

ORDINANCE NO. 04-2019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON AMENDING CHAPTER 8.20 NOISE CONTROL AND CHAPTER 14.60 CLEARING AND GRADING OF THE CITY OF COVINGTON MUNICIPAL CODE; RELATING TO ALLOWING A METHOD TO REQUEST AN EXEMPTION TO THE ALLOWED HOURS OF CONSTRUCTION FOR FILL ACTIVITIES ASSOCIATED WITH A RECLAMATION PERMIT

WHEREAS, Chapter 35A.63 of the Revised Code of Washington (RCW) empowers the City of Covington (the "City") to enact planning and environmental regulations; and

WHEREAS, Chapter 8.20 of the Covington Municipal Code (CMC) authorizes the City of Covington to control the level of noise pollution in a manner that promotes commerce; the use, value, and enjoyment of property; sleep and repose; and the quality of the environment by declaring certain noise producing activities to be noise disturbances; and

WHEREAS, Chapter 14.60 of the CMC authorizes the City to enforce clearing and grading regulations to protect the public from adverse impacts due to grading activities and to produce a better end product for developing property; and

WHEREAS, this ordinance will allow amendments to Chapter 8.20 of the CMC to allow the City Manager or his/her designee to grant an exemption to the allowed hours of construction work for fill activities necessary to implement a Department of Natural Resources Reclamation Permit; and

WHEREAS, this ordinance will allow amendments to Chapter 14.60 of the CMC to add special criteria for proposed unloading of Fill during Expanded Work Hours; and

WHEREAS, adequate provisions are included in the proposed amendments to ensure that necessary mitigation measures can be applied to minimize impacts to adjacent residential dwellings and critical area habitat; and

WHEREAS, the Planning Commission held a properly noticed public hearing on March 21, 2019, to take public testimony on the proposed amendments, and the applicant and two members of the public spoke during the public comment portion and no written comments on the proposed amendments were submitted. A courtesy notice of the public hearing was also mailed to all property owners within 500 feet of the Lakepointe Urban Village Subarea notify them of the proposed amendments and Planning Commission public hearing; and

WHEREAS, the Covington City Council held a properly noticed public hearing on April 23, 2019 to receive public testimony on the proposed amendments; public notice was published in the newspaper, posted at City Hall, and on the City's website. A courtesy notice of the City Council's public hearing was also mailed to all property owners within 500 feet of the Lakepointe Urban Village Subarea to notify them of the proposed amendments and City Council's public hearing; and

WHEREAS, the City Council, upon review of the facts and findings and recommendations of the Covington Planning Commission, and after review and information provided by City staff find that all applicable and substantive requirements of the law have been met, that adoption of this ordinance promotes the public health, safety, and general welfare of the community and the adoption of this ordinance serves the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 8.20 Noise Control of the Covington Municipal Code, is hereby amended as set forth in the attached Exhibit A, incorporated herein by this reference.

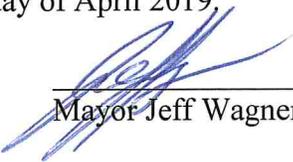
Section 2. Chapter 14.60 Clearing and Grading of the Covington Municipal Code is hereby amended as set forth in the attached Exhibit B, incorporated herein by this reference.

Section 3. The 2019 City of Covington Fee Schedule is hereby amended to include fees for the costs incurred by the City to review a waiver application to allow expanded work hours for fill associated with an approved DNR permit, which fees shall be consistent with the fees charged for a waiver to allow work involving public utilities within the public right-of-way.

Section 4. This ordinance shall be in full force and effect five (5) days after publication. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

Section 5. If any provision of this ordinance, or ordinance modified by it, is determined to be invalid or unenforceable for any reason, the remaining provisions of this ordinance and ordinances and/or resolutions modified by it shall remain in force and effect.

Passed by the City Council on the 23rd day of April 2019,

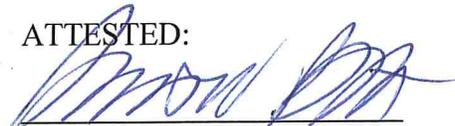


Mayor Jeff Wagner

PUBLISHED: April 26, 2019

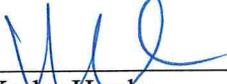
EFFECTIVE: May 1, 2019

ATTESTED:



Sharon Scott
City Clerk

APPROVED AS TO FORM:



Kathy Hardy
City Attorney

Chapter 8.20

NOISE CONTROL

Sections:

- 8.20.010 Purpose.
- 8.20.020 Public disturbance noises.
- 8.20.030 Violation – Penalty.

8.20.010 Purpose.

The purpose of this chapter is to minimize the exposure of citizens to the harmful physiological effects of excessive noise. The intent of the City Council is to control the level of noise pollution in a manner which promotes commerce, the use, value and enjoyment of property, sleep and repose and the quality of the environment by declaring certain noise producing activities to be noise disturbances. (Ord. 07-12 § 1 (Exh. A); Ord. 96-98 § 1)

8.20.020 Public disturbance noises.

(1) It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance noise.

(2) The following sources of sound shall be public disturbance noises:

(a) The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except those from a police, fire or medical emergency vehicle, so as to unreasonably disturb or interfere with the peace and comfort of owners or possessors of real property;

(b) The creation of frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residential district, so as to unreasonably disturb or interfere with the peace and comfort of owners or possessors of real property;

(c) Yelling or shouting which is audible on the public streets or public grounds between the hours of 10:00 p.m. and 8:00 a.m. or at any time and place so as to unreasonably disturb or interfere with the peace and comfort of owners or possessors of real property;

(d) The creation of frequent, repetitive or continuous sounds which emanate from any building, structure, apartment or condominium which unreasonably disturb or interfere with the peace and comfort of owners or possessors of real property, such as sounds from band sessions or social gatherings;

(e) The creation of sound from any motor vehicle audio sound system, such as a tape player, radio or compact disc player, operated at a volume so as to be audible at least 50 feet from the source;

(f) The creation of sound from any audio equipment, such as a tape player, radio or compact disc player, television, musical instrument, or similar device, whether portable or stationary, operated at a volume as to be audible at least 50 feet from the source;

