION, STOP WORK ORDERS AND EMERGENCY ORDERS, PROVIDING FOR HEARINGS ON APPEALS, DESCRIBING THE HEARING PROCESS, SETTING PENALTIES FOR VIOLATIONS, REPEALING PREVIOUS CODE ENFORCEMENT PROCEDURES IN CHAPTER _____, AND ADDING A NEW CHAPTER ____ TO THE _____ MUNICIPAL CODE.

WHEREAS, the City has decided to update its Zoning and Subdivision Code enforcement procedures; and

WHEREAS, the City SEPA Responsible Official has determined that this Ordinance is categorically exempt from SEPA as affecting only procedural and no substantive standards, pursuant to WAC 197-11-800(19); and

WHEREAS, on _____, 2016, the Planning Commission held a public hearing on this Ordinance and made a recommendation of _____ to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meetings on _____ and _____, Now, Therefore,

THE CITY COUNCIL OF THE CITY OF _____, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter ____ of the ____ Municipal Code is hereby repealed.

Section 2. A new Chapter ____ is hereby added to the ____ Municipal Code,

which shall read as follows:

Chapter 15.25 ENFORCEMENT

Sections:

- 15.25.001 Intent.**
- 15.25.002 Violations.**
- 15.25.003 Responsibility to Enforce.**
- 15.25.004 Investigation and Notice of Violation.**
- 15.25.005 Time to Comply.**
- 15.25.006 Stop Work Order.**
- 15.25.007 Emergency Order**
- 15.25.008 Appeals.**
- 15.25.009 Appeal Hearing.**
- 15.25.010 Civil Penalty.**
- 15.25.011 Criminal Penalties.**
- 15.25.012 Additional Relief.**
- 15.25.013 Penalties for Subdivision Violations.**

15.25.001 Intent. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of the Zoning Code, Title 15 and the Subdivision Code, Title 14. No provision of, or any term used in this chapter, is intended to impose any duty to enforce, or any other duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

15.25.002 Violations.

A. It is a violation of the Zoning Code, Title 15, and the Subdivision Code, Title 14, for any person to initiate, maintain or cause to be initiated or maintained, the use of any structure, land or property within the City, without first obtaining the permits or authorizations required for the use by the aforementioned codes.

B. It is a violation of the Zoning Code, Title 15, and the Subdivision Code, Title 14, for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the City, in any manner that is not permitted by

the terms of any permit or authorization issued pursuant to the aforementioned Titles; provided, that the terms or conditions are explicitly stated on the permit or the approved plans.

C. In addition to the above, it is a violation of Titles 15 and 14 to:

1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with the aforementioned Titles; and
2. To misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction authorization.

15.25.003 Responsibility to enforce.

A. The Community Development Director shall have the responsibility to enforce this Chapter. The Director may call upon the police, fire, building, public works or other appropriate City departments to assist in enforcement. As used in this chapter, “Community Development Director” or “Director” shall also mean his or her duly authorized representative.

B. Upon presentation of proper credentials, the Director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant, in order to perform the responsibilities imposed by this Chapter.

15.25.004 Investigation and Notice of Violation.

A. Investigation. The Director is authorized to investigate any structure or use which he/she reasonably believes does not comply with the standards and requirements of the Zoning Code, Title 15 or the Subdivision Code, Title 14.

B. Notice of Violation. If, after investigation, the Director determines that the standards or requirements of the Zoning Code, Title 15, and the Subdivision Code, Title 14 or the provisions of this chapter have been violated, the Director may serve a Notice of Violation upon the owner, tenant or other person responsible for the condition. The Notice of Violation shall contain the following information:

1. The name and address of the person to whom it is directed;
2. The location and specific description of the violation;
3. A statement that the Notice (or Order, in the case of a Stop Work or Emergency Order) is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
4. The Notice of Violation may include or reference a Stop Work Order or Emergency Order requiring that the violation immediately cease, or that the potential violation be avoided;

5. The Notice of Violation may include or reference a Stop Work or Emergency Order requiring that the person cease all work on the premises until correction and/or remediation of the violation as specified in the Order;

6. A specific identification of each standard, code provision or requirement violated;

7. A specific description of the actions required to correct, remedy or avoid the violation or to comply with the standards, code provision or requirements, including but not limited to, replacement, repair, supplementation, re-vegetation or restoration;

8. A reasonable time for compliance;

9. A statement that the violation may result in the imposition of penalties, and if the violation is not already subject to criminal prosecution, that any subsequent violations may result in criminal prosecution as provided in Section 15.25.011 (or 15.25.013 for subdivision violations);

10. A statement that failure to comply with the Notice of Violation may result in further enforcement actions, including issuance of additional Notices of Violation, civil fines and criminal penalties; and

11. A statement that the Notice of Violation represents a determination that a violation has been committed by the person named in the Notice of Violation, and that the determination shall be final unless appealed as provided in Section 15.25.008, and that the appeal must be timely filed under the procedures set forth in 15.25.008(E) (within 15 calendar days of service of the Notice of Violation).

C. Each Day a Separate Violation. Each day a person or entity fails to comply with the code provision cited in the Notice of Violation may be considered a separate violation for which a citation may be issued.

D. Service. The Notice of Violation shall be served on the owner, tenant or other person responsible for the condition in the manner set forth in RCW 4.28.080 for service of a summons, or personally, as set forth in RCW 4.28.080(15). In lieu of service under RCW 4.28.080(15), where the person cannot with reasonable diligence be served as described, the Notice of Violation may be served as provided in RCW 4.28.080(16).

E. Posting. A copy of the Notice of Violation shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

F. Other Actions May Be Taken. Nothing in this chapter shall be deemed to limit or preclude any action or proceeding pursuant to Sections 15.25.006 (Stop Work Order), 15.25.007 (Emergency Order), 15.25.010 (Civil Penalty), 15.25.011 (Criminal Penalties), 15.25.012 (Additional Relief), or 15.25.013 (Subdivision Violations).

G. Additional Notice to Others. The Director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure, or post at a conspicuous place on the property, a notice which informs each recipient or resident about the Notice of Violation, Stop Work Order or Emergency Order and the applicable requirements and procedures.

H. Recording. A copy of the Notice of Violation may be filed with the County Auditor when the responsible party fails to correct the violation and no appeal is filed, or the Director requests that the City Attorney take appropriate enforcement action. The Director may choose not to file a copy of the Notice or Order if the Notice or Order is directed only to a responsible person other than the owner of the property.

