



CITY OF EDGEWOOD COUNCIL STUDY SESSION AGENDA

Tues., April 2, 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.  **Discussion** - Speed Limits on 24th St.
- B.  **Discussion** - EDAB's 2019 Work Plan
- C.  **Discussion** - City's Vision Statement
- D.  **Discussion/Review** - Ordinance No. 19-0544 State Environmental Policy Act (SEPA)
- E.  **Discussion/Review** - Ordinance - New EMC Chapter – Potentially Dangerous & Dangerous Dogs

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



City Of Edgewood Council Agenda Summary Sheet

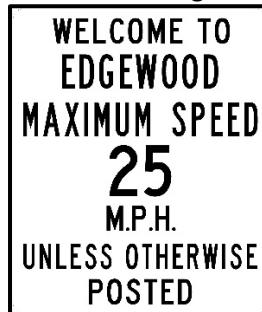
SUBJECT: Speed Limits on 24 th Street East, east of Meridian Avenue East (SR 161)		Agenda Item #: 2A	
		For Agenda of: April 2, 2019	
		Prepared by: Jeremy Metzler	
ATTACHMENTS (list): ☒ DRAFT Ordinance 19-0xxx ☒ Posted Speed Limits Map (dated March 28, 2019)			
Approval of Materials:			
Mayor, Daryl Eidinger	☒	Expenditure Required:	up to \$500
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	N/A
City Attorney, Carol Morris	☒	Appropriation Required:	Up to \$500
City Clerk, Rachel Pitzel	☒	Timeline: N/A	
Community Development Director, Darren Groth	☒		
Public Works, Jeremy Metzler	☒		
Police Chief, Micah Lundborg	☒		
Fiscal Note/Consideration: With the passing of this ordinance as presented, there are 4 existing speed limit signs would need to be updated. Assuming the existing sign posts can remain, the estimated cost to accomplish this is approximately \$500.			
SUMMARY STATEMENT: As traffic congestion increases in the region, more commuters have discovered local arterial streets as a convenient bypass with minimal traffic flow restrictions. In recent years we have seen increased traffic volumes, resulting in accidents and excessive speeds, causing concern for the safety and welfare of local residents. In an effort to step up enforceability, introduce traffic calming measures, and align with the statutory maximum lawful speed limit within cities, we reduced the maximum posted speed on several local arterial streets from 35 miles per hour to 25 miles per hour in March 2018. Since the speed limit reductions in 2018, staff has anecdotally noticed a decrease in commuter traffic (no official data collected to-date). Even so, concerns remain with regard to traffic along 24 th Street East to the east of Meridian Avenue East (State Route 161). This 35 mile-per-hour arterial is 1.25 miles long, contains a posted school zone, is adjacent to Edgemont Park, and is located just south of the Nelson Nature and Nelson Farm parks. There are currently no formal pedestrian facilities (separated paths, sidewalks, etc.) east of Edgemont Junior High (110 th Avenue East), and pedestrian traffic has been observed along either shoulder in this area throughout the day. Also over the course of the last year, the City has worked to install speed cameras at two school zones: Hedden Elementary (near 8 th Street East and 114 th Avenue East) and Edgemont Junior High (near 24 th Street East and 110 th Avenue East). Even before their activation, we have had several calls and reports of improved driver behavior as a result of their presence. It should be noted that a reduction of speed limit along 24 th Street East may impact the performance of the cameras near Edgemont Junior High, thereby impacting the ability to retain cameras at that location. As discussed with the Council in 2018, staff reviewed available grant programs and the impact speed limit reduction may have on eligibility. The Transportation Improvement Board (TIB) Sidewalk Program does consider posted speed limits, but this proposal would result in a loss of 4 points out of 100. TIB's Urban Arterial and Arterial Preservation			

Programs do not consider posted speeds. A quick review of WSDOT's grant opportunities demonstrated focus on collision and safety, but nothing specifically targeting posted speed limits.

On the topic of speed limits, there has been some discussion on adding "unless otherwise posted" plaques at the City's entry points. Also, our "Welcome to Edgewood" signage is aging and in need of replacement. Staff is seeking Council's direction on how to proceed. Should we add a plaque and replace the entry signs with the same signage that exists today:



Or consider replacement with something more standardized:



COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A

RECOMMENDED ACTION:

Discuss concerns with this segment of 24th Street East, and consider bringing Ordinance 19-0xxx forward to the next Regular Council Meeting for action.

ALTERNATIVES TO RECOMMENDED ACTION:

Forward to next Study Session for further review.

ORDINANCE NO. 19-0xxx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO SPEED LIMITS ON THE CITY'S STREETS AND HIGHWAYS, REDUCING THE SPEED LIMIT FROM 35 MPH TO 25 MPH ON 24th STREET EAST BETWEEN STATE ROUTE 161 (MERDIAN AVENUE EAST) AND 122ND AVENUE EAST, AND DIRECTING THE TRAFFIC ENGINEER TO POST SIGNS REFLECTING THE NEW SPEED LIMITS ON THE AFFECTED STREETS, AMENDING EDGEWOOD MUNICIPAL CODE SECTION 10.10.020.

WHEREAS, the Revised Code of Washington (RCW) Section 46.61.400(2)(a) establishes a maximum lawful speed of twenty-five (25) miles per hour on city and town streets; and

WHEREAS, on January 12, 1999, the City Council for Edgewood adopted Ordinance 98-0124, establishing maximum lawful speed limits for vehicles using certain city streets, roads and highways as 35 and 40 miles per hour (as codified in EMC Section 10.10.020); and

WHEREAS, since the passing of said Ordinance, traffic volumes and speeds on certain arterial streets within the city have increased to the extent that the City Council now believes that the public health and safety require a reduction of the maximum speed limit for certain streets identified in EMC Section 10.10.020; and

WHEREAS, RCW 46.61.415 provides that the City is required to obtain an engineering and traffic study when the City determines that the maximum speed permitted under RCW 46.61.400 for city streets is greater or less than is reasonable and safe under the conditions found to exist;

WHEREAS, the maximum speed permitted in RCW 46.61.400 is 25 miles per hour on city streets; and

WHEREAS, the City's decision to reduce the speed limit on certain streets from 35 mph to the maximum speed for city streets of 25 mph in RCW 46.61.400 is therefore consistent with RCW 46.61.415 and does not require a traffic study; and

WHEREAS, since the passage of Ordinance 18-0519, the City Council now believes the speed limit along 24th Street East, east of Meridian Avenue East (State Route 161), shall be reduced in order to protect the public's health and safety;

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

Section 1. Section 10.10.020 of the Edgewood Municipal Code is hereby amended as follows:

10.10.020 Increasing state speed limit. Whenever conditions are found to exist upon an arterial street or highway which warrant an increase in the speed permitted by state law, the legislative authority of this City, subject to the approval of the State Highway Commission in cases involving state highways, shall determine and declare a reasonable and safe maximum speed limit for such arterial street or highway, or portion thereof, not to exceed 55 miles per hour. Pursuant to the foregoing authority, the following speed limits are established for the following streets and highways:

A. Twenty-Five Miles Per Hour (25 MPH). The speed limit on the following streets shall be established as 25 mph, consistent with RCW 46.61.400(2)(a). ~~These streets are listed below to address the change in the speed limit from 35 MPH to 25 MPH as a result of this Ordinance.~~

1. 16th Street East from SR 161 (Meridian Avenue East) to 112th Avenue East;

2. 18th Street East from 112th Avenue East to 114th Avenue East;

3. 18th Street East from 114th Avenue East to 122nd Avenue East;

4. ~~24th Street East from SR 161 (Meridian Avenue East) to 122nd Avenue East;~~

~~45.~~ 32nd Street East from SR 161 (Meridian Avenue East) to 114th Avenue East;

~~56.~~ 32nd Street East from 114th Avenue East to 122nd Avenue East;

~~67.~~ 36th Street East from SR 161 (Meridian Avenue East) to 114th Avenue East;

~~78.~~ 36th Street East from 114th Avenue East to 122nd Avenue East;

~~89.~~ 48th Street East from Chrisella Road East to 114th Avenue East;

~~910.~~ 48th Street East from 114th Avenue East to 122nd Avenue East;

~~1011.~~ 48th Street East from 122nd Avenue East to 127th Avenue East / Edgewood Drive East;

~~112.~~ 112th Avenue East from 16th Street East to 18th Street East;

~~1213.~~ 112th Avenue East from 18th Street East to 24th Street East;

~~1314.~~ 112th Avenue East from 24th Street East to 32nd Street East;

~~1415.~~ 114th Avenue East from 8th Street East to 18th Street East;

~~1516.~~ 114th Avenue East from 32nd Street East to 36th Street East;

~~1617.~~ 114th Avenue East from 36th Street East to 48th Street East;

~~1718.~~ Edgewood Drive East from 48th Street East / 127th Avenue East to Sumner Heights Drive East (5600 block); and

~~1819.~~ Sumner Heights Drive East from Edgewood Drive East (5800 block) to Sumner city limits.

B. Thirty-Five Miles Per Hour (35 MPH).

1. 8th Street East from 114th Avenue East to 122nd Avenue East;
2. 8th Street East from SR 161 (Meridian Avenue East) to 114th Avenue East;
3. 20th Street East from 87th Avenue Court East to 92nd Avenue East;
4. 24th Street East from 92nd Avenue East to SR 161 (Meridian Avenue East);
- ~~5. 24th Street East from 112th Avenue East to 122nd Avenue East;~~
- ~~6. 24th Street East from SR 161 (Meridian Avenue East) to 112th Avenue East;~~
- ~~57.~~ 92nd Avenue East from 20th Street East to 24th Street East;
- ~~68.~~ 114th Avenue East from 8th Street East to Jovita Boulevard East;
- ~~79.~~ 114th Avenue East from Jovita Boulevard East to King/Pierce County Line;
- ~~84.~~ 122nd Avenue East from 36th Street East to 48th Street East;
- ~~94.~~ 122nd Avenue East from 8th Street East to 18th Street East;
- ~~104.~~ 122nd Avenue East from 32nd Street East to 36th Street East;
- ~~114.~~ 122nd Avenue East from 24th Street East to 32nd Street East;
- ~~124.~~ 122nd Avenue East from 18th Street East to 24th Street East;
- ~~134.~~ Jovita Blvd East from 114th Avenue East to West Valley Hwy East;
- ~~144.~~ Jovita Blvd East from SR 161 (Meridian Avenue East) to 114th Avenue East;
- ~~154.~~ Meridian Avenue East from the King/Pierce County line south to the City limits.

Section 2. Enforcement. The City's Traffic Engineer is hereby directed to post appropriate signage on City streets consistent with this ordinance immediately upon the effective date herein.

Section 3. 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 4. 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 BY THE CITY COUNCIL ON THE 13TH DAY OF MARCH, 2018

Daryl Eidinger, Mayor

ATTEST:

Rachel Pitzel, City Clerk

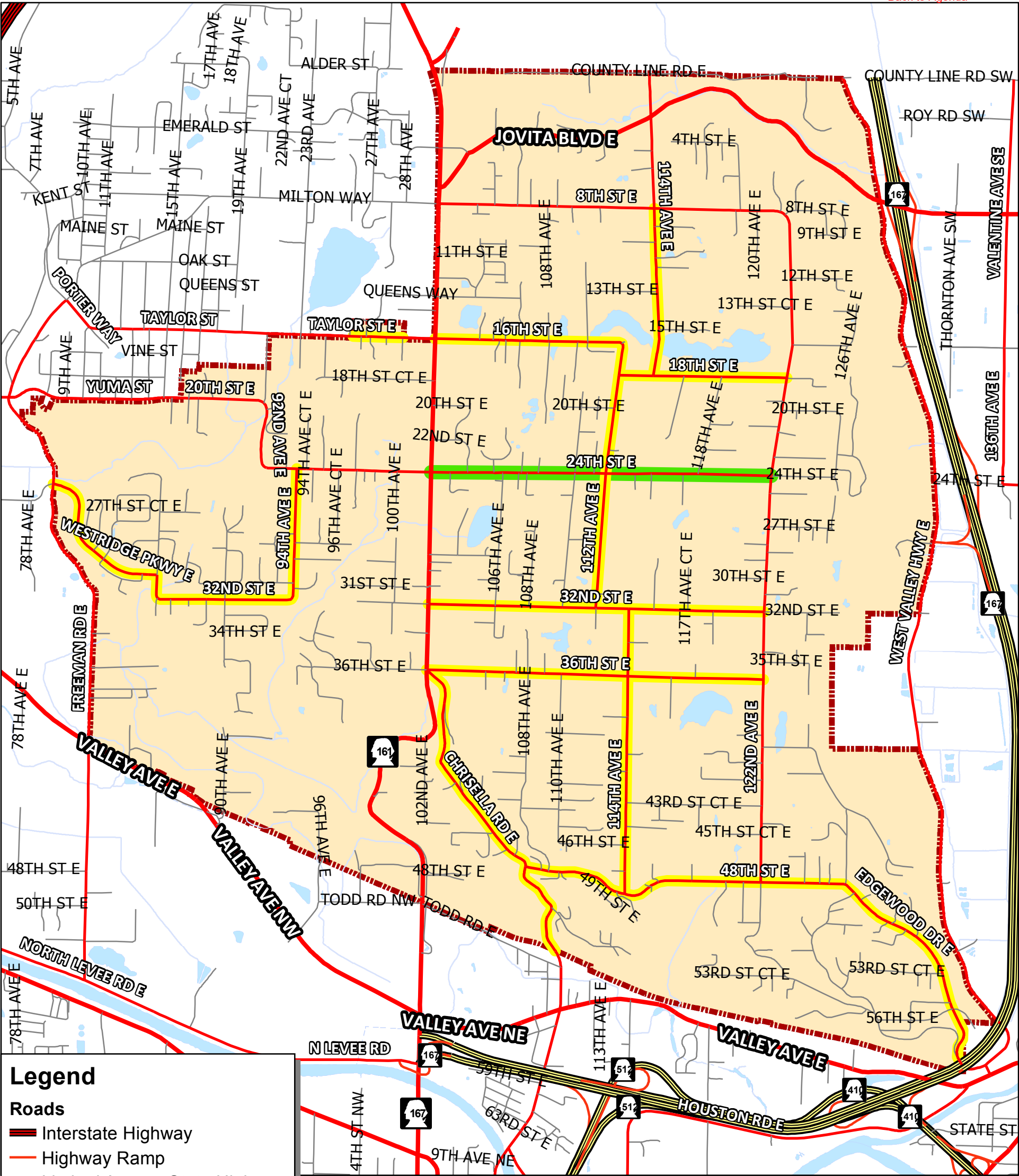
APPROVED AS TO FORM:

City Attorney, Carol Morris

Date Published: *April xx, 2019*

Effective Date: *April xx, 2019*

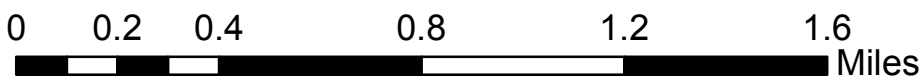
DRAFT



Legend

Roads

- Interstate Highway
- Highway Ramp
- Limited Access State Highway
- Other State Highway
- Major Road
- Arterial
- Residential
- 25mph Arterials
- Proposed 25mph Arterials
- Water body
- island
- Stream
- Piped Stream Sections
- Edgewood City Limits



1 inch = 2,000 feet

Note: All Arterial Roads (red lines) are posted 35 miles per hour, unless otherwise noted. All other roads are 25 miles per hour.



