

## **Title 15 BUILDINGS AND CONSTRUCTION**

### **Chapters:**

Chapter 15.04 - BUILDING CODE

Chapter 15.06 - DANGEROUS BUILDINGS

Chapter 15.12 - CONTRACTORS' BONDS

Chapter 15.16 - FIRE LIMITS

Chapter 15.20 - SIGN CODE

Chapter 15.22 - HISTORIC PRESERVATION

Chapter 15.24 - FLOOD HAZARD PREVENTION

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Chapter 15.30 - GRADING, EXCAVATION AND LAND FILLING

### **Chapter 15.04 BUILDING CODE [1](#)**

#### **Sections:**

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#### **15.04.010 Title.**

This title is known as and may be referred to as the "City of Cle Elum Building Code".

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

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### 15.04.020 Purpose.

The purpose of the code and regulations adopted in this title is to provide minimum standards to safeguard life, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of buildings and structures within the City of Cle Elum. It is not the purpose or intent to create or designate any particular class or group of persons to be especially protected or benefited, nor is it intended to create any special relationship with any individual.

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

### 15.04.030 Adoption of Codes by reference and amendments to referenced Codes.

The City of Cle Elum hereby adopts the following codes, as amended by the Washington State Building Code Council pursuant to RCW 19.27 and 70.92 as amended by this chapter for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures.

1. The 2012 International Building Code (IBC) published by the International Code Council, Inc. as adopted and amended by the Washington State Building Code Council in Chapter 51-50 WAC, includes adoption of and amendments to the 2012 International Existing Building Code and ICC/ANSI A117.1-2009 and may subsequently be amended by this chapter, is hereby adopted with the following appendices and amendments:

Appendices:

Appendix	H:	Signs
Appendix I: Patio Covers		

Amendments:

- A. Amend Section 105.2 Work Exempt from Permit. Building: 6) by adding the words "platforms" and "decks" to modify permit exemptions.
2. The 2012 International Residential Code (IRC) published by the International Code Council, Inc. as adopted and amended by the Washington State Building Code Council in Chapter 51-51 WAC, and as may subsequently be amended by this chapter, is hereby adopted with the following appendices and amendments:

Appendices:

Appendix	G:	Swimming	Pools,	Spas	and	Hot	Tubs
Appendix H: Patio Covers							

Amendments:

- A. Amend Section 105.2 Work Exempt from Permit. Building: 1) By substituting "120" for "200" in the square feet of floor area exempt from building permits and adding the following, "is not closer than 6-feet to any other structure and all required building, zoning and critical area requirements are met".
- B. Amend Section 105.2 Work Exempt from Permit. Building: 5) by adding the words "platforms" and "decks" not more than 30 inches above adjacent grade and not over any basement or story below and is not part of an accessible route." to modify permit exemptions.
3. The 2012 International Mechanical Code (IMC) published by the International Code Council, Inc. as adopted and amended by the Washington State Building Code Council in Chapter 51-52 WAC. Includes adoption of and amendments to the 2012 International Fuel Gas Code, the

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2012 National Fuel Gas Code (NFPA 54) and the 2011 Liquefied Petroleum Gas Code (NFPA 58), and as may subsequently be amended by this chapter, is hereby adopted.

4. The 2012 International Fire Code (IFC) published by the International Code Council, Inc. including those standards of the National Fire Protection Association specifically referenced in the International Fire Code: Provided, that, notwithstanding any wording in this code, participants in religious ceremonies shall not be precluded from carrying hand-held candles, as adopted and amended by the Washington State Building Code Council in Chapter 51-54 WAC, and as may subsequently be amended by this chapter, is hereby adopted with the following Appendices:

Appendices:

Appendix B: Fire Flow for Buildings  
 Appendix C: Fire Hydrant Locations and Distribution  
 Appendix D: Fire Apparatus Access Roads

5. The 2012 Uniform Plumbing Code (UPC) except as provided in RCW 19.27.170, the Uniform Plumbing Code and Uniform Plumbing Code Standards, published by the International Association of Plumbing and Mechanical Officials: Provided, that any provisions of such code affecting sewers or fuel gas piping are not adopted. The UPC, as adopted and amended by the Washington State Building Code Council in Chapters 51-56 and 51-57 WAC, and as may subsequently be amended by this chapter, is hereby adopted.

In case of conflict among the codes enumerated in subsections 1, 2, 3, 4 and 5 of this section, the first named code shall govern over those following.

6. The 2012 Washington State Energy Code as adopted by the Washington State Building Code Council in Chapter 51-11 WAC is hereby adopted.
7. The 2012 International Property Maintenance Code (IPMC) as published by the International Code Council, Inc. is hereby adopted.

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

**15.04.040 Design requirements.**

1. Conflict between Codes: Whenever there is a conflict between a Referenced Code in Section 15.04.030 of this code and the General Requirements contained in Section 15.04.040 of this code, the General Requirements shall apply.
2. Climatic and Geographic Design Criteria:

**Climatic and Geographic Design Criteria**

			Subject to Damage from							
Ground Snow Load	Wind Speed (Gust)	Seismic Design Category	Weathering	Frost line depth	Termite	Winter Design Temp.	Ice Shield Underlayment Required	Flood Hazards	Air Freezing Index	Mean Annual Temp.

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115	85 mph	IRC: D <sub>0</sub>	Severe	24"	Slight to Moderate	2°	YES	Date Entered Into NFIP: 3/3/1975 Date of Current FIRM Maps Adopted: 5/5/1981	1500	50
	Topographic effects: NO	IBC: S <sub>s</sub> =0.65 S <sub>1</sub> =0.23								

3. Professional Preparation of Plans: The City of Cle Elum shall require a Washington State licensed design professional, licensed under the provisions of RCW 18.08, WAC 308-12 (for Architects) or RCW 18.43 (for Engineers) to stamp, prepare or oversee the preparation of plans and calculations for buildings or structures when any of the following criteria are met but is not limited to the following:

- A. The following are required to be professionally designed for structural integrity (lateral & gravity), Life Safety and Architectural Barriers (accessibility).
  - a) A building of any occupancy over four thousand square feet.

Exception: Residential structures.

- b) Buildings containing five or more residential dwelling units.
- B. The following are required to be professionally designed for structural integrity (lateral & gravity) only.
  - a) All steel, concrete, masonry and timber framed structures.
  - b) All log buildings and structures. This includes any log or beam style trusses used in stick framed buildings.

Exception: One-story log buildings with a single ridged stick-framed roof with no valleys or trussed roof may be accepted without a professional structural design.

- c) All other structures within the City of Cle Elum.

Exception: One-story buildings with a single ridged stick-framed roof with no valleys or trussed roof may be accepted without a professional structural design.

- d) All pre-manufactured metal structures. These structures are primarily used as carports and require a building permit when over one hundred twenty square feet. All plans and specifications must be engineered by a Washington State licensed engineer and plans must state the snow load and wind load capacities. Plans must also include details on the tie-down or foundation systems.

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(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

### 15.04.050 Pole buildings.

The following section shall govern all pole style structures.

1. Design Requirements: All pole style structures shall follow the requirements of Section 15.04.040 "Design Requirements" with the following additions:
  - A. The City of Cle Elum shall require a Washington State licensed design professional, licensed under the provisions of RCW 18.08, WAC 308-12 (for Architects) or RCW 18.43 (for Engineers) to stamp, prepare or oversee the preparation of plans and calculations for pole structures when:
    - a) The eave height exceeds twelve feet.
    - b) The minimum embedment depth listed below cannot be met.
    - c) The backfill requirements listed below cannot be met.
    - d) The use of the building or structure is for habitable space.
    - e) The structure is over one story.
    - f) The occupant load based on the IBC is greater than or equal to ten.
2. Post Embedment Requirements: Posts must be embedded into the ground a distance one-third the height of the eave. The minimum post embedment is three feet.

Example: A twelve-foot eave height building would require the posts be embedded into the ground four feet. An eight-foot eave height building would require the posts be embedded three feet.

Post holes are required to be six-inches deeper than the post embedment length to allow for concrete footing under the posts. Post hole diameters will be sized to directly support three-fourths of the gravity load.

3. Backfill Requirements: The backfill requirements for all posts holes shall be concrete. All native material taken out for the excavation of the post hole shall be replaced with concrete.

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

### 15.04.060 Contractor registration.

No permit shall be issued for work which is to be done by any contractor required to be registered under Chapter 18.27 RCW without verification that such contractor is currently registered as required by law. All contractors shall have a city business license as required under Chapter 5.02 CEMC.

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

### 15.04.070 Fees.

1. All City of Cle Elum permit fees shall be established by resolution.
2. Investigation Fees: Work without a permit.
  - a. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.
  - b. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the building permit fee. This fee is an additional, punitive fee and shall not apply to the permit fees that may

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subsequently be issued. Payment of the investigative fee does not vest the illegal work with any legitimacy, nor does it establish any right to a permit for continued development of that project. If the work done remains illegal for ninety days after service of the stop work order, it shall be considered hazardous.

- c. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.
3. Fee Refunds. The building official may authorize the refunding of:
    - a. One hundred percent of any fee erroneously paid or collected.
    - b. Up to eighty percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
    - c. Up to eighty percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than one hundred eighty days after the date of fee payment.

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

### 15.04.080 Permits.

1. Except as specified in Section 15.04.030 above (work exempt from permit), no building or structure shall be erected, placed, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a separate permit for each building or structure has first been obtained from the City of Cle Elum.
2. All permits shall expire by limitation and be declared void if any one of the following apply:
  - a. Work is not started within one hundred eighty days of obtaining a permit.
  - b. Work is abandoned for one hundred eighty days or more after beginning work.
  - c. An inspection has not been performed and approved by the City of Cle Elum for over one year.

The building official may extend the time for action by the applicant for a period not exceeding one hundred eighty days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. If a permit has expired, an applicant may renew the permit for one-half the permit fee(s) plus issuance fees and less plan review fees, provided no changes have been made or will be made to the original construction documents for such work, and provided further that the permit was reviewed under the current adopted codes. If there are changes to the original construction documents or if the permit is renewed under a different code, a plan review fee will be charged at the current rate.

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

### 15.04.090 Enforcement.

1. Violation. It is unlawful for any person, firm or corporation to violate any provision of this chapter, or any code adopted herein, or to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure within the city, or to use any land contrary to, or in violation of, any of the provisions of the chapter, or any code adopted herein.
2. Penalty for Violations. See CEMC Chapter 8.60 (Code Enforcement).
3. Severability. The penalties provided in this section are intended to be in addition to, and not to supersede, any penalties provided in any of the codes adopted in CEMC 15.04.030. In the event of

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a conflict between the penalty provisions of this section and the penalty provisions in any of the codes, this section shall control.

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

### 15.04.100 Liability.

The express intent of the City of Cle Elum is that the responsibility for compliance with the provisions of this chapter shall rest with the permit applicant and their agents.

(Ord. No. 1386, § 1(Exh. A), 6-11-2013)

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FOOTNOTE(S):

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**Editor's note**— Ord. No. 1386, § 1(Exh. A), adopted June 11, 2013, amended Ch. 15.04 in its entirety to read as herein set out. Former Ch. 15.04, §§ 15.04.010—15.04.100, pertained to similar subject matter, and derived from Ord. No. 1289, § 1(Exh. A), adopted Apr. 8, 2008; Ord. No. 1332, § 1, adopted July 27, 2010. ([Back](#))

## Chapter 15.06 DANGEROUS BUILDINGS

### Sections:

[15.06.010 Dangerous buildings defined.](#)

[15.06.020 Board—Established—Membership and organization.](#)

[15.06.030 Inspector—Responsibilities and procedures.](#)

[15.06.040 Board—Duties following filing of complaint.](#)

[15.06.050 Cooperation of city officers authorized.](#)

[15.06.060 Failure to comply with board order—City to perform work when—Costs.](#)

[15.06.070 Administrative liability.](#)

[15.06.080 Chapter provisions not exclusive—City powers.](#)

[15.06.090 Appeals from board decisions—Procedure.](#)

[15.06.100 Complaints required—Violation—Penalty.](#)

### 15.06.010 Dangerous buildings defined.

There exist in the city certain dangerous buildings that are not consistent with the health, safety and welfare of the residents of the city, and which are declared to be public nuisances, said "dangerous buildings" being defined as follows:

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- A. Those whose interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity of such wall or member falls outside the middle third of its base;
- B. Those which, exclusive of the foundation, show thirty-three percent, or more, of damage or deterioration of the supporting member or members, or fifty percent of damage or deterioration of the nonsupporting member, enclosing or outside walls or coverings;
- C. Those which have improperly distributed loads upon the floors or roofs, or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used;
- D. Those which have become damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city. A building damaged to the extent of fifty percent of the replacement valuation shall be considered a dangerous building;
- E. Those which have become or are so dilapidated or decayed or unsafe or insanitary, or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein;
- F. Those having light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein. Any building without plumbing, or with plumbing or sewage disposal systems that do not meet the minimum requirements of the city plumbing code, shall be considered insanitary;
- G. Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes or other means of communication. Insufficient facilities for egress, stairways, elevators, fire escapes, etc., means those which do not meet the minimum requirements of the building code of the city;
- H. Those which have parts thereof which are so insecurely attached that they may fall and injure members of the public or property;
- I. Those which because of their condition are unsafe or insanitary, or dangerous to the health, morals, safety or general welfare of the people of the city.

(Ord. 840 § 1 (part), 1985)

### **15.06.020 Board—Established—Membership and organization.**

There is created and established a "board of appeals," hereinafter called "board." The board is empowered to conduct the hearings, to make the findings and to issue the orders called for in this chapter. The members of this board shall be the same as those members of the board of appeals established by Section 204 of the 1982 Uniform Building Code and any later editions thereof or amendments thereto. The board shall appoint a chairman, shall adopt rules and procedures to fulfill its functions under this chapter, shall meet as often as required, and shall work with and cooperate with the chief building inspector.