I. Amendment. A Notice or Order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

15.25.005 Time to comply. When calculating a reasonable time for compliance in the Notice of Violation, the Director shall consider the following criteria:

- A. The type and degree of violation cited in the Notice;
- B. The stated intent, if any, of a responsible party to take steps to comply;
- C. The procedural requirements for obtaining a permit to carry out corrective action;
- D. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
- E. Any other circumstances beyond the control of the responsible party.

15.25.006 Stop Work Order.

A. Whenever a continuing violation of Titles 15 or 14 will materially impair the Director's ability to secure compliance, or when the continuing violation threatens the health or safety of the public, the Director has the authority to issue a Stop Work Order prohibiting any work or other activity at the site. The Stop Work Order shall be in writing and served upon persons engaged in doing such work or causing such work to be done. The Stop Work Order shall be immediately posted on the property. Failure to comply with a Stop Work Order shall constitute a violation of this chapter.

B. The Stop Work Order shall include the information in Section 15.25.004(B)(1) through (8). In addition, the Stop Work Order shall include a statement that the person to whom the Stop Work Order is directed or the property owner may file an appeal and request an expedited hearing with the Hearing Examiner within seven (7) calendar days after service of the

Stop Work Order. If no appeal is filed and compliance is not achieved within the compliance date, the Director may ask the City Attorney to seek additional relief under Section 15.25.012 and/or the Director may file a Notice of Violation for the violation pursuant to 15.25.004, seeking compliance and describing penalties.

C. Expedited appeal. The Hearing Examiner shall hold the expedited appeal hearing on a Stop Work Order according to the applicable procedures in Section 15.26.009. If the Hearing Examiner finds that a violation has occurred which has not been corrected by the deadline established for compliance, the Director may ask the City Attorney to seek additional relief under Section 15.25.012 and/or the Director may issue a Notice of Violation for the violation pursuant to 15.25.004, describing penalties.

15.25.007 Emergency order.

A. Whenever any use or activity in violation of Title 15 or Title 14 threatens the health and safety of the occupants of the premises or any member of the public, the Director has the authority to issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall be immediately posted on the property and served on the person(s) responsible. Failure to comply with an Emergency Order shall constitute a violation of this Chapter.

B. The Emergency Order shall include all of the information in Section 15.25.004(B)(1) through (8). In addition, the Emergency Order shall include a statement that the person to whom the Emergency Order is directed may file an appeal and request an expedited hearing with the Hearing Examiner within seven (7) calendar days after service or posting of the Emergency Order. If no appeal is filed and compliance is not achieved, the Director may ask the City Attorney to seek additional relief under Section 15.25.012 and/or the Director may issue a Notice of Violation pursuant to 15.25.004, seeking compliance and penalties.

C. Expedited appeal. The Hearing Examiner shall hold the expedited appeal hearing on an Emergency Order according to the applicable procedures in 15.26.009. If the Hearing Examiner finds that the violation described in the Emergency Order occurred or exist, any condition described in the Emergency Order which is not corrected within the time specified is hereby declared to be a public nuisance and the Director may ask that the City Attorney take action to obtain a warrant of abatement for the property in Superior Court. The owner or person responsible (or both) shall be responsible for the costs associated with the abatement, in the manner provided by law.

15.25.008 Appeals.

A. No appeal of a Notice of Violation citing criminal penalties. There is no administrative appeal of a Notice of Violation issued pursuant to 15.25.004 for violations which would subject the violator to criminal prosecution and/or the imposition of criminal penalties. A Notice of Violation or citation for a violation that subjects the violator to criminal penalties is enforced in municipal court.

B. Expedited Appeal Hearings on Stop Work and Emergency Orders. An expedited public hearing shall be held by the Hearing Examiner, according to the procedures in this Section, on an appeal of a Stop Work or Emergency Order, regardless of whether the violations described in the Stop Work Order or Emergency Order would eventually subject the violator to civil or criminal prosecution and/or the imposition of civil or criminal penalties. The expedited appeal hearing shall be for the sole purpose of determining whether the Stop Work or Emergency Order was correctly issued and/or whether a violation occurred. If a violation occurred, the Director may issue a Notice of Violation.

C. Appeal Hearings on Notices of Violations Citing Civil Penalties. Unless an appeal of a Notice of Violation is filed with the Director in accordance with this Section, or an appeal involving an expedited hearing is filed, the Notice of Violation shall become the Final Order of the Director. The Final Order, including the collection of penalties, may be enforced by the City Attorney in Superior Court.

D. Standing to file appeal.

1. *Notice of Violation.* Only parties of record have standing to file an appeal of a Notice of Violation. Parties of record are defined to mean:

- a. The property owner or the person responsible for the condition of the property;
- b. Any person who can demonstrate that he/she is aggrieved by the decision; and
- c. The City Council.

2. *Stop Work Order and Emergency Order.* Only the property owner or the person responsible for the condition of the property may request an expedited appeal hearing for a Stop Work Order or Emergency order.

E. Time to file appeal.

1. Notice of Violation under 15.25.004. The party of record must file an appeal with the Director within fifteen (15) calendar days of service of the Notice of Violation.

2. Stop Work or Emergency Orders under 15.25.006 or 15.25.007. The property owner or the person responsible for the condition of the property may request an expedited appeal hearing within seven (7) calendar days after service of the Stop Work or Emergency Order.

3. Computing deadline for filing appeal. For purposes of computing the time for filing an appeal, the day the decision issued shall not be counted. If the last day of the deadline for filing the appeal is a Saturday, Sunday or holiday designated by RCW 1.16.050 or

city ordinance, then the appeal must be filed on the next business day. Appeals shall be delivered to the Director by mail, by personal delivery or by fax before 5:00 p.m. on the last business day of the appeal period. Appeals received by mail after 5:00 p.m. on the last day of the appeal period will not be accepted, no matter when such appeals were mailed or postmarked.

E. Content of appeal. Appeals shall be in writing, be accompanied by the required appeal fee, and contain the following information:

1. Appellant's name, address and phone number;
2. A statement describing appellant's standing to appeal;
3. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
4. The specific relief sought;
5. A statement that the appellant has read the appeal and believe the contents to be true, followed by the appellant's signature.

F. Effect. The timely filing of an appeal shall stay any enforcement action based on a Stop Work Order, Emergency Order or Notice of Violation until the Hearing Examiner's decision issues unless the Director finds that the violation causes an immediate threat to public health or safety.