Author: Jeremy Metzler
Date Prepared: 3/28/2019

City of Edgewood Posted Speed Limits





City Of Edgewood Council Agenda Summary Sheet

SUBJECT: EDAB's 2019 Work Plan		Agenda Item #:		2B
		For Agenda of:		April 2, 2019
		Prepared by:		Darren Groth
ATTACHMENTS (list): ☒ EDAB Work Plan				
Approval of Materials:				
Mayor, Daryl Eidinger	☒	Expenditure Required:	<u>\$0</u>	
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	<u>\$0</u>	
City Attorney, Carol Morris	☒	Appropriation Required:	<u>\$0</u>	
City Clerk, Rachel Pitzel	☒	Timeline: Introduce to City Council: <u>01/26/19</u> Approved by EDAB: <u>04/01/19</u> Submit for Council Review: <u>04/02/19</u> City Council Action: <u>04/09/19</u>		
Community Development Director, Darren Groth	☒			
Public Works, Jeremy Metzler	☒			
Police Chief, Micah Lundborg	☒			
Fiscal Note/Consideration: N/A				
SUMMARY STATEMENT: On December 17, 2018, the Economic Development Advisory Board (EDAB) met for the first time in nearly three years. In addition to their initial December meeting, the EDAB continued to discuss possible work plan ideas during their January 7, 2019 meeting. These first two meetings allowed the board members an opportunity to review prior Edgewood development goals, discuss economic development with City staff, and propose objectives for the coming year. On January 29, 2019, the EDAB held a joint meeting with City Council to strategize the EDAB's work plan for 2019. The City Council offered general direction to the members present for the discussion and recommended that the EDAB could spend their next meeting(s) compiling their ideal work plan and presenting back to City Council for adoption. During the March meeting, the EDAB agreed to elements of their 2019 Work Plan. On April 1, 2019, the EDAB finalized the EDAB 2019 Work Plan.				
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A				
RECOMMENDED ACTION: Hold a discussion regarding the EDAB's 2019 Work Plan and move this item to the City Council's Consent Agenda for approval on April 9, 2019.				
ALTERNATIVES TO RECOMMENDED ACTION: 1) Revise the presented Work Plan 2) Remand back to EDAB with recommended changes				

Economic Development Advisory Board

2019 Work Plan

- 1) Create, distribute, and analyze results of a restaurant or other preferred business survey.**
 - a. Optional methods of distribution include: Survey Monkey, publishing the survey in the local paper; copies in the Chamber of Commerce office; a new webpage on the City's website; or a separate website or landing page.
 - b. Seek [anecdotal] information to give to a targeted restaurant or eatery, e.g., *"Our recent survey showed that 72% of the respondents wanted XYZ Café in Edgewood."*
 - c. End result may be a press release or new marketing materials.
- 2) Develop a SWOT Analysis.**
 - a. Schedule economic development workshops, at least two
 - i. First workshop – ask for input from stakeholders
 - ii. Second workshop, at least a month later so the analyses can be completed – present the findings.
 - b. Use the SWOT Analysis to develop a strategic plan and the SWOT findings may be used in business attraction.
- 3) Serve as Business Retention Ambassadors.**
 - a. Visit existing businesses and conduct a survey or see if they will provide testimonials, i.e., what is it like doing business in Edgewood.
 - b. Determine if they are looking to expand – if so, can you find another place for them in Edgewood?
 - c. If they may be looking to leave – find out why and see what can be done to keep them in Edgewood.



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: City's Vision Statement		Agenda Item #:		2C
		For Agenda of:		April 2, 2019
		Prepared by:		Rachel Pitzel
ATTACHMENTS (list): ☒ None				
Approval of Materials:				
Mayor, Daryl Eidinger	☒	Expenditure Required:	<u>\$0</u>	
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	<u>\$0</u>	
City Attorney, Carol Morris	☒	Appropriation Required:	<u>\$0</u>	
City Clerk, Rachel Pitzel	☒	Timeline: Discuss at the 4/2 SS		
Community Development Director, Darren Groth	☒			
Public Works, Jeremy Metzler	☒			
Police Chief, Micah Lundborg	☒			
Fiscal Note/Consideration: N/A				
SUMMARY STATEMENT: Staff has been asked to replace the current vision statement on the website with the version Council worked on at their 01/14/18 Strategic Retreat. In order to replace the vision statement, this amendment would need to be included on the next annual Comprehensive Plan amendment. The City may consider amendments to its Comprehensive Plan once every year. Applications for Comprehensive Plan amendments are submitted before December 31st in order to be considered during the following year's amendment process. Any requests submitted prior to December 31, 2019, will be prepared for the 2020 docket and, if accepted for the final docket, will be processed prior to the last meeting in December 2020. Staff is proposing the following be placed above the current vision statement on the website until it can be amended through the annual Comprehensive Plan amendment: <i>The City Council during a strategic planning meeting in 2018 looked at revising the vision statement. Below is the Council's city vision statement they would like to replace in the next annual Comprehensive Plan Amendment:</i> <i>"A unique, safe and prosperous community of neighbors"</i>				
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A				
RECOMMENDED ACTION: Allow staff to add the above language to the Comprehensive Plan website page where the current vision statement is located.				
ALTERNATIVES TO RECOMMENDED ACTION: 1) Do not recommend additional language to be added to website 2) Forward to Study Session for further review				



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: Ordinance No. 19-0544 State Environmental Policy Act (SEPA)		Agenda Item #:	2D
		For Agenda of:	April 2, 2019
		Prepared by:	Carol Morris
ATTACHMENTS (list): ☒ Proposed Ordinance No. 19-0544 ☒ SEPA – a basic primer			
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: SS - 04/02/19 PH- 04/09/19 RCM Action – 04/09/19	
Community Development Director, Darren Groth	☒		
Public Works, Jeremy Metzler	☒		
Police Chief, Micah Lundborg	☒		
Fiscal Note/Consideration: The new ordinance includes a mechanism for the City to obtain cost reimbursement for the preparation of SEPA documents required for applications submitted by private parties.			
SUMMARY STATEMENT: The City is required to adopt procedures for the implementation of the State Environmental Policy Act (SEPA, chapter 43.21 C RCW). The City adopted procedures implementing SEPA in chapter 20.05 EMC. In 2014, these rules were substantially revised. However, the City's SEPA rules were not updated to include the new revisions. In addition, the Department of Ecology developed a model ordinance for local governments to use when adopting the SEPA Rules in chapter 197-11 WAC. This model ordinance didn't modify the Rules in chapter 197-11 WAC, but instead adopted them by reference. The model ordinance also identified a few portions of these Rules that could be changed to accommodate local conditions, such as limited exemptions and appeal procedures. However, the majority of the Rules in chapter 197-11 WAC are meant to be adopted by reference and implemented without modification by local governments so that SEPA is administered in a uniform manner throughout the State of Washington. The model ordinance approved by DOE was used to draft the attached ordinance. Attached to this agenda bill is a brief primer explaining SEPA.			
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: This ordinance is not a "development regulation" as defined in the Growth Management Act, and a Planning Commission hearing is not required. As stated above, the City is required to adopt chapter 197-11 RCW with little variation.			
RECOMMENDED ACTION: Forward the ordinance to the next regular Council meeting for a Public Hearing and adoption.			
ALTERNATIVES TO RECOMMENDED ACTION: 1) Do not adopt 2) Forward to Study Session for further review			

ORDINANCE NO. 19-0544

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA, CHAPTER 43.21C RCW), REPEALING THE CITY'S CURRENT PROCEDURES FOR ADMINISTRATION OF SEPA AND ADOPTING NEW PROCEDURES FOR REVIEW OF ALL "ACTIONS" UNDER SEPA; ISSUANCE OF THRESHOLD DECISIONS; PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS; ISSUING PUBLIC NOTICE; RECEIVING COMMENT AND APPEALS; REPEALING CHAPTER 20.05 AND ADOPTING A NEW CHAPTER 20.05 OF THE EDGEWOOD MUNICIPAL CODE AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Washington State Department of Ecology (DOE) has adopted administrative rules to implement the State Environmental Policy Act (chapter 43.21C RCW), which are included in chapter 197-11 of the Washington Administrative Code (WAC), and were last updated in 2014; and

WHEREAS, DOE's model SEPA ordinance adopts the provisions of chapter 197-11 WAC by reference, and allows for certain local amendments; and

WHEREAS, the City of Edgewood has adopted a SEPA chapter in the Edgewood Municipal Code (ch. 20.05) that does not adopt any of the provisions of chapter 197-11 WAC by reference, and was last updated in 2002; and

WHEREAS, most counties, cities and other agencies required to enforce SEPA have adopted chapter 197-11 WAC by reference, which means that most jurisdictions are familiar with these administrative rules and know how to implement them from jurisdiction to jurisdiction; and

WHEREAS, because most municipalities and agencies have adopted the SEPA Rules in chapter 197-11 WAC, a body of case law has developed on these Rules, which aids in administration and enforcement; and

WHEREAS, on March 15, 2019 the City's SEPA Responsible Official determined that the adoption of this Ordinance is categorically exempt under WAC 197-11-800(19) as an ordinance relating to procedures only; and

WHEREAS, on _____, 2019, the City Council considered this Ordinance during a study session on _____, 2019; and

WHEREAS, on _____, 2019, the City Council held a public hearing on this Ordinance and adopted it;

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

Section 1. Chapter 20.05 of the Edgewood Municipal Code is hereby repealed.

Section 2. A new chapter 20.05 is hereby added to the Edgewood Municipal Code, as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 3. Adoption by Reference. Pursuant to RCW 35A.12.140, a copy of chapter 197-11 of the Washington Administrative Code, as adopted by reference in this Ordinance, shall be filed in the office of the City Clerk for use and examination by the public. Such copy shall also be filed in the City Clerk's office while this Ordinance is under consideration by the Council.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be unconstitutional or invalid 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 take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

**PASSED BY THE CITY COUNCIL ON THE XTH DAY OF
XXXXXXXXXXXXXX, 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 20.05

ENVIRONMENTAL REVIEW STATE ENVIRONMENTAL POLICY ACT (SEPA)

Sections.

20.05.010	Authority.
20.05.020	Definitions.
20.05.030	Additional Definitions.
20.05.040	Process.
20.05.050	Designation of Responsible Official.
20.05.060	Lead Agency Determination and Responsibilities.
20.05.070	Transfer of Lead Agency Status to State Agency.
20.05.080	Categorical Exemptions – Adoption by Reference.
20.05.090	Categorical Exemptions – Determination.
20.05.100	Flexible Thresholds for Categorical Exemptions.
20.05.110	Integration of SEPA with Project Permit Decisions.
20.05.120	Threshold Determinations.
20.05.130	Environmental Checklist.
20.05.140	Timing.
20.05.150	Mitigated DNS.
20.05.160	Environmental Impact Statement.
20.05.170	Preparation of EIS – Additional Considerations.
20.05.180	Additional Elements to be Covered by EIS.
20.05.190	Commenting.
20.05.200	Public Notice.
20.05.210	Designation of Official to Perform Consulted Agency Responsibilities for the City.
20.05.220	Using Existing Environmental Documents.
20.05.230	SEPA and Agency Decisions.
20.05.240	Substantive Authority.
20.05.250	Appeals.
20.05.260	Notice.
20.05.270	Agency Compliance.
20.05.280	Fees.
20.05.290	Adoption of Forms by Reference.

20.05.010 Authority. The City adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules promulgated in Chapter 197-11 of the Washington Administrative Code (WAC). This ordinance contains the City's SEPA procedures and policies. The SEPA Rules, Chapter 197-11 WAC, must be used in conjunction with this chapter.