(Ord. 840 § 1 (part), 1985)

### **15.06.030 Inspector—Responsibilities and procedures.**

The chief building inspector or the Cle Elum fire chief, hereinafter called "inspector," or his authorized representative shall have the following responsibilities and shall abide by the following procedures:

- A. Inspection. The inspector shall be an ex officio member of the board, shall work with and cooperate with the board, and shall inspect or cause to be inspected all buildings which may

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be brought to his attention for the purpose of deciding whether any condition exists which would render any building in the city a dangerous building.

- B. Informal Procedure. If any building is found to be a dangerous building by the inspector, he shall proceed as follows:
1. Determine all owners of the building as shown by public records;
  2. Determine the legal description of the property upon which the building is located;
  3. Notify all owners of the building by registered mail, return receipt requested, that the building is a dangerous building within the terms of the dangerous building code;
  4. The notice shall include:
    - a. A list of the conditions which cause the building to be a dangerous building,
    - b. A recommendation as to how the conditions can best be corrected to comply with the dangerous building code,
    - c. A request that the conditions be corrected within ninety days, and
    - d. A notice that failure to correct the conditions will result in the filing of a complaint with the board.
- C. Formal Procedure. If the inspector proceeds informally and the dangerous conditions are not corrected within ninety days to the satisfaction of the inspector, or if the inspector finds that an emergency exists which demands immediate action without the informal procedure, the inspector shall proceed as follows:
1. File a complaint with the board;
  2. The complaint shall include:
    - a. The names of all owners,
    - b. A legal description of the property upon which the building is located, as well as the street address,
    - c. The conditions which cause the building to be a dangerous building,
    - d. The recommendations of the inspector as to how the conditions can best be corrected,
    - e. A notice that hearing shall be held before the board at the City Hall of Cle Elum, Kittitas County, state of Washington, not less than ten days nor more than thirty days after the serving of the complaint, or in the event of publication or posting, not less than fifteen days or more than thirty days from the date of the last publication and posting, and
    - f. A notice that all parties in interest shall be given the right to file an answer to the complaint, to appear in person or otherwise, and to give testimony at the time and place fixed in the complaint;
  3. Serve copies of the complaint upon all owners or, if the whereabouts of the owners are unknown and cannot be determined by reasonable diligence and the inspector shall so state by affidavit, the complaint shall be served by publishing the same once each week for two consecutive weeks in a newspaper published in the city;
  4. Post in a conspicuous place on the property a copy of the complaint;
  5. File a copy of the complaint with the Kittitas County auditor, which filing shall have the same force and effect as other lis pendens notices as provided by law.

(Ord. 840 § 1 (part), 1985)

**15.06.040 Board—Duties following filing of complaint.**

The board, upon filing of a complaint, shall:

- A. Conduct a hearing thereon on the date stated in the complaint;
- B. At the hearing, the board shall hear all of the testimony relevant to the allegations of the complaint;
- C. Upon hearing all of the testimony to be presented, the board shall make written findings of fact and an order within sixty days from the date of hearing; the findings shall state whether or not the building in question is a dangerous building and, if so, shall order the remedial action that should be taken. The board shall have authority to order repairs, vacation and/or demolition;
- D. The board, in making the findings and order, shall be controlled by the following standards for repair, vacation or demolition:
  1. If the dangerous building can be reasonably repaired so that it will not longer exist in violation of the terms of this chapter, it shall be ordered repaired by the board,
  2. If the dangerous building is in such condition as to make it dangerous to the health, morals, safety or general welfare of its occupants, it shall be ordered to be vacated by the board,
  3. If the dangerous building is fifty percent damaged or decayed or deteriorated in value, it shall be demolished. "Value" as used herein means replacement valuation,
  4. If the dangerous building cannot be repaired so that it will no longer exist in violation of the terms of this chapter, it shall be demolished;
- E. A copy of the executed findings and order shall be served upon the owners of the property by registered mail, return receipt requested, shall be posted in a conspicuous place on the property, and shall be filed with the Kittitas County auditor.

(Ord. 840 § 1 (part), 1985)

**15.06.050 Cooperation of city officers authorized.**

The city attorney, fire chief, police chief and all other public officers shall work with and cooperate with the inspector and the board to the extent necessary to carry out the terms and provisions of this chapter.

(Ord. 840 § 1 (part), 1985)

**15.06.060 Failure to comply with board order—City to perform work when—Costs.**

If the owners fail to comply with the order issued by the board, or, if appealed, the order issued by the city council or the Kittitas County Superior Court, then, and in that event, the board may direct or cause such dwelling, building or structure to be repaired or demolished, as the order may require, and the costs of such shall be assessed against the real property upon which such costs were incurred, unless such amount is previously paid. The city treasurer shall determine the amount of the assessment due and owing and shall certify the same to the county treasurer, who shall enter the amount of such assessment upon the tax rolls against the property, all in the manner provided by law.

(Ord. 840 § 1 (part), 1985)

**15.06.070 Administrative liability.**

No officer, agent or employee of the city shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his

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duties under this chapter. Any suit brought against any officer, agent or employee of the city as a result of any act required or permitted in the discharge of his duties under this chapter shall be defended by the city until the final determination of the proceedings therein.

(Ord. 840 § 1 (part), 1985)

### **15.06.080 Chapter provisions not exclusive—City powers.**

Nothing in this chapter shall be construed to abrogate or impair the power of the city or any department thereof to enforce any provision of its ordinances or regulations, nor to prevent or punish violations thereof, and any powers conferred by this chapter shall be in addition to and supplemental to powers conferred by other laws, nor shall this chapter be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or in any other manner provided by law.

(Ord. 840 § 1 (part), 1985)

### **15.06.090 Appeals from board decisions—Procedure.**

The owners may file an appeal from the order of the board within thirty days of the date of the service of the order. The appeal notice may be a formal notice or may be a simple letter from the owner addressed to the city council; the city council shall then conduct a hearing as outlined in this chapter. Any decision upon review by the city council may be further reviewed by the superior court of the county. The review shall be by writ of certiorari and shall be initiated by serving and filing a petition for the writ within thirty days after the council's decision has become final.

(Ord. 840 § 1 (part), 1985)

### **15.06.100 Complaints required—Violation—Penalty.**

No owner or occupant or any other person having charge, custody or control of any building or premises shall fail or refuse, after receiving notice, to promptly comply with any lawful order issued by the board. Violation of this provision or any other provision of this chapter, shall be punishable as set forth in Section 1.16.010 of this code.

(Ord. 840 § 1 (part), 1985)

## **Chapter 15.12 CONTRACTORS' BONDS**

### **Sections:**

[15.12.010 Statutes adopted.](#)

[15.12.020 Bonds payable to city.](#)

[15.12.030 Maintenance bond.](#)

### **15.12.010 Statutes adopted.**

The provisions of Chapter 39.08 of the Revised Code of Washington have been filed in triplicate with the city clerk and are adopted by reference into this chapter and shall hereafter be in effect in the city in the same manner as if they were fully set out in this chapter.

(Ord. 691 § 1, 1975)

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### **15.12.020 Bonds payable to city.**

All contractors' bonds given to the city in connection with any project to be performed for the city shall be payable to the city.

(Ord. 691 § 2, 1975)

### **15.12.030 Maintenance bond.**

Performance and payment bonds furnished by any contractor to the city shall comply with the requirements of RCW Chapter 39.08. In addition, the city may require the furnishing by the contractor of a maintenance bond in the sum of at least twenty percent of the total contract price with a corporate surety approved by the city, before final payment is made to the contractor, the bond to guarantee the repair of all damage due to faulty materials and equipment and workmanship provided or done by the contractor for the city, and to remain in effect for a period of one year after date of final acceptance of the project by the city.

(Ord. 691 § 3, 1975)

## **Chapter 15.16 FIRE LIMITS**

### **Sections:**

[15.16.010 Designated.](#)

### **15.16.010 Designated.**

All that portion of the city described in this section is declared to be within and constitute the fire limits of the city:

All of Blocks One, Two, Three, Four, and A; Lots Seven to Eighteen inclusive in Block Five; Lots Six to Twenty-five inclusive in Block Six; Lots One to Twenty inclusive in Block Seven; Lots Seven to Eighteen inclusive in Block Eight; Lots Seven to Twelve inclusive in Block Nine; all in the original town (now city) of Cle Elum.

(Ord. 300 § 1, 1936)

## **Chapter 15.20 SIGN CODE**

### **Sections:**

[15.20.030 Purpose and applicability.](#)

[15.20.035 Definitions.](#)

[15.20.040 Enforcing official.](#)

[15.20.050 Right of entry.](#)

[15.20.060 Appeals.](#)

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[15.20.090 Removal of signs.](#)

[15.20.135 Prohibited signs.](#)

[15.20.140 Residential areas.](#)

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[15.20.150 General commercial, entry commercial areas and public reserve.](#)

[15.20.155 Old Town commercial.](#)

[15.20.160 Industrial areas.](#)

[15.20.165 Business park areas.](#)

[15.20.167 Lighting of signs.](#)

[15.20.170 Temporary signs.](#)

[15.20.175 Nonconforming signs.](#)

[15.20.190 Responsibility of owner.](#)

[15.20.195 Maintenance and safety.](#)

[15.20.200 Variances.](#)

[15.20.210 Violation—Penalty.](#)

### **15.20.030 Purpose and applicability.**

The purpose of this chapter is to improve the quality of life and to harmonize the residential and business environments in the city. It is intended to improve the visual environment, permit signage consistent with the character of the community, and reduce signs or advertising distractions and/or obstructions that may contribute to hazards or accidents. The use of signs shall be regulated by zone. This chapter is designed to recognize the communication needs of the business community, and encourage maintenance of those signs, but also to protect the public health, safety, welfare and aesthetics by regulating outdoor signs of all types. This chapter applies to all signs as defined by Section 15.20.035.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 1136 § 1, 2001; Ord. 866 § 1, 1987; Ord. 638 § 3, 1970)

### **15.20.035 Definitions.**

Unless otherwise set forth, the following words as used in this chapter shall have the following meanings:

"Changeable copy sign (automatic)" means a sign on which the copy changes automatically on a lamp bank or through mechanical means, e.g., electrical or electronic time and temperature units.

"Double-faced sign" means a sign with two faces.

"Electrical sign" means a sign or sign structure in which electrical wiring, connections or fixtures are used.

"Facade" means the front or face of a building.

"Flashing sign" means a sign which contains an intermittent or sequential flashing light source used primarily to attract attention. It does not include changeable copy signs, animated signs, or signs which, through reflection or other means, create an illusion of flashing of intermittent light.

"Freestanding sign" means a sign supported upon the ground by poles or braces or other structure designed and constructed to support the sign only and not attached to any building.

"Illegal sign" means a sign which does not meet the requirements of this code and which has not received legal nonconforming status.

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"Internal illumination" means an indirect concealed light source that is recessed or contained within any element of a sign.

"Maintenance" means, for purposes of this chapter, the cleaning, painting, repair of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign.

"Mural" means a picture or picture-print combination that contains no advertising copy and which does not convey an advertising message which is painted or otherwise applied on the exterior wall of a building or structure.

"Nonconforming sign" means a sign which was erected legally but which does not comply with subsequently enacted sign restrictions and regulations.

"Off-premises sign" means a sign structure advertising an establishment, merchandise, service or entertainment, which is not sold, produced, manufactured or furnished at the property on which the sign is located, e.g., "billboards" or "outdoor advertising"; provided, however, that signs located on property under the same ownership and which would be in a single tax parcel or immediately adjacent thereto but for the presence of an intervening right-of-way shall not be construed as an "off-premises sign" for purposes of this chapter.

"Owner" means a person recorded as such on official records. For the purpose of this chapter, the owner of property on which a sign is located is presumed to be the owner of the sign unless facts to the contrary are officially recorded or otherwise brought to the attention of the administrator, e.g., a sign leased from a sign company.

"Projecting sign" means a sign, which is attached to and projects horizontally from a building wall.

"Public benefit sign" means an off-premises sign installed, maintained, and controlled in, over or adjacent to the public right-of-way for the sole purpose of providing directions to an establishment that serves or provides a benefit to the general public, including but not limited to directional signs to hospitals, schools, and other establishments of general public need or interest. In the case of a designated American Red Cross Emergency Shelter a digital message center sign not to exceed 45 square feet per face, with no more than two sign faces, may be permitted for the purpose of providing emergency information, community information and information related to events and activities that help fund or otherwise support the designated Emergency Shelter. The Digital Message Center Sign shall only be operational from the hours of 8:00 a.m. Pacific Time to 6:00 p.m. Pacific Time. A minimum of one-second transition time between messages is required. A permit for any public benefit sign may be additionally conditioned by the responsible official as to size, height, location, illumination, coloring, hours of operation, and similar characteristics to keep with the purposes and objectives of the Cle Elum Municipal Code and the Cle Elum Comprehensive Plan.

"Public service sign" means a sign installed, maintained and controlled by the City of Cle Elum for the sole purpose of providing directions to locations and objects of interest to visitors and the traveling public and not to advertise a specific business or product.

"Reverse internal illumination" means an indirect concealed light source located within the sign and where the majority of the sign face does not allow light to be revealed except for the sign letter or graphics.

"Sandwich board sign" means a portable sign capable of supporting itself through an "A" frame structure.

"Sign" means any communication device, structure, placard or fixture that is visible from any public right-of-way, pedestrian path or sidewalk and is intended to aid in promoting the sale of product, goods, services or events or to identify a building using graphics, letters, figures, symbols, trademarks or written copy but not murals.

Sign, Area of.

1. Projecting and freestanding. The area of a freestanding or projecting sign shall have all faces of any double-faced or multi-faced sign counted in calculating its area. The area of the sign shall be measured as follows if the sign is composed of one or two individual cabinets:

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- a. The area around and enclosing the perimeter of each cabinet or module shall be summed and then totaled to determine total area. The perimeter of measurable area shall include embellishments such as pole covers, framing, decorative roofing, etc. Support structures shall not be included in the determination of total area unless the support structures contribute to the advertising message.
  - b. If the sign is composed of more than two sign cabinets or modules, the area enclosing the entire perimeter of all cabinets and/or modules, within a single, continuous geometric figure shall be the area of the sign. Support structures shall not be included in the determination of total area unless the support structures contribute to the advertising message.
2. Wall signs. The area around and enclosing the perimeter of each cabinet or module shall be summed and then totaled to determine total area.
  3. Awning signs. The area of awning signs shall be measured by the area around and enclosing the advertising message.