15.25.009 Appeal Hearing.

A. The public hearing on an appeal shall include the following elements and be conducted as follows:

1. The Hearing Examiner shall set the time and place of the hearing, and arrange for notice of the public hearing to be provided, except in cases involving an expedited hearing. For expedited hearings, notice of the hearing shall be provided to the appellant and every reasonable effort shall be made to schedule the hearing within one week after receipt of the appeal.
2. A party to the hearing may participate personally or by an attorney.
4. The Hearing Examiner shall, at the appropriate stage in the proceeding, give all parties full opportunity to submit and respond to motions and file briefs and objections.
5. If the person requesting the hearing fails to attend or participate in the hearing (other than filing the timely request for an appeal hearing as provided in this chapter), the Hearing Examiner may issue a default order of dismissal.

6. To the extent necessary for full disclosure of all relevant facts and issues, the Hearing Examiner shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence.

7. The Hearing Examiner shall cause the hearing to be recorded by a method chosen by the City, which shall allow preparation of a verbatim transcript.

8. The hearing shall be open to public observation.

9. All testimony of parties and witnesses shall be made under oath or affirmation.

10. Ex parte communications shall be addressed as set forth in chapter 42.36 RCW.

11. The scope and standard of review shall be de novo. The City shall have the initial burden of proof in cases involving notices of violation, stop work orders, emergency orders or penalties, to demonstrate by a preponderance of the evidence the existence of a violation or that the legal standard for imposing the penalty has been met. The Examiner shall grant substantial weight or otherwise accord deference whenever directed by ordinance or statute.

12. After the conclusion of the public hearing, the Hearing Examiner may allow the parties a designated time for the submission of memos, briefs or proposed findings, as long as the Hearing Examiner can still issue his/her final decision according to any applicable deadline established by this chapter.

13. At or after the appeal hearing on a Notice of Violation, the Hearing Examiner may:

- (a) Sustain the notice of violation;
- (b) Withdraw the notice of violation;
- (c) Continue the review to a date certain for receipt of additional information;
- (d) Modify the notice of violation, which may include an extension of the compliance date.

D. Except with regard to expedited hearings, the Hearing Examiner shall issue written findings of fact and conclusions of law within 10 calendar days of the date of the completion of the hearing and shall cause the same to be mailed by regular first class mail to the person(s) named on the notice of violation, mailed to the complainant, if possible. A copy of the final decision may be recorded against the property in the County Auditor's office. The decision

on expedited hearings shall issue within five (5) business days after the completion of the hearing.

E. The decision of the Hearing Examiner on appeal shall be final, and no further administrative appeal may be filed. In order to appeal the decision of the Hearing Examiner, a person with standing must file an appeal of the decision to superior court as provided under Chapter 36.70C RCW within the deadline set forth in RCW 36.70C.040.

15.25.010 Civil Penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this chapter relating to the Zoning Code (Title 15), shall be subject to a cumulative penalty in the amount of ____ hundred dollars (\$____.00) per day for each violation from the date set for compliance until compliance is achieved. Each day of noncompliance shall constitute a separate offense.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Director shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Director, take appropriate action to collect the penalty.

C. The violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

15.25.011 Criminal penalties.

A. Any person violating or failing to comply with any of the provisions of this chapter or the Zoning Code (Title 15) who has had a judgment entered against him or her pursuant to 15.25.010 or 15.25.011(B) for the same violation within the past five years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding five thousand dollars (\$5,000) or be imprisoned for a term not exceeding one year or be both fined and imprisoned. Each day of noncompliance shall constitute a separate offense.

B. The above criminal penalty may also be imposed:

1. For any other violation of this chapter or the Zoning Code, Title 15, for which corrective action is not possible; and

2. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this chapter or the Zoning Code, Title 15.

15.25.012 Additional relief.

The Director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the Zoning Code, Title 15 or Title 14, the Subdivision Code, when civil or criminal penalties are inadequate to effect compliance.

15.25.013 Penalties for Subdivision Violations.

A. Any person, firm, corporation or association or any agency or any person, firm, corporation or association who violates any provision of Subdivisions, Title 14, relating to the sale, offer for sale, lease or transfer of any lot, tract, or parcel of land, shall be guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract or parcel of land in violation of any provision of Subdivisions, Title 14, shall be deemed a separate and distinct offense and subject to a separate citation.

B. Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of Subdivisions, Title 14, or any condition of plat approval prescribed for the plat by the city, the City Attorney may commence an action to restrain and enjoin such use and compel compliance with the provisions of Subdivisions, Title 14, or with such terms and conditions. The costs of such action shall be taxed against the violator.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Effective Date. This Ordinance shall become effective five days after publication as provided by law.

ADOPTED by the City Council of the City of _____, signed by the Mayor and attested by the City Clerk in authentication of such passage on this ____ day of _____, 201__.

____ Mayor

ATTEST/AUTHENTICATED:

City Clerk

APPROVED AS TO FORM:

City Attorney

Chapter 1.15 CODE ENFORCEMENT

Sections:

- [1.15.010](#) Purpose.
- [1.15.020](#) Definitions.
- [1.15.030](#) Conflicting code provisions.
- [1.15.040](#) Joint and several responsibility and liability.
- [1.15.050](#) Computation of time.
- [1.15.060](#) Interference with code enforcement unlawful.
- [1.15.070](#) Service of documents.
- [1.15.080](#) Violations.
- [1.15.090](#) Infractions.
- [1.15.100](#) Voluntary correction.
- [1.15.110](#) Stop work order.
- [1.15.120](#) Notice of civil violation.
- [1.15.130](#) Response to notice of civil violation.
- [1.15.140](#) Scheduling of hearing to contest or mitigate – Correction prior to hearing.
- [1.15.150](#) Contested hearing – Procedure.
- [1.15.160](#) Mitigation hearing – Procedure.
- [1.15.170](#) Decision of hearing examiner.
- [1.15.180](#) Failure to appear – Default order.
- [1.15.190](#) Judicial review.
- [1.15.200](#) Recovery of penalties and costs.
- [1.15.210](#) Abatement.
- [1.15.220](#) Right of entry.

1.15.010 Purpose.

The purpose of this chapter is to establish an efficient system of enforcing city regulations that will enable violations to be promptly resolved whenever possible, while providing both appropriate penalties and a full opportunity for alleged violators to have a hearing to contest the violations. It is the express and specific purpose and intent of this chapter to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter. It is also the express and

specific purpose and intent of this chapter that no provision or term used in this chapter is intended to impose any duty whatsoever upon the city or any of its officers or employees. Nothing contained in this chapter is intended or shall be construed to create or form the basis of any liability on the part of the city, its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the city, its officers, employees or agents.