20.05.020 Definitions. This section contains the basic requirements that apply to the SEPA process. The City adopts the following sections of WAC Chapter 197-11 by reference:

WAC

197-11-040	Definitions.
197-11-220	SEPA/GMA definitions.
197-11-700	Definitions.
197-11-702	Act.
197-11-704	Action.
197-11-706	Addendum.
197-11-708	Adoption.
197-11-710	Affected Tribe.
197-11-712	Affecting.
197-11-714	Agency.
197-11-716	Applicant.
197-11-718	Built Environment.
197-11-720	Categorical exemption.
197-11-721	Consolidated appeal.
197-11-724	Consulted agency.
197-11-726	Cost-benefit analysis.
197-11-728	County/city.
197-11-730	Decision-maker.
197-11-732	Department.
197-11-734	Determination of nonsignificance (DNS).
197-11-736	Determination of significance (DS).
197-11-738	EIS.
197-11-740	Environment.
197-11-742	Environmental checklist.
197-11-744	Environmental document.
197-11-746	Environmental review.
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Lands covered by water.
197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Nonproject.
197-11-775	Open record hearing.

197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible official.
197-11-790	SEPA.
197-11-792	Scope.
197-11-793	Scoping.
197-11-794	Significant.
197-11-796	State agency.
197-11-797	Threshold determination.
197-11-799	Underlying government action.

20.05.030 Additional Definitions. In addition to those definitions contained with WAC 197-11-700 through 197-11-799 and 197-11-220, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- A. “Department” means any division, unit, or department of the City.
- B. “Ordinance” or “chapter” means the ordinance, resolution, or other procedure used by the City to adopt regulatory requirements.
- C. “Early notice” means the City’s response to an applicant asking whether the City is considering a determination of significance in making its threshold determination on the applicant’s proposal. See WAC 197-11-350.

20.05.040. Process. The City adopts the following sections of Chapter 197-11 WAC by reference:

WAC

197-11-050	Lead Agency.
197-11-055	Timing of the SEPA Process.
197-11-060	Content of Environmental Review.
197-11-070	Limitations on actions during SEPA Process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-158	GMA project review – reliance on existing plans, laws and regulations.
197-11-164	Planned actions – definitions and criteria.
197-11-168	Ordinances or resolutions designating planned actions.
197-11-172	Planned actions – project review.

197-11-210	SEPA/GMA integration.
197-11-228	Overall SEPA/GMA integration procedures.
197-11-230	Timing of an integrated GMA/SEPA process.
197-11-232	SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
197-11-235	Documents.
197-11-238	Monitoring.
197-11-250	SEPA/Model Toxics Control Act Integration.
197-11-253	SEPA Lead Agency for MTCA actions.
197-11-256	Preliminary evaluation.
197-11-259	Determination of nonsignificance and EIS for MTCA remedial actions.
197-11-265	Early scoping for MTCA remedial actions.
197-11-268	MTCA interim actions.

20.05.050 Designation of Responsible Official.

A. For those proposals for which the City is the lead agency, the responsible official shall be the Community Development Director (Director).

B. For all proposals for which the City is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the “lead agency” or “responsible official” by those sections of the SEPA rules that were adopted by reference in this chapter.

20.05.060 Lead Agency Determination and Responsibilities.

A. The SEPA Responsible Official shall determine the lead agency for any application for or initiation of a proposal that involves a nonexempt action, as provided in WAC 197-11-050, unless the lead agency was previously determined or another agency is in the process of determining the lead agency.

B. When the City is the lead agency for a proposal, the SEPA Responsible Official shall supervise compliance with the necessary threshold determination requirements, and shall supervise preparation of the EIS, if necessary.

C. When the City is not the lead agency, all Departments shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No Department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the City may conduct supplemental environmental review under WAC 197-11-600.

D. If the City, or any of its Departments, receives a lead agency determination made by any other agency that appears inconsistent with the criteria of

WAC 197-11-253 or 197-11-922 through 197-11-940, the City may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen (15) days of receipt of the determination, or the City must petition the Department of Ecology for lead agency determination under WAC 197-11-946 within the fifteen (15) day time period.

E. Departments are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; PROVIDED, that the responsible official and any Department that will incur responsibilities as the result of such agreement approve the agreement.

F. Any Department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

20.05.070. Transfer of Lead Agency Status to a State Agency. For any proposal for a private project where the City would be the lead agency and for which one or more state agencies have jurisdiction, the City's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC 197-11-936 shall be the lead agency and the City shall be an agency with jurisdiction. To transfer lead agency duties, the City's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the City shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

20.05.080 Categorical Exemptions – Adoption by Reference. The City adopts the following rules for categorical exemptions from chapter 197-11 WAC:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

20.05.090 Categorical Exemptions – Determination.

A. Each Department that receives an application for a license or, in the case of governmental proposals, the Department initiating the proposal, shall determine whether the license, permit, or proposal is exempt. The Department's determination that a proposal is exempt shall be final and is not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the Department shall make certain that the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-070). If a proposal includes exempt and non-exempt actions, the Department shall determine the lead agency, even if the license application that triggers the Department's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the City may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The City shall not give authorization for:
 - a. any nonexempt action;
 - b. any action that would have an adverse environmental impact; or
 - c. any action that would limit the choice of alternatives.
2. The Department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt action(s) were not approved; and
3. A Department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if the nonexempt actions were not approved.

The City will normally identify whether an action is categorically exempt within 14 days of receiving a completed application. The Director shall certify when an application is complete based upon review of the environmental checklist, or for project permit applications, based on the requirements for a complete application set forth in the City's code for each permit type. If additional information is required to supplement the checklist, the application shall not be determined complete until the required information is received by the Director.

20.05.100 Flexible Thresholds for Categorical Exemptions. The lowest level in the ranges below apply unless the City raises the level based on local conditions, such as previous DNSs on the activities or the City's development codes. The City may raise the level for an exemption to any point up to the maximum specified in WAC 197-11-800(1)(c), once levels are established in this ordinance, the City must apply a level to all projects within the geographic area.

A. The City establishes the following exempt level for minor new construction under WAC 197-11-800(1)(b) based on local conditions:

1. For the construction or location of detached single-family residential units in 197-11-800(1)(b)(i) [NOTE: range is 4-30 units]: up to six (6) dwelling units.

2. For the construction or location of multi-family residential units in 197-11-800(1)(b)(ii) [NOTE: range is 4-60 units]: up to six (6) dwelling units.
3. For the construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure in WAC 197-11-800(1)(b)(iii) [NOTE: range is 10,000 to 40,000 square feet]: up to 10,000 square feet.
4. For the construction of an office, school, commercial, recreational, service or storage building with associated parking facilities in WAC 197-11-800(1)(b)(iv) [NOTE: range is 4,000-30,000 square feet and 20-90 parking spaces]: up to 12,000 square feet and 40 parking spaces.
5. For any fill or excavation throughout the total lifetime of the fill or excavation in WAC 197-11-800(1)(b)(v) [Note: range is 100-1,000 cubic yards]: up to 500 cubic yards.

B. Whenever the City creates additional exemptions under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, WA 98504 under WAC 197-11-890.

C. The City may raise the exempt levels up to the maximums specified in the ranges identified in Subsection 20.05.100.A.1-5 by following the process in WAC 197-11-800(1)(c) to amend this Chapter. The City may adopt the maximum level, a level between the minimum and maximum level, or may adopt a system of several exempt levels, such as different levels for different geographic areas, and mixed use projects.

20.05.110 Integration of SEPA with Project Permit Decisions. Under chapter 36.70B RCW, the environmental review process, both procedural and substantive, shall be combined with the procedure for review of project permits. The integration process shall include the following elements, insofar as possible or applicable:

- A. A determination of completeness to the applicant (RCW 36.70B.070);
- B. A notice of application to the public and agencies with jurisdiction (RCW 36.70B.110);
- C. Except for project permits excluded from review through City ordinance or resolution, an optional consolidated project permit review process (RCW 36.70B.120);
- D. Provision allowing for any public meeting or required open record hearing to be combined with any public meeting or open record hearing that may be held on the project by another local, state, regional, federal, or other agency (RCW 36.70B.090 and 36.70B.110);

E. A single report, which may be the local permit, stating all the decisions made as of the date of the report on all project permits included in the consolidated permit process that do not require an open record predecision hearing and any recommendations on project permits that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the agency's authority under RCW 43.21C.060;

F. A notice of decision (RCW 36.70B.130);

G. Completion of project review by the City, including environmental review and public review and any appeals to the City; and

H. Such other review processes as determined by the Community Development Director.

20.05.120 Threshold Determinations. This section contains the rules for deciding whether a proposal has a “probable, significant, adverse environmental impact,” which results in the issuance of a DS that requires preparation of an environmental impact statement (EIS). This section also contains rules for evaluating the impacts of proposals not requiring an EIS. The City adopts the following WAC sections by reference, as supplemented by this section:

WAC

197-11-310	Threshold determination required.
197-11-315	Environmental Checklist.
197-11-330	Threshold Determination Process.
197-11-335	Additional Information.
197-11-340	Determination of Significance (DS)
197-11-350	Mitigated DNS.
197-11-355	Optional DNS process.
197-11-360	Determination of significance (DS)(initiation of scoping)
197-11-390	Effect of threshold determination

20.05.130 Environmental Checklist.

A. Except as provided in subsection (C) of this section, a completed environmental checklist, in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter, except that a checklist is not needed if the City and applicant agree that an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The City shall use the environmental checklist to determine the lead agency, and for both determining the responsible official and making the threshold determinations if the City is the lead agency.

B. For private proposals, the City will require the applicant to complete the environmental checklist, providing assistance as necessary. For City proposals, the Department initiating the proposal shall complete the environmental checklist.

C. For projects submitted as planned actions under WAC 197-11-164, the City shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. Any proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a thirty-day review prior to use.

20.05.140 Timing. For those applications that are not subject to chapter 36.70B RCW, the following will apply:

A. The City will attempt to issue a threshold determination on a completed application within ninety (90) days after the application and supporting documentation are complete.

B. A complete application for a threshold determination consists of the following information:

1. A description of the proposed action;
2. Site information, including site plans, vicinity maps and other information required for a land use certification or other application;
3. The environmental checklist;
4. Additional information on subjects in the environmental checklist (WAC 197-11-335). The environmental checklist covers sixteen (16) subjects. If, after review of the environmental checklist, it is determined that there is insufficient information to make a threshold determination, then additional information will be required using any one or more of the following:

- a. The applicant will provide more information on subjects in the checklist;
- b. The City makes its own further study; or
- c. The City will consult with other agencies, requesting information on the proposal's probable or potential impacts which lie within the other agency's jurisdiction or expertise.

C. It is the policy of the City that adequate information in the form of a complete application and supporting documentation must be provided before a threshold decision can be made. The City will not commence processing environmental checklists which are not complete.

20.05.150 Mitigated DNS.

A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on mitigation measures attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
2. Precede the City's actual threshold determination for the proposal.

C. The responsible official should attempt to respond to requests for early notice within 10 working days and the response shall:

1. Be written;
2. State whether the City considers issuance of a DS likely and if so, indicate the impacts which led the City to consider a DS likely; and
3. State that the applicant may clarify or change features of the proposal to mitigate the indicated impacts by revising the environmental checklist, permit application, or both documents, as necessary, to reflect the changes or clarifications.

D. When an applicant submits a changed or clarified proposal, along with the revised or amended documentation, the City shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal;

1. The applicant's proposed mitigation measures in their clarifications, changes, or conditions must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibels" or "construct 200-foot storm water retention pond at Y location" are adequate.

2. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies, or other documents.

E. A mitigated DNS is issued under either WAC 197-11-340(2), requiring a fourteen day comment period and public notice, or WAC 197-11-355, which may require no additional comment period beyond the comment period on the notice of application.

F. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as

any term or condition of the permit, or enforced in any manner specifically prescribed by the City.

G. The City's written response under subsection (B) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the City to consider the clarifications or changes in its threshold determination.

20.05.160 Environmental Impact Statement. This section contains the rules for preparing environmental impact statements. The City adopts the following sections by reference, as supplemented by this section:

WAC

197-11-400	Purpose of EIS
197-11-402	General Requirements
197-11-405	EIS types
197-11-406	EIS timing
197-11-408	Scoping
197-11-410	Expanded Scoping (Optional)
197-11-420	EIS preparation
197-11-425	Style and Size
197-11-430	Format
197-11-435	Cover letter or memo
197-11-440	EIS contents
197-11-442	Contents of EIS on nonproject proposals
197-11-443	EIS contents when prior nonproject EIS
197-11-444	Relationship of EIS to other considerations
197-11-450	Cost-benefit analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS

20.05.170 Preparation of EIS – Additional Considerations.

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of City, by or under the direction of its responsible official. Before the City, as lead agency, issues an EIS, the City's responsible official shall be satisfied that it complies with this ordinance and chapter 197-11 WAC. When there is a project permit application, preparation of the EIS is the responsibility of the applicant, under direction of the responsible official. However, when there is no project permit application, the Community Development Director shall have the

discretion to determine the responsibility for preparation of the EIS, under the direction of the responsible official based on the circumstances.¹

B. The DEIS and FEIS or draft and final SEIS shall be prepared by the City staff, the applicant, or by a consultant selected by the City. If the responsible official requires an EIS for a proposal and determines that someone other than the City will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the City's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The City may require an applicant to provide information the City does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. However, this does not apply to information the City may request under another ordinance or statute.

D. Subject to delays caused by the applicant's failure to provide information requested by the City and other delays beyond the City's control, an EIS will be completed within one (1) year of the date of the declaration of significance, unless an appeal is filed or the City and applicant agree in writing to a different estimated time period for completion of the EIS.

20.05.180 Additional Elements to be Covered by EIS. The following three additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter: economy; social policy analysis, and cost-benefit analysis.