"Sign, awning" means a sign attached, painted or installed on an awning projecting from a storefront.

"Temporary sign" means any sign or advertising display constructed of cloth, wood, canvas, light fabric, paper or other light materials with or without frames that is not permanently mounted and is intended to be displaced for a limited time only such as for political candidacy or special events.

"Wall sign" means a sign attached, painted or erected on or parallel to the face of building to which it is attached and supported throughout its entire length with the exposed face parallel to the plane of the building. Signs on or in windows will be considered wall signs.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1211, 2004; Ord. 1198 § 1, 2003; Ord. 866 § 2, 1987)

(Ord. No. 1333, § 1, 7-27-2010; Ord. No. 1345, § 1, 6-14-2011)

### **15.20.040 Enforcing official.**

The city planner or designee is authorized and directed to enforce all the provisions of this code.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 638 § 4(a), 1970)

### **15.20.050 Right of entry.**

Upon presentation of proper credentials the city planner, the building official or their duly authorized representatives may enter at reasonable times any building, structure, or premises in the city to perform any duty imposed upon him by this code. The city shall make reasonable effort to inform the owner of the need to access the premises authorized by this section.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 638 § 4(b), 1970)

### **15.20.060 Appeals.**

Any administrative decision on a permit for a sign may be appealable to the city council pursuant to the provisions of CEMC 17.100.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 638 § 4(c), 1970)

### **15.20.070 Permits.**

- A. Permits Required. No sign shall hereafter be erected, moved, constructed, structurally altered or repaired except as provided by this title and a permit having been duly issued by the city.

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- B. Permits are not required for the following activities or signs in all districts:
1. Changing of advertising copy without increasing sign size or modifying characteristics;
  2. Maintenance and cleaning of existing signs, provided such maintenance and cleaning does not include structural or electrical changes;
  3. On-premises, non-electrical signs, three square feet or less in size used for advertising the street address of the building and the name of the occupant or owner;
  4. Non-illuminated real estate or contractors sign pertaining to the sale or lease of the premises or the construction or improvement of the property, not exceeding six square feet in area;
  5. Public informational signs installed, maintained and controlled by the City of Cle Elum. Signs shall not exceed twenty-five square feet of area devoted to advertising and are limited to no more than two signs at the west end of First Street, a single sign at Oakes Street and two signs at the east end of First Street;
  6. Temporary signs;
  7. Signs placed on or inside windows, provided that a minimum of fifty percent of any window shall remain free of signs.
- C. Applications for sign permits shall be made to the City of Cle Elum on a form provided by the city. Applications shall include:
1. Name, address, telephone number and other contact information of the applicant or authorized agent and the legal owner of the property upon which the sign is to be located;
  2. If the applicant is not the property owner, a signed instrument from the property owner authorizing the application;
  3. Street address, tax parcel number, and acreage of the subject property;
  4. A description of the sign, either in writing or in plan form, that identifies the type of sign per this chapter, the type of structural support, sign height, sign area and method of illumination;
  5. A site plan drawn to scale, at a minimum scale of one inch equals twenty feet, that includes the dimensions of the subject property, the proposed location of the sign, the dimensions of the sign, the location of existing development on-site, the location size and dimensions of any existing signs on-site and the location of any public or private roads abutting the property;
  6. Lighting details, if applicable, including fixture type, wattage, shielding, and other information necessary to determine compliance;
  7. The required application fee as set by the Cle Elum city council.
- D. Sign permits shall be processed as a Type I Application, as provided in CEMC 17.100.
- E. Sign permits shall become invalid if work is not begun within one hundred eighty days of permit issuance. The city may authorize a single one hundred eighty day extension upon request of the applicant for circumstances beyond the applicant's control that prohibit installation of the sign within the required time period.

(Ord. 1279 § 1 (Attach. A (part)), 2007: Ord. 1198 § 1, 2003: Ord. 866 § 5, 1987: Ord. 638 § 6, 1970)

### 15.20.090 Removal of signs.

Any sign(s) and fixture(s) now or hereafter existing which, for a period of sixty days, no longer advertises a bona fide business conducted or product sold shall be taken down and removed by the owner, agent, or person having the beneficial use of the building, lot, or structure upon which the sign may be found. Fixtures that are no longer used shall be removed. Signs that are not used because of a vacant building shall remove the fixture or replace the sign face with a blank. Upon failure to comply with

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this provision, the building official is authorized to cause removal of the sign and any expense incident thereto shall be paid by the owner of the promises or filed as a lien against the property.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 638 § 7, 1970)

### 15.20.135 Prohibited signs.

The following signs are prohibited in all districts within the City of Cle Elum except as specifically allowed as temporary signs:

- A. Any sign not specifically listed as permitted in this chapter is prohibited unless otherwise provided by law;
- B. Any sign which, by reason of its size, location, movement, content, coloring or manner of illumination may be confused with traffic control signs or signals, which determination shall be in the sole discretion of the responsible official;
- C. Stationary motor vehicles, trailers and related devices used to circumvent the intent of this chapter;
- D. Signs which are attached to utility poles, trees, fences, rocks or natural features and other similar objects which are not designed specifically for the installation of the sign;
- E. Roof signs or signs projecting or installed above the eave lines of buildings;
- F. All lighted signs which are adjacent to and directed toward a residential district and which detract from the welfare of the residential district;
- G. Animated, moving, automatic changing copy, revolving, blinking or flashing signs, except public service signs such as those which only give the time, temperature and humidity, and digital message center signs providing emergency information, community information and information related to events and activities that help fund or otherwise support the designated American Red Cross Emergency Shelter;
- H. Any sign or advertising display which obstructs in any way the vision of motorists entering or leaving public or private rights-of-way;
- I. Signs extending over the public right-of-way and any sign placed within the right-of-way, with the exception of projecting signs, awning signs, and public benefit signs;
- J. Off-premises signs, with the exception of public service signs controlled and installed by the City of Cle Elum and public benefit signs, as allowed in the entry commercial zone pursuant to Section 15.20.150;
- K. Signs emitting pollutants such as smoke and sound;
- L. Signs displaying unwarranted content (i.e., obscene language); and
- M. Signs located within structural setbacks established by the zoning district, unless specifically authorized by this chapter.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003)

(Ord. No. 1333, § 2, 7-27-2010; Ord. No. 1345, § 2, 6-14-2011)

### 15.20.140 Residential areas.

The following signs shall be permitted in all residential zoning districts in the city:

- A. A wall mounted or freestanding sign, not exceeding fifteen square feet in area, erected upon the premises of a church or other institution for the purposes of displaying the name of the institution and its activities or services. Freestanding signs shall not exceed six feet in height;

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- B. A land sales sign of twenty-five square feet or less, non-illuminated, advertising the sale or development of a subdivision containing an area of not less than seven lots, erected upon the property so developed and advertised for sale.

(Ord. 1279 § 1 (Attach. A (part)), 2007: Ord. 1198 § 1, 2003: Ord. 638 § 12, 1970)

### 15.20.150 General commercial, entry commercial areas and public reserve.

In areas zoned general commercial, entry commercial and public reserve, the following regulations apply:

- A. The aggregate sign area for any lot shall not exceed two square feet for each foot of street frontage. Aggregate sign area for corner lots shall not exceed one and one-half square foot for each foot of street frontage;
- B. Projecting and awning signs are permitted. Sign size shall not exceed forty-five square feet of area and shall maintain a vertical clearance of ten feet from the bottom edge of the sign or awning to the sidewalk surface;
- C. Wall signs are permitted. The size of a wall sign shall not exceed ten percent of the building facade on which they are located, and no more than two signs are permitted per facade. For buildings with multiple tenants, maximum sign size shall be based on that portion of the facade occupied by each individual tenant;
- D. Freestanding signs are permitted. One freestanding sign is permitted per street frontage, provided that corner lots with less than eighty feet on each street shall be permitted only one freestanding sign. Freestanding signs shall not exceed two hundred square feet of total sign area, and no one face shall exceed one hundred square feet. The height for a freestanding sign shall not exceed thirty-five feet;
- E. Off-premises signs are allowed in the entry commercial zone and shall be for directional purposes only.
  - 1. Off-premises signs shall be permitted only for businesses located not more than one block off of First Street, or not more than one block off of the principal arterial serving the business, except for public benefit signs;
  - 2. No off-premises sign shall exceed six feet in height;
  - 3. Off-premises signs shall not exceed twenty-four square feet per sign face, and shall have no more than two faces;
  - 4. Off-premises signs shall not be allowed within any right-of-way and must be located no further than five hundred feet from the exterior boundary of the parcel upon which the business is situated; provided, however, that this prohibition does not apply to public benefit signs;
  - 5. Only one off-premise sign permitted per business or organization, with the exception of public benefit signs;
  - 6. The sign copy of the off-premise sign shall be limited to copy, text and graphics of the business or facility benefiting from the off-premise sign;
  - 7. A notarized agreement from the property owner on whose property the sign will be located is required as part of the application. At a minimum, the agreement shall address:
    - a. Final responsibility for maintenance, removal and nuisance/abatement issues will be that of the property owner upon which the off-premises sign is located;
    - b. The right of use of the off-premise sign is neither assignable nor transferable without sign permit approval from the City of Cle Elum; and
    - c. That the property owner upon which the sign is to be located authorizes the sign to be placed upon their property;

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- F. Sandwich boards and portable signs are allowed under the following conditions:
1. They shall not exceed two feet in overall width and four feet overall height;
  2. Must be wind-firm in some acceptable manner;
  3. May not obstruct more than twenty percent of a sidewalk or right-of-way. A minimum clearance of clear passage shall be six feet;
  4. Shall not be placed in or on a street or alley right-of-way;
  5. Shall be constructed of materials that are hard, durable, weather proof and permanent. Signs shall be constructed in an "A" frame fashion only. Copy and images shall only indicate the name and type of business. Changeable copy is not permitted except for hand drawn lettering or graphics such as a chalkboard;
  6. Shall be allowed only immediately in front of the business being occupied. Provided that a property owner may grant another business owner the right to locate a sign on their property frontage if the businesses are located on the same block and not more than one sign is permitted;
  7. Only one sign is permitted per lot, structure or business;
  8. Shall not obstruct sight distance requirements on public streets; and
  9. Shall be removed from public view during closed hours.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 866 § 3, 1987; Ord. 855 § 1, 1986)

(Ord. No. 1333, § 3, 7-27-2010; Ord. No. 1345, § 3, 6-14-2011)

### 15.20.155 Old Town commercial.

Signs in the Old Town commercial zone shall be permitted as follows:

- A. All signs shall be consistent with the historical and pedestrian character of the district.
- B. The aggregate sign area for any lot shall not exceed two square feet for each foot of street frontage. The permitted signs enumerated in this subsection shall be subject to the total aggregate sign area.
- C. Wall signs are permitted provided they do not total an area more than ten percent of the building facade on which they are located. Each multi-tenant building may have one identification wall sign for each street frontage.
- D. Projecting and awning signs shall not exceed forty-five square feet of area and shall maintain a vertical clearance of ten feet from the bottom edge of the sign or awning to the sidewalk surface.
- E. Sandwich board signs are allowed under the following conditions:
  1. They shall not exceed two feet in overall width and four feet overall height;
  2. Must be wind-firm in some acceptable manner;
  3. May not obstruct more than twenty percent of a sidewalk or right-of-way. A minimum clearance of clear passage shall be six feet;
  4. Shall not be placed in or on the traveled or parking area of a street or alley right-of-way;
  5. Shall be constructed of materials that are hard, durable, weather proof and permanent. Signs shall be constructed in an "A" frame fashion only. Copy and images shall only indicate the name and type of business. Changeable copy is not permitted except for hand drawn lettering or graphics such as a chalkboard;

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6. Shall be allowed only immediately in front of the business being occupied. Provided that a property owner may grant another business owner the right to locate a sign on their property frontage if the businesses are located on the same block and not more than one sign is permitted;
  7. Only one sign is permitted per lot, structure or business;
  8. Shall not obstruct sight distance requirements on public streets;
  9. Shall be removed from public view during closed hours.
- F. Application of the specific sign standards in this section to individual signs may not be required if the applicant provides substantial evidence that the imposition of the standards will result in a sign that is less consistent with the historic character of the area.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003)

### 15.20.160 Industrial areas.

In areas which are zoned industrial, the following regulations apply:

- A. The aggregate sign area for any lot shall not exceed one foot for each foot of street frontage. The permitted signs enumerated in this subsection shall be subject to the total aggregate sign area.
  1. Wall signs are permitted but shall not total an area more than fifteen percent of the building facade on which they are located, and not exceed two signs per facade.
  2. Each structure may have one freestanding sign per street frontage, provided that corner lots with less than eighty feet on each street shall be permitted only one freestanding sign. Freestanding signs shall not exceed one hundred square feet of total sign area, and no one face shall exceed fifty square feet. The maximum height for a freestanding sign shall not exceed the height of the building containing the activity being advertised and in no case shall exceed twenty-five feet. The width of the support system for a freestanding sign shall be a minimum of eighty percent of the width of the sign face.
- B. Buildings having multiple occupancy will be allowed individual signs as set forth in subsection A of this section.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 855 § 2, 1986)

### 15.20.165 Business park areas.

Signs in the business park zone shall be permitted as follows:

- A. The aggregate sign area for any lot shall not exceed one square foot for each foot of street frontage. The permitted signs enumerated in this subsection shall be subject to the total aggregate sign area.
- B. Wall signs are permitted provided they do not total an area more than ten percent of the building facade on which they are located. Each multi-tenant building may have one identification wall sign for each street frontage.
- C. Each building may have one freestanding sign per street frontage. The sign may not exceed a total of one hundred square feet for the total of all faces. No one face shall exceed fifty square feet in area. The sign shall not exceed fifteen feet in height. The width of the support system for a freestanding sign shall be a minimum of eighty percent of the width of the sign face.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003)

**15.20.167 Lighting of signs.**

- A. Internal and exterior illuminated signs are allowed in all zones except R, RM and the Old Town commercial zoning district where only exterior and reverse internal illuminated signs are permitted provided, that awning signs may be internally illuminated.
- B. No on ground lighting fixtures shall be permitted. Fixtures must be mounted to the bottom or top of the sign face and shall be shielded or mounted on curved standards to direct light to sign face only to minimize glare and off-sight lighting impacts. One mounted light shall be permitted per five square feet of sign area.
- C. The illumination of signs shall not cause excessive light or glare that could result in the reduced visibility of official signs and approaching, merging or entering traffic.
- D. Portable and temporary signs shall not be illuminated.