(g) The creation of squealing, screeching or other similar sounds from motor vehicle tires in contact with the ground or other roadway surface because of rapid acceleration, braking or excessive speed around corners or because of such other reason; provided, that sounds which result from actions which are necessary to avoid danger shall be exempt from this section;

(h) The creation of sounds originating from residential real property relating to temporary projects for the maintenance or repair of grounds and appurtenances, including but not limited to sounds from lawn mowers, powered hand tools, snow removal equipment and composters, between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on weekends;

(i) The creation of sounds originating from any construction activity, including excavation and land clearing work, or erection, demolition, alteration, repair, or relocation of any building or structure, which uses tools such as, but not limited to, powered equipment, compressors, motorized or powered hand tools, hammers or equipment of a similar nature at any location which produces noise clearly audible from another location in a residential district or at a dwelling in any district, between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 6:00 p.m. and 9:00 a.m. on Saturdays, Sundays or Federal holidays. Prohibitions on the above listed construction activities occurring between 8:00 p.m. and 7:00 a.m. on weekdays and 6:00 p.m. and 9:00 a.m. on weekends or Federal holidays may be waived or modified (expanded work hours) only upon application and subject to approval by the City Manager or his/her designee ~~upon written request~~ by a permit applicant, or the owner of the property, with an approved building permit for work involving public utilities within the public right-of-way, or an approved Washington State Department of Natural Resources (DNR) Surface Mining Reclamation Permit limited to the unloading of fill on-site.

The application fee established in the Covington Fee Schedule shall be paid for review and potential issuance of an expanded work hours permit. The designated City official responsible for reviewing and issuing the permit may approve, deny, or condition the permit based on the approval criteria. Approval may only be for specific dates and times and under terms that the approving official deems appropriate under the circumstances. The City may require additional measures to control noise, vibration and light/glare, including but not limited to equipping construction vehicles with ambient-sensitive back-up alarms or muffling engine noise if the site conditions or the site's proximity to residential zoned properties, residential uses, or critical areas warrants them. The application shall contain such information as deemed necessary by the designated city official, including:

(A) Expanded Work Hours Procedures and Approval Criteria. The applicant shall outline in writing the length, duration and hours of the requested nighttime work, why it is necessary, a detailed description of the activities that will be undertaken in those expanded hours, and any mitigation methods proposed to minimize or eliminate noise impacts to nearby residential dwellings and critical areas. Any proposed expanded work hours application for fill activity associated with an approved DNR Surface Mining Reclamation Permit shall demonstrate they meet the provisions of CMC 14.60.160 (4).

(B) Approval. If the request is approved, the City's approval shall include the specific construction activities, dates and hours of operation, and any appropriate noise mitigation measures that must be met to commence such activities during the approved dates and times. Upon approval by the City, the applicant shall notify all property owners within 300 feet of the property of the approved nighttime construction hours at least three days prior to commencement of the nighttime work by a notification method approved by the City. The City Manager or his/her designee may waive or modify the three-day notification requirement to affected property owners if the City Manager or his/her designee determines that a fire or life safety emergency exists that requires the work to be commenced prior to the end of the three-day notification period.

(j) The creation of sounds from gas-powered motorized foot scooters between the hours of 9:00 p.m. and 7:00 a.m. or during any "hours of darkness" as that phrase is defined in RCW 46.04.200. For purposes of this section, the times of sunset and sunrise shall be those times designated in a newspaper of local circulation including the King County Journal, the Seattle Times or the Seattle Post-Intelligencer.

(3) The prohibitions set forth in this section shall not apply to a civic event or gathering approved in advance by the City Manager or his/her designee; and provided, that the City shall approve the activities and hours of operation for which the noise level shall be exempt. (Ord. 07-12 § 1 (Exh. A); Ord. 21-04 § 1; Ord. 27-01 § 1; Ord. 96-98 § 1)

8.20.030 Violation – Penalty.

(1) Any person who violates the provisions of this chapter shall be subject to a civil fine not to exceed \$250.00 for the first offense. For second and subsequent offenses, the person shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine not to exceed \$1,000 or 90 days in jail, or both such fine and jail.

(2) Nothing contained in this chapter shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 05-13 § 1; Ord. 07-12 § 1 (Exh. A); Ord. 96-98 § 1)

Chapter 14.60

CLEARING AND GRADING REGULATIONS

Sections:

- 14.60.010 Purpose.
- 14.60.020 Definitions.
- 14.60.030 Applicability.
- 14.60.040 Related codes and regulations.
- 14.60.050 Administration.
- 14.60.060 Hazards.
- 14.60.070 Design variances and deviations.
- 14.60.075 Clearing and grading fee.
- 14.60.080 Clearing and grading permit required.
- 14.60.100 Permit requirements.
- 14.60.110 Expiration of permits and applications.
- 14.60.120 Operating conditions and standards of performance.
- 14.60.130 Grading – Land development projects.
- 14.60.135 Grading – Individual lots.
- 14.60.140 Drainage.
- 14.60.150 Slopes.
- 14.60.160 Fill.
- 14.60.170 Rock and retaining walls.
- 14.60.190 Driveways – Design.
- 14.60.200 Inspections.
- 14.60.210 Final approval.
- 14.60.240 Enforcement, violations and penalties.

14.60.010 Purpose.

(1) This chapter is intended to regulate clearing, grading and earthwork construction, including cuts and fills, within the City of Covington, in order to protect public health, safety, welfare, and aesthetics by:

- (a) Preventing damage to property and harm to persons caused by excavations and fills;
- (b) Minimizing adverse stormwater impacts generated by the removal of vegetation and alteration of landforms;
- (c) Protecting water quality from the adverse impacts associated with erosion and sedimentation;
- (d) Minimizing the height, steepness, and number of graded slopes;
- (e) Minimizing the amount of grading after a property is developed and prepared for building construction;
- (f) Minimizing the height and number of rock and retaining walls;
- (g) Protecting critical areas and associated buffers from adverse clearing and grading activities;
- (h) Minimizing aquatic and terrestrial wildlife habitat loss caused by the removal of vegetation;
- (i) Establishing minimum access requirements to and around buildings for safety, security, maintenance, and general use and enjoyment of property;
- (j) Establishing administrative procedures for the issuance of permits, approval of plans, and inspection of clearing and grading operations; and
- (k) Providing enforcement and penalties for the violation of this chapter.