1.15.020 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or they are more specifically defined in a subchapter or section. Terms not defined shall be given their usual meaning.

“Abate” means to act to stop an activity and/or to repair, replace, remove, or otherwise remedy a condition, when such activity or condition constitutes a violation of this code or a city regulation, by such means and in such a manner and to such an extent as the applicable department director, enforcement officer, or other authorized official determines is necessary in the interest of the general health, safety, and welfare of the community. For the purposes of this chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.

“Act” means doing or performing something.

“City” means the city of Edgewood, Washington.

“Civil penalty” or “monetary penalty,” as used in any code, ordinance or regulation of the city, shall be deemed to have the same meanings as used in this chapter.

“Code” means the Edgewood Municipal Code.

“Code enforcement officer” or “enforcement officer” means the city’s code enforcement officer(s); the building official; building inspectors; construction inspectors; the fire marshal or his or her designee; fire inspectors; the chief of the Edgewood police department or his or her designee; the director of the community development department or his or her designee; the director of the public works department or his or her designee; or any other person or persons assigned or directed by the Mayor or his or her designee to enforce the regulations subject to the enforcement and penalty provisions of this chapter.

“Correction notice” means a written statement issued by a code enforcement officer, notifying a person that property or work under his or her control is in violation of one or more regulations and informing such

person that a notice of civil violation may be issued and/or an infraction or criminal charges filed if the violations are not abated.

“Costs” means, but is not limited to, contract expenses and city employee labor expenses incurred in abating a nuisance; a rental fee for city equipment used in abatement; costs of storage, disposal, or destruction; legal expenses and attorneys’ fees associated with civil judicial enforcement of abatement orders or in seeking abatement orders; and any other costs incurred by the city, excluding fees and expenses associated with appeals authorized by this code or by state law.

“Day” or “days” means one or more calendar days, unless expressly stated otherwise in a given section or subsection. In addition, any portion of a 24-hour day shall constitute a full calendar day.

“Hearing examiner” means the Edgewood hearing examiner and the office thereof, as established pursuant to Chapter [2.40](#) EMC.

“Knowledge” means being aware of a fact or circumstance or having information which would lead a reasonable person in the same situation to believe a fact or circumstance exists. A person acts knowingly or with knowledge when that person either is aware of one or more facts, circumstances, or results, which are described by an ordinance defining an offense, or has information which would lead a reasonable person in the same situation to believe that facts, circumstances, or results exist which are described by an ordinance defining an offense.

“Mortgagee” means a financial institution, including a bank, credit union or other commercial lender, which holds mortgaged property as security for repayment of a loan.

“Notice of violation” or “notice of civil violation” means a written statement, issued by a code enforcement officer, which contains the information required under EMC and which notifies a person that he or she is responsible for one or more civil violations of the Edgewood Municipal Code.

“Omission” means a failure to act.

“Owner” means any owner, part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of a building or land.

“Person” means any individual, firm, business, association, partnership, corporation, or other legal entity, public or private, however organized. Because “person” shall include both human beings and organizational entities, any of the following pronouns may be used to describe a person: he, she, or it.

“Person responsible for the violation” or “violator” means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; a mortgagee that has filed an action in foreclosure on the property that is subject to the regulation, based on breach or default of the mortgage agreement, until title to the property is transferred to a third party; a mortgagee of property that is subject to the regulation and has not been occupied by the owner, the owner’s tenant, or a person having the owner’s permission to occupy the premises for a period of at least 90 days; or any person who created, caused, participated in, or has allowed a violation to occur.

“Regulation” means and includes any of the following, as now enacted or hereafter amended:

- (a) All Edgewood Municipal Code provisions;
- (b) All standards, regulations, and procedures adopted by the city pursuant to a city ordinance;
- (c) The terms and conditions of any permit or approval issued by the city, or any concomitant agreement entered into with the city, pursuant to code provisions; and
- (d) A written order of the hearing examiner that has been served as provided in this chapter.

“Repeat violation” means, as evidenced by the prior issuance of a correction notice or a notice of violation, a subsequent violation that has occurred on the same property or that has been committed by a person responsible for the prior violation elsewhere within the city of Edgewood. To constitute a repeat violation, the violation need not be the same violation as the prior violation. The violation of a written order of the hearing examiner that has been served as provided in this chapter shall constitute a repeat violation.

“Right-of-way” means land owned, dedicated or conveyed to the public or a unit of government, used primarily for the movement of vehicles or pedestrians and providing for access to adjacent parcels, with the secondary purpose of providing space for utility lines and appurtenances and other devices and facilities benefiting the public. “Right-of-way” includes, but is not limited to, any street, easement, sidewalk, or portion thereof under the jurisdiction of the city.

“Violation” or “civil violation” or “civil infraction” means an act or omission contrary to a regulation as defined in this section. A violation continues to exist until abated to the satisfaction of the city, with each day or portion thereof in which the violation continues constituting a separate violation.

1.15.030 Conflicting code provisions.

In the event a conflict exists between the enforcement provisions of this chapter and the enforcement provisions of any international or uniform code, statute, or regulation that is adopted in the Edgewood Municipal Code and subject to the enforcement provisions of this chapter, the enforcement provisions of this chapter will prevail, unless the enforcement provisions of this chapter are preempted or specifically modified by said code, statute, or regulation. In the event of a conflict between this chapter and any other provision of this code or city ordinance providing for a civil penalty, the more specific provision shall control.

1.15.040 Joint and several responsibility and liability.

Responsibility for violations of the codes enforced under this chapter is joint and several, both as to duty to correct and to payment of monetary penalties and costs, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for a violation.

1.15.050 Computation of time.

In computing any period of time prescribed or allowed by this code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

1.15.060 Interference with code enforcement unlawful.

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve a notice of violation, stop work order, or emergency order, or intentionally obstructs, impedes, or interferes with lawful attempts to correct a violation shall be guilty of a gross misdemeanor.

1.15.070 Service of documents.

(1) Methods of Service. For purposes of this chapter, service of documents related to code enforcement, such as correction notices, notices of civil violation, stop work orders, etc. (hereinafter “document”), shall be accomplished by one of the following methods; provided, that civil infractions shall be served as provided in Chapter [7.80](#) RCW and criminal misdemeanors and gross misdemeanors shall be served as provided by applicable law:

(a) “Personal service” is accomplished by handing the document to the person subject to the document or leaving it at his or her last known dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or leaving it at his or her office or place of employment with a person in charge thereof. Personal service may also be accomplished by the hearing examiner or his or her assistant handing any order, ruling, decision, or other document to a person prior to, during, or after a hearing.