(Ord. 1279 § 1 (Attach. A (part)), 2007: Ord. 1198 § 1, 2003)

**15.20.170 Temporary signs.**

Temporary signs are defined as signs announcing political candidacy, special events or any sign which becomes meaningless due to the passage of time for a period of one year or less. The following regulations apply to temporary signs:

- A. Political signs shall be no larger than nine square feet.
- B. Permission must be obtained from the appropriate property owner to erect a sign for which an individual seeks election to an office or position.
- C. Political signs shall not be erected or displayed more than ninety days prior to an election.
- D. Exterior political signs shall be removed not more than fifteen days following the applicable election or event date.
- E. A deposit fee of fifty dollars shall be required for temporary signs with an expiration date such as an election date or an event date. Upon removal of any such signs by the applicant or his or her agent within the time period specified in this section, the deposit set forth in this section shall be returned.
- F. Temporary promotional signs advertising specific events such as sales, grand openings and other similar activities are permitted. Signs shall remain in place no longer than fourteen days in any six-month period and shall comply with all other provisions of this code.

(Ord. 1279 § 1 (Attach. A (part)), 2007: Ord. 1198 § 1, 2003: Ord. 855 § 3, 1986)

**15.20.175 Nonconforming signs.**

- A. Existing signs that are nonconforming to the provisions of this chapter are permitted to continue subject to the provisions of subsection B of this section. Nonconforming signs may be replaced by a sign of the same type, size, dimensions and location without losing its nonconforming status. Sandwich board and temporary signs that are nonconforming are not permitted to be continued and shall be made conforming.
- B. A nonconforming sign shall lose its nonconforming status it:
  - 1. The sign is relocated; or
  - 2. The structure or size of the sign is altered in any way. This section shall exclude normal and routine maintenance; or
  - 3. The sign is not maintained consistent with Section 15.20.195.

(Ord. 1279 § 1 (Attach. A (part)), 2007: Ord. 1198 § 1, 2003: Ord. 866 § 4, 1987)

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### 15.20.190 Responsibility of owner.

This chapter shall not be construed to relieve or lessen the responsibility of any person owning or operating or installing any sign for damages to property or injuries to persons caused by the construction, maintenance or operation of any sign or any defect therein, nor shall the city or any agent thereof be held or construed as assuming any such liability or responsibility by reason of the permits, fees and inspections provided for in this chapter. The minimum safety requirements and regulations prescribed in this chapter shall not relieve the property owner nor the person constructing or maintaining a sign from the obligation of taking any additional steps necessary to make and keep the sign safe for persons and property. The city and other public agencies are not responsible for damage caused to signs overhanging the public right-of-way during maintenance operations or construction activities.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 855 § 5, 1986; Ord. 638 § 14, 1970)

### 15.20.195 Maintenance and safety.

All signs and components thereof must be maintained in good repair and in a safe, neat, clean and attractive condition. Signs that are a danger to the general public shall be repaired or removed at the direction of the city.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003)

### 15.20.200 Variances.

Variances to dimensional standards may be permitted in accordance with the provisions of Chapter 17.85.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 1116 § 1, 2000; Ord. 855 § 6, 1986; Ord. 648 § 1, 1971; Ord. 638 § 17, 1970)

### 15.20.210 Violation—Penalty.

It is unlawful to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use or maintain any sign or structure in the city, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this code. Each such person shall be guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this code is committed, continued, or permitted, and upon conviction of any such violation shall be punished as set forth in the applicable provisions of the Cle Elum Municipal Code.

(Ord. 1279 § 1 (Attach. A (part)), 2007; Ord. 1198 § 1, 2003; Ord. 855 §§ 7, 8, 1986; Ord. 638 § 15, 1970)

## Chapter 15.22 HISTORIC PRESERVATION

### Sections:

[15.22.010 Title.](#)

[15.22.020 Purpose.](#)

[15.22.030 Definitions.](#)

[15.22.040 Cle Elum historic commission.](#)

[15.22.050 Cle Elum register of historic places.](#)

[15.22.060 Review of changes to Cle Elum register properties.](#)

[15.22.070 Review and monitoring of properties for special property tax valuation.](#)

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### [15.22.080 Relationship to zoning.](#)

#### **15.22.010 Title.**

This chapter shall be known and may be cited as the "historic preservation ordinance of the City of Cle Elum."

(Ord. 1229 § 3 (Exh. C (part)), 2005)

#### **15.22.020 Purpose.**

The purpose of this chapter is to provide for the identification, evaluation, designation, and protection of designated historic and prehistoric resources within the boundaries of the City of Cle Elum and preserve and rehabilitate eligible historic properties within the city for future generations through special valuation, a property tax incentive, as provided in Chapter 84.26 RCW in order to:

- A. Safeguard the heritage of the city as represented by those buildings, districts, objects, sites and structures which reflect significant elements of the city's;
- B. Foster civic and neighborhood pride in the beauty and accomplishments of the past, and a sense of identity based on the city's history;
- C. Stabilize or improve the aesthetic and economic vitality and values of such sites, improvements and objects;
- D. Assist, encourage and provide incentives to private owners for preservation, restoration, redevelopment and use of outstanding historic buildings, districts, objects, sites and structures;
- E. Promote and facilitate the early identification and resolution of conflicts between preservation of historic resources and alternative land uses; and
- F. Conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.

(Ord. 1229 § 3 (Exh. C (part)), 2005)

#### **15.22.030 Definitions.**

The following words and terms when used in this chapter shall mean as follows, unless a different meaning clearly appears from the context:

"Actual cost of rehabilitation" means costs incurred within twenty-four months prior to the date of application and directly resulting from one or more of the following:

1. Improvements to an existing building located on or within the perimeters of the original structure;
2. Improvements outside of but directly attached to the original structure which are necessary to make the building fully useable but shall not include rentable/habitable floor-space attributable to new construction;
3. Architectural and engineering services attributable to the design of the improvements;
4. All costs defined as "qualified rehabilitation expenditures" for purposes of the federal historic preservation investment tax credit.

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"Building" means a structure constructed by human beings. This includes both residential and nonresidential buildings, main and accessory buildings.

"Certificate of appropriateness" means the document indicating that the commission has reviewed the proposed changes to a local register property or within a local register historic district and certified the changes as not adversely affecting the historic characteristics of the property which contribute to its designation.

"Certified local government" or "CLG" means the designation reflecting that the local government has been jointly certified by the State Historic Preservation Officer and the National Park Service as having established its own historic preservation commission and a program meeting federal and state standards.

"Class of properties eligible to apply for special valuation" means all properties in Cle Elum listed on the National Register of Historic Places or certified as contributing to a National Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW, until Cle Elum becomes a certified local government (CLG). Once a CLG, the class of properties eligible to apply for special valuation means all properties listed on the Cle Elum register of historic places or properties certified as contributing to a Cle Elum register historic district which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.

"Cle Elum historic inventory" or "inventory" means the comprehensive inventory of historic and prehistoric resources within the boundaries of the City of Cle Elum.

"Cle Elum historic preservation commission" or "commission" means the commission created by Section 15.22.040 in this chapter.

"Cle Elum register of historic places," "local register," or "register" mean the listing of locally designated properties provided for in Section 15.22.050 in this chapter.

"Cost" means the actual cost of rehabilitation, which cost shall be at least twenty-five percent of the assessed valuation of the historic property, exclusive of the assessed value attributable to the land, prior to rehabilitation.

"District" means a geographically definable area urban or rural, small or large—possessing a significant concentration, linkage, or continuity of sites buildings, structures, and/or objects united by past events or aesthetically by plan or physical development.

"Emergency repair" means work necessary to prevent destruction or dilapidation to real property or structural appurtenances thereto immediately threatened or damaged by fire, flood, earthquake or other disaster.

"Historic property" means real property together with improvements thereon, except property listed in a register primarily for objects buried below ground, which is listed in a local register of a certified local government or the National Register of Historic Places.

"Incentives" are such rights or privileges or combination thereof which the city council, or other local, state, or federal public body or agency, by virtue of applicable present or future legislation, may be authorized to grant or obtain for the owner(s) of register properties. Examples of economic incentives, include, but are not limited to, tax relief, conditional use permits, rezoning, street vacation, planned unit development, transfer of development rights, facade easements, gifts, preferential leasing policies, beneficial placement of public improvements or amenities, or the like.

"Local review board" or "board" used in Chapter 84.26 RCW and Chapter 254-20 WAC for the special valuation of historic properties means the commission created in Section 15.22.040 in this chapter.

"National Register of Historic Places" means the national listing of properties significant to our cultural history because of their documented importance to our history, architectural history, engineering or cultural heritage.

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"Object" means a thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

"Ordinary repair and maintenance" means work for which a permit issued by the City of Cle Elum is not required by law, and where the purpose and effect of such work is to correct any deterioration or decay of or damage to the real property or structure appurtenance therein and to restore the same, as nearly as may be practicable, to the condition prior to the occurrence of such deterioration, decay, or damage.

"Owner" of property is the fee simple owner of record as exists on the Kittitas County assessor's records.

"Significance" or "significant" used in the context of historic significance means the following: a property with local, state, or national significance is one which helps in the understanding of the history or prehistory of the local area, state, or nation (whichever is applicable) by illuminating the local, statewide, or nationwide impact of the events or persons associated with the property, or its architectural type or style in information potential. The local area can include Cle Elum, Kittitas County, Central Washington or a modest geographic or cultural area, such as a neighborhood. Local significance may apply to a property that illustrates a theme that is important to one or more localities; state significance to a theme important to the history of the state; and national significance to property of exceptional value in representing or illustrating an important theme in the history of the nation.

"Site" means a place where a significant event or pattern of events occurred. It may be the location of prehistoric or historic occupation or activities that may be marked by physical remains; or it may be the symbolic focus of a significant event or pattern of events that may not have been actively occupied. A site may be the location of ruined or now nonextant building or structure of the location itself possesses historic cultural or archaeological significance.

"Special valuation for historic properties" or "special valuation" means the local option program which when implemented makes available to property owners a special tax valuation for rehabilitation of historic properties under which the assessed value of an eligible historic property is determined at a rate that excludes, for up to ten years, the actual cost of the rehabilitation. (Chapter 84.26 RCW).

"State Register of Historic Places" means the state listing of properties significant to the community, state, or nation but which may or may not meet the criteria of the National Register.

"Structure" means a work made up of interdependent and interrelated parts in a definite pattern of organization. Generally constructed by man, it is often an engineering project.

"Universal Transverse Macerator" or "UTM" means the grid zone in metric measurement providing for an exact point of numerical reference.

"Waiver of a certificate of appropriateness" or "waiver" means the document indicating that the commission has reviewed the proposed whole or partial demolition of a local register property or in a local register historic district and failing to find alternatives to demolition has issued a waiver of a certificate of appropriateness which allows the building or zoning official to issue a permit for demolition.

"Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties" or "State Advisory's Council's Standards" means the rehabilitation and maintenance standards used by the Cle Elum historic preservation commission as minimum requirements for determining whether or not a historic property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified.

(Ord. 1229 § 3 (Exh. C (part)), 2005)

### 15.22.040 Cle Elum historic commission.

- A. Creation and Size. There is hereby established a Cle Elum historic preservation commission, consisting of five members, as provided in subsection B of this section. Members of the Cle Elum historic preservation commission shall be appointed by the mayor and approved by the city council and at least three members of the commission shall live within the corporate limits of the City of Cle

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Elum, and the other members must reside within unincorporated Kittitas County, lying within the boundaries of Cle Elum-Roslyn School District No. 404, except as provided in subsection (B)(2) of this section.