(2) This chapter establishes the administrative procedure for issuance of permits, provides for approval of plans and inspection of clearing and grading operations, and provides for enforcement and penalties for the violation of this chapter. (Ord. 08-13 § 1 (Exh. A))

14.60.020 Definitions.

Certain words and phrases used in this chapter, unless otherwise clearly indicated by their context, mean as follows. Unless otherwise defined in this chapter the definitions provided in Chapter 18.20 CMC shall be applicable.

- (1) "Bench" means a relatively level step excavated or constructed into earth material on which fill is to be placed.
- (2) "Best management practices (BMPs)" means the best available and reasonable physical, structural, managerial, or behavioral activities that, when used singly or in combination, eliminate or reduce the contamination of surface and/or ground waters.
- (3) "Borrow" means earth material acquired from an off-site location for use in grading on a site.
- (4) "Clearing and grading permit" means the written permission of the Director to the applicant to proceed with the act of clearing and grading within the provisions of this chapter. The clearing and grading permit includes the associated approved plans and any conditions of approval as well as the permit form itself.
- (5) "Compaction" means the densification of a fill by mechanical means.
- (6) "Earth material" means any rock, natural soil or fill, or any combination thereof.
- (7) "Excavation" means the removal of earth material. The term "cut" can also be used to describe excavation.
- (8) "Fill" means a deposit of earth material placed by mechanical or other means.
- (9) "Infrastructure improvements" means streets, drainage facilities, utilities, and associated appurtenances typically constructed as part of a development project for the purposes of serving the development.
- (10) "Key" means a compacted fill placed in a trench excavated in earth material beneath the toe of a slope.
- (11) "Modular block wall" means a wall constructed of manufactured modular wall units acting as a protective facing for an exposed soil face or as a gravity retaining wall.
- (12) "Reinforced fill" or "reinforced soil" means soil fill designed by a geotechnical engineer which includes reinforcement consisting of metal or synthetic materials in bars, strips, grids, or sheets.
- (13) "Retaining wall" means a wall designed to resist the lateral displacement of soil or other materials.
- (14) "Rockery" or "rock wall" means one or more courses of large rocks stacked near vertical in front of an exposed soil face to protect the soil face from erosion and sloughing. A rockery or rock wall is not a retaining wall.
- (15) "Site restoration" means the permanent restoration of lands modified under the provisions of this code, typically in the form of the establishment of vegetation and drainage facilities to control the rate and erosive force of stormwater runoff.
- (16) "Terrace" means a relatively level step excavated or constructed in the face of a graded slope surface for drainage and maintenance purposes. (Ord. 08-13 § 1 (Exh. A))

14.60.030 Applicability.

The provisions of this chapter shall apply to any person developing, altering, clearing, or grading land, or constructing buildings in the City of Covington. (Ord. 08-13 § 1 (Exh. A))

14.60.040 Related codes and regulations.

(1) The requirements of this chapter are in addition to other City codes, standards, and regulations. Where conflicts exist between the provisions of this chapter and other codes and standards, the most restrictive shall apply.

(2) The applicant shall comply with this chapter, the City of Covington Design and Construction Standards, as adopted in Chapter 12.60 CMC, Appendix J of the International Building Code, as adopted in Chapter 15.05 CMC, Surface and Stormwater, as adopted in Chapter 13.25 CMC, CMC Titles 14 and 18, and equivalent standards approved by the Director.

(3) Requirements administered by other State and local agencies may also apply. The responsibility for determining the existence and application of other agency requirements rests solely with the applicant. (Ord. 08-13 § 1 (Exh. A))

14.60.050 Administration.

(1) The Director is authorized to develop and adopt administrative rules and procedures for the purposes of implementing and enforcing the provisions of this chapter.

(a) If clearing and grading, inconsistent with the purposes and requirements of this chapter, has occurred on a site, the City shall not accept or grant any development permits or approvals for the site unless the applicant adequately restores the site.

(2) The Director may impose conditions on permit approval as needed to mitigate identified project impacts and shall deny permit applications that are inconsistent with the provisions of this chapter.

(3) As a condition of any permit issued for activity covered by this chapter, the property owner shall be required to consent to entry upon the land by the Director or his/her designee at all reasonable times to inspect the same or to perform any duty imposed upon the Director by this chapter. If the land is occupied, the Director shall first present proper credentials and request entry. If the land is unoccupied, a reasonable effort shall be made to locate the owner or other persons at the site who are in apparent charge or control of the land and demand entry. If no person is located, the Director may enter said property and shall, with due diligence, make attempts to notify the owner, occupant, or other person having charge within a reasonable amount of time of the entry.

(4) Where the Director has reasonable grounds to believe that activities for which a permit is required by this chapter are being conducted without a permit on land within the City, the Director or his/her designee may seek to inspect the land and such activity. If the land is occupied, the Director shall first present proper credentials and request entry for inspection. If the land is unoccupied, a reasonable effort shall be made to locate the owner or other persons at the site who are in apparent charge or control of the land and request entry for inspection. If no person is located, or if entry is refused, the Director may request the assistance of the City Attorney, City Prosecutor, or Police Department regarding access. (Ord. 08-13 § 1 (Exh. A))

14.60.060 Hazards.

The Director has the authority to determine whether an existing site, as a result of clearing, grading, excavation, filling, or other similar activity, has become a hazard which may endanger property or adversely affect the safety, use, or stability of a public way or drainage channel. (Ord. 08-13 § 1 (Exh. A))

14.60.070 Design variances and deviations.

(1) A design deviation is a Type 1 decision and a design variance is a Type 2 decision, as established by CMC 14.30.040. Applicants requesting a variance from the requirements of this chapter shall provide justification for the variance in accordance with Chapter 18.125 CMC. Applicants requesting a deviation from the requirements of this chapter shall provide justification in accordance with the process outlined in the City's Design and Construction Standards, adopted in Chapter 12.60 CMC. The Director, City Engineer, and/or their designee may impose conditions upon the granting of any clearing and grading design deviations or design variance.