20.05.190 Commenting. This section contains rules for consulting, commenting and responding on all environmental documents under SEPA, including rules for public notice and hearings. The City adopts the following sections by reference, as supplemented by this section:

WAC

197-11-500	Purpose of this part
197-11-502	Inviting comment
197-11-504	Availability and cost of environmental documents
197-11-508	SEPA register
197-11-510	Public notice
197-11-535	Public hearings and meetings
197-11-545	Effect of no comment

¹ For example, if there are five comprehensive plan amendments submitted during the annual amendment process, four of which are submitted by private property owners and one from the City, the Community Development Director may allocate the financial responsibility for the EIS preparation between the property owners and the City.

197-11-550	Specificity of comments
197-11-560	FEIS response to comments
197-11-570	Consulted agency costs to assist lead agency

20.05.200 Public Notice.

A. Whenever the City issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the City shall give public notice as follows:

1. If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

2. If no public notice is required for the permit or approval, the City shall give notice of the DNS or DS by:

- a. Posting the property, for a site-specific proposal;
- b. Informing any member of the public who is identified in the City's code relating to the permit or approval, who is entitled to such public notice; and
- c. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located.

3. The City may choose, in addition to the requirements of Subsection A.2.a-c above, to use the following methods to inform the public.

- a. Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- b. Notifying the news media;
- c. Placing notice in agency newsletters;
- d. Sending notice to agency mailing lists;
- e. Mailing or emailing notice to any person, group, or agency who has requested notice; or
- f. Publishing on the City's website.

B. When the City issues a DS under WAC 197-11-360(3), the City shall commence scoping for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

C. Whenever the City issues a DEIS under WAC 197-11-455 or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and:

- a. Posting the property, for site-specific proposals; and
- b. Publishing notice in a newspaper of general circulation in the County, City or general area where the proposal is located.

2. The City shall also send a notice of availability or a copy of the DEIS to any person, organization, or governmental agency that has expressed an interest in the proposal.

3. The City may choose, in addition to the requirements of Subsection C.1.a-b above, to use the following methods to inform the public.

- a. Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- b. Notifying the news media;
- c. Placing notice in agency newsletters;
- d. Sending notice to agency mailing lists;
- e. Mailing or emailing notice to any person, group, or agency who has requested notice; or
- f. Publishing on the City's website.

D. Whenever possible, the City shall integrate the public notice required under this Section with existing notice procedures for the City's nonexempt permit(s) or approval(s) required for the proposal.

E. The City may require an applicant to complete the public notice requirements for their proposal at the applicant's expense.

20.05.210 Designation of Official to Perform Consulted Agency Responsibilities for the City.

A. The Mayor or designee shall be responsible for preparation of written comments for the City in response to a consultation required prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The Mayor or designee shall be responsible for the City's compliance with WAC 197-11-440 whenever the City is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the City.

20.05.220 Using Existing Environmental Documents. This section contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the City's own environmental compliance. The City adopts the following sections by reference:

WAC

197-11-600

When to use existing environmental documents

197-11-610	Use of NEPA documents
197-11-620	Supplemental environmental impact statement – procedures
197-11-625	Addenda – procedures
197-11-630	Adoption – procedures
197-11-635	Incorporation by reference – procedures
197-11-640	Combining documents

20.05.230 SEPA and Agency Decisions. This section contains rules (and policies) for SEPA’s substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This section also contains procedures for appealing SEPA determinations to agencies or the courts. The City adopts the following sections by reference:

WAC

197-11-650	Purpose of this part
197-11-655	Implementation
197-11-660	Substantive authority and mitigation
197-11-680	Appeals

20.05.240 Substantive Authority.

A. The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the City.

B. The City may attach conditions to a permit or approval for a proposal, so long as the City follows these five steps:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter;
2. Such conditions are in writing;
3. The mitigation measures included in such conditions are reasonable and capable of being accomplished;
4. The City has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
5. Such conditions are based on one or more policies in subsection (D) of this section and cited in the license or other decision document.

C. The City may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter;
2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
3. The denial is based on one or more policies identified in writing the decision document.

D. The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:

1. The City shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - b) assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;
 - c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - d) preserve important historic, cultural and natural aspects of our national heritage;
 - e) maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - f) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
2. The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
3. The City adopts by reference the policies in the following City codes, ordinances, resolutions and plans, as they now exist or may hereafter be amended,

as a possible basis for the exercise of substantive SEPA authority in the conditioning or denying of proposals:

- a. Chapter 43.21C RCW – State Environmental Policy Act;
- b. Chapter 5 of the EMC Business Licenses and Regulations;
- c. Chapter 6 of the EMC – Animals Control;
- d. Chapter 8 of the EMC – Health and Safety;
- e. Chapter 9 of the EMC – Criminal Code;
- f. Chapter 10 of the EMC -- Vehicles and Traffic;
- g. Chapter 11 of the EMC – Sewers;
- h. Chapter 12 of the EMC – Streets, Sidewalks, and Public Spaces;
- i. Chapter 13 of the EMC – Surface Water Management and Site Development;
- j. Chapter 14 of the EMC – Critical Areas;
- k. Chapter 15 of the EMC – Buildings and Construction;
- l. Chapter 16 of the EMC – Subdivisions;
- m. Chapter 18 of the EMC – Development Standards;
- n. The City of Edgewood Comprehensive Plan;
- o. The City’s Capital Improvement Program;
- p. The City’s Comprehensive Sewer Plan;
- q. City’s Public Works Standards;
- r. City’s Storm Water Management Ordinance;
- s. The City’s Parks, Recreation, and Open Space (PROS) Plan;
- t. The Pierce County Shoreline Master Program and Regulations;
- u. The Hylebos Basin Drainage Plan;
- v. The WSDOT SR 167 Extension Project Hylebos Riparian Restoration Program (2008 version and any amendments thereto);
- w. Interim HUD Flood Insurance Study for Pierce County;
- x. Pierce County Road Standards;
- y. Pierce County Road Approach Standards;
- z. Puyallup River Basin General Sewerage Plan;
- aa. Housing Assistance Plan;
- bb. Pierce County Flood Damage Prevention Regulations;
- cc. Pierce County Off-Site Road Improvement Ordinance;
- dd. Chapter 2.88 of the Pierce County Code, Structures of Historical and Architectural Significance;
- ee. Pierce County Fair Housing Regulations;
- ff. Noise Pollution Control Regulations;
- gg. Pierce County Title 12, Roads and Rights of Way (chapter 12.05 EMC);
- hh. Pierce County Wetland Inventory (Ord. 97-84)
- ii. Edgewood Surface Water Development Plan;
- jj. Data collected by Kato and Warren, other evidence on hand, previous storm data and the latest version of NFIP maps, establishing the flood plain for the City of Edgewood and high water levels;
- kk. Puyallup School District Capital Facilities Plan;
- u. Fife School District Capital Facilities Plan;
- v. Sumner School District Capital Facilities Plan.

4. The City establishes the following additional policies:

- A. **Schools.** In order to ensure that adequate school facilities are available to serve new growth and development, as well as to ensure that such new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the City may impose school mitigation fees, all as provided in RCW 82.02.020.
- B. **Police.** In order to ensure that the City's acceptable level of service for police response is not diminished as a result of new growth and development and to ensure that new growth and development provides mitigation for the direct impacts on the City's Police Department that are identified by the City as a consequence of proposed development, the City may impose Police and Emergency Response mitigation fees, all as provided in RCW 82.02.020.
- C. **Parks.** In order to that the City's acceptable level of service to citizens for all other government services and utilities is not diminished as a result of new growth and development, the City may impose mitigation fees, all as provided in RCW 82.02.020 for parks.

20.05.250 Appeals.

The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-110-680:

A. Appealable Decisions.

1. Only the following decisions may be administratively appealed under this chapter: (a) Final threshold determination; (2) mitigation or failure to mitigate in the SEPA decision; (3) Final EIS; and (4) project denials.

2. If the City does not provide for a hearing or appeal on the underlying action or permit, then the SEPA administrative appeal on the decisions listed in Subsection A(1) above shall be the only hearing and appeal allowed on the underlying action or permit.

B. Notice of Decision.

1. In the Notice of Decision issued by the City and for every decision for which an appeal is available in this Section, the SEPA Responsible Official shall give official notice of the date and place for commencing an appeal. The notice shall include:

- a) Notice that the SEPA issues must be appealed within the time limit set by statute or ordinance for appealing the underlying governmental action;
- b) The time limit for commencing the appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit; and
- c) Where the appeal may be filed.

2. Written notice shall be provided to the applicant, all parties to any administrative appeal, and all persons who have requested notice of decisions concerning the project. Such notice may be appended to the permit, the decision documents, the SEPA compliance documents, or printed separately.

C. Timing of Appeal. The appeal shall take place prior to the City's final decision on a proposed action. The SEPA open record appeal hearing may be consolidated with any other hearing on the underlying permit or action.

D. Number of Appeals: Only one administrative appeal to the City is allowed of the decisions listed in Subsection 20.05.260(A) above.

E. Consolidated Appeals. If the underlying action/permit requires a hearing, any SEPA appeal shall be consolidated with the hearing or appeal of the underlying action/permit into one simultaneous hearing, with the exception of the following:

1. An appeal of a determination of significance (DS);
2. An appeal of a procedural determination made by the City when the City is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;
3. An appeal of a procedural determination made by the City on a nonproject action; and
4. An appeal to the City Council under RCW 43.21C.060.

F. Timing of Appeal.

1. *SEPA Decision issues at the same time as underlying action.* An appeal of a SEPA decision that issued at the same time as the decision on a project action shall be filed within fourteen days (14) days after issuance of a notice of decision issues, or after notice that a decision has been made and is appealable.

2. *SEPA Decision allows Public Comment.* For a DNS or MDNS for which public comment is required (under this chapter) the appeal period shall be extended for an additional seven days.

3. *SEPA Threshold Decision issues prior to decision on underlying action.* An appeal of a threshold decision issued prior to a decision on a project action shall be filed within fourteen (14) days after notice that the threshold decision has been made and is appealable.

G. Consideration of SEPA Responsible Official's Decision. Procedural determinations made by the SEPA Responsible Official shall be entitled to substantial weight by the hearing examiner or city council in an appeal.

H. Administrative Record. An administrative record of the appeal must be provided, and the record shall consist of the following:

- a. Findings and conclusions;
- b. Testimony under oath; and
- c. A taped or written transcript. [The City may require that the appellant provide an electronic transcript.]

I. Exhaustion of Administrative Remedies. The City's administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue for which the City allows an appeal in this Section.

J. Content of Appeal. Every appeal must be in writing, and must include the following:

1. The applicable appeal fee, as established by Resolution of the City Council;
2. Appellant's name, address and phone number;
3. A statement describing the appellant's standing, or why the appellant believes that he or she is aggrieved by the decision appealed from;
4. Identification of the application and decision which is the subject of the appeal;
5. 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;
6. The specific relief sought; and
7. A statement that the appellant has read the appeal and believes the content to be true, followed by the appellant's signature.

K. Timeliness of Appeals. On receipt of a written notice of appeal, the SEPA Responsible Official shall forward the appeal to the hearing examiner or city council (whichever is the hearing officer/body on the appeal), who shall determine whether the appeal is timely prior to the scheduling of any appeal hearing or consolidated open record hearing on an underlying project permit. A written decision will issue if the appeal is untimely and the appeal will not proceed.

L. Hearing Examiner Appeals.

1. *Jurisdiction.* All administrative appeals relating to project permit applications or any type of quasi-judicial or ministerial development applications that are not appealable to the City Council (pursuant to EMC 18.40.090(L)) shall be heard by the Hearing Examiner.
2. *Hearing.* The Hearing Examiner shall hold an open record public hearing on the appeal, as provided in chapter 2.40.
2. *Date for Issuance of Decision.* The hearing examiner shall issue a decision on the appeal within ten (10) working days, unless a longer period is agreed to in writing by the applicant and hearing examiner.
3. *Appeals of Hearing Examiner's Decision.* The hearing examiner's decision on the timeliness of an appeal within his/her jurisdiction, and any other appeals allowed under this subsection within his/her jurisdiction shall be the final decision of the City. The hearing examiner's decision shall state whether any additional administrative appeals are allowed, and cite the applicable code section.

M. City Council Appeals.

1. *Jurisdiction.* The City Council shall hear all administrative appeals relating to legislative actions, such as amendments to the comprehensive plan and development regulations under chapter 18.60 EMC. In addition, the City Council shall hear appeals relating to any other project permit applications that are appealable to the City Council.
2. *Hearing.* For all legislative actions, the City Council shall hold an open record hearing both on the underlying legislative action and the SEPA appeal. For any project permit applications for which the City Council has jurisdiction, there shall be an open record hearing on the SEPA appeal, whether it is held by the Hearing Examiner or the City Council, even if the code does not allow another open record hearing on the project permit application.
3. *Record on Appeal.* The City Council shall receive evidence and testimony in the SEPA appeal prior to or during the hearing.
4. *Appeals of City Council's Decision.* The City Council's decision on the timeliness of an appeal within its jurisdiction and any other appeals allowed under this subsection within its jurisdiction shall be the final decision of the City. The City Council's decision shall state that no further administrative appeals are allowed of the decision.

N. Judicial Appeals.

1. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA and those which do not. This Section and RCW 43.21C.075 establish the time limits for raising SEPA issues, but existing statutes of limitation control the appeal of non-SEPA issues.

2. Appeals of the City’s final decision shall be filed in superior court (or the Growth Management Hearings Board), but appellants must follow RCW 43.21C.075(6)(c), which provides that “judicial review under chapter 43.21C RCW shall without exception be of the governmental action together with its accompanying environmental determinations,” which contemplates a single lawsuit.

20.05.260 Notice.

A. The City, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided by WAC 197-11-990. The notice shall be published by the City Clerk or County Auditor, applicant or proponent, pursuant to RCW 43.21C.080.

