



**CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA**

Tues., March 5, 2019 – 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** - Ordinance – Latecomers Agreement
- B.  **Review/Discussion** - Ordinance – Zoning, Critical Areas and Subdivision Code Enforcement

3. OTHER COUNCIL ITEMS

4. ADJOURN

Study Sessions are meetings for Council to review upcoming and pertinent business of the City, no action is taken by the City Council. Study Sessions are open to the public, but public input is reserved for the regular Council meetings

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 Council Agenda Summary Sheet

SUBJECT: Latecomer Agreements		Agenda Item #:		2A
		For Agenda of:		March 5, 2019
		Prepared by:		Carol Morris Jeremy Metzler
ATTACHMENTS (list): ☒ Ordinance No. 19-0XXX				
Approval of Materials:				
Mayor, Daryl Eiding	☒	Expenditure Required:	\$0	
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	\$0	
City Attorney, Carol Morris	☒	Appropriation Required:	\$0	
City Clerk, Rachel Pitzel	☒	Timeline: Adoption - March 12, 2019		
Community Development Director, Darren Groth	☒			
Public Works, Jeremy Metzler	☒			
Police Chief, Micah Lundborg	☒			
Fiscal Note/Consideration: The current code allows a property owner to apply for a latecomer agreement under state law. This ordinance establishes the necessary procedures for the City to comply with state law, but there is no change in the cost of implementation to the City.				
SUMMARY STATEMENT: State law (chapter 35.91 RCW) allows a developer/property owner to contract with a city for the partial reimbursement of the developer/property owner's cost of constructing water and sewer facilities through the execution of a latecomer agreement. The Edgewood Municipal Code referenced this state law, but didn't include a procedure which described how the law would be implemented. Recently, this state law was changed to provide more detail, but it still does not include detail on actual implementation. The attached ordinance establishes this procedure, consistent with chapter 35.91 RCW. The basic procedure is summarized below: 1. A developer/property owner asks the City to execute a Latecomer Agreement so that the developer/property owner may be partially reimbursed for the cost of constructing water and/or sewer facilities. The reimbursement will be provided by other property owners who subsequently connect to and/or use these water and/or sewer facilities in the 20 year period after the latecomer agreement is executed. 2. If the latecomer agreement application meets the requirements of EMC 11.36.030, then the developer/property owner must agree to sign the latecomer agreement that requires compliance with EMC 11.36.040. 3. The developer/property owner must then provide the City with information relating to the actual cost of the construction of the water and/or sewer facilities. In addition, the developer/property owner provides the Public Works Director with a recommendation on the latecomer fee to be paid by other property owners who subsequently use or connect to the facilities. This is determined by establishing a latecomer reimbursement area, and calculating the pro rata share. EMC 11.36.050. 4. The Public Works Director will then review the materials and make a recommendation to the Council on the latecomer reimbursement area and the pro rata share proposed by the developer/property owner.				

5. Notice of a public hearing on the latecomer agreement will be sent to the owners of property within the proposed latecomer reimbursement area, so that they can provide testimony at the public hearing.
6. The City Council holds a public hearing, considers all the recommendations and evidence and determines whether the requirements of chapter 11.36 EMC and chapter 35.91 RCW have been satisfied. If the Council decides that these requirements have been met, it will authorize the Mayor to sign the latecomer agreement and order that staff record the documents against the properties in the latecomer reimbursement area.
7. During the 20 year period after the agreement is recorded against the properties in the latecomer reimbursement area, the owners of property in that area are required to pay the latecomer fee to the City if and when they use or connect to the facilities. The City will then turn this fee over to the developer/property owner (subtracting the City's administrative costs).
8. If anyone hooks up to these facilities without paying the latecomer fee, the City can enforce EMC 11.36.110.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A

RECOMMENDED ACTION:

Advance to the Regular City Council meeting.

ALTERNATIVES TO RECOMMENDED ACTION:

- 1) Forward to next Regular Council Meeting for action
- 2) Forward to Study Session for further review

ORDINANCE NO. 19-0xxx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON, RELATING TO LATECOMER AGREEMENTS, PROVIDING A NEW PROCEDURE FOR A DEVELOPER/OWNER OR THE CITY OF EDGEWOOD TO FUND THE CONSTRUCTION OF CERTAIN WATER AND/OR SEWER FACILITIES, AND THEN BE REIMBURSED BY PROPERTY OWNERS WHO SUBSEQUENTLY CONNECT TO OR USE THE WATER AND/OR SEWER FACILITIES; UPDATING REFERENCES TO THE NEW PROCEDURE IN THE CODE; REPEALING THE EXISTING LATECOMER AGREEMENT PROCESS IN EDGEWOOD MUNICIPAL CODE SECTION 11.35.100, AMENDING SECTION 11.20.040 AND 11.40.110; AND ADOPTING A NEW CHAPTER 11.36 IN THE EDGEWOOD MUNICIPAL CODE, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the State of Washington has adopted a procedure in chapter 35.91 RCW, allowing an owner/developer to contract with a city for the partial reimbursement of the cost of constructing water and/or sewer facilities through a procedure commonly known as a “latecomer agreement,” which requires property owners who subsequently connect to the water and/or sewer facilities to pay the city a fair pro rata fee of the cost of such construction, which the city then transmits to the owner/developer; and

WHEREAS, the Washington State Legislature recently amended chapter 35.91 RCW in pertinent part, and also included a procedure that allows a city to construct such water and/or sewer facilities, and to become the sole beneficiary of the latecomer fee; and

WHEREAS, Edgewood’s latecomer agreement procedure in EMC Section 11.35.100 was adopted prior to the Legislature’s most recent amendments and is outdated; and

WHEREAS, this Ordinance is categorically exempt under SEPA (WAC 197-11-800(19)), as relating only to procedure; and

WHEREAS, the Council considered this Ordinance during its March 5, 2019 study session; and

WHEREAS, the Council considered this Ordinance during its regular City Council meeting of March 12, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council hereby repeals Section 11.35.100 of the Edgewood Municipal Code.

Section 2. A new chapter 11.36 is hereby added to the Edgewood Municipal Code, which shall read as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.

Section 3. Edgewood Municipal Code Section 11.20.040 is hereby revised to read as follows:

11.20.040 Sewer utility creation policies. Policies guiding the creation of the sewer utility are hereby established as follows:

* * *

B. System extensions shall be paid for by the benefited parties. May be done through developer extension or formation of a local improvement district.