(2) Applications for variances shall require payment of all application fees to cover the cost of the review. Such fees are set forth in the current fee resolution. (Ord. 08-13 § 1 (Exh. A))

14.60.075 Clearing and grading fee.

(1) Fees shall be collected to compensate the Department for the investigation, permit administration, plan review, and ongoing monitoring/inspection of grading and clearing permit applications consistent with the grading and/or clearing fees set forth in the current fee resolution.

(2) Fee Reductions. Grading permit fees for projects entirely completed within one year or for permits reviewed in conjunction with other land use permits may qualify for a fee reduction. The reduction is set forth in the current fee resolution.

(3) Work without a Permit. Whenever any work for which a grading or clearing permit is required by this chapter has been commenced without first obtaining a valid permit, the City may double the clearing and grading fee as set forth in the grading permit fee tables in the current fee resolution. This fee increase may be imposed in addition to any other enforcement procedures pursuant to this chapter.

(4) Additional Review Fees. In addition to the grading and clearing permit fees set forth in this section, other fees required by the Covington Municipal Code may be applicable to individual grading permit applications. Such fees include, but are not limited to, shoreline management, SEPA, and critical areas review fees. (Ord. 08-13 § 1 (Exh. A))

14.60.080 Clearing and grading permit required.

(1) A clearing and grading permit is required for all clearing and grading activities, unless the activity is exempt as follows:

(a) An on-site excavation for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation;

(b) Routine landscape maintenance or installation of landscaping improvements involving not more than 50 cubic yards in total of excavation and fill on a single parcel of property within a 12-month period; provided, that topsoil up to a depth of six inches, regardless of quantity, may be placed on single-family residential properties without requiring a permit, provided this activity is not conducted within a critical area or associated buffer;

(c) Maintenance of existing driveways or private access roads within their existing road prisms;

(d) Any clearing or grading within a publicly owned road right-of-way or easement, for which a right-of-way use permit has been granted by the City;

(e) Clearing or grading by a public agency for the following routine maintenance activities:

(i) Routine clearing within road right-of-way;

(ii) Pavement maintenance;

(iii) Normal grading of gravel shoulders;

(iv) Roadside ditch cleaning;

(v) Maintenance of culverts;

(vi) Maintenance of flood control or other approved surface water management facilities; and

(vii) Normal and routine maintenance of parks and trails;

(f) Cemetery graves;

(g) Excavation or fill less than three feet in vertical depth not involving more than 50 cubic yards of earth or other material on a single site;

(h) Clearing associated with tree and vegetation removal as exempt in CMC 18.45.050(3);

(i) Clearing or grading activities for the purposes of gathering information required by the City for application of a development proposal, such as:

- (i) Hand clearing of vegetation for surveying;
- (ii) Minimal clearing and grading as required to perform geotechnical exploration to characterize geologic formations and soils;
- (iii) Minimal clearing and grading to install erosion and sedimentation control devices in accordance with an approved temporary erosion and sedimentation plan; and
- (iv) Removal of trees outside of critical areas; provided, that trees to be removed are not located in an area designated to be preserved as part of an approved tree retention plan in general accordance with CMC 18.45.080; and provided, that a forest practices application is not required by the Washington State Department of Natural Resources.

(j) Approved and active Washington State Department of Natural Resources Surface Mining Reclamation Permits.

- (2) All clearing and grading within critical areas and their associated buffers shall conform to the provisions of this chapter and Chapter 18.65 CMC.
- (3) A clearing and grading permit may be issued as a component of a building permit, or other permit, rather than as a separate permit. The Director may require that single-family building permits and clearing and grading permits be combined.
- (4) All clearing and grading activities within the City, regardless of whether a permit is required, shall meet the performance and restoration requirements of this chapter and shall include the use of best management practices to reduce erosion, ~~and protect water and air quality~~, and mitigate off-site impacts, such as noise, light, dust, etc. (Ord. 08-13 § 1 (Exh. A))

14.60.100 Permit requirements.

- (1) Applications shall be on forms prescribed by the Director and shall include such information as deemed necessary by the Director to establish compliance with this section. A complete application shall include requirements as outlined in CMC 14.35.020 and this section, unless otherwise approved by the Director and as shown on the application form.
 - (a) A complete application on a form supplied by the department;
 - (b) Payment of any application fee set forth in the current fee resolution;
 - (c) Describe the work to be covered by the permit for which application is made;
 - (d) Indicate the estimated quantities of work involved (disturbed area in acres and cut and fill quantities in cubic yards);
 - (e) Be signed by the property owner or his/her authorized agent who shall be required to submit evidence to indicate such authority;
 - (f) Complete bond quantity worksheet, associated financial guarantees, and liability insurance as set forth in CMC 14.105.150 and 14.105.170; and
 - (g) Other information as may be required by the Director.
- (2) Each application for a grading permit shall be accompanied by plans and specifications and other supporting data, as applicable. The plans and specifications shall be prepared and signed by a civil engineer registered to practice in the State of Washington. Plans and specifications for single-family residential construction shall not require preparation by a licensed engineer unless deemed necessary by the City Engineer.
- (3) Plans shall be prepared in general accordance with Chapter 10 of the City's Design and Construction Standards.

(a) Tree retention plan shall be prepared in accordance with CMC 18.45.080;

(b) A soils report shall be prepared by a licensed soils or geotechnical engineer and shall cover all portions of the project within the engineer's expertise, including site history; geologic structures; surface conditions; subsurface conditions; recommendations for foundation support, site preparation, structural fill, slope stability, and mitigation; design parameters for retaining structures and structure backfill, surface and subsurface drainage, dewatering, excavation conditions, and hazards; seismic conditions, erosion, and sedimentation hazards and controls; use of on-site materials for structural fill and backfill; and pavement design. The soils or geotechnical engineer shall be retained as the engineer-of-record for the duration of the project; and

(c) If the clearing or grading is proposed to take place in or adjacent to a critical area as regulated in Chapter 18.65 CMC, provide information as required by that chapter.

(4) Issuing Clearing and Grading Permits.

(a) After an application has been filed and reviewed, the Director shall determine that the clearing and grading work complies with the other provisions of the municipal code or request that the application be corrected or amended to comply with this chapter.

(b) In granting a clearing and grading permit, the Director may require measures to mitigate the impacts of the clearing and grading work.