20.05.270 Agency Compliance. This section contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency and applying these rules to current agency activities. The City adopts the following sections by reference:

WAC

197-11-900	Purpose of this part.
197-11-902	Agency SEPA policies.
197-11-916	Application to ongoing actions.
197-11-920	Agencies with environmental expertise.
197-11-922	Lead agency rules.
197-11-924	Determining the lead agency.
197-11-926	Lead agency for governmental proposals.
197-11-928	Lead agency for public and private proposals.
197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-938	Lead agencies for specific proposals.
197-11-940	Transfer of lead agency status to a state agency.
197-11-942	Agreements on lead agency status.
197-11-944	Agreements on division of lead agency duties.
197-11-946	DOE resolution of lead agency disputes.

197-11-948

Assumption of lead agency status.

20.05.280. Fees.

A. The City shall require the fees from the applicant for the following activities, in accordance with the provisions of this chapter:

1. Threshold determination: For every environmental checklist, the City will review when it is lead agency, and the City shall collect a fee from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided in this Chapter shall not begin to run until payment of the fee.

2. Environmental impact statement.

(a) When the City is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover the costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(b) The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS or a portion of the EIS, for activities initiated by some person or entity other than the City and may bill such costs and expenses directly to the applicant. The City may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected after input from the applicant, after a call for proposals. The City shall have the final decision on the selection of the consultant.

(c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.

3. The City may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

4. The City shall not collect a fee for performing its duties as a consulted agency.

5. The City may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by the City's resolution on public records disclosure.

20.05.290 Adoption of Forms by Reference. The City adopts the following forms and sections by reference:

WAC

197-11-960	Environmental checklist
197-11-965	Adoption notice
197-11-970	Determination of nonsignificance (DNS)
197-11-980	Determination of significance and scoping notice (DS)
197-11-985	Notice of assumption of lead agency status
197-11-990	Notice of action

The State Environmental Policy Act SEPA – a basic primer

I. Purpose.

To assure for all people of Washington a safe, healthful, productive and aesthetically and culturally pleasing surroundings; attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; preserve historic and cultural aspects of our national heritage; maintain environmental diversity; achieve a balance between population and resource use, and enhance the quality of renewable resources. RCW 43.21C.020.

II. Implementation.

A. The Washington State Department of Ecology has adopted the SEPA Rules (chapter 197-11 WAC) for use in implementing SEPA (chapter 43.21 C RCW).

B. Local jurisdictions are required to adopt SEPA rules consistent with the state rules. WAC 197-11-020 and -918. If a local jurisdiction fails to adopt rules, then chapter 197-11 WAC applies.

C. Most local jurisdictions adopt the SEPA Rules in chapter 197-11 WAC by reference, with slight local variations allowed by law.

D. Local jurisdictions are also required to adopt SEPA policies, which serve as the basis for conditioning or denying proposals under SEPA. WAC 197-11-902. The policies are incorporated into regulations, plans or codes formally designated by the local jurisdiction as the possible bases for the exercise of substantive authority. RCW 43.21C.060.

III. SEPA's substantive authority and mitigation. SEPA does not demand a particular substantive result in governmental decision-making, rather, it ensures that environmental values are given appropriate consideration. *Moss v. Bellingham*, 109 Wn. App. 6, 31 P.3d 703 (2001). Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impacts (subject to the limitations in WAC 197-11-660).

A. What does it apply to? Any action may be conditioned or denied under SEPA. RCW 43.21C.060. “Action” is defined broadly in WAC 197-11-704. Actions fall into two categories: “project actions” which are decisions on specific projects, such as permitting of a particular project and “nonproject actions” include the adoption of ordinances, comprehensive plans, budgets, road and street plans, etc. WAC 197-11-704.

B. How do we know whether or not SEPA applies? The first step is to look at WAC 197-11-800, which describes the categorical exemptions from SEPA. Next, we review WAC 197-11-305, which explains how a categorically exempt action may still be subject to SEPA. If the action is categorically exempt, there is no need for further SEPA review of this action. The local jurisdiction is not required to document that a project action is categorically exempt. WAC 197-11-305.

C. When is a threshold determination required? A threshold determination, made by the local jurisdiction’s SEPA Responsible Official of the lead agency for a project, is required for any action that is not categorically exempt.

D. What is a threshold determination? A threshold determination is a determination made by the local jurisdiction’s SEPA Responsible Official that a project is or is not a major action significantly affecting the environment. RCW 43.21C.030(2)(c).

E. What is the effect of a threshold determination? If the SEPA Responsible Official decides that the project is a major action significantly affecting the quality of the environment, an Environmental Impact Statement must be prepared. WAC 197-11-330. Here’s the process:

1. The SEPA Responsible Official looks at the SEPA checklist submitted by the applicant and other information reasonably sufficient to evaluate the environmental impacts of the proposal. WAC 197-11-315, -335. If the checklist does not contain sufficient information to make a threshold determination, the applicant may be required to submit additional information. WAC 197-11-335(1). The Responsible Official may also consider mitigation measures an agency or the applicant will implement as part of the proposal. WAC 197-11-330(1)(c).

2. The Responsible Official may determine that the local jurisdiction's comprehensive plan and development regulations provide adequate analysis and mitigation for some or all of the project's adverse environmental impacts. WAC 197-11-158.

3. A local jurisdiction planning under the Growth Management Act may designate certain actions to be "planned actions" that have had the significant environmental impacts identified in environmental documents. WAC 197-11-164.

4. A threshold determination must be made by the SEPA Responsible Official within 90 days after the application for the proposal is determined complete. WAC 197-11-310(3).

5. If the SEPA Responsible Official determines that the proposal is not likely to have a significant adverse environmental impact, he/she issues a Determination of Nonsignificance (DNS). WAC 197-11-340.

6. If the SEPA Responsible Official determines that the proposal is likely to have a significant adverse environmental impact, the Official may contact the applicant to discuss whether certain aspects of the action or proposed mitigation can be changed to address these impacts so that an Environmental Impact Statement is not required. WAC 197-11-350(2). If mitigation measures will ameliorate the adverse environmental impacts of the proposal, the SEPA Responsible Official may issue a Mitigated Determination of NonSignificance (MDNS) for the proposal.

7. If the SEPA Responsible Official determines that the action is likely to have a significant adverse environmental impact, a Determination of Significance (DS) will issue. WAC 197-11-360.

F. Phased Review. The local jurisdiction determines the appropriate level of detail of environmental review to coincide with meaningful points in the planning and decision-making process. WAC 197-11-060(5). Phased review allows the local jurisdiction to focus environmental review on issues that are ready for decision and exclude from consideration those issues that are not yet ready. Phased review is not always appropriate. See, WAC 197-11-060(5).

G. Limits on Action during SEPA process. Until the SEPA Responsible Official issues a final determination of nonsignificance or a final environmental impact statement, no action concerning the proposal can be taken, if it would have an adverse environmental impact or limit the choice of reasonable alternatives.

H. Environmental Impact Statements (EIS).

1. The purpose of an EIS is to provide an impartial discussion of significant environmental impacts and inform the decision-makers of reasonable alternatives, including mitigation measures. It allows the citizens to comment on the proposed action. It is used in conjunction with other related materials to plan actions and make decisions. WAC 197-11-400. The process includes a draft EIS and Final EIS.

2. The EIS is prepared by or under the direction of the SEPA Responsible Official. WAC 197-11-420.

3. Public comment is received on the draft EIS. WAC 197-11-502. Public hearings and meetings may be held on the EIS. WAC 197-11-535. The FEIS responds to the comments on the draft EIS. WAC 197-11-570.

I. Use of Existing Environmental Documents.

1. Sometimes, an existing environmental document may be used to meet all or a part of the local jurisdiction's responsibilities under SEPA. WAC 197-11-600.

2. A supplemental EIS or addendum may be prepared under certain circumstances. WAC 197-11-620 (supplemental EIS), WAC 197-11-625 (addenda).

J. Exercising Substantive SEPA Authority.

1. The local jurisdiction may exercise substantive SEPA authority to condition or deny proposals based on SEPA.

2. In order to impose mitigation or deny a proposal, the local jurisdiction must base its action on SEPA policies that have been designated as the basis for the use of SEPA authority. WAC 197-11-660.

3. In order to mitigate proposals, the mitigation measures must be related to specific adverse environmental impacts clearly identified in an environmental document, and stated in writing by the decision maker. The SEPA policy must be identified by the decision maker when imposing mitigation. WAC 197-11-660.

4. Mitigation measures must be reasonable and capable of being accomplished. WAC 197-11-660.

5. To deny a proposal under SEPA, the local jurisdiction must find that the proposal would likely result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement and that reasonable mitigation measures are insufficient to mitigate the identified impact. WAC 197-11-660(f).

K. Appeals.

1. Under RCW 36.70B.060, the City's processing of a project permit application is limited to one open record hearing and one closed record hearing (or one closed record appeal hearing). There is one exception, and that is an appeal of a Determination of Significance. An open record hearing on a Determination of Significance may occur prior to the open record hearing on a project permit application.

2. Under RCW 43.21C.060, the City may allow an administrative appeal to the City Council of any decision that conditions or denies a proposal under SEPA. WAC 197-11-680(2). This is optional. Usually, this appeal is combined with the open record hearing on a project permit application, if the City issues a DNS or MDNS.

3. If the Town allows an administrative appeal to the City Council, the following restrictions apply:

a. the City has to specify by rule or ordinance that an appeal is available;

b. certain intermediate steps may not be appealed to the City Council, such as draft EIS adequacy, etc. WAC 197-11-680(3)(i).

c. appeals on SEPA procedures are limited to review of the final threshold determination and final EIS.

d. the City must consolidate the SEPA appeal with the hearing or appeal on the underlying permit/action (except for the issues identified in WAC 197-11-680(3)(vi)).

e. the City's ordinance must provide that the SEPA Responsible Official's determination shall be entitled to substantial weight.

f. the City must provide for an administrative record (tape recording of full hearing so that it can be transcribed).

4. The SEPA decision may be appealed to court, together with the underlying permit/project action decision. WAC 197-11-660(4).



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: Ordinance – New EMC chapter potentially dangerous and dangerous dogs		Agenda Item #:		2E
		For Agenda of:		April 2, 2019
		Prepared by:		Carol Morris
ATTACHMENTS (list): ☒ Ordinance No. 19-XXX and Exhibit A (new chapter 6.04 EMC)				
Approval of Materials:				
Mayor, Daryl Eidinger	☒	Expenditure Required:	<u>\$0</u>	
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	<u>\$0</u>	
City Attorney, Carol Morris	☒	Appropriation Required:	<u>\$0</u>	
City Clerk, Rachel Pitzel	☒	Timeline: N/A		
Community Development Director, Darren Groth	☒			
Public Works, Jeremy Metzler	☒			
Police Chief, Micah Lundborg	☒			
Fiscal Note/Consideration: The City has an interlocal agreement with Metro Animal Services to provide animal control and shelter services, which includes potentially dangerous and dangerous dogs. Under the interlocal agreement, the City is responsible for any costs associated with defending or enforcing the City's ordinance.				
SUMMARY STATEMENT: State Law on Dangerous Dogs. State law dictates the minimum requirements for regulation of dangerous dogs, but the City is free to adopt different requirements for the regulation of potentially dangerous dogs. Here is a summary of the procedure for determining a dog to be dangerous in RCW 16.08.009: (1) A notice seeking to determine that a dog is dangerous issues; (2) the notice includes, among other things, a statement that the dog's owner may request a meeting with the animal control authority, in order to present written or verbal information as to why the dog should not be declared dangerous; (3) if the meeting is requested, the meeting is held and the animal control authority issues a decision which either rescinds the notice or becomes the final decision determining that the dog is dangerous; (4) if a meeting is not requested, the animal control authority issues a final decision; and (5) the dog's owner can appeal this determination. Edgewood adopts Sumner's Dangerous and Potentially Dangerous Dog code by reference. In 2016, the City adopted Sumner's regulations on potentially dangerous and dangerous dogs. As a result of some recent dangerous dog activity, we reviewed that ordinance and it was decided that it needed to be revised. The Edgewood City Attorney and the Sumner City Attorney have exchanged drafts of the new ordinance. In March of 2019, Sumner adopted a new ordinance revising their regulations on potentially dangerous and dangerous dogs. Sumner's new ordinance on dangerous and potentially dangerous dogs. One major difference between Sumner's ordinance and the above state law procedure for determining a dog to be dangerous or potentially dangerous is that Sumner issues a notice to the dog owner, which automatically becomes the final decision the dog is either potentially dangerous or dangerous -- if certain things do not occur (a meeting with the police chief, Metro's rescission of the notice, the police chief's issuance of a decision rescinding the notice). This means that there is no deadline for any of these things to occur after issuance of the notice, yet the deadline for filing an appeal is still triggered by counting 15 calendar days from service of the notice, not these subsequent events. This can be a problem if it confuses the dog's owner about when a timely appeal must be filed. Usually, the document that is the final appealable decision includes language explaining when the appeal must be filed. I have asked the Assistant Sumner City Attorney about this potential problem, and she believes that even				

though SMC 6.10.030 provides that an appeal must be filed “within 15 calendar days of the day the dog is deemed to be potentially dangerous,” that this appeal period could be extended up to 30 days if these subsequent events occur. She also believes that any confusion about this deadline will be addressed in discussions between Metro and the dog’s owner. In addition, Sumner’s ordinance establishes the deadline for the dog’s owner to comply with other requirements (such as making application for a permit, scheduling an inspection) is based on the expiration of this same appeal period. (See, SMC 6.10.020(B), 6.10.020(B)(3), 6.10.030(1), 6.10.040(A), 6.10.040(B) re: inspections and reinspections, etc.)