1. Developer extensions.

a. Shall be paid for by the developer.

b. Are subject to approval by the city council and require execution of a system extension agreement with the City.

c. Reimbursement from other properties that later connect to and benefit from such extensions and/or improvements may be made at the sole discretion of the City, pursuant to chapter 35.91 RCW and chapter 11.36 EMC.

2. Local Improvement Districts.

a. The initial 50 percent of estimated LID preformation costs shall be advanced by the proponents of the project. The remaining 50 percent of LID preformation costs shall be advanced by the City. The source of funds shall be the sewer utility fund via an interfund loan from the general fund.

b. The proponents shall provide a petition requesting that the City Council initiate the LID process by resolution.

c. To assess support of the project, the petition must be signed by the owners of the property aggregating a majority of the area within the proposed district.

d. The formation of a local improvement district shall be pursuant to Chapters 35.43 through 35.54 RCW and subject to approval by the City Council.

* * *

Section 4. Edgewood Municipal Code Section 11.40.110 is hereby revised to read as follows:

11.40.110 Connection Charges. A connection charge shall be assessed for each new sewer connection made to the City's sewer system. Connection charges and fees shall be set by ordinance of the City Council following a hearing on the proposed connection charges. A connection charge shall be comprised of the following elements:

* * *

H. ~~Reimbursement Charges~~ Latecomer Agreements. No owner shall be granted a permit to connect directly or indirectly to sewer facilities, for which exists a contract providing for reimbursement to other owners of real estate who constructed and paid for such sewer facilities, without first paying a fair pro rata share of the cost of same, as provided for in chapter 11.36 EMC ~~11.35.100~~.

Section 5. **Severability.** Should any section, paragraph, sentence, clause or phrase of this Code, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason or should any portion of this Code be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Code or its application to other persons or circumstances.

Section 6. **Effective Date.** A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED THIS 12th day of March, 2019.

Daryl Eiding, Mayor

ATTEST:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney

Exhibit A

Chapter 11.36 WATER and/or SEWER LATECOMER AGREEMENTS

Sections:

- 11.36.010 Purpose.**
 - 11.36.020 Definitions.**
 - 11.36.030 Mandatory Requirements for Latecomer Agreements.**
 - 11.36.040 Conditions Imposed on and Included in Latecomer Agreements.**
 - 11.36.050 Procedure for Processing Request.**
 - 11.36.060 Notice – Hearing – Consideration by City Council**
 - 11.36.070 Approval and Acceptance of Facilities.**
 - 11.36.080 Recording Required.**
 - 11.36.090 Duration of Agreement, Extensions.**
 - 11.36.100 Reimbursement to Owner.**
 - 11.36.110 Prohibition on Unauthorized Connections, Enforcement.**
 - 11.36.120 City or County Construction.**
 - 11.36.130 No City Liability.**
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11.36.010 Purpose.

The purpose of this chapter is to implement Chapter 35.91 RCW and to describe the process for a developer/property owner, or the City of Edgewood, to fund the construction of certain water and/or sewer facilities, and then to be reimbursed by property owners who subsequently connect to or use the water and/or sewer facilities.

11.36.020 Definitions.

The definitions set forth in this section shall apply throughout this chapter:

A. “Cost of construction” means the cost incurred by the owner/developer for design, acquisition for right-of-way and/or easements, permit and plan review fees, construction (including materials and installation), as required in order to install/construct the water and/or sewer facilities in accordance with all applicable laws, ordinances and standards, including the City’s public works standards. The cost of construction shall be documented in writing by the owner/developer on final invoices or other documents showing the amounts actually paid by the owner/developer.

B. “Developer” or “owner” means a property owner or authorized agent of the property owner who may construct a water and/or sewer facility, and desires a latecomer agreement under the terms and conditions set forth in this chapter. The City of Edgewood may be a “developer” or “owner” under this chapter.

C. “Latecomer agreement” means a written contract between the City and an owner/developer providing for the partial reimbursement of the cost of constructing the water and/or sewer facilities (the “fair pro rata share” as provided in RCW 35.91.050). The latecomer

agreement shall be a contract approved as to form by the city attorney. Where the City constructs water or sewer facilities under a latecomer agreement, the agreement may provide for the total reimbursement of the cost of construction of the water and/or sewer facilities.

D. “Latecomer fee” means a charge collected by the City, whether separately stated or as part of a connection fee for providing access to the City’s water and/or sewer system, against a real property owner who connects to, connects to or uses a water or sewer facility subject to a latecomer agreement created under this Chapter and Chapter 35.91 RCW.

E. “Latecomer” means a property owner not a party to a duly executed and recorded latecomer agreement, who did not contribute to the original cost of the facilities, and who: (a) owns property in the area benefitted by such agreement; (b) seeks to connect to the water and/or sewer facilities constructed under the latecomer agreement within the time frame established in the agreement; and (3) may only do so by making payment to the City of his/her pro rata share of the cost of construction.

F. “Water and/or sewer facilities” means storm, sanitary, or combination sewers, pumping stations and disposal plants, water mains, hydrants, reservoirs or appurtenances.

11.36.030 Mandatory Requirements for Latecomer Agreements.

A. Requirements. At the owner/developer’s request, the City must contract with the owner of real estate for the construction or improvement of water or sewer facilities that the owner elects to install solely at the owner’s expense, as long as such contract is consistent with this Chapter and all of the following conditions are satisfied:

1. The latecomer agreement must be for the construction of water and/or sewer facilities in locations where the City’s ordinances require such facilities to be improved or constructed as a prerequisite to further property development; and
2. The water and/or sewer facilities must be consistent with all applicable comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve; and
3. The sewer and/or water facilities to be constructed or improved must be included in the City of Edgewood’s comprehensive plan. Unless the City provides written notice to the owner of its intent to request comprehensive plan approval for the facilities, the owner must request comprehensive plan approval for the water and/or sewer facility; and
4. The water and/or sewer facilities to be constructed may not be located outside the City’s corporate limits¹. If Pierce County is a party to the latecomer agreement, the water and/or sewer facilities may not be located outside Pierce County; and

¹ The language from RCW 35.91.020 regarding facilities being located “within ten miles of the municipality’s corporate limits” is not included herein, as the City of Edgewood does not currently have an Urban Growth Area and all areas abutting the City’s corporate limits are served by other agencies. (Under RCW 36.70A.110(4), sewer cannot be extended into rural areas except in very limited circumstances.)