(c) No clearing and grading permit shall be issued until approved by Federal, State, and local agencies having jurisdiction by laws or regulations pertaining to the proposed work.

(d) Upon approval of the application and issuance of the clearing and grading permit, no work shall be done that is not provided for in the permit.

(e) The clearing and grading permits from the Director shall be required regardless of any other permits issued by any other department or governmental agency who may be interested in certain aspects of the proposed work. (Ord. 08-13 § 1 (Exh. A))

14.60.110 Expiration of permits and applications.

(1) An application for a clearing and grading permit may be canceled for inactivity if an applicant fails, without reasonable justification, to respond to the Department's written request for revisions or corrections within 60 days of receipt of such request. The Director may extend the response period beyond 60 days if the applicant provides and adheres to a reasonable schedule for submitting the full revisions.

(2) Clearing and grading permits expire as follows:

(a) If a building permit is issued for the same site, the clearing and grading permit shall automatically expire or be extended when the building permit expires or is extended;

(b) If a building permit is not issued for the same site, the clearing and grading permit shall expire as follows:

(i) The permit shall expire if the authorized work has not begun within 180 days from the date of permit issuance, or if work is abandoned for over 60 consecutive days, unless an extension has been granted. The applicant shall be responsible for notifying the Director, in writing, if delays or unforeseen circumstances are impacting the start or continuation of the work.

(ii) If the authorized work is continually performed, the permit shall expire one year from the date of issuance, unless a different time frame is specified on the permit or an extension is granted. Up to two one-year extensions may be granted by the Director; provided, that conditions which were relevant to issuance of the permit have not changed substantially and no material detriment to the public welfare will result from the extension. The applicant shall be responsible for notifying the Director, in writing, if delays or unforeseen circumstances are impacting the completion of the work. An extension may be granted by the Director, provided the applicant provides the following:

(A) A written request and applicable fee. The request should be submitted no later than 60 days prior to expiration of the permit;

(B) The applicant's project engineer submits a signed statement certifying that they have reviewed the current physical conditions of the site and such conditions have not changed to a degree as to require a revision to the design of the site in order to remain consistent with the applicable standards and requirements which were in effect at the time of the original permit approval and the associated land use approval.

(3) When a permit is ready to be issued, the applicant shall be notified and must pick up the permit within 60 days of notification. If the permit is not picked up, it may be canceled by the Director and become null and void. If the permit is canceled, the Director shall notify the applicant by mail. (Ord. 08-13 § 1 (Exh. A))

14.60.120 Operating conditions and standards of performance.

All clearing and grading activities in the City shall conform to the City's adopted regulations as set forth in the municipal code and the provisions of this section as follows:

(1) All standards under this chapter shall be consistent with the City's adopted stormwater and reference manuals adopted in CMC 13.25.020, herein referred to as the "City's stormwater manual."

(2) The site shall be operated and maintained in a neat and orderly manner, free from junk, trash, or unnecessary debris.

(3) Prior to the start of clearing and grading operations, the applicant shall identify all proposed haul routes and access points to the site for review and approval by the City.

(4) The applicant must properly handle and dispose of other pollutants that are on site during construction so as to avoid possible health risks or environmental contamination. Direct and indirect discharge of pollutants to the drainage system, critical areas, wetlands, streams, or any other adjacent properties is prohibited. Storage of fuel or other hazardous substances on site is prohibited.

(a) All pollutants, including waste materials and demolition debris, that occur on site shall be handled and disposed of in a manner that does not cause contamination of stormwater.

(b) Cover, containment, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment. On-site fueling tanks shall include secondary containment.

(c) Maintenance, fueling, and repair of heavy equipment and vehicles shall be conducted using spill prevention and control measures. Contaminated surfaces shall be cleaned immediately following any spill incident.

(d) Wheel wash or tire bath wastewater shall be discharged to a separate on-site treatment system or to the sanitary sewer with local sewer district approval pursuant to State Department of Ecology standards, unless modified by the Director.

(e) Application of fertilizers and pesticides shall be conducted in a manner and at application rates that will not result in loss of chemical to stormwater runoff. Manufacturers' label requirements for application rates and procedures shall be followed.

(f) Best management practices shall be used to prevent or treat contamination of stormwater runoff by pH modifying sources. These sources include, but are not limited to: bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, dewatering concrete vaults, concrete pumping and mixer washout waters. Construction site operators shall adjust the pH of stormwater if necessary to prevent violations of water quality standards.

(g) Construction sites with significant concrete work shall adjust the pH of stormwater if necessary to prevent violations of water quality standards. Construction site operators shall obtain written approval from the State Department of Ecology prior to using chemical treatment other than CO₂ or dry ice to adjust pH.

(5) The applicant shall be responsible that the requirements found either in the City's stormwater manual or outlined below are met for the following:

- (a) Site containment;
- (b) Installing sediment controls;
- (c) Stabilizing disturbed areas;
- (d) Stabilizing channels and outlets.

(6) Land disturbance activities shall not result in off-site physical damage, nor pose a danger or hazard to life or property. Such activities shall neither contribute to nor create landslides, accelerated soil creep, or settlement of soils.

(7) Dewatering Devices.

- (a) Foundation, vault, and trench dewatering water that has similar characteristics to stormwater runoff at the site shall be discharged into a controlled conveyance system prior to discharge to a sediment pond. Channels must be stabilized according to the standards in the City's stormwater manual.
- (b) Clean, nonturbid dewatering water, such as well-point groundwater, can be discharged to systems tributary to State surface waters provided the dewatering flow does not cause erosion or flooding of receiving waters. These clean waters should not be routed through stormwater sediment ponds.
- (c) Highly turbid or contaminated dewatering water shall be handled separately from stormwater.
- (d) Other disposal options, depending on site constraints, may include:
 - (i) Infiltration.
 - (ii) Transport off site in a vehicle, such as a vacuum flush truck, for legal disposal in a manner that does not pollute State waters.
 - (iii) On-site treatment using chemical treatment or other suitable treatment technologies.
 - (iv) Sanitary sewer discharge with local sewer district approval.
 - (v) Use of a sedimentation bag with outfall to a ditch or swale for small volumes of localized dewatering.