(b) “Service by mail” is accomplished by sending the document by regular first class mail to the last known address of the person subject to the document. The last known address shall be an address provided to the city by the person to whom the document is directed. If an address has not been provided to the city, the last known address shall be any of the following as they appear at the time the document is mailed: the address of the property where the violation is occurring, as reflected on the most recent equalized tax assessment roll of the county assessor or the taxpayer address appearing for the property on the official property tax information website for Pierce County; the address appearing in any database used for the payment of utilities for the property at which the violations are occurring; or the address of the person to whom the documents are being sent that appears in the Washington State Department of Licensing database.

(c) “Service by posting” is accomplished by affixing a copy of the document in a conspicuous place on the subject property or structure, or as near to the affected property or structure as feasible, with at least one copy of such document placed at an entryway to the property or structure if an entryway exists.

(d) “Service by publication” is accomplished by publishing the document as set forth in RCW [4.28.100](#) and [4.28.110](#), as currently enacted or hereafter amended.

(2) Service – When Complete. If service is accomplished by personal service, service shall be deemed complete immediately. If service is accomplished by mail, service shall be deemed complete upon the third day following which the document is placed in the mail, unless the third day falls on a Saturday,

Sunday, or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day. If service is accomplished by posting, service shall be deemed complete upon the fourteenth day following the day upon which the document is posted. If service is accomplished by publication, service shall be deemed complete upon the final publication of the document as set forth in RCW [4.28.110](#).

(3) Proof of Service – Due Diligence. Proof of service shall be made by written affidavit or declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service and the manner by which service was made. If service was made solely by posting or publication, the proof of service shall include a statement as to what steps were used in attempting to serve personally and by mail the person at whom service of the document is directed. If service was made by posting, a photograph of the posting may be taken and retained by the city as documentation.

(4) Additional Proof of Service Not Necessary. No additional proof of service beyond the requirements in this chapter shall be required by the hearing examiner or other entity. Any failure of the person to whom a document is directed to observe a document served by posting or publication shall not invalidate service made in compliance with this section, nor shall it invalidate the document.

1.15.080 Violations.

(1) The violation of any regulation shall be unlawful. Violations may be enforced by issuing notices of violation and, if necessary, by filing civil infractions. In addition, any violation of this code shall constitute a misdemeanor, unless otherwise designated as a gross misdemeanor, and the city shall have discretionary authority to enforce a violation as either a civil infraction or civil violation pursuant to this chapter or as a criminal misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than 90 days or by a fine in an amount fixed by the court of not more than \$1,000 or by both such imprisonment and fine. A gross misdemeanor is punishable by a fine of not more than \$5,000 or by imprisonment for not more than 12 months or by both such fine and imprisonment.

(2) Each day during any portion of which a violation of this code occurs or continues is a separate offense.

(3) Civil enforcement of the provisions of this code or the terms and conditions of any permit or approval issued pursuant to this code shall be governed by this chapter unless other more specific provisions apply.

(4) Code enforcement officers are authorized to enforce the code using the provisions and procedures of this chapter; provided, however, that enforcement under this chapter is in addition to, and does not preclude or limit, any other forms of enforcement available to the city including, but not limited to, criminal proceedings or sanctions, nuisance and injunction actions, rights to file and enforce liens, or other civil or equitable actions to abate, discontinue, correct, or discourage unlawful acts in violation of this code.

(5) Nothing in this chapter or in other chapters of the Edgewood Municipal Code shall prevent code enforcement officers or any other officers of the city of Edgewood or other governmental unit from taking any other action, summary or otherwise, necessary to eliminate or minimize an imminent danger to the health or safety of any person or property. The city's costs of abating any such nuisance or endangerment summarily or otherwise abated shall be recoverable under this chapter as well as in the same manner and to the same extent as costs of abating nuisances or endangerment under any other provisions of this code, in addition to or as an alternative to any other rights or remedies the city may possess.

1.15.090 Infractions.

(1) When the city determines that it is appropriate to enforce violations of this code as civil infractions rather than civil or criminal violations as otherwise provided in this chapter, or if the city is unable to obtain payment of civil fines pursuant to a notice of civil violation, enforcement officers shall file such infractions in Pierce County district court and shall follow the provisions of Chapter [7.80](#) RCW. First offenses shall be class 2 civil infractions, for which the maximum penalty and the default amount shall be \$125.00, and second or subsequent violations shall be class 1 civil infractions, for which the maximum penalty and the default amount shall be \$250.00, not including fees, costs, and assessments.

(2) Chapter [7.80](#) RCW is hereby adopted by reference to the extent that it is not inconsistent with explicit provisions of the Edgewood Municipal Code, including this section.

1.15.100 Voluntary correction.

(1) General. When the city determines that a violation has occurred, a code enforcement officer may attempt to secure the voluntary correction of a violation by attempting to contact the person responsible for the violation, explaining the violation, and requesting correction. This may be done orally and/or in writing. The city may also enter into a written voluntary correction agreement with any person causing, allowing, or participating in the violation, including the property owner. A voluntary correction agreement may be instead of, in lieu of, or in conjunction with a notice of violation. Voluntary correction efforts need

not be made where the nature of the violation creates a risk of imminent harm to public health or safety or where it is a repeat violation.

(2) Contents of Written Voluntary Correction Agreement. A voluntary correction agreement is a contract between the city and the person responsible for the violation, in which the responsible person agrees to abate the violation within a specified time and according to specified conditions. A voluntary correction agreement will generally contain the following information:

- (a) The name and address of a person responsible for the violation;
- (b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
- (c) A description of the violation and a reference to the code provisions that have been violated;
- (d) A statement indicating what corrective actions are required and a correction deadline stating the date by which the corrective actions must be completed to the satisfaction of the code enforcement officer in order for the violator to avoid the issuance of a notice of violation;
- (e) An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;
- (f) An agreement by the person responsible for the violation and/or the owner(s) of property on which the violation has occurred or is occurring that, if the terms of the voluntary correction agreement are not met, the city may enter the property, abate the violation, and recover its costs and expenses as provided in this chapter;
- (g) An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the hearing examiner under this chapter regarding the violation, any penalty, and/or required corrective action; and
- (h) A statement indicating that, pursuant to EMC [1.15.120](#), a notice of civil violation may be issued with each violation constituting a separate offense subject to civil penalties, or, alternatively, civil infraction or criminal charges may be filed.