5. The latecomer agreement shall meet all of the conditions required by the City under this chapter, and shall be filed and recorded against the affected properties with the county auditor and as provided in EMC 11.36.080; and

6. The owner/developer's request shall be submitted within one hundred twenty (120) days of the completion of the water and or sewer facility and prior to approval and acceptance of the water or sewer facility by the City for ownership and maintenance; and

7. The total cost of the construction of the water and/or sewer facility must be submitted to City by the owner/developer no more than one hundred twenty (120) days of the completion of the water and/or sewer facility.

B. Rejection of Requests Not in Compliance. The City shall reject requests made by developer/owners that are not in compliance with this Section 11.36.030. Such requests are not subject to project permit processing, under RCW 36.70B.140.

11.36.040 Conditions imposed on and included in latecomer agreements.

Every latecomer agreement shall include the following conditions:

A. The water and/or sewer facility shall be constructed by the developer/owner according to plans and specifications approved by the City;

B. The water and/or sewer facility shall be inspected and approved for ownership and maintenance by the City;

C. The developer/owner shall transfer the water and/or sewer facility to the City with a bill of sale, without cost to the City, at the time the City approves the facility for ownership and maintenance;

D. The developer/owner shall fully comply with all of the owner's obligations under the latecomer agreement and the applicable City rules and regulations;

E. The developer/owner shall provide sufficient security to the City to ensure completion of the water and/or sewer facility and compliance with other performance measures under the contract;

F. The developer/owner shall pay all of the City's costs associated with the water or sewer facility including, but not limited to, engineering, legal and administrative costs;

G. The City shall verify and approve all contracts and cost of construction related to the water and/or sewer facility;

H. The agreement shall provide that the owner and/or the owner's assigns shall be entitled to a pro rata share of the fees received by the City from property owners who did not contribute to the original cost of the facilities but who subsequently connect to the facilities, as reimbursement for the costs of the water and/or sewer facilities constructed and installed in accordance with the agreement;

I. The agreement shall include a provision requiring that, every two years from the date the agreement was executed, the developer/owner entitled to reimbursement shall provide the

municipality with information regarding the current contact name, address and telephone number of the person, company, or partnership that originally entered into the latecomer agreement. If the owner fails to comply with the notification requirements of this subsection within sixty (60) days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the agreement. The funds collected under this subsection must be deposited in the capital fund of the municipality; and

J. The agreement shall provide that all latecomer fees received by the City for water and/or sewer facilities constructed by a developer/owner shall be paid to the developer/owner or his/her assigns within sixty (60) days of the receipt of such fees.

11.36.050 Procedure for Processing Request.

A. Owner's Responsibilities.

1. Deadline for submission of request. Within one hundred twenty (120) days of the completion of the water and or sewer facilities, the owners of the real estate must provide the City with the total cost of construction of the water or sewer facility actually paid by the owner. The City will not accept written estimates in determining the cost of construction. In the event of a disagreement between the City and the developer/owner concerning the cost of the construction of the water and/or sewer facilities, the City Public Works Director's decision shall be final. This information on the cost of construction shall be used by the City as the basis for determining reimbursements by future users who benefit from the water and/or sewer facility, but who did not contribute to the original cost of the water or sewer facilities.

2. Recommendation by Owner of Pro Rata Share. The amount of the pro rata share to be paid under the latecomer agreement shall be recommended by the owner, so that each property within the latecomer assessment reimbursement area (including the property owned by the developer/owner) will be assessed a share of the costs of the improvements proportional to the benefits which accrue to the property. The methodology utilized in calculating the amount of the pro rata share shall be the responsibility of the owner. For example, the method of assessment permitted for local improvement district assessment, including, but not limited to, the front-foot method, the zone and termini method, and square footage method, may be proposed.

B. City Public Works Director's Responsibilities.

1. Recommendation to City Council. The City Public Works Director shall determine whether a request for a latecomer agreement satisfies the requirements in EMC 11.36.030 and

this Chapter. The Director's recommendation to the City Council shall include, but not be limited to, his/her analysis on the following factors:

- a. Whether the water and/or sewer facilities are consistent with the applicable comprehensive plan(s) and development regulations; and
- b. Whether the preliminary determination of the boundaries of the latecomer assessment reimbursement area, based upon the identification of parcels who may subsequently connect to or use the facilities, including through laterals and branches connecting thereto; and
- c. Whether the developer/owner's receipts and invoices relating to the cost of construction of the water and sewer facilities are reasonable and accurate and have been verified by the Public Works Director in the "Engineer's Estimate," which shall include separate itemizations of costs; and
- d. Whether the pro rata share calculated by the developer/owner ensures that each property subject to the latecomer fee will pay a fair pro rata share of the costs of the improvements as determined by any appropriate method, including, but not limited to determining the total capacity of the water or sewer improvements expressed in equivalent residential units (ERUs) and dividing the total cost by the number of ERUs created by construction or added by improvement of the water and/or sewer facility.

11.36.060 Notice – Hearing – Consideration by City Council.

- A. Upon receipt of the Public Works Director's recommendation as provided in EMC 11.36.050(B), the City shall prepare a latecomer agreement (based on EMC Section 11.36.030) for inclusion in the council agenda.
- B. At least ten (10) days prior to the City Council public hearing, individual notice shall be sent to the owners of property located within the preliminary boundaries of the latecomer assessment reimbursement area, as these property owners are identified in the records of the county assessor. This notice shall state that the City Council will be holding a public hearing for the purpose of allowing public testimony and submission of evidence in order to consider the execution of the latecomer agreement with the developer/owner; establish the final boundaries of the latecomer reimbursement area; and establish the proposed pro rata share. The notice shall reference this chapter 11.36 EMC, include the date and time scheduled for the public hearing before the City Council, and shall be forwarded by certified mail to the property owners of record within the proposed latecomer reimbursement area.
- C. The City Council shall consider the request for a latecomer agreement in a public hearing, together with the Public Works Director's recommendation, all application materials; all submitted evidence and public testimony. The City Council shall make the final determination whether the request satisfies the criteria set forth in this chapter and as specified in Chapter 35.91 RCW, the Council shall approve the latecomer agreement. The Council's decision on the method for determining the pro rata share used to calculate the latecomer fee and the latecomer

fee shall be final. The fair pro rata share of the cost of the water and/or sewer facilities attributable to the owner's property shall be deducted from the cost of construction.