(8) Site-Specific Requirements. Additional site-specific requirements may be established after a site visit by the City. These requirements shall be based on specific site conditions and are limited to additional temporary erosion and sedimentation control and the mitigation of hazardous or potentially hazardous conditions that pose a threat off site or to habitat preservation. (Ord. 08-13 § 1 (Exh. A))

14.60.130 Grading – Land development projects.

(1) For all land development projects such as subdivisions, short subdivisions, and commercial site developments, the applicant shall, after being issued the proper permits, clear and grade the property and install infrastructure improvements. Final grades of lots shall be prepared in accordance with the provisions of this chapter. Individual lots shall be cleared and graded in accordance with CMC 14.60.135.

(2) Individual lots within a land development project shall be cleared and graded as part of the overall project's mass grading and construction of infrastructure. The individual lots shall be graded to accept the expected buildings and driveways. All lots shall be designed and constructed with due regard to the natural topography.

- (a) Walls and slopes proposed as a means of grade separation between lots shall be constructed as part of the mass grading phase of the project and shall be constructed entirely on the downhill lot.

(b) If lots are expected to be constructed for a daylight basement type building, the lot shall be prepared as near as possible for such a building by grading a terrace at some distance from the street. The excess material from the terrace shall be hauled off site or utilized as fill, if suitable elsewhere on the project. (Ord. 08-13 § 1 (Exh. A))

14.60.135 Grading – Individual lots.

Individual lots may be cleared and graded with the following restrictions:

- (1) Excavation and fill will be allowed up to maximum depth of three feet, excluding the excavation required for the building foundations.
- (2) Grading across property boundaries will only be allowed if a separate clearing and grading permit is issued for the grading activity for all affected lots.
- (3) Any grading of the property and individual lots shall generally conform to the natural topography of the property and adjacent properties and all provisions of this chapter.
- (4) All building lots shall be graded and prepared such that all roof, yard, wall, slope, driveway, and footing drains can be connected directly by gravity to the project's drainage system. Discharge to an alternate location may be allowed only with prior approval of the City Engineer and appropriate easements from affected downstream property owners. (Ord. 08-13 § 1 (Exh. A))

14.60.140 Drainage.

Clearing and grading operations shall take all necessary precautions, through the use of best management practices (BMPs), to control drainage within the site and off site to avoid damage to adjoining properties and drainage facilities and prevent impacts to water quality as outlined in the City's stormwater manual and Design and Construction Standards. (Ord. 08-13 § 1 (Exh. A))

14.60.150 Slopes.

Slopes shall be constructed with due regard for drainage, access, maintenance, impacts to adjacent property, and aesthetics. Constructed slopes shall comply with all applicable codes and standards and the following criteria:

- (1) Fill slopes shall be constructed no steeper than three horizontal to one vertical. Cut slopes may be constructed at a maximum slope of two horizontal to one vertical upon approval of the Director and recommendation of a geotechnical engineer for those areas lying outside the building envelope. In addition, the following standards shall apply to cut and fill slopes:
 - (a) Minimize clearing and grading on slopes 15 percent or greater. Clearing and grading on slopes shall meet any applicable critical areas standards set forth in Chapter 18.65 CMC.
 - (b) Slopes shall comply with the land use code restrictions applicable to slopes 40 percent or greater and to areas of colluvial or landslide deposit on slopes of 15 percent or greater.
 - (c) Do no clearing, excavation, stockpiling, or filling on the potential slide block of an unstable or potentially unstable slope unless it is demonstrated to the Director's satisfaction that the activity would not increase the load, drainage, or erosion on the slope.
 - (d) Do no clearing, excavation, stockpiling, or filling on any unstable or potentially unstable areas (such as landslide deposits) unless it is demonstrated to the Director's satisfaction that the activity would not increase the risk of damage to adjacent property or natural resources or injury to persons.
 - (e) Intercept any groundwater or surface water drainage encountered on a cut slope and discharge it at a location approved by the Director. Off-site stormwater (run-on) or groundwater shall be diverted away from slopes and undisturbed areas with interceptor dikes, pipes and/or swales. Off-site stormwater should be managed separately from stormwater generated on the site.
 - (f) Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations.

- (g) Check dams shall be placed at regular intervals within constructed channels.
 - (h) At the top of slopes, collect drainage in adequate pipe slope drains or armored channels to prevent erosion.
- (2) Existing slopes shall not be over-steepened beyond the criteria in subsection (1) of this section by placing fill or by constructing a fill wall near the top of the slope.
- (3) If building sites are prepared by constructing slopes near the property boundary, the slope shall be constructed in accordance with CMC 14.60.135.
- (4) Drainage at the top and toe of any slope shall be appropriately collected and discharged.
- (a) The ground surface above a slope shall be graded to direct surface runoff to an appropriate collection point. Water shall not be allowed to discharge over the top of a slope.
 - (b) Slopes shall not be constructed in a location or manner in which surface runoff and debris are permitted to drain onto an adjacent property.
 - (c) Slopes shall be designed and protected to minimize erosion.
 - (d) Terraces at least 10 feet in width shall be sloped away from the face of a slope and shall be established at not more than 25-foot vertical intervals to control surface drainage and debris. Swales or ditches on terraces shall have a maximum gradient of five percent.
 - (e) The tops and the toes of cut and fill slopes shall be set back from property boundaries as far as necessary as determined by a geotechnical engineer for safety of the adjacent properties and to prevent damage resulting from water runoff or erosion. The tops and toes of cut and fill slopes shall be set back from structures as far as is necessary as determined by a geotechnical engineer for adequacy of foundation support and to prevent damage as a result of water runoff or erosion. (Ord. 08-13 § 1 (Exh. A))

14.60.160 Fill.

All fill material shall be inspected and approved by the geotechnical engineer prior to the material arriving on site. All imported fill material received from other than a commercial borrow site shall be accompanied by a clean soil questionnaire stating that the material is free of hazardous wastes. Recycled concrete shall not be used.