(3) Extension of Voluntary Correction Period or Modification of Required Actions. An extension of the deadline for voluntary correction, or a modification of any required corrective action, may be granted by

the code enforcement officer if the person responsible for the violation has, in the opinion of the code enforcement officer, shown due diligence or made substantial progress in correcting the violation but unforeseen circumstances have rendered correction unattainable within the original deadline.

(4) Revocation of Deadline for Compliance. The original deadline for compliance, or any extension for compliance previously granted by the code enforcement officer, may be revoked and immediate compliance required where, in the opinion of the code enforcement officer, circumstances make immediate correction necessary to avoid an imminent risk of injury to persons or property.

(5) Failure to Comply with Voluntary Correction Agreement.

(a) Abatement by the City. In addition to any other remedy provided for in this chapter, the city may abate the violation in accordance with EMC [1.15.210](#), if the terms of the voluntary correction agreement are not met.

(b) Penalties and Costs. If the terms of the voluntary correction agreement are not met, the person responsible for the violation may be issued a notice of civil violation and assessed a monetary penalty in accordance with EMC [1.15.120](#), plus all costs and expenses of abatement. Alternatively, the city may file a civil infraction or criminal charges.

1.15.110 Stop work order.

(1) Issuance. Whenever a code enforcement officer determines that any work, use, activity, or conduct is a violation under the Edgewood Municipal Code and creates an imminent threat of injury to the health, safety, or welfare of any member of the public or will damage or injure, or exacerbate damage or injury already caused to, any property, the code enforcement officer may issue a stop work order directing any person causing, allowing, or participating in the offending conduct to cease such use, activity or conduct immediately.

(2) Service of Order. Service of the stop work order shall generally be accomplished as set forth in EMC [1.15.070](#)(1) (c).

(3) The stop work order shall state the reasons for the order and may be appended to, or incorporate by reference, a notice of violation. The stop work order shall take effect immediately upon service and may be appealed under the procedures set forth in this chapter. During any such appeal, the stop work order shall remain in effect.

(4) Effect of a Stop Work Order. When a stop work order has been issued, posted and/or served pursuant to this section, it is unlawful for any person to whom the order is directed or any person with actual or constructive knowledge of the order to conduct the activity or perform the work covered by the order, even if the order has been appealed, until the code enforcement officer has removed the copy of the order, if posted, and issued written authorization for the activity or work to be resumed. In addition, a monetary penalty shall accrue for each day or portion thereof that a violation of a stop work order occurs, in the same amounts as under EMC [1.15.120](#). In addition to such criminal or monetary penalties, the city may enforce a stop work order pursuant to any other provision of this chapter and enforce it in superior court.

(5) Removal of a Stop Work Order. When a stop work order has been posted in conformity with the requirements of this chapter, removal of such order without the authorization of the city, or the hearing examiner if the matter has been heard by the hearing examiner, is unlawful and a violation.

1.15.120 Notice of civil violation.

(1) Issuance of Notice of Violation. When the city determines that a violation has occurred or is occurring, the code enforcement officer may issue a notice of civil violation to any person responsible for the violation.

(2) Monetary Penalty. A monetary penalty shall accrue for each day or portion thereof that each violation continues beyond the date set in a notice of civil violation or any hearing examiner's decision. Unless a different penalty amount for a given violation is expressly authorized or required by a more specific city code provision, the maximum penalty and the default amount shall be \$125.00 for the first violation and \$250.00 for a second or subsequent violation of the same nature or a continuing violation past a deadline set by a notice of violation, not including fees, costs, and assessments. The city may waive the monetary penalty, if corrective action is completed by the date specified in the notice of civil violation or a voluntary correction agreement. The city shall have the discretion to impose penalties in an amount lower than those shown above.

(3) Contents of Notice. The notice of civil violation shall include the following:

- (a) The name and address of a person responsible for the violation;
- (b) The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

(c) A description of the violation and a reference to the provision violated and a description of what must be done to correct the violation;

(d) A statement indicating that the violator must respond to the notice of civil violation within 14 days of the date of issuance, or within such other time period as specified in the notice of civil violation, by doing one of the following:

(i) Paying any fine and correcting the violation;

(ii) Entering into and complying with a voluntary correction agreement with the city;

(iii) Requesting a mitigation hearing and correcting the violation; or

(iv) Requesting a hearing to contest the violation;

(e) A statement indicating that failure to respond to the notice of violation, or failure to attend any hearing, shall result in the violation being deemed committed without requiring further action by the city, and that the monetary penalty specified in the notice shall be due to the city by the violator and further accrue as provided; and

(f) A statement indicating that payment of a monetary penalty does not relieve the person or entity named in the notice of civil violation of the duty to abate the violation, and that failure to abate may result in the issuance of additional notices of violation and/or criminal charges, with additional civil and/or criminal penalties, including the payment of costs for any abatement action taken by the city.

(4) Extension. Upon written request received prior to the correction date or time, the code enforcement officer may extend the date set for correction for good cause or in order to accommodate a violation correction agreement. The code enforcement officer may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as a good cause.

(5) Transfer of Ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a notice of civil violation to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of civil violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of civil violation issued by the code enforcement officer and shall furnish to the code enforcement officer a signed and notarized statement from the grantee,

transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of civil violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation. This provision shall not apply to the following types of transfers of real property: a gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent, spouse, or domestic partner of a transferor; a transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership; a transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and a tax deferred exchange to an intermediary or facilitator.

1.15.130 Response to notice of civil violation.

(1) Generally. A person who has been served with a notice of civil violation must respond to the notice within 14 days of the date the notice is served or within such other time period as specified in the notice of civil violation. A person may respond to the notice of civil violation by:

(a) Paying the amount of the monetary penalty as set forth in the notice of violation. Partial payment or payment using a check that is rejected for insufficient funds shall not be deemed payment under this subsection. Payment of the fine shall not relieve the person or entity responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

(b) Entering into a voluntary correction agreement with the city.

(c) Contesting the notice of civil violation by requesting a contested hearing in writing and sending the request to the city as described in subsection (2) of this section.