D. If approved, the final determination of the boundaries of the latecomer reimbursement area and pro rata share shall be included in an ordinance, which shall authorize the Mayor to sign the latecomer agreement. The ordinance and all attachments shall be recorded against the affected properties as provided in EMC 11.36.080.

11.36.070 Approval and Acceptance of Facilities. Upon the completion of water or sewer facilities pursuant to a latecomer agreement and all applicable codes and development regulations, the City council shall be authorized to approve their construction and accept the water and/or sewer facilities for ownership and maintenance. The City may then charge for their use such water or sewer rates that the city is authorized by law to establish. All further maintenance and operation costs shall be borne by the City.

11.36.080 Recording Required. After the final latecomer reimbursement pro rata fee has been established as provided in EMC 11.36.060, the agreement shall be recorded with the Pierce County Auditor. The provisions of the latecomer agreement may not be effective as to any owner of real estate not a party thereto unless the latecomer agreement has been recorded against the affected property in the office of the county auditor of the county in which the real estate of the owner is located, prior to the time the owner taps into or connects to the water or sewer facilities. It shall be the sole responsibility of the developer/owner (or the City, if the City is the beneficiary of the latecomer fee) to record the latecomer agreement. Within thirty (30) days after receipt of evidence that the latecomer agreement has been recorded, the Public Works Director shall ensure that a notice of additional water and/or sewer connection charges has been recorded with the Pierce County Auditor's office, as required by RCW 65.08.170.

11.36.090 Duration of Agreement, Extensions. The latecomer agreement shall provide for the pro rata reimbursement to the owner or the owner's assigns for twenty (20) years. The agreement may provide for an extension of the 20-year reimbursement period for a time not to exceed the effective date of any moratorium, phasing ordinance, concurrency designation or other governmental action that prevents making applications for, or obtaining approval of, any new development within the benefit area for a period of six months or more. If the latecomer agreement is extended pursuant to this section, the amended latecomer agreement must specify the duration of the extension and must be filed and recorded as provided in EMC 11.36.080 in order to be effective. Property owners who are subject to the reimbursement obligations in the latecomer agreement shall be notified by the City of any extension filed under this section.

11.36.100 Reimbursement to Owner. Where a developer/owner has constructed the water and/or sewer facilities, all latecomer fees received by the City shall be paid out by the City under the terms of the latecomer agreement to the developer/owner within 60 days after the receipt thereof. Where the City has constructed the water and/or sewer facilities under this Chapter, the City shall retain the latecomer fees as provided in the approving Ordinance.

11.36.110 Prohibition on Unauthorized Connections, Enforcement.

A. Unauthorized connections. A person, firm or corporation may not be granted a permit or be authorized to tap into, connect or use any such water or sewer facilities or extensions subject to a latecomer agreement during the period of time prescribed in the latecomer agreement without first paying to the City, in addition to any and all other costs and charges made or assessed for such tap or use, or for the water lines or sewers constructed in connection therewith, the amount required by the provisions of the applicable latecomer agreement.

B. Enforcement. Whenever any tap or connection is made into any water or sewer facilities subject to a latecomer agreement without such payment having first been made, the City may authorize the removal, or cause to be removed, such unauthorized tap or connection and all connecting tile or pipe located in the facility right-of-way, and dispose of unauthorized material so removed, without any liability whatsoever.

11.36.120 City or county participation in latecomer agreements.

A. City as Beneficiary of Latecomer Fee. The City may create an assessment reimbursement area on its own initiative, without the participation of a private property owner, finance all of the costs associated with the construction of the water and/or sewer facilities and become the sole beneficiary of the facilities. Unless otherwise provided by ordinance or contract, the City or the county participating in the financing of water or sewer facilities improved or constructed under this Section EMC 11.36.120:

(a) Shall have the same rights to reimbursement as owners of real estate who make contributions as authorized under this Chapter; and

(b) Are entitled to a pro rata share of the reimbursement based on the respective contributions of the owner and the city/county.

B. Authorized Locations for Construction Water and/or Sewer Facilities. The water and/or sewer facilities must be consistent with the City's comprehensive plan(s) and development regulations. The boundaries of the assessment reimbursement must be formulated by the City based upon a determination of which parcels in the proposed area would require construction or improvement of water or sewer facilities upon development or redevelopment, or would be allowed connection to or usage of constructed or improved water or sewer facilities. The water and/or sewer facilities to be constructed or improved may not be located outside the City's corporate limits². If Pierce County is a party to the latecomer agreement, the water and/or sewer facilities may not be located outside Pierce County.

C. Public Works Director Recommendation. The Public Works Director shall prepare a recommendation to the City Council as provided in EMC 11.36.050(B).

² See, footnote to EMC Section 18.36.030(4).

D. Notice of the Public Hearing. Notice of the public hearing shall be provided consistent with EMC 11.36.060.

E. Public Hearing. The City shall hold a public hearing on the proposed assessment reimbursement area and assessment (pro rata share), as provided in EMC 11.36.060. The City Council's final determination of the assessment reimbursement area and assessment shall be included in an ordinance, which shall be final. The City shall record the ordinance as required by EMC 11.36.080.

F. Limit on Reimbursement. Except as otherwise provided in this chapter, the city or county seeking reimbursement from an owner of real estate subsequently connecting to the water and/or sewer facilities constructed under this Section 11.36.120 is limited to the dollar amount authorized in the resolution contemplated in subsection (3) of this section. This does not prevent the city or county from collecting amounts for services or infrastructure that are additional expenditures not subject to the ordinance, contract or agreement, nor does it prevent the collection of fees that are reasonable and proportionate to the total expenses incurred by the City or county in complying with this section.

H. Installation. To the extent that it may require in the performance of the latecomer agreement, the City or county may install the water or sewer facilities in and along the city or county streets in the area to be served as hereinabove provided, subject to reasonable requirements as the manner of occupancy of the streets as the city or county may by resolution provide.

11.36.130 No City Liability.

Nothing in this chapter is intended to create a private right of action for damages against the City or any municipality for failing to comply with the requirements of this chapter. The City, its officials, employees or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure of the City to comply with the requirements of this chapter does not relieve the City of any future requirements to comply with this chapter.