- (1) Preparation of Ground. The ground surface shall be prepared to receive fill by removing vegetation and unsuitable soil and material such as concrete rubble, topsoil, tree stumps, and brush. Where slopes receiving fill are steeper than five horizontal to one vertical, the fill material shall be benched into sound bedrock.
- (2) Fill Material. Fill shall be "clean" and free of contaminants pursuant to Chapters 173-204 and 173-340 WAC or fill shall be obtained from a Washington State Department of Ecology approved site. Only earth materials which have no rock or similar irreducible material with a maximum dimension greater than 12 inches shall be used. All on-site materials used as fill on the site shall conform to the specifications identified in the approved soils report.
- (3) Compaction. All fill material shall be compacted to a firm and unyielding condition to a density of 95 percent of maximum density per ASTM D-1557, modified proctor. (Ord. 08-13 § 1 (Exh. A))
- (4) Special Criteria for Fill Activity during Expanded Work Hours. Any application to allow the unloading of fill material during expanded work hours as provided for in CMC 8.20 Noise Control must address the following:
 - (a) Any proposed night-time unloading of fill material associated with an approved DNR Surface Mining Reclamation Permit shall be supported by a Noise Assessment, prepared by a qualified independent noise consultant, to evaluate and address potential noise impacts on surrounding residential uses and critical areas from that activity. The noise assessment should address at a minimum the following:
 - (i) Provide a summary of all noise regulations that would apply to the potential nighttime fill activities (i.e. City, County, State).

(ii) Provide a detailed description of the activities the applicant plans to conduct during the expanded work hours including time of day, specific equipment to be used (model numbers and power level data), and specific noise abatement technologies to be used (model numbers and vendor guaranteed attenuation data).

(iii) Conduct baseline noise monitoring, for at least a 24-hour period, at sensitive receiver locations (residences, open areas where wildlife could be impacted, and any other locations of concern).

(iv) Conduct computer noise modeling (using CADnaA or other noise modeling software) to demonstrate quantitatively that the noise levels at sensitive receivers (residences and wildlife areas) will not exceed specified decibel limits during daytime and nighttime operations.

(v) CMC 8.20 (b) does not provide specific decibel limits; therefore, the noise assessment should refer to the Washington Administrative Code (WAC) 173-60-040 for maximum permissible environmental noise levels. The applicant shall implement noise reduction measures to the extent feasible to ensure compliance.

(b) Noise levels shall comply with WAC 173-60. The City may condition any expanded work hour permit approval to require the applicant to ensure that noise levels are monitored by a technician with the qualifications contained in WAC 173-58, or acceptable qualifications as determined by the City, using instruments that meet the qualifications of WAC 173-58, at the property boundaries. Noise monitoring reports shall be provided to the City at least weekly or more frequently if the City determines more frequent monitoring is necessary. If the noise levels exceed the levels permitted by WAC 173-60, the City may take any enforcement measures necessary to ensure compliance with WAC 173-60.

(c) Lighting. All lighting shall be limited to the lowest intensity that allows the permitted activity to be carried out in a safe manner. The lights shall be shielded and directed so that illumination affects only the premises of the site and does not result in glare outside of the permit site.

(d) Vehicle preparation. All vehicles leaving the site shall comply with RCW 46.61.655 (escape of load materials and cleaning of vehicles).

(e) Dust control. The applicant shall obtain all required preconstruction approval permits from the Puget Sound Clean Air Agency and shall comply with all of the requirements of the Puget Sound Clean Air Agency. In addition, the City may require methods of dust control, such as water trucks or sprinklers, that will mitigate the dust from the site.

(f) Contact. The applicant shall visibly post his or her name, address and phone number or the name, address, and phone number of a designated person whom the public can contact during the expanded work hours, to report complaints or violations. The applicant's designated person must be available during the expanded work hours to answer the phone and if necessary visit the site to address any reported complaints or violations.

14.60.170 Rock and retaining walls.

Walls shall be designed and constructed with due regard for drainage, access, maintenance, impacts to adjacent property, and aesthetics. All walls shall be constructed in accordance with all applicable codes and standards and the following criteria:

(1) Rock walls may be used for erosion protection of cut or fill slopes. The primary function of a rock wall is to protect the slope face from soil erosion and sloughing.

(2) Any wall supporting a surcharge or an exposed wall height of greater than three feet shall require a separate building permit.

(3) All walls shall be provided with a wall drainage system. The wall drainage system shall discharge at an appropriate location:

(a) Wall drains shall be connected to the storm drainage stub provided for the lot, if possible.

- (b) Wall drains shall not discharge onto an adjacent downhill property, unless downhill property is a vegetated area that has been set aside as permanent open space or critical area, with approval from the City.
 - (c) Wall drains shall not discharge onto a steep slope or area susceptible to erosion.
 - (d) The area above the wall shall be graded to channel water in a direction parallel to the face of the wall until the water can be collected in a pipe or drain, or discharged at an appropriate location.
- (4) All walls parallel to a building shall be set back from the building a minimum of five feet. This setback applies to the horizontal space between the wall and the building as measured from the front face of a wall or the cut slope for a wall and the face of the building.
- (5) Within the building setback, walls shall not exceed 30 inches in height as measured from the ground surface to the top of the wall.
- (6) Walls existing at the time of the ordinance codified in this chapter, if constructed under a valid permit, may be repaired or replaced to their original height.
- (7) Walls shall not support earth, other walls, or other structures on an adjacent property.
- (8) Walls on a single-family lot may be no higher than four feet. The designer of walls shall also consider the fencing restriction on top of walls in general accordance with CMC 18.35.210.
- (9) Walls shall not be located in separate tracts or public rights-of-way for the purposes of circumventing the provisions of this chapter.
- (10) Walls shall not be stacked wherein a lower wall is supporting an upper wall, unless the lower wall is designed to do so. Minimum horizontal spacing between rock or retaining walls, as measured from face to face, shall be no less than the thickness of the lower wall plus the height of the lower wall.
- (11) Cutting, filling, or constructing walls within storm, water, and sanitary sewer easements is prohibited, unless specific written approval from the utility owner is provided. It shall be the applicant's responsibility to obtain said approval and to provide a copy to the City.
- (12) When preparing a grading plan and designing a roadway, use of a retaining wall to support the roadway shall be considered only after other design options are exhausted. When a roadway must be supported by a retaining wall, the City may require additional building setbacks, easements, or other restrictions and provisions to allow proper maintenance of the wall.
- (13) Walls shall not be located or constructed so as to impede travel on a public walkway.
- (14) The area above the wall shall be designed and constructed to prevent surface water and debris from flowing over the top of the wall and to allow for access and maintenance to the area above the wall.
- (15) The area between the wall and the building shall be graded no steeper than five percent, perpendicular to the face of the wall, for a distance of five feet, for that area located within five feet of the building.
- (16) Walls shall not be used to break up a slope or to circumvent the definition of or the restrictions for steep slope hazard areas as described in Chapter 18.65 CMC.
- (17) Walls constructed between lots shall be constructed entirely on the downhill side of the property line entirely on one lot, including the wall drainage system. (Ord. 06-17 § 5 (Exh. C); Ord. 08-13 § 1 (Exh. A))