- B. Composition of the Commission.
1. All members of the commission must have a demonstrated interest and competence in historic preservation and possess qualities of impartiality and broad judgement.
  2. The commission shall always include at least two professionals who have experience in identifying, evaluating, and protecting historic resources and are selected from among the disciplines of architecture, history, architectural history, historic preservation, planning, archaeology, anthropology, cultural geography, curation, real estate or related disciplines. The commission action that would otherwise be valid shall not be rendered invalid by the temporary vacancy of one or all of the professional positions, unless the commission action is related to meeting certified local government (CLG) responsibilities cited in the certification agreement between the mayor and the State Historic Preservation Officer on behalf of the state. Furthermore, exception to the residency requirement of commission members may be granted by the mayor and city council in order to obtain representatives from these disciplines.
  3. In making appointments, the mayor may consider names submitted from any source, but the mayor shall notify history, city and county development related organizations of vacancies so that names of interested and qualified individuals may be submitted by such organizations for consideration along with names from any other source.
- C. Terms. The original appointment of members to the commission shall be as follows: three for two years, and two for three years. Thereafter, appointments shall be made for a three year term. Vacancies shall be filled by the mayor for an unexpired term in the same manner as the original appointment.
- D. Powers and Duties. The major responsibility of the historic preservation commission is to identify and actively encourage the conservation of the city's historic resources by initiating and maintaining a register of historic places and reviewing proposed changes to register properties; to raise community awareness of the city's history and historic resources; and to serve as the city's primary resource in matters of history, historic planning, and preservation. In carrying out these responsibilities, the historic preservation commission shall engage in the following:
1. Conduct and maintain a comprehensive inventory of historic resources within the boundaries of the City of Cle Elum and known as the Cle Elum historic inventory, and publicize and periodically update inventory results. Properties listed on the inventory shall be recorded on official zoning records with an "HI" (for historic inventory designation). This designation shall not change or modify the underlying zone classification;
  2. Initiate and maintain the Cle Elum register of historic places. This official register shall be compiled of buildings, structures, sites, objects, and districts identified by the commission as having historic significance worthy of recognition and protection by the City of Cle Elum and encouragement of efforts by owners to maintain, rehabilitate, and preserve properties;
  3. Review nominations to the Cle Elum register of historic places according to criteria in CEMC Section 15.22.050 and adopt standards in its rules to be used to guide this review;
  4. Review proposals to construct, change, alter, modify, remodel, move, demolish, or significantly affect properties or districts on the register as provided in CEMC Section 15.22.060; and adopt standards in its rules to be used to guide this review and the issuance of a certificate of appropriateness or waiver;
  5. Provide for the review either by the commission or its staff of all applications for approvals, permits, environmental assessments or impact statements, and other similar documents pertaining to identified historic resources or adjacent properties;

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6. Conduct all commission meetings in compliance with Chapter 42.30 RCW, Open Public Meetings Act, to provide for adequate public participation and adopt standards in its rules to guide this action;
  7. Participate in, promote and conduct public information, educational and interpretive programs pertaining to historic and prehistoric resources;
  8. Establish liaison support, communication and cooperation with federal, state, and other local government entities which will further historic preservation objectives, including public education, within the Cle Elum area;
  9. Review and comment to the city council on land use, housing and redevelopment, municipal improvement and other types of planning and programs undertaken by any agency of the City of Cle Elum, other neighboring communities, the county, the state or federal governments, as they relate to historic resources of the City of Cle Elum;
  10. Advise the city council and the chief local elected official generally on matters of Cle Elum's history and historic preservation;
  11. Perform other related functions assigned to the commission by the city council or the chief local elected official;
  12. Provide information to the public on methods of maintaining and rehabilitating historic properties. This may take the form of pamphlets, newsletters, workshops, or similar activities;
  13. Officially recognize excellence in the rehabilitation of historic buildings, structures, sites and districts, and new construction in historic areas; and encourage appropriate measures for such recognition;
  14. Be informed about and provide information to the public and city departments on incentives for preservation of historic resources including legislation, regulations and codes which encourage the use and adaptive reuse of historic properties;
  15. Review nominations to the State and National Registers of Historic Places;
  16. Investigate and report to the city council on the use of various federal, state, local or private funding sources available to promote historic resource preservation in the City of Cle Elum;
  17. Serve as the local review board for special valuation and:
    - a. Make determination concerning the eligibility of historic properties for special valuation,
    - b. Verify that the improvements are consistent with the Washington state advisory council's standards for rehabilitation and maintenance,
    - c. Enter into agreements with property owners for the duration of the special valuation period as required under WAC 254-20-070(2),
    - d. Approve or deny applications for special valuation,
    - e. Monitor the property for continued compliance with the agreement and statutory eligibility requirements during the ten-year special valuation period, and
    - f. Adopt bylaws and/or administrative rules and comply with all other local review board responsibilities identified in Chapter 84.26 RCW;
  18. The commission shall adopt rules of procedure to address subsections (D)(3), (4), (6), and this subsection of this chapter.
- E. Compensation. All members shall serve without compensation.
- F. Rules and Officers. The commission shall establish and adopt its own rules of procedure, and shall select from among its membership a chairperson and such other officers as may be necessary to conduct the commission's business.
- G. Commission Staff. Commission and professional staff assistance shall be provided by the city planner with additional assistance and information to be provided by other city departments as may

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be necessary to aid the commission in carrying out its duties and responsibilities under this chapter.

(Ord. 1229 § 3 (Exh. C (part)), 2005)

### 15.22.050 Cle Elum register of historic places.

- A. Criteria for Determining Designation in the Register. Any building, structure, site, object, or district may be designated for inclusion in the Cle Elum register of historic places if it is significantly associated with the history, architecture, archaeology, engineering, or cultural heritage of the community; if it has integrity; is at least fifty years old, or is of lesser age and has exceptional importance; and if it falls in at least one of the following categories:
1. Is associated with events that have made a significant contribution to the broad patterns of national, state, or local history;
  2. Embodies the distinctive architectural characteristics of a type, period, style, or method of design or construction, or represents a significant and distinguishable entity whose components may lack individual distinction;
  3. Is an outstanding work of a designer, builder, or architect who has made a substantial contribution to the art;
  4. Exemplifies or reflects special elements of the city's cultural, special, economic, political, aesthetic, engineering, or architectural history;
  5. Is associated with the lives of persons significant in national, state, or local history;
  6. Has yielded or may be likely to yield important archaeological information related to history or prehistory;
  7. Is a building or structure removed from its original location but which is significant primarily for architectural value, or which is the only surviving structure significantly associated with an historic person or event;
  8. Is a birthplace or grave of an historical figure of outstanding importance and is the only surviving structure or site associated with that person;
  9. Is a cemetery that derives its primary significance from age, from distinctive design features, or from association with historic events, or cultural patterns;
  10. Is a reconstructed building that has been executed in a historically accurate manner on the original site;
  11. Is a creative and unique example of folk architecture and design created by persons not formally trained in the architectural or design professions, and which does not fit into formal architectural or historical categories.
- B. Process for Designating Properties or Districts to the Cle Elum Register of Historic Places.
1. Any person may nominate a building, structure, site, object, or district for inclusion in the Cle Elum register of historic places. Members of the historic preservation commission or the commission as a whole may generate nominations. In its designation decision, the commission shall consider the Cle Elum historic inventory and the Cle Elum comprehensive plan.
  2. In the case of individual properties, the designation shall include the UTM reference and all features—interior and exterior—and outbuildings that contribute to its designation.
  3. In the case of districts, the designation shall include description of the boundaries of the district; the characteristics of the district which justifies its designation; and a list of all properties including features, structures, sites, and objects which contribute to the designation of the district.

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4. The historic preservation commission shall consider the merits of the nomination, according to the criteria in subsection A of this section and according to the nomination review standards established in rules, at a public meeting. Adequate notice will be given to the public, the owner(s) and the authors of the nomination, if different, and lessees, if any, of the subject property prior to the public meeting according to standards for public meetings established in rules and in compliance with Chapter 42.30 RCW, Open Public Meetings Act. Such notice shall include publication in a newspaper of general circulation in Cle Elum and posting of the property. If the commission finds that the nominated property is eligible for the Cle Elum register of historic places, the commission shall make recommendation to the Cle Elum city council that the property be listed in the register with the owner's consent. In the case of historic districts, the commission shall consider a simple majority of property owners to be adequate for owner consent. Owner consent and notification procedures in the case of districts shall be further defined in rules. The public, property owner(s) and the authors of the nomination, if different, and lessees, if any, shall be notified of the listing.
  5. Properties listed on the Cle Elum register of historic places shall be recorded on official zoning records with an "HR" (for Historic Register) designation. This designation shall not change or modify the underlying zone classification.
- C. Removal of Properties from the Register. In the event that any property is no longer deemed appropriate for designation to the Cle Elum register of historic places, the commission may initiate removal from such designation by the same procedure as provided for in establishing the designation, in subsection B of this section. A property may be removed from the Cle Elum register of historic places without the owner's consent.
- D. Effects of Listing on the Register.
1. Listing on the Cle Elum register of historic places is an honorary designation denoting significant association with the historic, archaeological, engineering, or cultural heritage of the community. Properties are listed individually or as contributing properties to a historic district.
  2. Prior to the commencement of any work on a register property, excluding ordinary repair and maintenance and emergency measures defined in CEMC Section 15.22.060(B), the owner must request and receive a certificate of appropriateness from the commission for the proposed work. Violation of this rule shall be grounds for the commission to review the property for removal from the register.
  3. Prior to whole or partial demolition of a register property, the owner must request and receive a waiver of a certificate of appropriateness.
  4. Once the City of Cle Elum is certified as a certified local government (CLG), all properties listed on the Cle Elum register of historic places may be eligible for special tax valuation on their rehabilitation, as provided in CEMC Section 15.22.070.

(Ord. 1229 § 3 (Exh. C (part)), 2005)

### **15.22.060 Review of changes to Cle Elum register properties.**

- A. Review Required. No person shall change the use, construct any new building or structure, or reconstruct, alter, restore, remodel, repair, move, or demolish any existing property on the Cle Elum register of historic places or within a historic district on the Cle Elum register without review by the commission and without receipt of a certificate of appropriateness, or in the case of demolition, a waiver, as a result of the review. The review shall apply to all features of the property, interior and exterior, that contribute to its designation and are listed on the nomination form. Information required by the commission to review the proposed changes is established in rules.
- B. Exemptions. The following activities do not require a certificate of appropriateness or review by the commission: ordinary repair and maintenance—which includes painting—or emergency measures defined in CEMC Section 15.22.030.
- C. Review Process.

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1. Requests for Review and Issuance of a Certificate of Appropriateness or Waiver. The building or zoning official shall report any application for a permit to work on a designated Cle Elum register property or in a Cle Elum register historic district to the commission. If the activity is not exempt from review, the commission or professional staff shall notify the applicant of the review requirements. The building or zoning official shall not issue any such permit until a certificate of appropriateness or a waiver is received from the commission but shall work with the commission in considering building and fire code requirements.
2. Commission Review. The owner or his/her agent (architect, contractor, lessee, etc.) shall apply to the commission for a review of proposed changes on a Cle Elum register property or within a Cle Elum register historic district and request a certificate of appropriateness or, in the case of demolition, a waiver. Each application for review of proposed changes shall be accompanied by such information as is required by the commission established in its rules for the proper review of the proposed project. The commission shall meet with the applicant and review the proposed work according to the design review criteria established in rules. Unless legally required, there shall be no notice, posting, or publication requirements for action on the application, but all such actions shall be made at regular meetings of the commission. The commission shall complete its review and make its recommendations within thirty calendar days of the date of receipt of the application. If the commission is unable to process the request, the commission may ask for an extension of time. The commission's recommendations shall be in writing and shall state the findings of fact and reasons relied upon in reaching its decision. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. If the owner agrees to the commission's recommendations, a certificate of appropriateness shall be awarded by the commission according to standards established in the commission's rules. The commission's recommendations and, if awarded, the certificate of appropriateness shall be transmitted to the building or zoning official. If a certificate of appropriateness is awarded, the building or zoning official may then issue the permit.
3. Demolition. A waiver of the certificate of appropriateness is required before a permit may be issued to allow whole or partial demolition of a designated Cle Elum register property or in a Cle Elum register historic district. The owner or his/her agent shall apply to the commission for a review of the proposed demolition and request a waiver. The applicant shall meet with the commission in an attempt to find alternatives to demolition. These negotiations may last no longer than forty-five calendar days from the initial meeting of the commission, unless either party requests an extension. If no request for an extension is made and no alternative to demolition has been agreed to, the commission shall act and advise the official in charge of issuing a demolition permit of the approval or denial of the waiver of a certificate of appropriateness. Conditions in the case of granting a demolition permit may include allowing the commission up to forty-five additional calendar days to develop alternatives to demolition. When issuing a waiver the board may require the owner to mitigate the loss of the Cle Elum register property by means determined by the commission at the meeting. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. After the property is demolished, the commission shall initiate removal of the property from the register.
4. Appeal of Approval or Denial of a Waiver of a Certificate of Appropriateness. The commission's decision regarding a waiver of a certificate of appropriateness may be appealed to the city council within ten days. The appeal must state the grounds upon which the appeal is based. The appeal shall be reviewed by the council only on the records of the commission. Appeal of council's decision regarding a waiver of a certificate of appropriateness may be appealed to superior court.

(Ord. 1229 § 3 (Exh. C (part)), 2005)

### **15.22.070 Review and monitoring of properties for special property tax valuation.**

- A. Time Lines.

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1. Applications shall be forwarded to the commission by the assessor within ten calendar days of filing.
  2. Applications shall be reviewed by the commission before December 31 of the calendar year in which the application is made.
  3. Commission decisions regarding the applications shall be certified in writing and filed with the assessor within ten calendar days of issuance.
- B. Procedure.
1. The assessor forwards the application(s) to the commission;
  2. The commission reviews the application(s), consistent with its rules of procedure, and determines if the application(s) are complete and if the properties meet the criteria set forth in WAC 254-20-070(1) and listed in subsection C of this section:
    - a. If the commission finds the properties meet all the criteria, then, on behalf of the City of Cle Elum, it enters into a historic preservation special valuation agreement (set forth in WAC 254-20-120 and in subsection D of this section with the owner. Upon execution of the agreement between the owner and commission, the commission approves the application(s),
    - b. If the commission determines the properties do not meet all the criteria, then it shall deny the application(s);
  3. The commission certifies its decisions in writing and states the facts upon which the approvals or denials are based and files copies of the certifications with the assessor;
  4. For approved applications:
    - a. The commission forwards copies of the agreements, applications, and supporting documentation (as required by WAC 254-20-090(4) and identified in subsection (C)(2) of this section to the assessor,
    - b. Notifies the state review board that the properties have been approved for special valuation, and
    - c. Monitors the properties for continued compliance with the agreements throughout the ten-year special valuation period;
  5. The commission determines, in a manner consistent with its rules of procedure, whether or not properties are disqualified from special valuation either because of:
    - a. The owner's failure to comply with the terms of the agreement, or
    - b. Because of a loss of historic value resulting from physical changes to the building or site;
  6. For disqualified properties, in the event that the commission concludes that a property is no longer qualified for special valuation, the commission shall notify the owner, assessor, and state review board in writing and state the facts supporting its findings.
- C. Criteria.
1. Historic Property Criteria. The class of historic property eligible to apply for special valuation in Cle Elum means all properties listed on the National Register of Historic Places or certified as contributing to a National Register Historic District which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW, until Cle Elum becomes a certified local government (CLG). Once a CLG, the class of property eligible to apply for special valuation in Cle Elum means all properties listed on the Cle Elum register of historic places or properties certified as contributing to a local register historic district which have been substantially rehabilitated at a cost and within a time period which meets the requirements set forth in Chapter 84.26 RCW.
  2. Application Criteria. Complete applications shall consist of the following documentation:

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- a. A legal description of the historic property;
  - b. Comprehensive exterior and interior photographs of the historic property before and after rehabilitation;
  - c. Architectural plans or other legible drawings depicting the completed rehabilitation work;
  - d. A notarized affidavit attesting to the actual cost of the rehabilitation work completed prior to the date of application and the period of time during which the work was performed and documentation of both to be made available to the commission upon request; and
  - e. For properties located within historic districts, in addition to the standard application documentation, a statement from the secretary of the interior or appropriate local official, as specified in local administrative rules or by the local government, indicating the property is a certified historic structure is required.
3. Property Review Criteria. In its review the commission shall determine if the properties meet all the following criteria:
- a. The property is historic property;
  - b. The property is included within a class of historic property determined eligible for special valuation by the City of Cle Elum under this section;
  - c. The property has been rehabilitated at a cost which meets the definition set forth in RCW 84.26.020(2) (and identified in subsection (C)(4) of this section) within twenty-four months prior to the date of application;
  - d. The property has not been altered in any way which adversely affects those elements which qualify it as historically significant as determined by applying the Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties (WAC 254-20-100(1) and listed in subsection (C)(4) of this section).
4. Rehabilitation and Maintenance Criteria. The Washington State Advisory Council's Standards for the Rehabilitation and Maintenance of Historic Properties in WAC 254-20-100 shall be used by the commission as minimum requirements for determining whether or not a historic property is eligible for special valuation and whether or not the property continues to be eligible for special valuation once it has been so classified.
- D. Agreement. The historic preservation special valuation agreement in WAC 254-20-120 shall be used by the commission as the minimum agreement necessary to comply with the requirements of RCW 84.26.050(2).
- E. Appeals. Any decision of the commission acting on any application for classification as historic property, eligible for special valuation, may be appealed to superior court under Chapter 34.04.130 RCW in addition to any other remedy of law. Any decision on the disqualification of historic property eligible for special valuation, or any other dispute, may be appealed to the county board of equalization.

(Ord. 1229 § 3 (Exh. C (part)), 2005)

### 15.22.080 Relationship to zoning.

Properties designated to the register shall be subject to the provisions set forth in this chapter, as well as the use, setback and other controls of the zoning district in which they are located. Nothing contained herein shall be construed to repeal, modify or waive any zoning provisions that are or may otherwise apply to or affect the designated property.

(Ord. 1229 § 3 (Exh. C (part)), 2005)

## Chapter 15.24 FLOOD HAZARD PREVENTION

### Sections:

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[15.24.010 Statutory authorization.](#)

[15.24.020 Findings of fact.](#)

[15.24.030 Purpose.](#)

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[15.24.050 Applicability of provisions.](#)

[15.24.060 Area of special flood hazard—Establishment.](#)

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[15.24.090 Abrogation of easements.](#)

[15.24.100 Flood loss reduction methods generally.](#)

[15.24.110 Development permit—Required.](#)

[15.24.120 Administration—Designated.](#)

[15.24.130 Administration—Duties.](#)

[15.24.140 Construction and development standards—Generally.](#)

[15.24.145 Critical facility.](#)

[15.24.150 Construction and development—Residential and nonresidential—Manufactured homes.](#)

[15.24.155 Wetlands management.](#)

[15.24.160 Floodway location.](#)

[15.24.170 Variance and appeals procedure.](#)

[15.24.180 Violation—Penalty.](#)

### **15.24.010 Statutory authorization.**

The Legislature of the state of Washington has delegated responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

(Ord. 865 § 1.1, 1987)

### **15.24.020 Findings of fact.**

- A. The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

(Ord. 865 § 1.2, 1987)

**15.24.030 Purpose.**

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- A. To protect human life and health;
- B. To minimize expenditure of public money and costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. 865 § 1.3, 1987)

**15.24.040 Definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application:

"Appeal" means a request for a review of the city clerk's interpretation of any provision of this chapter or a request for a variance.

"Area of shallow flooding" means a designated AO or AH zone on the flood insurance rate map (FIRM). The base flood range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

"Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "one-hundred-year flood." Designation on maps always includes the letters A or V.

"Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials, located within the area of special flood hazard.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- 1. The overflow of inland or tidal waters; and/or

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2. The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter found in subsection A(2) of Section 15.24.150.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty consecutive days. For insurance purposes, "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of the ordinance codified in this chapter.

"Recreational vehicle" means a vehicle which is built on a single chassis, four hundred square feet or less when measured at the largest horizontal projection, designed to be self propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

"Structure" means a walled and roofed building including a gas or liquid storage tank that is principally aboveground.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

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- a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
- b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

"Water dependent" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

(Ord. 1185, § 1, 2, 2002; Ord. 889 (part), 1988; Ord. 865 § 2, 1987)

### **15.24.050 Applicability of provisions.**

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the City of Cle Elum.

(Ord. 865 § 3.1, 1987)

### **15.24.060 Area of special flood hazard—Establishment.**

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Kittitas County," dated November 5, 1980, with accompanying flood insurance map is adopted by reference and declared to be a part of this chapter. The flood insurance study is on file at the Kittitas County Courthouse, Ellensburg, Washington.

(Ord. 865 § 3.2, 1987)

### **15.24.070 Interpretation of provisions.**

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 865 § 3.5, 1987)

### **15.24.080 Liability—Disclaimer.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made under this chapter.

(Ord. 865 § 3.6, 1987)

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### 15.24.090 Abrogation of easements.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. 865 § 3.4, 1987)

### 15.24.100 Flood loss reduction methods generally.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging and other development which may increase flood damage; and
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas.

(Ord. 865 § 1.4, 1987)

### 15.24.110 Development permit—Required.

- A. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.24.060. The permit shall be for all structures including manufactured homes, as set forth in the "definitions," and for all development including fill and other activities, also as set forth in the "definitions."
- B. Application for Development Permit. Application for a development permit shall be made on forms furnished by the city clerk and may include but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
  1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
  2. Elevation in relation to mean sea level to which any structure has been floodproofed;
  3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection B of Section 15.24.150; and
  4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

(Ord. 865 § 4.1, 1987)

### 15.24.120 Administration—Designated.

The city planner is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

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(Ord. 1185, § 3, 2002; Ord. 865 § 4.2, 1987)

### 15.24.130 Administration—Duties.

Duties of the city planner shall include, but not be limited to:

- A. Permit Review.
  1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;
  2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required;
  3. Review all development permits to determine if the proposed development is located in the floodway, assure that the encroachment provisions of subsection B of Section 15.24.160 are met.
- B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 15.24.060, the city planner shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer Sections 15.24.150 and 15.24.160.
- C. Information to be Obtained and Maintained.
  1. Where base flood elevation data is provided through the flood insurance study or required as in subsection B of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
  2. For all new or substantially improved flood-proofed structures:
    - a. Verify and record the actual elevation (in relation to mean sea level), and
    - b. Maintain the floodproofing certifications required in subsection B(3) of Section 15.24.110.
  3. Maintain for public inspection all records pertaining to the provisions of this chapter.
- D. Alteration of Watercourses.
  1. Notify adjacent communities and the state of Washington Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
  2. Require that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.
- E. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.24.170.

(Ord. 1185, § 4, 2002; Ord. 865 § 4.3, 1987)

### 15.24.140 Construction and development standards—Generally.

In all areas of special flood hazard the following standards are required:

- A. Anchoring.

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1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
  2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
- B. Construction Materials and Methods.
1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  3. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- C. Utilities.
1. All new and replacement water systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
  2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
  3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- D. Subdivision Proposals.
1. All subdivision proposals shall be consistent with the need to minimize flood damage;
  2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
  3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
  4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least fifty lots or five acres (whichever is less).
- E. Review of Building Permits. Where elevation data is not available either through the flood insurance study or from another authoritative source (subsection B of Section 15.24.130), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(Ord. 865 § 5.1, 1987)

### **15.24.145 Critical facility.**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the base flood plain. Construction of new critical facilities shall be permissible within the base flood plain if no feasible alternative site is available. Critical facilities constructed within the base flood plain shall have the lowest floor elevated to three feet or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced

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by or released into flood waters. Access routes elevated to or above the level of the base flood plain shall be provided to all critical facilities to the extent possible.

(Ord. 900 § 1 (part), 1989; Ord. 889 (part), 1988)

### **15.24.150 Construction and development—Residential and nonresidential—Manufactured homes.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 15.24.060 or 15.24.130(B), the following provisions are required:

- A. Residential Construction.
  1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.
  2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
    - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
    - b. The bottom of all openings shall be no higher than one foot above grade.
    - c. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  3. Interior grades below the lowest exterior grade are prohibited unless the interior grade is above the base flood elevation. Below grade crawlspaces are permitted subject to the following criteria:
    - a. The interior grade is not more than two feet below the lowest exterior grade.
    - b. The height of the below grade crawlspace, as measured from the interior grade to the top of the crawlspace foundation wall, must not exceed four feet at any point.
    - c. There must be an adequate drainage system that removes interior floodwaters.
    - d. The velocity of floodwaters is not more than five feet per second.
- B. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or together with attendant utility and sanitary facilities, shall:
  1. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
  2. Have structural components capable of resisting hydrostatic and hydrostatic loads and effects of buoyancy;
  3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in subsection C(2) of Section 15.24.130;
  4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection A(1) of this section.

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5. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).
- C. **Manufactured Homes.** All manufactured homes to be placed or substantially improved within zones A1-30, AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection A(2) of Section 15.24.140.
- D. **Recreational Vehicles:** Recreational vehicles, where authorized by the City of Cle Elum, placed on sites are required to:
  1. Be on site for fewer than one hundred eighty consecutive days; and
  2. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

(Ord. 1185, § 5, 6, 2002; Ord. 865 § 5.2, 1987)

### **15.24.155 Wetlands management.**

To the maximum extent possible, to avoid the short-term and long-term adverse impacts associated with the destruction or modification of wetlands, especially those activities which limit or disrupt the ability of the wetland to alleviate flooding impacts, the following process should be implemented:

- A. Review proposals for development within base flood plains for their possible impacts on wetlands located within the flood plain;
- B. Ensure that development activities in or around wetlands do not negatively affect public safety, health and welfare by disrupting the wetlands' ability to reduce flood and storm drainage.
- C. Request technical assistance from the Department of Ecology in identifying wetland areas. Existing wetland map information from the National Wetlands Inventory (NWI) can be used in conjunction with the community's FIRM to prepare an overlay zone indicating critical wetland areas deserving special attention.

(Ord. 889 (part), 1988)

### **15.24.160 Floodway location.**

Located within areas of special flood hazard established in Section 15.24.060 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge;
- B. Construction or reconstruction of residential structures is prohibited within designated floodways, except for:
  1. Repairs, reconstruction or improvements to a structure which do not increase the ground floor area; and
  2. Repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty percent of the market value of the structure either:
    - a. Before the repair, reconstruction or repair is started, or

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- b. If the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary or safety codes or to structures identified as historic places shall not be included in the fifty percent.
- C. If subsection A of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 15.24.150, provisions for flood hazard reduction.

(Ord. 865 § 5.3, 1987)

### 15.24.170 Variance and appeals procedure.

#### A. Appeal Board.

1. The city council shall hear and decide appeals and the city planner shall consider requests for variances from the requirements of this chapter.
2. The city council shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the city planner in the enforcement or administration of this chapter.
3. Repealed.
4. In passing upon such applications, the city shall consider all technical evaluations, all relevant factors standards specified in other sections of this chapter; and:
  - a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or erosion damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity to the facility of a waterfront location, where applicable;
  - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - g. The compatibility of the proposed use with existing and anticipated development;
  - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
5. Upon consideration of the factors of subdivision 4 of this subsection and the purposes of this chapter, the city may attach such conditions to the granting of variances, as it deems necessary to further the purposes of this chapter.
6. The city planner shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

#### B. Conditions for Variances.

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1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items a through k of subdivision 4 of subsection A of this section have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:
  - a. A showing of good and sufficient cause;
  - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection (A)(4) of this section or conflict with existing local laws or ordinances.
6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subdivision 1 of this subsection, and otherwise complies with subsections A and B of Section 15.24.140.
8. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Ord. 1185, § 7, 2002; Ord. 865 § 4.4, 1987)

### **15.24.180 Violation—Penalty.**

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction be fined not more than five thousand dollars for each violation, and in addition shall pay all costs and expenses involved in the case. 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. 865 § 3.3, 1987)

## **Chapter 15.28 ENVIRONMENTAL POLICY**

### **Sections:**

Article I. - General Provisions

Article II. - SEPA Process—General Requirements

Article III. - Categorical Exemptions and Threshold Determinations

Article IV. - Environmental Impact Statement (EIS)

Article V. - Commenting

Article VI. - Using Existing Environmental Documents

Article VII. - SEPA and Agency Decisions

Article VIII. - Categorical Exemption

Article IX. - Agency Compliance

Article X. - Forms

Article XI. - Third Party Liability

Article XII. - Hearing Examiners for Review of SEPA Actions

### **Article I. General Provisions**

[15.28.010 Title.](#)

[15.28.020 Purpose.](#)

[15.28.030 Definitions—Adoption by reference.](#)

[15.28.040 Additional definitions.](#)

[15.28.050 General policies.](#)

[15.28.060 Specific policies.](#)

[15.28.065 Rules.](#)

#### **15.28.010 Title.**

The ordinance codified in this chapter shall hereinafter be known as the "city environmental policy ordinance," may be cited as such, and will hereinafter be referred to as "this chapter."

(Ord. 1085 § 2 (part), 1999)

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### 15.28.020 Purpose.