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: Zoning, Critical Areas and Subdivision Code Enforcement		Agenda Item #: 2B	
		For Agenda of: March 5, 2019	
		Prepared by: Carol Morris	
ATTACHMENTS (list): ☒ Ordinance No. 19-XXX			
Approval of Materials:			
Mayor, Daryl Eidinger	☒	Expenditure Required:	\$0
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	\$0
City Attorney, Carol Morris	☒	Appropriation Required:	\$0
City Clerk, Rachel Pitzel	☒	Timeline:	
Community Development Director, Darren Groth	☒	Study Session: March 5, 2019	
Public Works, Jeremy Metzler	☒	Public Hearing and Adoption: March 26, 2019	
Police Chief, Micah Lundborg	☒		
Fiscal Note/Consideration:			
The existing Zoning/Subdivision Code Enforcement Chapter 18.85 EMC provides a Hearing Examiner appeal of an issued Notice of Violation, Stop Work or Emergency Order. An appeal fee is charged, but this is usually a small portion of the Hearing Examiner's bill, because the Examiner will charge his/her hourly rate for the appeal hearing. This means that the City usually absorbs the majority of the Hearing Examiner's bill. The new ordinance allows a violator to request a hearing in Pierce County District Court. The City already has an interlocal agreement which covers the costs related to the Pierce County District Court. If the City initiates a code enforcement action but the court finds in favor of the property owner, the City may be required to pay the property owner's attorneys' fees.			
SUMMARY STATEMENT:			
This new procedure has been largely copied from chapter 7.80 RCW, and the District Court should be very familiar with it. The current procedure for Zoning and Subdivision Code Enforcement would be changed in the following ways as a result of the adoption of the attached ordinance: 1. It is clear that it applies to violations of the Critical Areas Ordinance, Title 14; 2. Once the code enforcement officer issues a Notice of Civil Infraction, it is filed with the District Court. The violator has 15 days to respond by either paying the fine (if the violation has been corrected); requesting a hearing to contest the Notice; or requesting a hearing to explain mitigating circumstances. If the violator does not respond, the violator may be charged with a misdemeanor and be punished by a fine or imprisonment in jail or both. 3. The City may refuse to issue any permits or approvals on the same property until the violation has been corrected. There is a procedure for restoration orders which applies for critical areas and/or other environmental violations. 4. If a hearing is requested to contest the civil infraction, the court determines whether the infraction has been committed and may impose a \$250 fine (previous procedure was \$500 per day, per violation). The court may modify the penalty and allow a person who cannot pay the fine to perform community restitution. There is a limited ability to appeal the decision to superior court (previous procedure had no limit on the ability to appeal). 5. If a hearing is requested in order to explain mitigating circumstances is limited in the evidence that can be presented and no appeal is allowed. Again, the court may modify the penalty.			

6. If a person fails to respond to the Notice of Civil Infraction, fails to pay the penalty, or fails to perform the community restitution, may be found in contempt of court and guilty of a misdemeanor and subject to criminal penalties.

7. Attorneys' fees may be awarded by the court to either party – meaning, if the court finds that the City did not meet its burden to prove that the violation occurred, the court could require the City to pay the prevailing party's attorneys' fees.

8. We need to keep records on the Notice of Infraction issued under chapter 7.80 RCW. The procedure appears to be set up for a "ticket" system, such as for parking tickets. Given the fact that the City is more interested in compliance and the City may waive the penalty, not all of the procedures from chapter 7.80 RCW (keeping Notices in triplicate, auditing them monthly) are applicable and have not been added to the code.

The advantages to this new system are: (1) cost (see discussion under Fiscal Note); (2) reduction in paperwork (the court handles the paperwork after issuance of the Notice of Civil Infraction; and (3) speed (we do not need to schedule the appeal to fit into the Hearing Examiner's schedule).

We haven't used this procedure before, so if it doesn't work, we can go back to the previous way, using the Hearing Examiner appeals system.

This ordinance is not defined as a "development regulation," and therefore does not require a hearing before the Planning Commission. However, it is recommended that the City Council needs to hold a public hearing on it prior to adoption.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A

RECOMMENDED ACTION:

Consider the amendment to chapter 18.85 EMC during the Study Session on March 5, 2019.

ALTERNATIVES TO RECOMMENDED ACTION:

- 1) Forward to next Regular Council Meeting for action
- 2) Forward to Study Session for further review

ORDINANCE NO. 19-xxxx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON, RELATING TO LAND USE, ZONING, CRITICAL AREAS AND SUBDIVISION CODE ENFORCEMENT, CHANGING THE PROCEDURES FOR ENFORCEMENT FROM A SYSTEM ALLOWING HEARING EXAMINER APPEALS OF NOTICES OF VIOLATION/STOP WORK/EMERGENCY ORDERS, TO A CIVIL INFRACTION SYSTEM, WHICH IS ENFORCED THROUGH PIERCE COUNTY DISTRICT COURT, AS ALLOWED BY CHAPTER 7.80 RCW, PROVIDING FOR ISSUANCE OF NOTICES OF CIVIL INFRACTION, ALLOWING A VIOLATOR TO REQUEST A HEARING TO EITHER CONTEST THE NOTICE OR TO EXPLAIN MITIGATING CIRCUMSTANCES; ESTABLISHING PENALTIES, ALLOWING FOR RECOVERY OF ATTORNEY'S FEES, DESCRIBING THE CONSEQUENCES FOR FAILURE TO RESPOND TO A NOTICE OF CIVIL INFRACTION, ALLOWING THE CITY ATTORNEY TO OBTAIN ADDITIONAL RELIEF FROM THE SUPERIOR COURT, SUCH AS INJUNCTIONS AND ABATEMENT, AMENDING SECTIONS 18.85.010, 18.85.020, 18.85.040, 18.85.060, 18.85.070, 18.85.080, 18.85.085, 18.85.090, 18.85.100, 18.85.110, 18.85.120, ADDING NEW SECTIONS 18.85.075, 18.85.076, 18.85.085, 18.85.095, 18.85.096, 18.85.104, 18.85.105 AND 18.85.140 TO THE EDGEWOOD MUNICIPAL CODE, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council adopted chapter 18.85 of the Edgewood Municipal Code in order to enforce the City's Zoning and Subdivision Codes; and

WHEREAS, chapter 18.85 EMC allows the City to issue Notices of Violation, Stop Work Orders and Emergency Orders, which subject the violator to civil penalties, all of which may be appealed to the City Hearing Examiner; and

WHEREAS, chapter 7.80 RCW describes a procedure that can be adapted by the City for code enforcement, which allows a violator to request a hearing to the Pierce County Municipal Court to either contest whether an infraction occurred or to explain the mitigating conditions; and

WHEREAS, the procedure in chapter 7.80 RCW has a number of advantages over the Hearing Examiner appeal system (for example, it is less costly than allowing an appeal through the Hearing Examiner, who must be paid hourly); and

WHEREAS, this Ordinance is exempt from SEPA under WAC 197-11-800(19) as procedural only, as authorized by state law; and

WHEREAS, this enforcement chapter is not a “development regulation” as defined in RCW 36.70A.020(7), and therefore, does not require a hearing before the City Planning Commission under EMC 18.60.080; and

WHEREAS, the City Council considered this ordinance during its study session held on _____, 2019; and

WHEREAS, the City Council held a public hearing and adopted this ordinance during its regular City Council meeting of _____, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption. Chapter 18.85 of the Edgewood Municipal Code is hereby amended to read as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or 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 3. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of final passage.