(d) Seeking to mitigate the monetary penalty by requesting a mitigation hearing to explain the circumstances surrounding the violation. The request to mitigate must be made in writing and sent to the city with a \$100.00 filing fee as described in subsection (2) of this section. Requesting to mitigate the penalty shall not relieve the person responsible for the violation from the duty to correct or abate the violation. Additional notices of violation may be issued if the violation goes uncorrected.

(2) Method of Response. The person or entity to whom a notice of civil violation has been issued may respond by mailing or hand-delivering the response to the city clerk. Mailed responses must be received no later than the fourteenth day from the date of service of the notice of violation or such other day as

specified in the notice of violation. Hand-delivered responses must be brought to the city clerk no later than 4:30 p.m. on the fourteenth day after service or such other day as specified in the notice of violation; provided, that where the fourteenth or other specified day falls on a weekend or holiday, the deadline shall be extended to the next regular business day. Telephone, facsimile, or email responses shall not satisfy the requirements of this section. The response deadline may be stayed for a time certain by the code enforcement officer, if the responsible person or entity is engaged in active discussions with the code enforcement officer and the code enforcement officer determines there is a reasonable probability that such discussions may result in compliance.

(3) If the person to whom the notice of civil violation is issued fails to respond as required in the notice of civil violation and this chapter, the violation(s) shall be deemed committed without requiring further action by the city or the city's hearing examiner, and the person to whom the notice of civil violation was issued shall owe the monetary penalty indicated.

1.15.140 Scheduling of hearing to contest or mitigate – Correction prior to hearing.

(1) Notice and Scheduling of Hearing. Upon the timely filing of a request for a hearing to contest a violation or to mitigate the penalty, the matter shall be scheduled to be heard at the next available appearance by the hearing examiner that is a minimum of 14 but no later than 60 calendar days after the date the request was received by the city. Notice of the hearing date and time shall be served by regular first class mail to the address of the party who requested the hearing. The date and time for any hearing may be rescheduled by the hearing examiner for good cause upon the motion of a party or the hearing examiner.

(2) Correction of Violation Prior to Hearing. The hearing may be cancelled and the party requesting the hearing need not appear if, at least two business days prior to the scheduled hearing, the code enforcement officer determines that the violation has been satisfactorily corrected or abated and the monetary penalty paid in full. Where the scheduled hearing involves a repeat violation as defined in this chapter, the hearing shall not be cancelled unless the new violation has been corrected or abated to the satisfaction of the code enforcement officer and the monetary penalty and costs for the new violation(s) and any monetary penalty and costs owing for the previous violation(s) have been paid in full.

1.15.150 Contested hearing – Procedure.

The hearing examiner shall conduct a contested violation hearing when such hearing is properly and timely requested. The city and the person or entity to whom the notice of civil violation was issued may

participate in the hearing, and each party or its legal representative may call witnesses and present evidence and rebuttal, subject to the following:

(1) Where not in conflict with a more specific provision of this chapter, hearings shall be conducted in accordance with Chapter [2.40](#) EMC.

(2) The city shall have the burden of proving by a preponderance of the evidence that a violation has occurred.

(3) The parties are responsible for securing the appearance of any witnesses they may wish to call. Neither the city nor the hearing examiner shall have the burden of securing any witnesses on behalf of the person who is contesting the violation(s) or seeking to mitigate the penalties.

(4) Formal rules of evidence shall not apply to any such hearing, and the hearing examiner shall allow hearsay testimony by the parties and not require proof of chain of custody for evidence that is presented; provided, that the hearing examiner shall determine the weight to be assigned to any evidence presented.

(5) Any notes, reports, summaries, photographs, or other materials prepared by the parties shall be admitted into evidence if requested; provided, that the parties are free to argue the weight that should be assigned by the hearing examiner to any evidence submitted.

1.15.160 Mitigation hearing – Procedure.

The hearing examiner shall conduct a hearing to mitigate the penalty on a violation when such hearing is properly and timely requested; provided, that in the event a person has requested a hearing to contest a violation and prior to the start of the hearing indicates to the hearing examiner a desire to mitigate rather than contest, the examiner shall permit the person to seek mitigation of the monetary penalty. The mitigation hearing shall be conducted according to the following general procedures:

(1) The person responsible for the violation shall be given the opportunity to explain or provide evidence regarding the nature of the violation, why the violation exists, why the violation has not been abated or corrected, and any other information the hearing examiner determines is relevant.

(2) The city shall be given the opportunity, at its discretion, to provide evidence of the nature of the violation, evidence to rebut assertions made by any party, and any other information or evidence the hearing examiner deems to be relevant.

1.15.170 Decision of hearing examiner.

(1) Contents of Order. Upon the conclusion of a hearing, the hearing examiner may issue an oral decision pending issuance of the written decision. If necessary, the hearing examiner may delay issuing the written order for up to 10 business days following the hearing. In either event, the oral decision and written order shall contain findings and conclusions based on the record, which to the extent applicable includes the following information:

- (a) In mitigation hearings a statement indicating that each alleged violation has been found committed, and in contested hearings, for each alleged violation of the city code, a statement indicating whether the violation has been found committed or not committed;
- (b) For violations found committed, the monetary penalties and costs being assessed pursuant to this chapter; provided, that where the person has requested to mitigate the monetary penalty, the hearing examiner may reduce the monetary penalty for each violation, but in no case shall the penalty be reduced to an amount less than \$100.00 for each violation found committed;
- (c) For violations found committed, any required corrective actions and compliance dates;
- (d) For violations found committed, a finding that abatement of the violations by the city is authorized, at the expense of the person responsible for the violations; and
- (e) A statement notifying the person responsible for the violation that he or she is subject to additional civil and/or criminal penalties if any violation that was the subject of the hearing has not been corrected or abated as required by the hearing examiner's order.

(2) Notice of Decision. The hearing examiner may cause a copy of the decision and order to be served upon the parties at the close of the hearing. When the hearing examiner requires more time to prepare a written order, or when a party fails to appear after requesting a contested hearing, the hearing examiner shall cause a copy of the decision and order to be served on the parties by mailing a copy to each party's last known address no later than 10 business days following the hearing.

1.15.180 Failure to appear – Default order.

If the person who requests a hearing to contest a violation or mitigate the penalty then fails to appear at the scheduled hearing after having been given notice in the manner provided for by this chapter, the hearing examiner shall immediately issue a default order, which finds committed all the violations set forth

in the notice of civil violation and which assesses a monetary penalty in the full amount indicated in the notice of violation. In addition, at the request of the city, the hearing examiner shall also impose upon the non-appearing party any costs to the city related to preparation for the hearing. The hearing examiner shall cause a copy of the decision to be served upon the non-appearing party by mailing a copy to the last known address of the non-appearing party within 10 business days of the hearing. Upon the motion of a party, the hearing examiner may rescind a default judgment only upon a showing of good cause to do so and only if such motion has been brought within 30 calendar days of the date of the hearing at which the default judgment was ordered.