14.60.190 Driveways – Design.

Lots shall be prepared to accept a driveway meeting all applicable design and dimension standards regarding width and slope. Where a lot fronts on a steep roadway, the driveway shall be narrowed and/or lengthened in order to meet the standards regarding driveway slope. Where increased driveway lengths are required, subdivisions and short plats

shall contain a note on the face of the plat indicating those lots affected and to what degree the driveways are to be lengthened. (Ord. 08-13 § 1 (Exh. A))

14.60.200 Inspections.

(1) All projects with a clearing and grading permit are subject to City inspections to ensure compliance with the permit and that adequate control is being exercised by the contractor, civil engineer, and geotechnical engineer. The Director will specify the general stages of work when City inspection is required and may require inspection and testing by an approved testing agency, to be paid by the applicant.

(2) The applicant shall employ professionals to perform inspections of the site grading as follows:

(a) Geotechnical Engineer. The geotechnical engineer's area of responsibility shall include, but need not be limited to, the professional inspection and certification concerning the adequacy of erosion control measures, the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes, the stability of cut slopes with respect to geological matters, and the need for subdrains or other groundwater drainage devices. The geotechnical engineer shall perform on-site geotechnical testing and observation during implementation of drainage features and while site grading is underway. Records of the geotechnical observation and testing shall be provided to the City on a regular basis.

(b) Civil Engineer. The civil engineer's area of responsibility shall include, but need not be limited to, the inspection of the site grading and construction of roads and drainage facilities to verify compliance with approved plans, evaluate the need for design changes based on field conditions, including submittal of revised plans to the City for review and approval, and providing accurate as-built drawings upon completion of the clearing and grading operations.

(c) Special Inspectors. The applicant shall employ professional inspectors in the area of special concrete work, seismic hazards, or other areas as required by the project and/or the Director. (Ord. 08-13 § 1 (Exh. A))

14.60.210 Final approval.

(1) The Director shall give final approval to the clearing and grading operations once all the work is completed per the permit. The following must be completed, as a minimum, prior to final approval:

(a) All clearing and grading must be complete;

(b) The site shall be permanently stabilized, temporary erosion control measures removed, and storm drainage control facilities constructed and operational;

(c) The site shall be in a neat and orderly manner, free from junk, trash, debris, equipment, stockpiles and other construction materials;

(d) All required reports, certification letters, as-built drawings, and other documents shall be submitted and approved by the City;

(e) The site shall be free of hazards; and

(f) All disputes regarding property damage caused by the clearing and grading operations shall be resolved to the satisfaction of the Director.

(2) The City shall not issue final approval for any development proposal or issue a certificate of occupancy or final building inspection for property that has not received final approval for the clearing and grading operations.

(3) Final Reports. Upon completion of the clearing and grading operations, the professionals having conducted inspections in their respective areas shall submit, in a form acceptable to the Director, final reports certifying that all portions of the project pertaining to their area of expertise have been constructed in accordance with the approved plans and specifications. The reports shall identify problems encountered, field changes, methods or designs utilized to correct deficiencies, and other information deemed necessary by the Director.

(a) Geotechnical Engineer. The geotechnical engineer shall submit a final soil grading report prepared by the geotechnical engineer, including locations and elevations of field density tests, summaries of field and laboratory tests, final description of the geology of the site including any new information disclosed during the grading and the effect of same, and other substantiating data and comments on any changes made during grading and their effect on the recommendation made in the approved geotechnical report. The geotechnical engineer shall provide certification as to the adequacy of the site for the intended use as affected by soil and geologic factors.

(b) Civil Engineer. The civil engineer shall submit an as-built grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and subsurface drainage facilities. The civil engineer shall provide certification that the work was done in accordance with the final approved grading plan. Upon completion of the work, a reproducible as-built drawing, stamped by the civil engineer of record, of the storage, conveyance, and discharge elements of the detention system and the newly constructed downstream components of the storm drainage system shall be required. The Director may require additional information in respect to any significant deviations from the approved plans, specifications, or reports.

(c) Special Inspectors. Special inspectors shall submit final reports describing original and final conditions, changes, and methods utilized to correct deficiencies or mitigate specific conditions. (Ord. 08-13 § 1 (Exh. A))

14.60.240 Enforcement, violations and penalties.

(1) Permit Suspension/Revocation. The Director may suspend work or revoke a clearing and grading permit, as appropriate, whenever:

- (a) The work is not authorized by a valid permit;
- (b) The applicant requests such revocation or suspension;
- (c) The work does not proceed in accordance with the plans, as approved, or is not in compliance with the requirements of this chapter or other applicable City ordinances;
- (d) Entry upon the property for the purposes of investigation or inspection has been denied;
- (e) The applicant has made a misrepresentation of a material fact in applying for such permit;
- (f) The progress of the work indicates that the plan is or will be inadequate to protect the public, the adjoining property, the street, critical areas, the drainage system, or other utilities, or the work endangers or will endanger the public, the adjoining property, the street, protected areas, the drainage system or other utilities;
- (g) The required project security has expired or been expended to the point that it no longer provides assurance of completion of the project in compliance with the terms of the permit; or
- (h) The permit has not been acted upon or extended within the time allowed pursuant to CMC 14.60.110.

(2) Except as otherwise provided in this chapter, any violation of any provision of this chapter constitutes a civil code violation subject to and enforced pursuant to the provisions of Chapter 1.30 CMC. (Ord. 08-13 § 1 (Exh. A))