PASSED BY THE CITY COUNCIL ON THE XTH DAY OF XXXXXXXXXXXXXXXX, 2019

Mayor Daryl Eiding

ATTEST/AUTHENTICATED:

Rachel Pitzel, CMC

City Clerk

APPROVED AS TO FORM:

City Attorney, Carol Morris

Date of Publication:

Effective Date:

Chapter 18.85

ENFORCEMENT

Sections:

- 18.85.010 Intent.
- 18.85.020 Violations.
- 18.85.030 Responsibility to enforce.
- 18.85.040 Investigation and ~~notice of violation.~~ Notice of Civil Infraction.
- 18.85.050 Time to comply.
- 18.85.060 Stop work order.
- 18.85.070 Emergency order.
- 18.85.075 Prohibition on Permit Approvals.
- 18.85.076 Response to Notice of Civil Infraction.
- 18.85.080 ~~Appeals.~~ Contesting the Determination and Civil Infraction.
- 18.85.085 ~~Failure to Respond.~~
- 18.85.090 ~~Appeal hearing.~~ Hearings – Rules of Procedure – Counsel.
- 18.85.095 Hearings – Contesting Determination that Infraction Committed – Appeal.
- 18.85.096 Hearings – Explanation of Mitigating Circumstances.
- 18.85.100 ~~Civil penalty.~~ Monetary Penalties – Restitution – Restoration Orders.
- 18.85.104 Order of Court – Modification of Penalty – Community Restitution.
- 18.85.105 Costs and Attorneys' Fees.
- 18.85.110 ~~Criminal penalties.~~ Failure to Respond to Notice of Civil Infraction – Failure to Satisfy Penalty.
- 18.85.120 Additional relief.
- 18.85.130 Penalties for subdivision violations.

18.85.010 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 Development Standards Code, this title 18, the Critical Areas Code, title 14, and the Subdivision Code, EMC Title 16. 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.

18.85.020 Violations.

A. It is a violation of the Development Standards Code, this title 18, the Critical Areas Code, title 14, and the Subdivision Code, EMC Title 16, 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 Development Standards Code, this title 18, the Critical Areas Code, title 14, and the Subdivision Code, EMC Title 16, 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 EMC Title 16, Title 14 and this title 18 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.

18.85.030 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.

18.85.040 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 Development Standards Code, this title 18, the Critical Areas Code, Title 14, or the Subdivision Code, EMC Title 16. As used in this Chapter, “enforcement officer” means a person authorized to enforce the provisions of this Chapter, and shall include, but not be limited to, the director.¹

B. Notice of Civil Infraction.² ~~Notice of Violation~~. If, after investigation, the director determines that the standards or requirements of the Development Standards Code, this Title 18, the Critical Areas Code, Title 14, and the Subdivision Code, EMC Title 16, or the provisions of this chapter have been violated, the director may serve a notice of civil infraction ~~violation~~ upon the owner, tenant or other person responsible for the condition. The notice of civil infraction ~~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;

¹ RCW 7.80.040.

² RCW 7.80.070.

4. A statement that the notice (or order, in the case of a stop work or emergency order) represents a determination that a civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter; ~~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 civil infraction ~~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, revegetation or restoration;
8. A reasonable time for compliance;
9. A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction, together with a statement of the monetary penalty established for a civil infraction in Section 18.85.100; ~~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 EMC-18.85.110 (or EMC 18.85.130 for subdivision violations);~~
10. A statement of the options provided in this Chapter for responding to the Notice of Civil Infraction and the procedures necessary to exercise those options; ~~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 alleged violator must respond to the Notice of Civil Infraction as provided in this Chapter within fifteen (15) days; ~~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 EMC 18.85.080, and that the appeal must be timely filed under the procedures set forth in EMC 18.85.080(E) (within 15 calendar days of service of the notice of violation).-~~
12. A statement that failure to respond to the Notice of Civil Infraction or failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining any mitigating circumstances will result in a default judgment against the person in the amount of the penalty and that this failure may be referred to the city attorney/prosecuting attorney for criminal prosecution for failure to respond or appear;
13. A statement that failure to respond to a Notice of Civil Infraction or to appear at a requested hearing is a misdemeanor and may be punished by a fine or imprisonment in jail as provided in EMC Section 18.85.110(A); and
14. A statement that at any hearing to contest the determination, the City has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that

the person may subpoena witnesses, including the enforcement officer who issued the Notice of Civil Infraction.

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

D. Service and Filing. The civil infraction proceeding is initiated by the issuance, service and filing of a Notice of Civil Infraction.³

1. The Notice of Civil Infraction 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(16 5), 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(17-6). Otherwise, service shall be as provided by court rule or the Civil Rules for Courts of Limited Jurisdiction 4 (CRLJ 4).

2. A Notice of Civil Infraction may be issued by an enforcement officer when the civil infraction occurs in the officer's presence. A court may issue a Notice of Civil Infraction if an enforcement officer files with the court a written statement that the civil infraction was committed in the officer's presence or that the officer has reasonable cause to believe that a civil infraction was committed.

3. A Notice of Civil Infraction shall be filed with the Pierce County District Court within forty-eight (48) hours of issuance, excluding Saturdays, Sundays and holidays. A Notice of Infraction not filed within the time limits prescribed in this Section may be dismissed with prejudice.