It is important for the ordinance to be clear with regard to the procedure and deadlines that the dog owner must follow in order to file an appeal. The Washington courts have held that dog ownership is a constitutionally protected property interest, and that “before the government can deprive an individual of a property interest, it is *required* to afford her ‘some form of hearing.’” *Downey v. Pierce County*, 165 Wash.App. 152, 166, 267 P.3d 445 (2011). If a dog’s owner files an untimely appeal of the dangerous/potentially dangerous dog determination because he/she can’t figure out when the appeal period expires, serious consequences could result, such as (1) the imposition of the dangerous/potentially dangerous dog restrictions, which could be difficult and costly; (2) confiscation, impoundment and destruction of the dog. In addition, if the dog owner misses an appeal deadline and is charged with a violation of these restrictions, the dog’s owner could be charged with a misdemeanor (for failure to timely obtain the dangerous dog and potentially dangerous dog permits).

The ordinance attached requires issuance of a Notice that informs the dog’s owner that **the procedure** (not the appeal period) to determine his/her dog as either potentially dangerous or dangerous has begun. It establishes a deadline for submitting a request for a meeting with the Police Chief, and a deadline for the Police Chief to schedule the meeting. There is a deadline for the Police Chief to issue a final decision, and it states that this final decision (not the original notice) triggers the appeal period.

There are other differences between the two ordinances, but Sumner has informed us that some of these differences are based on their decision to use their hearing examiner as the municipal court judge. An appeal of this ordinance would be filed in Pierce County District Court, so SMC 6.10.030(3-4) and 6.10.060(3-4) do not appear in the attached ordinance.

The intent in drafting this ordinance was to copy Sumner’s ordinance as much as possible. Differences remain, but given that Edgewood would have to bear the cost of defending the ordinance as well as enforcement, we recommend that the attached ordinance be adopted.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: *None.*

RECOMMENDED ACTION:

Move to schedule the Ordinance for a regular City Council meeting for adoption.

ALTERNATIVES TO RECOMMENDED ACTION:

- 1) Postpone action
- 2) Forward to another 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 DANGEROUS AND POTENTIALLY DANGEROUS DOGS, ADOPTING DEFINITIONS, DESCRIBING THE PROCEDURE USED FOR DETERMINING A DOG TO BE POTENTIALLY DANGEROUS OR DANGEROUS, DESCRIBING THE PROCEDURE FOR APPEALING A DETERMINATION THAT A DOG IS POTENTIALLY DANGEROUS OR DANGEROUS, IDENTIFYING THE RESPONSIBILITIES OF THE OWNER OF A DANGEROUS OR POTENTIALLY DANGEROUS DOG, ESTABLISHING VIOLATIONS, DESCRIBING THE PROCEDURES FOR SEIZURE, IMPOUNDMENT, RELEASE OR EUTHANASIA OF SUCH DOGS, AMENDING SECTIONS 6.01.010 AND 6.01.020; ADOPTING A NEW CHAPTER 6.04 TO THE EDGEWOOD MUNICIPAL CODE, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on December 30, 2010, the City of Edgewood entered into an interlocal agreement with the Cities of Sumner and Puyallup, for Metro Animal Services to provide animal control and shelter services within the City of Edgewood; and

WHEREAS, according to the interlocal agreement, the City of Edgewood is required to “review its local laws regulating dangerous dogs, licensing and other animal related codes and to make amendments as needed to ensure that the regulations contain provisions similar to Sumner’s and Puyallup’s to ensure consistency in enforcement and to increase management efficiency (Section B under “Edgewood’s Responsibilities,” page 3); and

WHEREAS, the interlocal agreement provides that “Edgewood shall be responsible for any costs associated with enforcing or defending their ordinances related to potentially dangerous and dangerous dog declarations, impounds or additional costs associated with prosecution of criminal and civil cases, or other unforeseen costs that may arise from time to time” (Section E under “Edgewood’s Responsibilities,” page 3); and

WHEREAS, the interlocal agreement provides that Edgewood is required to provide a minimum of fourteen days' written notice of all code changes prior to adoption with regard to non-fee related changes (Section F under "Edgewood's Responsibilities," page 4); and

WHEREAS, in 2016, Edgewood adopted chapter 6.10 of the Sumner Municipal Code on Dangerous and Potentially Dangerous Dogs by reference; and

WHEREAS, on March 4, 2019, Sumner adopted Ordinance No. 2676, which repealed chapter 6.10 of the Sumner Municipal Code and adopted a new chapter 6.10 SMC on the same subject;

WHEREAS, cities and counties without procedures for notification and appeal with regard to determining a dog to be dangerous as of June 13, 2002, were required to follow the procedure in RCW 16.08.080, and this statute also allows the city or county to impose additional restrictions on the owners of dangerous dogs; and

WHEREAS, pursuant to RCW 16.08.090(2), local jurisdictions may regulate potentially dangerous dogs without state law limits on the restrictions that may be placed on potentially dangerous dogs;

WHEREAS, this Ordinance is exempt from SEPA, pursuant to WAC 197-11-800(19); and

WHEREAS, a final draft of this Ordinance was sent to the Sumner City Attorney's Office on March 15, 2019;

WHEREAS, the Edgewood City Council considered this draft Ordinance on March __, 2019, in a study session; and

WHEREAS, the Edgewood City Council adopted this Ordinance on March __, 2019;

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

Section 1. Section 6.01.010 of the Edgewood Municipal Code is hereby amended to read as follows:

6.01.010 Adoption.

Pursuant to RCW 35A.12.140, the city hereby adopts by reference the following chapters of the Sumner Municipal Code (SMC) related to the control, regulation and licensing of animals, inclusive of any future amendments thereto:

SMC Chapter 6.04, Animal Control;

SMC Chapter 6.08, Dog Feces Removal;

~~SMC Chapter 6.10, Dangerous and Potentially Dangerous Dogs;~~

SMC Chapter 6.16, Exotic Animals.

Section 2. Section 6.01.020 of the Edgewood Municipal Code is hereby amended to read as follows:

6.01.020 References.

The following references as used in the SMC chapters adopted under EMC 6.01.010 as well as chapter 6.04 EMC, shall have the following meanings for purposes of this title:

“Animal control authority” shall mean Metro Animal Services, pursuant to the Interlocal agreement between Edgewood, Sumner and Puyallup dated December 30, 2010. ~~the Edgewood police department.~~

“City of Sumner” shall mean the City of Edgewood.

“Director” shall mean the City of Edgewood Police Chief or his/her designee.

“Municipal Court” or “Pierce County District Court” shall mean the Pierce County District Court.

All other references to city of Sumner officials and/or terms as used in the adopted Sumner Municipal Code chapters shall be reasonably construed as meaning the most similar or equivalent city of Edgewood official and/or term.

Section 3. A new chapter 6.04 is hereby added to the Edgewood Municipal Code, which is attached hereto as Exhibit A, and incorporated herein as if fully set forth.

Section 4. 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 5. 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:

DRAFT 3-19-19

CHAPTER 6.04 POTENTIALLY DANGEROUS DOGS AND DANGEROUS DOGS

Sections:

- 6.04.001 Purpose.**
- 6.04.002 Definition of a potentially dangerous dog.**
- 6.04.003 Procedure for determining a dog to be potentially dangerous.**
- 6.04.004 Appeal of the potentially dangerous dog determination**
- 6.04.005 Responsibilities of the potentially dangerous dog owner.**
- 6.04.006 Definition of a dangerous dog.**
- 6.04.007 Procedure for determining a dog to be dangerous.**
- 6.04.008 Appeal of the dangerous dog determination.**
- 6.04.009 Responsibilities of the dangerous dog owner.**
- 6.04.010 Seizure, impoundment and/or euthanasia.**
- 6.04.011 Violations and penalties.**

6.04.001 Purpose. The City Council finds that potentially dangerous dogs and dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of the City of Edgewood because of unprovoked attacks which cause injury to persons and domestic animals. Such attacks are attributable in part to the failure of dog owners to confine, properly train and control their dogs. While state law (RCW 16.08.080 through 16.08.100) includes the regulations to be enforced by the City against dangerous dogs, the state does not limit the regulations that the City may impose on the owners of potentially dangerous dogs (RCW 16.08.090(2)). This chapter is therefore appropriate and necessary in order to impose uniform requirements on the owners of potentially dangerous and dangerous dogs, and to establish violations for failure to comply with these regulations.

6.04.002 Definition of a potentially dangerous dog.

A. “Potentially dangerous dog” means any dog that when unprovoked: (a) inflicts bites on a human or domestic animal or livestock either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or (c) any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals or livestock.

B. Exclusions.

1. A dog shall not be declared dangerous if the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused or assaulted the dog or was committing or attempting to commit a crime.

2. The definition of “potentially dangerous dog” shall not apply to police dogs as defined in RCW 4.24.410.

6.04.003 Procedure for determining a dog to be potentially dangerous.

A. Issuance of Notice of Intent to Determining a Dog to be Potentially Dangerous.

1. The animal control authority may initiate the procedure in this Section for determining whether a dog’s conduct falls within the definition of potentially dangerous dog in EMC 6.04.002(A) and whether the exclusions in EMC 6.04.002(B) do not apply, based upon:

- a. The written complaint of a citizen who is willing to testify that the dog has acted in a manner which causes it to fall within the definition of EMC Section 6.04.002(A); or
- b. Animal bite reports filed with the animal control authority; or
- c. Actions of the dog witnessed by an animal control officer; or
- d. Other substantial evidence.

2. If the animal control authority has probable cause to believe that the dog is potentially dangerous, it shall issue a Notice of Potentially Dangerous Dog, as provided in Subsection 6.04.003(C).

B. Seizure, Impoundment or Confinement of Dog While Notice is Pending. Once the animal control authority issues the Notice, it shall have the discretion to determine whether the dog that is the subject of a potentially dangerous dog Notice should be immediately impounded and held pending the outcome of the determination and any related appeals. If the dog is impounded, the owner is responsible for all boarding costs and other fees of the animal control authority, as may be required to humanely and safely keep the animal during this period of time.

In the alternative, the animal control authority may determine that the dog which is the subject of a potentially dangerous dog Notice need not be impounded pending the outcome of determination and any related appeals, as long as the dog is confined and controlled as set forth in Section 6.04.005(C)(2) (“Confinement”), and the dog’s owner provides the notification to the animal control authority required by Section 6.04.005(D) (“Notice”).

C. Contents of Notice Seeking Declaration. The Notice seeking a declaration that a dog is potentially dangerous shall include, at a minimum, the following information:

1. A description of the dog, together with the dog owner's name and address (if known);
2. The statutory basis for the proposed determination that the dog is potentially dangerous;
3. The reasons the animal control authority considers the dog to be potentially dangerous;
4. A recitation of the dog owner's responsibilities and the controls that must be placed on the dog, if it is ultimately determined to be a potentially dangerous dog, as taken from EMC 6.04.005;
5. A statement that the owner is entitled, but is not required, to meet with the Edgewood Police Chief (or designee) prior to the issuance of any final decision on whether the dog is potentially dangerous. The statement shall explain that the owner may use the opportunity for the meeting to give the Police Chief, orally or in writing, any reasons or information as to why the dog should not be declared potentially dangerous. The date, time and location of this meeting shall be identified in the Notice, and the date of the meeting must be scheduled prior to expiration of fifteen (15) calendar days following delivery of the Notice. If the Notice was not personally delivered, then the dog's owner must request a meeting by submitting the written request to the animal control authority within fifteen (15) calendar days after the Notice was mailed to the dog owner or posted on the dog owner's property. In the written request for this meeting, the owner may propose an alternative meeting date and time, but such meeting must still occur within the fifteen-day time period set forth in this subsection;
6. A statement that if the dog's owner does not request a meeting with the Edgewood Police Chief (or designee) within the fifteen (15) calendar day period after service, that the Notice will become the final determination that the dog is potentially dangerous (unless timely appealed under EMC 6.04.004); and
7. A statement of the proper procedure that the owner must follow in order to timely appeal a final determination finding the dog to be potentially dangerous (under EMC 6.04.004).

D. Service. The Notice shall be served on the dog's owner by one of the following methods:

1. Regular and certified mail to the owner's last known address. Service shall be deemed complete upon the third day following the day upon which the Notice was placed in the

mail. If the third day falls on a Saturday, Sunday or legal holiday, then service shall be deemed complete on the next business day; **or**

2. By providing the Notice to the dog's owner personally.

3. The animal control authority may, but is not required to post a copy of the Notice in a conspicuous place on the property of the dog's owner.

E. Effect of Notice if a Meeting with the Police Chief is Not Requested. If the dog's owner does not request a meeting with the Edgewood Police Chief (or designee) within fifteen (15) calendar days after service of the Notice, the Notice shall become the final determination that the dog is potentially dangerous. This final determination may be appealed as forth in EMC Section 6.04.004.

F. Meeting with Police Chief (or designee in the event the Police Chief is unavailable).

1. If the dog's owner timely requests a meeting with the Police Chief, the owner may present, verbally or in writing, the reasons that the owner believes that the dog should not be declared potentially dangerous.

2. The Police Chief shall deliberate on the information submitted by the owner, the evidence provided by the animal control authority, the definition of "potentially dangerous dog" in EMC Section 6.04.002 and all relevant facts.

3. Within fifteen (15) calendar days after the meeting (or on the date set for the meeting if the owner fails to attend), the Police Chief shall issue a final decision which either rescinds the Notice or determines the dog to be potentially dangerous. If the Police Chief determines the dog to be potentially dangerous, the decision shall include a recital of the authority for the action, a brief concise statement of the facts that support the determination, and the Police Chief's signature. Any decision which determines the dog to be potentially dangerous shall also state that the dog's owner may file an appeal of the decision to the Pierce County District Court within twenty (20) calendar days of receipt of the decision, all as provided in EMC Section 6.04.004. In addition, this decision shall be served on the dog's owner as provided in EMC Section 6.04.003(D) above.