1.15.190 Judicial review.

Judicial review of a decision by the hearing examiner relating to any ordinance regulating the improvement, development, modification, maintenance, or use of real property may be sought by any person aggrieved or adversely affected by the decision, pursuant to the provisions of the Land Use Petition Act, Chapter [36.70C](#) RCW, if applicable, or other applicable authority, if any, if the petition or complaint seeking review is filed and served on all parties within 21 days of the date of the decision. For purposes of this section, “aggrieved or adversely affected” shall have the meaning set forth in RCW [36.70C.060](#) (2). Judicial review of all other decisions may only occur subject to the procedures of Chapter [7.16](#) RCW.

1.15.200 Recovery of penalties and costs.

(1) Payment of Monetary Penalties and Costs. Any monetary penalties or costs assessed pursuant to this chapter constitute a personal obligation of the person responsible for the violation. In addition, the monetary penalties or costs assessed pursuant to this chapter may be assessed against the property that is the subject of the enforcement action. The city attorney is authorized to collect the monetary penalty or costs by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem monetary penalties so long as the violation continues. The city may incorporate any outstanding penalty or cost into an assessment lien, if the city incurs costs of abating the violation. Any monetary penalty assessed must be paid in full to the city within 30 days from the date of service of an uncontested notice of civil violation or any order of the hearing examiner that assesses monetary penalties.

(2) Recovery of Costs. The city shall bill its costs, including incidental expenses, of pursuing code compliance and/or of abating a violation to the person responsible for the violation and/or against the subject property. Such costs shall become due and payable 30 days after the date of the bill. The term

“incidental expenses” shall include, but not be limited to, personnel costs, both direct and indirect, including attorneys’ fees incurred by the city; costs incurred in documenting the violation; the actual expenses and costs to the city in the preparation of notices, specifications and contracts, and in inspecting the work; hauling, storage and disposal expenses; the cost of any required printing and mailing; and interest. The city manager or designee, or the hearing examiner, may in his or her discretion waive in whole or part the assessment of any costs upon a showing that abatement has occurred or is no longer necessary or that the costs would cause a significant financial hardship for the responsible party. Any challenge to the amount of the abatement costs must be made within 14 days of issuance of the bill and shall be heard by the Mayor in an informal hearing. The Mayor shall make a written determination as to whether or not the city’s costs were accurate and necessary for accomplishing the abatement.

(3) Use of Collection Agency. Pursuant to Chapter [19.16](#) RCW, as currently enacted or hereafter amended, the city may, at its discretion, use a collection agency for the purposes of collecting penalties and costs assessed pursuant to this chapter. The collection agency may add fees or interest charges to the original amount assigned to collections as allowed by law. No debt may be assigned to a collection agency until at least 30 calendar days have elapsed from the time that the city attempts to notify the person responsible for the debt of the existence of the debt and that the debt may be assigned to a collection agency for collection if the debt is not paid. Notice of potential assignment to collections shall be made by regular first class mail to the last known address of the person responsible for the violation; provided, that inability to ascertain a current mailing address shall not prohibit the debt from being assigned to collections.

(4) Assessment Lien. If penalties or costs assessed against a property are not paid within 30 days, the city clerk shall certify to the county treasurer the confirmed amount for assessment on the tax rolls. The county treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates as provided in RCW [84.56.020](#), as now or hereafter amended, for delinquent taxes, and when collected to be deposited to the credit of the general fund of the city. The lien shall be of equal rank with the state, county and municipal taxes. The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within 15 calendar days after the assessment is placed upon the assessment roll. The city attorney may also file a lien for such costs against the real property.

(5) Continuing Duty to Abate Violations. Payment of a monetary penalty or costs pursuant to this chapter does not relieve the person responsible for the violation of the duty to correct or abate the violation. Additional notices of violation may be issued and/or criminal charges filed for continuing failure to correct or abate a violation.

1.15.210 Abatement.

(1) Abatement by City. The city may perform the abatement required upon noncompliance with the terms of an un-appealed notice of violation, a voluntary correction agreement, or a final order of the hearing examiner. The city may utilize city employees or a private contractor under city direction to accomplish the abatement. The city, its employees and agents using lawful means are expressly authorized to enter upon the property of the violator for such purposes. Nothing in this chapter shall prohibit the city from pursuing abatement of a violation pursuant to any other laws of the state of Washington or the city.

(2) Summary Abatement. Whenever any violation causes a condition the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the city or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the city be entitled to recover any costs incurred for summary abatement, prior to the time that notice thereof is served on the person responsible for the violation as set forth in EMC [1.15.070](#).

(3) Obstruction with Work Prohibited. No person shall obstruct, impede or interfere with the city, its employees or agents, or any person who owns or holds any interest or estate in any property in the performance of any necessary act preliminary or incidental to carrying out the requirements of a notice of violation, voluntary correction agreement, or order of the hearing examiner issued pursuant to this chapter.

1.15.220 Right of entry.

(1) When it is necessary to enforce the provisions of the Edgewood Municipal Code, or when a code enforcement officer has reasonable cause to believe that there exists in a building or upon a premises a condition that is contrary to or in violation of this code, the code enforcement officer may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this code; provided, that if such building or premises be occupied that credentials be presented to the occupant and

entry requested. If such building or premises be unoccupied, the code enforcement officer shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the code enforcement officer shall have recourse to the remedies provided by law to secure entry.

(2) Posted Property. Where private property is posted with a "No Trespassing" sign and has a gate or chain on private property, or where private property is enclosed by a secured gate or chain (other than by a simple latching or closure device) a city employee shall not make entry beyond areas open to the public without the express permission of the property owner/resident or a court order. No employee shall be required to enter a posted or gated piece of property if the employee feels threatened, intimidated, or otherwise in fear of his or her personal safety.

(3) Employee Identification. City employees shall carry identification cards while on duty. Any employee, when legitimately requested by the public, shall show the requesting party his/her identification card.

(4) Intimidation of Employees. Threats, intimidation, or other violations of public peace directed against an employee engaged in lawful action upon private property are unlawful and may subject that person and the owner of the property, as applicable, to legal action.