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 EMC 18.85.060 (Stop work order), 18.85.070 (Emergency order), 18.85.100 (Civil Infraction penalty), 18.85.110 (Criminal penalties), 18.85.120 (Additional relief), or 18.85.130 (Penalties for 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 notice of civil infraction may be recorded upon issuance with the Pierce County auditor against the subject property. If a notice of civil infraction is recorded against the property, the City shall record a Certificate of Compliance against the subject property if:

1. The civil infraction proceeding has been dismissed or decided in favor of the person to whom the notice was issued; or

³ RCW 7.80.050.

2. Any monetary penalty assessed for the infraction has been paid and the violation has been remedied to the satisfaction of the City.

~~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.~~

18.85.050 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.

18.85.060 Stop work order.

A. Whenever a continuing violation of EMC Title 16, Title 14 or this title 18 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 EMC 18.85.040(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 calendar days after service of the stop work order. If no appeal is filed and compliance with the stop work order is not achieved within the compliance date, the director may ask the city attorney to seek additional relief under EMC 18.85.120 and/or the director may file a notice of violation Civil Infraction for the violation pursuant to EMC 18.85.040. , 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 EMC 18.85.090. 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 EMC 18.85.120 and/or the director may issue a notice of violation for the violation pursuant to EMC 18.85.040, describing penalties.~~

18.85.070 Emergency order.

A. Whenever any use or activity in violation of EMC Title 16, Title 14 or this title 18 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 EMC 18.85.040(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 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 EMC 18.85.120 and/or the director may issue a notice of~~ Civil Infraction violation pursuant to EMC 18.85.040, 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 EMC 18.85.090. If the hearing examiner finds that the violation described in the emergency order occurred or exists, 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.~~

18.85.075 Prohibition on Permit Approvals.

A. No permit or approval shall be granted pursuant to Title 18, Title 14 or Title 16 if the director has knowledge of any violation on the subject property, unless such activity is authorized under this chapter (i.e., a permit may be granted to remedy a violation).

B. A permit may be granted if conditioned on remediation of the violation within a reasonable time as calculated by the Director. If a permit or approval is conditioned on remedial action, a bond, cash set-aside or other, similar instrument may be required to ensure compliance.

C. Adherence to the requirements of Title 18, Title 14 or Title 16, and to any permit conditions or orders issued pursuant to such titles is required throughout the construction period and thereafter. No use or activity subject to Title 18, Title 14 or Title 16 may be carried out within a critical area, buffer or management zone where a violation occurred, until the City determines that all violations in the affected critical area, buffer or management zone have been fully remedied.

D. Restoration Orders.

1. If warranted due to the scale of the damage or the sensitivity of the affected critical area, associated buffer or dependent fish and wildlife, the City may require submission of a restoration plan and implementation schedule prior to initiation of the restoration activity. If so, any development activity on the site where the violation occurred shall cease until the City approves the restoration plan and schedule. The plan shall be prepared by a qualified profession as determined by the Director, and shall describe how the proposed actions meet the requirements of the applicable code provisions. Restoration activities shall be reviewed by the Director under the requirements for a Critical Areas Permit (as required by Title 14 EMC). Inadequate plans as determined by the Director shall be returned to the violator/property owner for revision and resubmittal.

2. Restoration plans shall comply with the following requirements unless the property owner/violator demonstrates that equal or greater critical area and buffer functions can otherwise be obtained.

a. The pre-violation structure, condition, and functions of the critical area, associated buffer and sensitive area zone, as applicable, shall be restored including, but not limited to, topography; soil types; vegetation types, sizes and densities (not including noxious weeds and invasive plants); water quality; hydrologic functions; habitat functions and other relevant conditions;

b. If information is not available regarding pre-violation conditions at the violation site, the Director shall determine the restoration goals based on similar sites.

3. The property owner/violator shall submit a surety acceptable to the City and with the requirements of Title 14 EMC, to ensure that restoration is successful.

4. The property owner/violator shall be responsible for all costs associated with the restoration plan, including the costs associated with the City's review of the plan.

18.85.076 Response to Notice.⁴

A. Any person who receives a Notice of Civil Infraction shall respond to such Notice as provided in this Section, within fifteen days of the date of the Notice.

B. If the person determined to have committed the civil infraction does not contest the determination, the person shall respond by completing the appropriate Notice of Civil Infraction and submitting it, either by mail or in person, to the court specified on the Notice. A check or money order in the amount of the penalty prescribed for the civil infraction must be submitted with the response. The clerk of the District Court may accept cash in payment for an infraction. When a response which does not contest the determination is received, an appropriate order will be entered in the court's records.

⁴ RCW 7.80.080.

18.85.080 Appeals. Contesting the Determination and Civil Infraction.⁵

~~A. No Appeal of a Notice of Violation Citing Criminal Penalties. There is no administrative appeal of a notice of violation issued pursuant to EMC 18.85.040 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.~~

A. If the person determined to have committed the civil infraction wishes to contest the determination, the person shall respond by completing the portion of the Notice of Civil Infraction requesting a hearing and submitting it, either by mail or in person, to the court specified in the Notice. The court shall notify the person in writing of the time, place and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of hearing, except by agreement.

B. If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the Notice of Civil Infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified in the Notice. The court shall notify the person in writing of the time, place and date of the hearing, and that date shall not be earlier than seven days nor more than ninety days from the date of the notice of hearing, except by agreement.

~~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~~

⁵ RCW 7.80.080.

~~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 EMC 18.85.040. The party of record must file an appeal with the director within 15 calendar days of service of the notice of violation.~~

~~2. Stop Work or Emergency Orders under EMC 18.85.060 or 18.85.070. The property owner or the person responsible for the condition of the property may request an expedited appeal hearing within seven 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, email, 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.~~

~~F. 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.~~

~~G. 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. (Ord. 17-495 § 4).~~

18.85.085 Failure to Respond.⁶ The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction and may notify the city attorney or prosecuting attorney if a person issued a Notice of Civil Infraction:

⁶ RCW 7.80.080(5).

A. Fails to respond to the Notice of Civil Infraction as provided in Subsection 18.85.076(B); or

B. Fails to appear at a hearing requested by the violator in order to contest the determination of an infraction or a hearing requested in order to explain mitigating circumstances (Subsection 18.85.110(A)).

18.85.090 ~~Appeal hearing.~~ Hearings – Rules of Procedure – Counsel.⁷

A. Procedures for the conduct of all hearings provided in this chapter (which is based on chapter 7.80 RCW) may be established by rule of the supreme court.

B. Any person subject to proceedings under this Chapter may be represented by counsel.

C. The attorney representing the City authorized to issue civil infractions may appear in any proceedings under this Chapter, but need not appear, notwithstanding any statute or court rule to the contrary.