The purpose of this chapter is to establish a clearly understood and effective set of policies and procedures for implementing the State Environmental Policy Act as set forth in RCW 43.21C, through the adoption of city environmental policies, and rules and procedures designed to take into consideration the environmental impact of actions taken by the city. The city adopts the ordinance codified in this chapter under the State Environmental Policy Act SEPA, RCW 43.21C.120, and the SEPA Rules, WAC 197-11-904.

(Ord. 1085 § 2 (part), 1999)

### 15.28.030 Definitions—Adoption by reference.

This article contains uniform usage and definitions of terms under SEPA. The city adopts the following sections of WAC Chapter 197-11 by reference as supplemented by Section 15.28.040:

WAC

- 197-11-700 Definitions
- 197-11-702 Act
- 197-11-704 Action
- 197-11-706 Addendum
- 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 Closed Record Appeal
- 197-11-722 Consolidated appeal
- 197-11-724 Consulted agency
- 197-11-726 Cost-benefit analysis
- 197-11-728 County/City
- 197-11-730 Decisionmaker
- 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

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- 197-11-742 Environmental checklist
- 197-11-744 Environmental document
- 197-11-746 Environmental review
- 197-11-748 Environmentally sensitive area
- 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
- 197-11-775 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

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197-11-799 Underlying governmental action

(Ord. 1085 § 2 (part), 1999)

### 15.28.040 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 799, when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

"City" means the City of Cle Elum.

"Days" means calendar days unless stated otherwise.

"Department" means any division, subdivision or organizational unit of the city established by ordinance, rule or order.

"Early notice" means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated DNS procedures).

"Nondiscretionary project" means a project which does not involve an action which would grant the applicant any development rights which do not exist within zoning of the property at the time an application for development is submitted and includes, but is not limited to, grading permits and demolition permits.

"Nonexempt action" means any action which is not categorically exempt under Article III of this chapter or Part Nine of the SEPA rules.

"Ordinance" means the ordinance, resolution or other procedure used by the city to adopt regulatory requirements.

"Responsible official" means the person designated by the mayor who shall carry out the duties and functions of the city when it is acting as the lead agency under this chapter. (See Section 15.28.080 for designation of responsible official.)

"SEPA rules" means WAC Chapter 197-11 adopted by the state of Washington Department of Ecology and as may be herein after amended.

(Ord. 1085 § 2 (part), 1999)

### 15.28.050 General policies.

The city adopts by reference the general policies of the State Environmental Policy Act SEPA as set forth in RCW 43.21C.010 and RCW 43.21C.020 and as may be herein after amended.

(Ord. 1085 § 2 (part), 1999)

### 15.28.060 Specific policies.

The city adopts the following specific policies in order to achieve the environmental goals of the Cle Elum community:

A. Policies Pertaining to the Natural Environment.

1. Earth.

- a. To encourage land development practices that result in a minimal disturbance to the city's vegetation and soils;
- b. To encourage building and site planning practices that are consistent with the city's natural topographical features;

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- c. To insure prompt development, restoration and effective erosion control of property after land clearing through the use of phased development, replanting, hydroseeding and other appropriate engineering techniques;
    - d. Prohibit development on steep slope areas when such development would create imminent danger of landslides.
  2. Air.
    - a. To work in cooperation with the air pollution control agency having jurisdiction over the proposal, to secure and maintain such levels of air quality as will protect human health and safety and to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of inhabitants, promote the economic and social development of the city, and facilitate the enjoyment of the natural attractions of the city.
  3. Water.
    - a. To encourage development and construction procedures which conform to the Kittitas County Code as such may be amended or superseded, to minimize surface water and ground water runoff and diversion and to minimize erosion and reduce the risk of slides;
    - b. To encourage sound development guidelines and construction procedures which respect and preserve the city's watercourses; to minimize water quality degradation and control the sedimentation of creeks, streams, ponds, lakes and other water bodies; to preserve and enhance the suitability of waters for contact recreation and fishing; to preserve and enhance the aesthetic quality of the waters;
    - c. To maintain and protect ground water resources, to minimize adverse effects of alterations in ground water quantities locations and flow patterns;
    - d. To provide a coordinated water supply plan with adjoining municipalities, special purpose districts, Kittitas County, private water purveyors, and land owners with water rights, provisions for interlocal agreements, joint/mutual assistance, and improvements to existing city facilities, and further joint public/private/regional water supply and treatment strategies and actions to comply with federal, state, and local water quality and drinking water standards.
  4. Plants and Animals.
    - a. To protect the unique plants and animals within the city;
    - b. To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;
    - c. To encourage the retention of trees and other vegetation for visual buffers and soil retention;
    - d. To encourage building and site planning practices that are consistent with the city's vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover.
  5. Energy and Natural Resources.
    - a. To encourage the wise use of nonrenewable natural resources;
    - b. To encourage efficient use of renewable resources;
    - c. To incorporate energy conservation features as feasible and practicable into all city projects and promote energy conservation throughout the community.

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### B. Policies Pertaining to the Built Environment.

#### 1. Environmental Health.

- a. To encourage development practices consistent with development standards of the city, Kittitas County and interlocal agreements as such may be amended or superseded. To minimize the exposure of citizens to the harmful physiological and psychological effects of excessive noise in a manner which promotes commerce; the use, value and enjoyment of property; sleep and repose; and the quality of the environment, including fish and wildlife functions, values, features and habitat;
- b. To require proposals involving the potential risk of an explosion or the release of hazardous substances to the environment to include specific measures which will ensure the public health, safety and welfare;
- c. To restrict or prohibit uses which will expose the public to unsanitary conditions or disease;
- d. To restrict or prohibit uses which are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities;
- e. To require that uses vulnerable to floods, including public facilities which serve such uses, shall be protected against flood damage at the time of initial construction;
- f. To meet the minimum requirements of the National Flood Insurance Program and State of Washington Flood Control Program.

#### 2. Land and Shoreline Use.

- a. Relationship to land use plans and estimated population:
  - i. To implement and further the city's comprehensive plans as may hereafter be amended, including the land use plan, transportation plan, utilities plan, open space, parks and recreation plan, and other plans consistent with ongoing city facility plan or utility-related projects and places,
  - ii. To encourage orderly growth in undeveloped areas of the city by maximizing the efficiency of utilities and roads and other capital improvements;
- b. Housing.
  - i. To encourage the provision and maintenance of adequate housing for the residents of Cle Elum, for all income levels,
  - ii. To evaluate impacts of new nonresidential development which would reduce existing housing stock or reduce land available for residential development;
- c. Light and Glare.
  - i. To minimize excessive light and glare;
- d. Aesthetics.
  - i. To encourage development which maintains and improves the existing aesthetic character of the community,
  - ii. To maximize protection of existing public scenic vistas and scenic corridors;
- e. Recreation.
  - i. To protect the existing open space areas for future generations and promote their expansion;
- f. Historic and Cultural Preservation.
  - i. To consider the historical and archaeological importance of all buildings and sites prior to any change in use or development, and to recognize properties

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and structures included in any future survey of historic buildings or as such may be amended or superseded, as properties of historical significance.

3. Transportation.
  - a. To approve street designs which are beneficial to the public in consideration of vehicular and pedestrian safety, efficiency of service, influence on the amenities and livability of the community, and economy of both construction and the use of land;
  - b. To encourage increased traffic volumes only in areas with sufficient capacity to provide safe and efficient traffic flow or where adequate traffic improvements will be provided in conjunction with the development. To require adequate vehicular and pedestrian access to new developments, and minimize pedestrian-vehicular conflict points.
4. Public Services and Utilities.
  - a. To encourage and approve development only where adequate public services, including fire and police protections are available or will be made available to serve the proposal;
  - b. To encourage and approve development only where adequate utilities, including water, sewer, power, communications and drainage facilities are available or will be made available in conjunction with the proposal following inclusion within the city's growth area and after annexation into the city or the execution of a no-protest annexation plan that allows for municipal utility sewers for properties on-site the City of Cle Elum;
  - c. To protect the existing open space areas for future generations and promote their expansion.
- C. Other Policies.
  1. To minimize the reduction of available natural light due to the casting of shadows by new development;
  2. To encourage planned residential development to preserve and maintain sensitive environmental areas which could be negatively impacted by traditional development techniques;
  3. A single development or land use, though otherwise consistent with zoning and other city policies, may create adverse impacts upon facilities and services, natural systems or the surrounding area when aggregated with the impacts of prior or other proposed development. It is the policy of the city to analyze such cumulative environmental impacts and condition or deny proposals to minimize or prevent adverse impacts in accordance with other provisions of this chapter;
  4. In assessing the environmental impacts of a proposal and in determining the need for conditioning or denying a proposal in accordance with other provisions of this chapter, the responsible official shall utilize SEPA, all policies, guidelines and regulations adopted pursuant to SEPA, federal, state and regional environmental quality standards, and the legislative enactments of the city, both specific and general, now in effect or enacted in the future;
  5. The city reserves the right to impose specific conditions upon any action or to deny action in conformance with the policies stated in this chapter, so as to mitigate or prevent adverse environmental impacts;
  6. It is not the intent or purpose of this chapter to prevent or delay the reasonable development of land in the city;
  7. It is the intent of the city to provide for adequate development standards and procedure for the Bull Frog Subarea following the adoption of an urban growth area which upon adoption are incorporated by reference in this chapter.

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(Ord. 1085 § 2 (part), 1999)

### **15.28.065 Rules.**

The city is authorized to promulgate rules for the interpretation and implementation of this chapter through administrative rules adopted by the responsible official, and resolutions or ordinances adopted by the city council.

(Ord. 1085 § 2 (part), 1999)

### **Article II. SEPA Process—General Requirements**

[15.28.070 Purpose—Adoption by reference.](#)

[15.28.080 Designation of responsible official.](#)

[15.28.090 Lead agency determination and responsibilities.](#)

[15.28.100 Timing of the SEPA process and integration of SEPA procedures with other governmental activities.](#)

[15.28.110 Additional considerations in applicable time limits.](#)

### **15.28.070 Purpose—Adoption by reference.**

This article contains general requirements that apply to the SEPA process, subject to the additional provisions contained in this article, the city adopts the following sections of WAC Chapter 197-111 by reference:

WAC

197-11-040 Definitions

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 action during SEPA process

197-11-080 Incomplete or unavailable information

197-11-090 Supporting documents

197-11-100 Information required of applicants

(Ord. 1085 § 2 (part), 1999)

### **15.28.080 Designation of responsible official.**

- A. For those proposals for which the city is the lead agency, the responsible official shall be the city's mayor or designated official.
- 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 EIS, and perform any

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other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference.

- C. The city shall retain all documents required by the SEPA rules (WAC Chapter 197-11) and make them available in accordance with RCW Chapter 42.17.
- D. Public information on SEPA can be obtained at the lead agency through the Cle Elum city clerk's office, Cle Elum City Hall, 301 Pennsylvania, Cle Elum, WA, 98922.

(Ord. 1085 § 2 (part), 1999)

### **15.28.090 Lead agency determination and responsibilities.**

- A. When the city receives for or initiates a proposal that involves a nonexempt action, the responsible official shall determine the lead agency for that proposal under WAC 197-11-050 and WAC 197-11-922 through WAC 197-11-940. This determination shall be made for each proposal involving a nonexempt action unless the lead agency has been previously determined or the responsible official is aware that another agency is in the process of determining the lead agency.
- B. When the city is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the draft and final EIS.
- C. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The city shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless the city determines it to be required under WAC 197-11-600. In some cases, the city may require or conduct supplemental environmental review under WAC 197-11-600.
- D. If the city receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the city may be initiated by the responsible official.
- E. The responsible official is 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.
- F. In making a lead agency determination for a private project, the responsible official shall identify which other agencies have jurisdiction over the proposal.

(Ord. 1085 § 2 (part), 1999)

### **15.28.100 Timing of the SEPA process and integration of SEPA procedures with other governmental activities.**

- A. The primary purpose of the environmental review process is to provide environmental information to governmental decision makers to be considered prior to making their decision (and to provide for appropriate mitigation of environmental impacts in compliance with other sections of this chapter and the SEPA rules). The actual decision to proceed with many actions may involve a series of individual approvals or decisions. The threshold determination and the EIS, if required, should ideally be completed at the beginning of this process. The threshold determination and the EIS (if required) should be completed at the earliest point in the planning and decision making process, at which time, principal features of a proposal and its environmental impacts can be reasonably identified.
- B. To the fullest extent possible, the procedures required by this chapter shall be integrated with existing planning and licensing procedures utilized by the city. These procedures should be

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initiated early, and undertaken in conjunction with other governmental operations to avoid lengthy time delays and unnecessary duplication of effort.

- C. 1. A private applicant may, and is encouraged to, file a completed environmental checklist prior to the filing of an application for any covered license. The city shall provide for applicant review at the conceptual stage of a proposed action. An applicant shall submit a preliminary site plan in conjunction with a completed environmental checklist for SEPA review at the conceptual stage.
- 2. If the responsible official determines that the information initially supplied is not reasonably sufficient to evaluate the environmental impacts of the proposal, further information may be required of the applicant in conformance with WAC 197-11-100 and WAC 197-11-335.
- 3. The responsible official may set reasonable deadlines, not to exceed ninety days, for the submittal of information, studies or documents necessary for the threshold determination. Failure to meet such deadlines and fully comply shall cause the application to be deemed withdrawn. In which case, the responsible official shall either notify the applicant or return the plans or other data submitted to the city for review together with any unexpended portion of the application review fee. This provision shall also apply to SEPA applications submitted prior to the effective date of the ordinance codified in this chapter, amendment subject to the responsible official providing the applicant notice of pertinent deadlines.
- D. At a minimum, any DNS or MDNS shall be completed prior to the city making any decision irreversibly committing itself to adopt, approve or otherwise undertake any proposed nonexempt action.
- E. For nonexempt proposals, the final DNS, MDNS or final EIS for the proposal shall accompany the city's final staff recommendation to any appropriate advisory body, such as the planning commission; provided; however, that preliminary discussions, public workshops or preliminary hearings before the advisory body may occur prior to the final SEPA determinations.
- F. When the city is the proponent for either a governmental action of a project nature or a governmental action of a nonproject nature, and the city is also the lead agency, then the maximum time limits contained in this chapter for the threshold determination and EIS process shall not apply to the proposal.