6.04.004 Appeal of the Potentially Dangerous Dog Declaration.

A. Appeal Deadline. The owner of the dog may file a written appeal with the Pierce County District Court within twenty (20) calendar days after the owner's receipt of the Notice, or, if the dog's owner requested and attended a meeting with the Police Chief, any written appeal must be filed within twenty (20) calendar days after the owner's receipt of the Police Chief's decision. A copy of the written appeal shall also be served upon the animal control authority and the City Clerk within this twenty (20) calendar day appeal period.

B. Meeting with Chief Not Required for an Appeal. An appeal may be filed by the dog's owner regardless of whether the dog's owner met with the Police Chief, as long as it is timely filed, as provided above in EMC 6.04.004(A).

C. Dog Must be Confined After Notice issues and Throughout Appeal Process. Unless seized by the animal control authority pursuant to EMC 6.04.003(B), the dog's owner shall comply with EMC 6.04.005(C)(2) ("Confinement") while all court appeals are pending and until final resolution of all such appeals.

D. Penalty for Failing to Keep Dog Confined During Appeal. It is unlawful for the owner appealing a Notice or the Police Chief's decision determining a dog to be potentially dangerous, to allow or permit the animal to go beyond the owner's premises unless such animal is securely leashed, under the control of a competent adult and humanely muzzled or otherwise securely restrained. (See, EMC Section 6.04.011(A) for penalties.) Upon noncompliance with this subsection, the animal control authority is authorized to seize and impound the dog subject to the procedures in EMC 6.04.010.

E. Burden on Appeal. In the appeal, the City shall have the burden to show, by a preponderance of the evidence, that the dog is a potentially dangerous dog.

F. Decision. The District Court shall have the authority to enter the following finding:

1. Reverse the determination of potentially dangerous dog; or
2. Uphold the determination of potentially dangerous dog; or
3. Impose any necessary conditions upon the determination of potentially dangerous dog for a period not to exceed twelve (12) months, at which time the Court shall conduct a review hearing to determine if sufficient evidence supports the maintenance of the determination of potentially dangerous dog. During this period of time, the Court shall require that the owner comply with all of the provisions of EMC Section 6.04.005(C)(2) ("Confinement"). The owner is responsible for requesting a review hearing at the end of the conditional determination period. The conditional determination shall remain in effect until it is revised or rescinded by the Court.

G. Appeal to Superior Court. The dog's owner may file an appeal of the Pierce County District Court's decision in Superior Court within twenty (20) calendar days of issuance of the date of the Pierce County District Court's decision. A copy of the appeal shall also be served on the City and the animal control authority within this twenty (20) calendar day time period.

6.04.005 Responsibilities of a potentially dangerous dog owner.

A. Deadline for Compliance. The owner of a dog that has been determined to be potentially dangerous shall continue to comply with EMC 6.04.005(C)(2), and is required to comply with the remainder of this Section on or before the following deadlines:

1. If the animal control authority issues a Notice of a potentially dangerous dog, and the dog's owner does not request a meeting with the Edgewood Police Chief and no appeal of the Notice is filed, then the owner shall comply with the requirements of this Section within twenty-one (21) calendar days after service of the Notice upon him/her.

2. If the animal control authority issues a Notice of a potentially dangerous dog and the dog's owner requests a meeting with the Edgewood Police Chief, but does not file an appeal of the Police Chief's decision, then the owner shall comply with the requirements of this Section within thirty-one (31) calendar days after service of the Police Chief's decision upon him/her.

3. If the animal control authority issues a Notice of a potentially dangerous dog and the dog's owner requests a meeting with the Edgewood Police Chief, and files an appeal to the court of the Police Chief's decision, then the owner shall comply with the requirements of this Section within twenty-one (21) calendar days after issuance of the final court decision which resolves all appeals.

B. Permit Required. The owner of the potentially dangerous dog shall submit an application for a permit for such dog to the animal control authority showing compliance with all of the requirements below. If the dog's owner presents sufficient evidence of all of the following, the animal control authority shall issue the potentially dangerous dog permit, which shall be renewed annually by the owner. In order to obtain the initial permit and any renewal of the permit, the owner shall:

1. Pay the fee for the permit/renewal;
2. Provide proof that the dog has been microchipped and the microchip number;
3. Provide a current, color, digital photographs in electronic format, each of the front and the profile/side of the dog (minimum 3" by 5" in size), for identification purposes;
4. Provide proof of current rabies vaccination;
5. Provide proof of that the policy of liability insurance (or surety bond) required by EMC 6.04.005(C)(4) has been obtained; and
6. Schedule an inspection of the dog owner's premises within the deadline established in EMC Section 6.04.005(A) to obtain the animal control authority's approval of the following permit requirements:
 - a. The dog is confined in a proper enclosure as defined in EMC 6.04.005(C)(2);
 - b. There is a conspicuously posted and clearly visible warning sign as defined in EMC 6.04.005(C)(3);
 - c. The dog is wearing a current license tag; and
 - d. Possession of a muzzle for the dog, as required by EMC 6.04.005(C)(2), which muzzle must be available at the time of inspection.

If the owner fails to pass an inspection, the owner will be charged a re-inspection fee per occurrence. The animal control authority shall set the date of the re-inspection, which may be not more than ten (10) calendar days of the original inspection. Future inspections may be performed by the animal control authority upon reasonable notice to the owner.

C. Restrictions. The animal control authority may impose any or all of the following restrictions upon the permit issued to the owner of a potentially dangerous dog:

1. **Training.** The owner of a potentially dangerous dog and the dog **may** be required to attend, compete and pay all costs associated with an obedience training class. The animal control authority shall pre-approve any choice of class by the owner of the animal, and proof of satisfactory completion of such training shall be provided to the animal control authority, even if similar training has been completed by the animal in the past.

2. **Confinement.** Every potentially dangerous dog must at all times be confined or controlled as follows:

a. On the owner's premises, within a proper enclosure, which means that dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

b. In an area completely enclosed by a fence of sufficient height, substance and condition to prevent the escape of the dog while under the direct, in person supervision of a person 18 years or older, who is capable of preventing the escape of the dog from the fenced area; or

c. If beyond the premises, then securely leashed and humanely muzzled while under the direct supervision of a person 18 years or older, who is capable of controlling the dog, and any other restrictions deemed necessary by the animal control authority. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

These restrictions apply while an appeal of the potentially dangerous dog declaration is pending.

3. **Warning.** The owner of a potentially dangerous dog shall be required to post clearly visible warning signs on the owner's property. The warning sign shall be a clearly visible and conspicuously displayed sign containing words and a symbol (to inform children or others incapable of reading), warning that there is a potentially dangerous dog on the property.

4. **Liability Insurance.** The owner of a potentially dangerous dog shall be required to purchase a policy of liability insurance (such as homeowner's insurance) issued by an insurer qualified under Title 48 RCW in an amount of at least One Hundred Thousand Dollars (\$100,000.00) insuring the owner for any personal injuries inflicted by the potentially dangerous dog, or proof of a surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least One Hundred Thousand Dollars (\$100,000.00) and payable to any person injured by the potentially dangerous dog.

D. Notice. The owner of a dog that has been determined potentially dangerous shall immediately notify the animal control authority when such dog:

1. Is loose or unconfined; or
2. Has bitten or otherwise injured a human being or attacked another animal or livestock; or
3. Is sold, given away or dies; or
4. Is permanently relocated to another address; or
5. Is temporarily moved to another address for longer than thirty (30) days.

E. Petition for Vacation of Potentially Dangerous Dog Determination.

1. Where an owner has obtained a potentially dangerous dog permit and has been in compliance with the requirements of this Section for three (3) consecutive years, the owner may submit a written Petition to Vacate the potentially dangerous dog determination. The determination may be vacated if it is determined that the potentially dangerous dog determination is no longer appropriate as a result of a change in the dog's behavior due to age, health, training and/or other factors. It is the owner's burden to provide sufficient information in support of the vacation petition.

2. The procedure to vacate the potentially dangerous dog determination is as follows:

- a. The written petition shall be submitted to the animal control authority.
- b. Within thirty (30) calendar days, the animal control authority will forward the petition, along with the animal control authority's comments, objections and recommendations, to the Police Chief.
- c. The Police Chief may, in his/her discretion, grant the petition where the dog owner demonstrates, by a preponderance of the evidence, that the potentially dangerous dog determination is no longer appropriate. In making this decision, the Police Chief may consider: (a) the age of the dog; (b) the dog and dog's owner's completion of an obedience training class; (c) evidence of aggressive behavior or lack thereof; and (d) any other relevant evidence. In order to evaluate the dog under the criteria in this Section, the Police Chief may require that the dog's owner pay for the cost of hiring an animal behaviorist chosen by the Chief.
- d. The Police Chief shall issue a decision granting or denying the petition, which shall be served on the dog's owner by regular mail and certified mail at the owner's address on the petition. There is no appeal of this decision, but the dog's owner may file another Petition to

Vacate the potentially dangerous dog determination after three (3) years from the date of the Chief's decision.

6.04.006 Definition of a dangerous dog.

A. "Dangerous dog" means any dog that (a) inflicts severe injury on or kills a human being without provocation on public or private property, (b) inflicts severe injury or kills a domestic animal without provocation while this dog is off the owner's property, or (c) has been previously been found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans or other animals.

"Severe injury" means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

B. Exclusions.

1. Dogs shall not be declared dangerous if the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing or assaulting the dog, or has, in the past, been observed or reported to have tormented, abused or assaulted the dog or was committing or attempting to commit a crime.

2. This definition of "dangerous dog" shall not apply to police dogs as defined in RCW 4.24.410.

6.04.007 Procedure for determining a dog to be dangerous.

A. Issuance of Notice of Intent to Determining a Dog to be Dangerous.

1. The animal control authority may initiate the procedure in this Section for determining whether a dog's conduct falls within the definition of dangerous dog in EMC 6.04.006(A) and whether the exclusions in EMC 6.04.006(B) do not apply, based upon:

- a. The written complaint of a citizen who is willing to testify that the dog has acted in a manner which causes it to fall within the definition of EMC Section 6.04.006(A); or
- b. Animal bite reports filed with the animal control authority; or
- c. Actions of the dog witnessed by an animal control officer; or
- d. Other substantial evidence.

2. If the animal control authority has probable cause to believe that the dog is dangerous, it shall issue a Notice of Dangerous Dog, as provided in Subsection 6.04.007(C).

B. Seizure, Impoundment or Confinement of Dog While Notice is Pending. Once the animal control authority issues the Notice, it shall have the discretion to determine whether the dog that is the subject of a dangerous dog Notice should be immediately impounded and held pending the outcome of the determination and any related appeals. If the dog is impounded, the

owner is responsible for all boarding costs and other fees of the animal control authority, as may be required to humanely and safely keep the animal during this period of time.

In the alternative, the animal control authority may determine that the dog that is the subject of a dangerous dog Notice need not be impounded pending the outcome of determination and any related appeals, as long as the dog is confined and controlled as set forth in Section 6.04.009(C)(2) (“Confinement”), and provides the notification to the animal control authority required by Section 6.04.009(D) (“Notice”).

C. Contents of Notice Seeking Declaration. The Notice seeking a declaration that a dog is dangerous shall include, at a minimum, the following information:

1. A description of the dog, together with the dog owner’s name and address (if known);
2. The statutory basis for the proposed determination that the dog is dangerous;
3. The reasons the animal control authority considers the dog to be dangerous;
4. A recitation of the dog owner’s responsibilities and controls that must be placed on the dog, if it is ultimately determined to be a dangerous dog, as taken from EMC 6.04.009;
5. A statement that the owner is entitled, but is not required, to meet with the Edgewood Police Chief (or designee) prior to the animal control authority’s issuance of any final decision on whether the dog is dangerous. The statement shall explain that the owner may use the opportunity for the meeting to give the Police Chief (or designee), orally or in writing, any reasons or information as to why the dog should not be declared dangerous. The date, time and location of this meeting shall be identified in the Notice, and the date of the meeting must be scheduled prior to expiration of fifteen (15) calendar days following delivery of the Notice. If the Notice was not personally delivered, then the dog’s owner must request a meeting by submitting the written request to the animal control authority within fifteen (15) calendar days after the Notice was mailed to the dog owner or posted on the dog owner’s property. In the written request for this meeting, the owner may propose an alternative meeting date and time, but such meeting must still occur within the fifteen-day time period set forth in this subsection;
6. A statement that if the dog’s owner does not request a meeting with the Edgewood Police Chief within the fifteen calendar day period after service, that the Notice will become the final determination that the dog is dangerous (unless timely appealed under 6.04.008); and
7. A statement of the proper procedure that the owner must follow in order to timely appeal a final determination finding the dog to be dangerous (under 6.04.008).

D. Service. The Notice shall be served on the dog’s owner by one of the following methods:

1. Regular and certified mail to the owner’s last known address. Service shall be deemed complete upon the third day following the day upon which the Notice was placed in the

mail. If the third day falls on a Saturday, Sunday or legal holiday, then service shall be deemed complete on the next business day; **or**

2. By providing the Notice to the dog's owner personally.

3. The animal control authority may, but is not required to post a copy of the Notice in a conspicuous place on the property of the dog's owner.

E. Effect of Notice if a Meeting with the Police Chief is Not Requested. If the dog's owner does not request a meeting with the Edgewood Police Chief within fifteen (15) calendar days after service of the Notice, the Notice shall become the final determination that the dog is dangerous. This final determination may be appealed as forth in EMC Section 6.04.008.

F. Meeting with Police Chief (or designee, if the Police Chief is unavailable).

1. If the dog's owner timely requests a meeting with the Police Chief, the owner may present, verbally or in writing, the reasons that the owner believes that the dog should not be declared dangerous.