~~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.~~
- ~~3. 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.~~
- ~~4. 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.~~
- ~~5. 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.~~
- ~~6. 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.~~
- ~~7. The hearing shall be open to public observation.~~
- ~~8. All testimony of parties and witnesses shall be made under oath or affirmation.~~

⁷ RCW 7.80.090.

~~9. Ex parte communications shall be addressed as set forth in Chapter 42.36 RCW.~~

~~10. 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.~~

~~11. 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.~~

~~12. 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.~~

~~B. 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 business days after the completion of the hearing.~~

~~C. 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. (Ord. 17-495 § 4).~~

18.85.095 Hearings – Contesting Determination that Infraction Committed – Appeal.⁸

A. A hearing held for the purpose of contesting the determination that a civil infraction has been committed shall be without a jury and shall be recorded in the manner provided for in courts of limited jurisdiction.

B. The court may consider the notice of civil infraction and any other written report made under oath submitted by the enforcement officer who issued the notice or whose written statement was the basis for the issuance of the Notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may request that the court issue subpoenas for witnesses, including the enforcement officer who issued the Notice, and has the right to present evidence and examine witnesses present in court

C. The burden of proof is upon the City to establish the commission of the civil infraction by a preponderance of the evidence.

D. After consideration of the evidence and argument, the court shall determine whether the civil infraction was committed. Where it has not been established that the civil infraction was committed, an order dismissing the notice shall be entered in the court's records. Where it has been established that the civil infraction was committed, an appropriate order shall be entered in the court's records.

E. An appeal from the court's determination or order shall be to the superior court in the manner provided by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The decision of the superior court is subject only to discretionary review pursuant to the Rules of Appellate Procedure.

18.85.096 Hearings – Explanation of Mitigating Circumstances.⁹

A. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of a civil infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

B. After the court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the court's records.

C. There is no appeal from the court's determination or order.

18.85.100 ~~Civil penalty.~~ Monetary penalties – Restitution – Restoration Orders.¹⁰

⁸ RCW 7.80.100.

⁹ RCW 7.80.110.

¹⁰ RCW 7.80.120.

A. A person found to have committed a civil infraction shall be assessed a monetary penalty in the amount of Two Hundred and Fifty Dollars (\$250.00), as provided in EMC 1.10.010(B), not including statutory assessments. PROVIDED: that the penalties for certain subdivision violations shall be as set forth in EMC Section 18.85.130.

B. Whenever a monetary penalty is imposed by the court under this Chapter, it is immediately payable. If the person is unable to pay at that time, the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the city attorney of the failure to pay.

C. The court may also order a person found to have committed a civil infraction to make restitution.

D. Where there are critical area or other sensitive area violations, the court may issue a restoration order, as described in EMC Section 18.85.075(D). The restoration order may include complete or partial restoration, rehabilitation or replacement of the critical area by the property owner.

~~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 Development Standards Code (this title) shall be subject to a cumulative penalty in the amount of \$500.00 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. (Ord. 17-495 § 4).~~

18.85.104 Order of Court – Modification of Penalty – Community Restitution.¹¹

¹¹ RCW 7.80.130.

A. An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the civil infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances, is civil in nature.

B. The court may waive, reduce or suspend the monetary penalty prescribed for a civil infraction. If the court determines that a person has insufficient funds to pay the monetary penalty, the court may order performance of a number of hours of community restitution in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.

18.85.105 Costs and Attorneys' Fees.¹² Each party to a civil infraction case is responsible for the costs incurred by that party, but the court may assess witness fees against a nonprevailing respondent. Attorney fees may be awarded to either party in a civil infraction case.

18.85.110 Criminal penalties. Failure to Respond to Notice of Infraction – Failure to Satisfy Penalty.¹³

A. Any person who, after receiving a statement of the options provided for in this Chapter for responding to the notice of civil infraction and the procedures necessary to exercise those options, fails to respond to the Notice (as provided in EMC Section 18.85.076), or pay the civil penalty in a timely manner is guilty of a misdemeanor and shall be subject to the penalties in EMC Section 1.10.010(A), regardless of the disposition of the notice of civil infraction. As provided in EMC Section 1.10.010(A), any person convicted of a misdemeanor under this Chapter shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment not to exceed one year, or by both such fine and imprisonment. A notice of civil infraction may be complied with by an appearance of counsel.

B. A person who willfully fails to pay a monetary penalty or to perform community restitution as required by a court under this chapter may be found in contempt of court as provided in chapter 7.21 RCW.

~~A. Any person violating or failing to comply with any of the provisions of this chapter or the Development Standards Code (this title) who has had a judgment entered against him or her pursuant to EMC 18.85.100 or subsection (B) of this section 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 \$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 Development Standards Code, this title, for which corrective action is not possible; and~~

¹² RCW 7.80.140.

¹³ RCW 7.80.160.

~~2. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of this chapter or the Development Standards Code, this title. (Ord. 17-495 § 4).~~

18.85.120 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 Development Standards Code, Title 18, Title 14, this chapter title, or EMC Title 16, the Subdivision Code, when civil or criminal penalties are inadequate to effect compliance. ~~(Ord. 17-495 § 4).~~

18.85.130 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, EMC Title 16, 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, EMC Title 16, 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, EMC Title 16, 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, EMC Title 16, or with such terms and conditions. The costs of such action shall be taxed against the violator. ~~(Ord. 17-495 § 4).~~

18.85.140 Record of Notices to be Kept – Audit.¹⁴

A. The Director shall be responsible for the preparation and issuance of form notices of civil infractions which shall meet the requirements of this Section.

B. Upon issuance of a notice of civil infraction to an alleged perpetrator of a civil infraction, every enforcement officer shall file the original or a printed or electronic copy of such notice of civil infraction with a court having competent jurisdiction over the civil infraction, as provided in EMC 18.85.040(D)(3). Upon the filing of the original or a printed or electronic copy of such notice of civil infraction with the District Court, the original or copy may only be disposed of as provided in this Chapter.

C. The Director shall require the return to him/her of a copy of every notice of civil infraction issued by an enforcement officer to an alleged perpetrator of a civil infraction under this Chapter.

D. The Director shall also maintain or cause to be maintained in connection with every notice of civil infraction, a record of the disposition of the charge by the court in which the original or copy of the notice was filed.

¹⁴ RCW 7.80.150