2. The Police Chief shall deliberate on the information submitted by the owner, the evidence provided by the animal control authority, the definition of "dangerous dog" in EMC Section 6.04.006 and all relevant facts.

3. Within fifteen (15) calendar days after the meeting (or on the date set for the meeting if the owner fails to attend), the Police Chief shall issue a final decision which either rescinds the Notice or determines the dog to be dangerous. If the Police Chief determines the dog to be dangerous, the decision shall include a recital of the authority for the action, a brief concise statement of the facts that support the determination, and the Police Chief's signature. Any decision which determines the dog to be dangerous shall also state that the dog's owner may file an appeal of the decision to the Pierce County District Court within twenty (20) calendar days of receipt of the decision, all as provided in EMC Section 6.04.008. In addition, this decision shall be served on the dog's owner as provided in EMC Section 6.04.007(D) above.

6.04.008 Appeal of the Dangerous Dog Declaration.

A. Appeal Deadline. The owner of the dog may file a written appeal with the Pierce County District Court within twenty (20) calendar days after the owner's receipt of the Notice, or, if the dog's owner requested and attended a meeting with the Police Chief, any written appeal must be filed within twenty (20) calendar days after the owner's receipt of the Police Chief's decision. A copy of the written appeal shall also be served upon the animal control authority and the City Clerk within this twenty (20) calendar day appeal period.

B. Meeting with Chief Not Required for an Appeal. An appeal may be filed by the dog's owner regardless of whether the dog's owner met with the Police Chief, as long as it is timely filed, as provided above in EMC 6.04.008(A).

C. Dog Must be Confined After Notice issues and Throughout Appeal Process. Unless seized by the animal control authority pursuant to EMC 6.04.007(B), the dog's owner shall

comply with EMC 6.04.009(C)(2) while all court appeals are pending and until final resolution of all such appeals.

D. Penalty for Failing to Keep Dog Confined During Appeal. It is unlawful for the owner appealing a Notice or the Police Chief's decision determining a dog to be dangerous, to allow or permit the animal to go beyond the owner's premises unless such animal is securely leashed, under the control of a competent adult and humanely muzzled or otherwise securely restrained. (See, EMC Section 6.04.011(A) for penalties.) Upon noncompliance with this subsection, the animal control authority is authorized to seize and impound the dog subject to the procedures in EMC 6.04.010.

E. Burden on Appeal. In the appeal, the City shall have the burden to show, by a preponderance of the evidence, that the dog is a dangerous dog.

F. Decision. The District Court shall have the authority to enter the following finding:

1. Reverse the determination of dangerous dog; or
2. Uphold the determination of dangerous dog; or
3. Impose any necessary conditions upon the determination of dangerous dog for a period not to exceed twelve (12) months, at which time the Court shall conduct a review hearing to determine if sufficient evidence supports the maintenance of the determination of a dangerous dog. During this period of time, the Court shall require that the owner comply with all of the provisions of EMC Section 6.04.008(C)(2) ("Confinement"). The owner is responsible for requesting a review hearing at the end of the conditional determination period. The conditional determination shall remain in effect until it is revised or rescinded by the Court.

G. Appeal to Superior Court. The dog's owner may file an appeal of the Pierce County District Court's decision in Superior Court within twenty (20) calendar days of issuance of the date of the Pierce County District Court's decision. A copy of the appeal shall also be served on the City and the animal control authority within this twenty (20) calendar day time period.

6.04.009 Responsibilities of a dangerous dog owner.

A. Deadline for Compliance. The owner of a dog that has been determined to be dangerous shall continue to comply with EMC 6.04.009(C)(2), and is required to comply with the remainder of this Section on or before the following deadlines:

1. If the animal control authority issues a Notice of a dangerous dog, and the dog's owner does not request a meeting with the Edgewood Police Chief and no appeal of the Notice is filed, then the owner shall comply with the requirements of this Section within twenty-one (21) calendar days after service of the Notice upon him/her.
2. If the animal control authority issues a Notice of a dangerous dog and the dog's owner requests a meeting with the Edgewood Police Chief, but does not file an appeal of the

Police Chief's decision, then the owner shall comply with the requirements of this Section within thirty-one (31) calendar days after service of the Police Chief's decision upon him/her.

3. If the animal control authority issues a Notice of a dangerous dog and the dog's owner requests a meeting with the Edgewood Police Chief, and files an appeal to the court of the Police Chief's decision, then the owner shall comply with the requirements of this Section within twenty-one (21) calendar days after issuance of the final court decision which resolves all appeals.

B. Permit Required. The owner of the dangerous dog shall submit an application for a permit for such dog to the animal control authority showing compliance with all of the requirements below. If the dog's owner presents sufficient evidence of all of the following, the animal control authority shall issue the dangerous dog permit, which shall be renewed annually by the owner. In order to obtain the initial permit and any renewal of the permit, the owner shall:

1. Pay the fee for the permit/renewal;
2. Provide proof that the dog has been microchipped and the microchip number;
3. Provide a current, color, digital photographs in electronic format, each of the front and the profile/side of the dog (minimum 3" by 5" in size), for identification purposes;
4. Provide proof of current rabies vaccination;
5. Provide proof of that the policy of liability insurance required by EMC 6.04.009(C)(4) has been obtained; and
6. Schedule an inspection of the dog owner's premises within the deadline established in EMC Section 6.04.009(A) to obtain the animal control authority's approval of the following permit requirements:
 - a. The dog is confined in a proper enclosure as defined in EMC 6.04.009(C)(2);
 - b. There is a conspicuously posted and clearly visible warning sign as defined in EMC 6.04.009(C)(3);
 - c. The dog is wearing a current license tag; and
 - d. Possession of a muzzle for the dog, as required by EMC 6.04.009(C)(2), which muzzle must be available at the time of inspection.

If the owner fails to pass an inspection, the owner will be charged a re-inspection fee per occurrence. The animal control authority shall set the date of the re-inspection, which may be not more than ten (10) calendar days of the original inspection. Future inspections may be performed by the animal control authority upon reasonable notice to the owner.

C. Restrictions. The animal control authority may impose any or all of the following restrictions upon the permit issued to the owner of a dangerous dog:

1. **Training.** The owner of a dangerous dog and the dog **may** be required to attend, compete and pay all costs associated with an obedience training class. The animal control authority shall pre-approve any choice of class by the owner of the animal, and proof of satisfactory completion of such training shall be provided to the animal control authority, even if similar training has been completed by the animal in the past.

2. **Confinement.** Every dangerous dog must at all times be confined or controlled as follows:

a. On the owner's premises, within a proper enclosure, which means that dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog.

b. In an area completely enclosed by a fence of sufficient height, substance and condition to prevent the escape of the dog while under the direct, in person supervision of a person 18 years or older, who is capable of preventing the escape of the dog from the fenced area; or

c. If beyond the premises, then securely leashed and humanely muzzled while under the direct supervision of a person 18 years or older, who is capable of controlling the dog, and any other restrictions deemed necessary by the animal control authority. The muzzle must be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal.

These restrictions apply while an appeal of the dangerous dog declaration is pending.

3. **Warning.** The owner of a dangerous dog shall be required to post clearly visible warning signs on the owner's property. The warning sign shall be a clearly visible and conspicuously displayed sign containing words and a symbol (to inform children or others incapable of reading), warning that there is a dangerous dog on the property.

4. **Liability Insurance.** The owner of a dangerous dog shall be required to purchase a policy of liability insurance (such as homeowner's insurance) issued by an insurer qualified under Title 48 RCW in an amount of at least Five Hundred Thousand Dollars (\$500,000.00), insuring the owner for any personal injuries inflicted by the dangerous dog, or proof of a surety bond issued by a surety insurer qualified under chapter 48.28 RCW in a form acceptable to the animal control authority in the sum of at least Five Hundred Thousand Dollars (\$500,000.00) and payable to any person injured by the dangerous dog.

D. Notice. The owner of a dog that has been determined dangerous shall immediately notify the animal control authority when such dog:

1. Is loose or unconfined; or
2. Has bitten or otherwise injured a human being or attacked another animal or livestock; or

3. Is sold, given away or dies; or
4. Is permanently relocated to another address; or
5. Is temporarily moved to another address for longer than thirty (30) days.

E. Petition for Vacation of Dangerous Dog Determination.

1. Where an owner has obtained a dangerous dog permit and has been in compliance with the requirements of this Section for three (3) consecutive years, the owner may submit a written Petition to Vacate the dangerous dog determination. The determination may be vacated if it is determined that the dangerous dog determination is no longer appropriate as a result of a change in the dog's behavior due to age, health, training and/or other factors. It is the owner's burden to provide sufficient information in support of the vacation petition.

2. The procedure to vacate the dangerous dog determination is as follows:

- a. The written petition shall be submitted to the animal control authority.
- b. Within thirty (30) calendar days, the animal control authority will forward the petition, along with the animal control authority's comments, objections and recommendations, to the Police Chief.
- c. The Police Chief may, in his/her discretion, grant the petition where the dog owner demonstrates, by a preponderance of the evidence, that the dangerous dog determination is no longer appropriate. In making this decision, the Police Chief may consider: (a) the age of the dog; (b) the dog and dog's owner's completion of an obedience training class; (c) evidence of aggressive behavior or lack thereof; and (d) any other relevant evidence. In order to evaluate the dog under the criteria in this Section, the Police Chief may require that the dog's owner pay for the cost of hiring an animal behaviorist chosen by the Chief.
- d. The Police Chief shall issue a decision granting or denying the petition, which shall be served on the dog's owner by regular mail and certified mail at the owner's address on the petition. There is no appeal of this decision, but the dog's owner may file another Petition to Vacate the dangerous dog determination after three (3) years from the date of the Chief's decision.

6.04.010 Seizure, Impoundment and/or euthanasia of potentially dangerous and dangerous dogs.

A. Seizure and Impoundment. The animal control authority may seize and impound a potentially dangerous or dangerous dog under the following circumstances:

1. The dog is not maintained in the proper enclosure or the dog is outside of the dwelling of the owner or outside of the proper enclosure and not under physical restraint of the responsible adult. This subsection also applies to any dog that is the subject of an appeal of a potentially dangerous or dangerous dog determination, while the appeal is pending;

2. After all appeals have been exhausted of a declaration of a potentially dangerous or dangerous dog:

a. The dog is not validly permitted by the deadline required in EMC 6.04.005(A) or 6.04.009(A);

3. The dog's owner has not complied with one or more of the restrictions imposed by the animal control authority on the potentially dangerous or dangerous dog (as provided in EMC 6.04.005 or 6.04.009); and

(3) The dog attacks or bites a person, a domestic animal or livestock.

B. Notice to the Dog's Owner of Impoundment.

1. Immediately after the dog has been impounded, the animal control authority shall serve the dog's owner with written notice of the impoundment as follows:

a. In person; or

b. By service by regular mail **and** certified mail, return receipt requested.

2. The Notice shall state the reason for the impoundment of the dog; that the owner is responsible for payment of the costs of control; and that the dog will be destroyed in an expeditious and humane manner if the deficiencies for which the dog was confiscated are not corrected within twenty (20) calendar days.

C. Extensions of Time. The animal control authority may, but is not required to, grant the owner of the dog an extension of time to correct the violation(s) before destruction of the dog.

D. Release of Dog. If the dog's owner complies with the deadline for the correction of the deficiencies, the animal control authority may release the dog. The dog's owner shall be responsible to pay all costs of redemption, confinement, boarding and control, including any necessary veterinary fees, prior to release of the dog.

E. Euthanasia. The animal control authority will destroy the dog in an expeditious and humane manner if the animal control authority has provided notice to the dog's owner as required by this Section, and the dog's owner does not comply with the deadline for the correction of deficiencies. The dog's owner shall be responsible to pay all costs of confinement, boarding, control and/or destruction of the dog, including any necessary veterinary fees.

6.04.011 Violations and penalties.

A. Violations. Any person found to be in violation of the following provisions of this chapter shall, upon conviction thereof, be found guilty of a gross misdemeanor punishable by imprisonment in jail of no more than 364 days or a fine of not more than five thousand dollars (\$5,000) or both such imprisonment and fine:

1. It is unlawful for a person owning or having care of a potentially dangerous or dangerous dog to fail to timely obtain the permit required by EMC 6.04.005(A) and 6.04.009(A); fail to timely request inspection as required by the same code provisions, or fail to obtain timely renewal of the permit;

2. It is unlawful for a person owning or having care of a potentially dangerous or dangerous dog to fail to restrain or confine the potentially dangerous or dangerous dog (which includes the period while the potentially dangerous or dangerous dog determination Notice and/or appeal is pending), as required by EMC 6.04.003(B) or 6.04.007(B);

3. It is unlawful for a person owning or having care of a potentially dangerous or dangerous dog to fail to obtain the required liability insurance/surety bond for the potentially dangerous or dangerous dog, as required by EMC 6.04.005(C)(4) or EMC 6.04.004(C)(4);

4. It is unlawful for a person owning or having care of a potentially dangerous or dangerous dog to fail to post and maintain warning signs as required by EMC 6.04.005(C)(3) or EMC 6.04.009(C)(3);

5. It is unlawful for a person owning or having care of a potentially dangerous or dangerous dog to fail to provide the animal control authority with the notice required by EMC 6.04.005(D) or EMC 6.04.009(D).

B. Additional Court Action. In addition to the above penalties, upon conviction, the court may order the seizure, impoundment and/or forfeiture of any dog which is the subject of the criminal proceedings. Any potentially dangerous or dangerous dog which attacks a human being, domestic animal or livestock may be ordered destroyed when, in the court's judgment, such dog represents a continuing threat of serious injury to human beings or serious harm to livestock and/or domestic animals. The court shall order any person convicted under this Section to pay all costs of confinement, control and/or destruction of the dog, including any necessary veterinary fees and daily boarding fees.