(Ord. 1085 § 2 (part), 1999)

### **15.28.110 Additional considerations in applicable time limits.**

The responsible official shall make the following determinations as part of the initial review of every nonexempt project or proposal:

- A. Categorical Exemptions. A determination whether the project or proposal is categorically exempt shall be made by the responsible official within fifteen days of receiving a request for such a determination from a private applicant or another governmental agency.
- B. Threshold Determinations. The city's SEPA process is an integrated permit and land use process. Nevertheless, the time to complete a threshold determination shall not exceed ninety days from the date of submittal of a completed application and supporting documentation and payment of fees; provided, however, additional time to complete a threshold determination may be required whenever:
  - 1. A threshold determination requires further information from the applicant and/or consultation with other agencies with jurisdiction, as determined by the responsible official, in which case the running of the ninety-day period shall be stayed until the required information and/or consultation is provided;
  - 2. A threshold determination requires further studies, including field investigations initiated by the city, in which case the running of the ninety-day period shall be stayed until the required studies are provided;

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3. A threshold determination on an action where the applicant recommends in writing that an EIS be prepared because of the probable significant adverse environmental impact described in the application;
4. The applicant requests an extension (not to exceed an additional thirty days); or
5. If the applicant revises the application and such revision requires recirculation or additional analysis, the ninety-day period shall commence upon submittal of the revised application.

Any time limits set forth in this subsection shall not apply to withdrawal of alternative and negative threshold determinations (DS, DNS) where such withdrawals are made in accordance with WAC 197-11-340 and 197-11-360; and

For purposes of the ninety-day period, an application and supporting documentation is deemed complete at such time as the responsible official issues a certification of completion. Such certification will be issued in accordance with an administrative rule adopted by the responsible official. Upon issuance of a certification of completion, the certification shall only be withdrawn in the following circumstances:

- a. There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;
- b. There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
- c. The certification of completion was procured by misrepresentation or lack of material disclosure.

In the event that a certificate of completion is withdrawn and the responsible official determines that additional information is needed to process the application, the applicant shall be so notified, and the ninety-day period stayed pending receipt of the requested information by the city.

Upon request by an applicant, the responsible official shall select a date for making the threshold determination and notify the applicant of such date in writing.

(Ord. 1085 § 2 (part), 1999)

### **Article III. Categorical Exemptions and Threshold Determinations**

[15.28.120 Purpose—Adoption by reference.](#)

[15.28.130 Flexible thresholds for categorical exemptions.](#)

[15.28.140 Use of categorical exemptions.](#)

[15.28.150 Environmental checklist.](#)

[15.28.160 Mitigated DNS.](#)

#### **15.28.120 Purpose—Adoption by reference.**

This article contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This article also contains rules for evaluating the impacts of proposals not requiring an EIS. Subject to the additional provisions contained in this article, the city adopts the following sections of WAC Chapter 197-11 by reference:

WAC

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- 197-11-300 Purpose of this part
- 197-11-305 Categorical exemptions
- 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 Nonsignificance (DNS)
- 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

(Ord. 1085 § 2 (part), 1999)

### **15.28.130 Flexible thresholds for categorical exemptions.**

The following exempt levels are established for minor new construction in the city: under WAC 197-11-8(1)(b) based on conditions in the city:

- A. For residential dwelling units in WAC 197-11-800(1)(b)(ii): up to four dwelling units;
- B. For agricultural structures in WAC 197-11-800(1)(b)(ii): up to ten thousand square feet;
- C. For office, school, commercial, recreational, public, utility, service or storage buildings in WAC 197-11-800(1)(b)(iii): up to twelve thousand square feet and up to twenty parking spaces;
- D. For parking lots in WAC 197-11-800(1)(b) (iv): up to twenty parking spaces;
- E. For landfills and excavations in WAC 197-11-800(b)(v): up to five hundred cubic yards.

(Ord. 1085 § 2 (part), 1999)

### **15.28.140 Use of categorical exemptions.**

- A. The applicability of the exemptions shall be determined by the responsible official for each application received for a license, or for each governmental proposal initiated by the city. The determination of whether or not a proposal is exempt shall be made by ascertaining that the proposal is properly defined and by identifying the governmental license required (WAC 197-11-060). The responsible official's determination that a proposal is exempt shall be final and not subject to administrative review.
- B. If a proposal includes a series of actions, physically or functionally related to each other, some of which are exempt and some of which are not, the proposal shall not be exempt.
- C. If the proposal includes a series of exempt actions which are physically or functionally related to each other, but which together may have a probable significant adverse environmental impact, the proposal shall not be exempt.
- D. 1. If it is determined that a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal. No environmental checklist shall be required for an exempt proposal;

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2. Provided, however, that the city may itself prepare and use an environmental checklist to review a proposal whenever it would assist in its planning and decision making process.
- E. If a proposal includes both exempt and nonexempt actions, exempt actions may be authorized with respect to the proposal prior to compliance with the procedural requirements of these guidelines subject to the following limitations:
1. No nonexempt action shall be authorized;
  2. No action shall be authorized which would limit the choice of alternatives;
  3. The responsible official may withhold approval of an exempt action which would lead to modification of the physical environment, when such modifications would serve no purpose if later approval of a nonexempt action is not secured;
  4. The responsible official may withhold approval of exempt actions which would lead to substantial financial expenditures by a private applicant which would serve no purpose if later approval of a nonexempt action is not secured.

(Ord. 1085 § 2 (part), 1999)

### 15.28.150 Environmental checklist.

- A. Except as provided in WAC 197-11-31 5(1)(a), a completed environmental checklist, or a copy thereof, substantially in the form provided in WAC 197-11-960 shall be filed at the same time as, or before, an application for a permit, license, certificate or other entitlement or approval for actions not specifically exempted in this chapter. This checklist shall be the basis for a determination by the city as to lead agency status, and if the city is determined to be the lead agency, then for making the threshold determination.
- B. For private proposals, the city will require the applicant to complete the environmental checklist. The city will provide assistance to the applicant as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.
- C. The city may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:
  1. The city has technical information on a question or questions contained in the environmental checklist that is unavailable to the private applicant; or
  2. The applicant has provided misleading and inaccurate information on previous proposals or on proposals currently under consideration.

(Ord. 1085 § 2 (part), 1999)

### 15.28.160 Mitigated DNS.

- A. As provided in this section and in WAC 197-11-350, the responsible official may issue a mitigated determination of nonsignificance (mitigated DNS) for a proposal whenever:
  1. The city specifies mitigation measures in its DNS and conditions the proposal to include those mitigation measures so that the proposal will not have a probable significant adverse environmental impact; and
  2. The proposal is clarified or changed by the applicant to mitigate impacts of the proposal so that, in the judgment of the responsible official, the proposal will not have a probable significant adverse environmental impact.
- B. After submission of an environmental checklist and prior to the city's threshold determination, an applicant may submit a written request for early notice of whether a determination of significance (DS) is likely under WAC 197-11-350.

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- C. The responsible official should respond to the request for early notice within fifteen working days. The response shall:
  - 1. Be written;
  - 2. State whether the city currently considers issuance of a DS likely and, if so, indicate the potentially significant adverse environmental impacts that are leading the city to consider a DS; and
  - 3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, and revise the environmental checklist and/or permit application for the proposal as necessary to describe the changes or clarifications.
- D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, 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. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a mitigated determination of nonsignificance under WAC 197-11-340(2). The responsible official shall reconsider the DNS based on timely comments and may retain, modify or withdraw the DNS under WAC 197-11-340(2)(f).
  - 2. If the city indicated potentially significant adverse environmental impacts, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate.
  - 3. The applicant's proposed mitigation measures (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 decibel" or "construct two hundred-foot storm water retention pond at Y location" may be adequate.
  - 4. Environmental documents need not be revised and resubmitted if the clarifications or changes to the proposal are stated in writing in attachments to, or documents incorporated by reference into, the environmental review record. An addendum may be used in compliance with WAC 197-11-600 and WAC-197-11-425.
  - 5. If a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS shall be prepared.
- F. A mitigated DNS issued under WAC 197-11-340(2), requires a public notice and a fifteen-day comment period.
- G. 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.
- H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the responsible official should reevaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).
- I. The city's written response under subsection G of this section shall not be construed as a determination of significance.

(Ord. 1085 § 2 (part), 1999)

### **Article IV. Environmental Impact Statement (EIS)**

[15.28.170 Adoption by reference.](#)

[15.28.180 Preparation of EIS—Additional considerations.](#)

**15.28.170 Adoption by reference.**

This article contains the rules for preparing environmental impact statements or any other environmental document, including threshold determinations under WAC 197-11-360, mitigated determinations of nonsignificance, and determinations of nonsignificance. Subject to the additional provisions contained in this article, the city adopts the following sections of WAC Chapter 197-11 by reference:

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
- 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 Elements of the environment
- 197-11-448 Relationship of EIS to other considerations
- 197-11-450 Cost-benefit analysis
- 197-11-455 Issuance of EIS
- 197-11-460 Issuance of FEIS

(Ord. 1085 § 2 (part), 1999)

**15.28.180 Preparation of EIS—Additional considerations.**

- A. Preparation of draft and final EIS's and draft and final supplemental EIS and Addenda, is the responsibility of the city under the direction of the responsible official per the procedures contained in this section. Before the city issues an EIS or Addendum the responsible official shall be satisfied that it complies with this chapter and WAC Chapter 197-11.

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- B. The draft and final EIS or FEIS shall be prepared by a consultant selected by the city per the city's adopted procedures. However, city staff may prepare EIS's for city proposals. If the responsible official requires an EIS for a proposal, 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 EIS and FEIS prior to distribution.
- C. The city may require that an applicant provide information the city does not possess, including specific investigations necessary to identify potentially significant adverse environmental impacts. However, the applicant may not be required to supply information that is not required under this chapter or WAC 197-11-100. (The limitation does not apply to information the city may request under another ordinance or statute.)
1. Preparation of Draft Environmental Impact Statement.
    - a. When an EIS is required, all information required by the SEPA rules shall be presented by the consultant in substantially the same form as for the draft environmental impact statement in accordance with procedures of subdivision 4 of this subsection C.
    - b. The responsible official shall assure that the EIS is prepared in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document in accordance with subdivision 4 of this subsection C.
    - c. The draft environmental impact statement or adopted environmental adequate to waive scoping for purposes of WAC 197-11-360 shall be prepared, or reviewed and approved, by the responsible official prior to distribution. If, in the opinion of the responsible official, the information provided by the consultant and/or subconsultant(s) for the draft environmental impact statement is inadequate, erroneous, misleading or otherwise deficient under the standards of this chapter, the responsible official will cause its distribution to be delayed for such time as may be required to correct such deficiencies.
    - d. Upon acceptance of the information required under this section for the draft environmental impact statement, such information shall become the property of the city and the responsible official shall possess the right to edit, reproduce, modify and distribute such information.
  2. Preparation of Final Environmental Impact Statement. Upon acceptance of the draft EIS or adopted environmental documents, the responsible official shall cause its circulation and shall finalize such EIS in accordance with the procedures required by this chapter and the SEPA rules.
  3. Consultant Selection for Draft EIS Information or Adoption of Other Environmental Documents.
    - a. When a DS is issued, a consultant will be selected by the city.
    - b. When a DS is issued, the applicant shall solicit and provide to the responsible official statements of qualifications for preparation of the EIS from at least three consultants.
    - c. Based upon the responsible official's review of the responses to the statement of qualifications, the responsible official shall select a consultant(s) and appropriate subconsultant(s) or reject the proposed consultant(s) and/or subconsultant(s) and require that the applicant solicit new statements of qualifications. The review may include interviews with the responsible official.
    - d. Upon issuance of a scoping determination by the responsible official, it shall be the responsibility of the applicant to negotiate a contract with the consultant and any subconsultant(s) selected by the responsible official. The contract shall address all items in the scoping document. If there is a conflict between the contract and the scoping document, the scoping document shall prevail. After the responsible official is notified by the consultant and/or subconsultant(s) that the contact(s) with the applicant has been negotiated and executed in accordance with the provisions of this chapter and the city's

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adopted procedures, the consultant's and subconsultant's work on the EIS shall commence.

- e. The responsible official will meet with the consultant and any subconsultants to direct preparation of the draft EIS. The consultant shall meet with the applicant and/or discuss the EIS process with the applicant only when authorized by the responsible official.
  - f. When the preliminary draft EIS is provided to the responsible official, the consultant shall also provide a copy to the applicant and the applicant shall be provided an opportunity to comment thereupon.
  - g. All fees charged by the consultant and any subconsultant(s) shall be the responsibility of the applicant. In no event, shall the city be responsible for any such fees charged by the consultant or subconsultant except when the city is the applicant. All consultant and subconsultant contracts shall include language which recognizes that payment of the consultant/subconsultant(s) fees shall be the sole responsibility of the applicant and not the responsibility of the city.
  - h. In the event the actions or inactions of the consultant/subconsultant(s) jeopardize the EIS process as defined in this chapter, the responsible official is authorized to impose penalties in accordance with rules adopted by the responsible official. Such rules shall be incorporated into the consultant's/subconsultant's contract and the contract shall be consistent with said rules.
4. Consultant/Applicant Responsibilities. When a consultant prepares a draft, final or supplemental EIS, the following responsibilities are hereby specified:
- a. Consultant and subconsultant(s) selected by city;
  - b. City determines the scope of the EIS in compliance with WAC 197-11-360, and WAC 197-11-408 or WAC 197-11-410 as appropriate;
  - c. Applicant negotiates and executes contact with consultant and required subconsultants;
  - d. Consultant submits information in the form of a preliminary draft EIS to city and applicant;
  - e. Applicant reviews and provides comments on preliminary draft EIS to city;
  - f. City reviews the preliminary draft EIS and applicant's comments;
  - g. City prepares review comments and directs preliminary draft EIS changes;
  - h. Consultant prepares rough draft of EIS;
  - i. City approves rough draft EIS or directs that further revisions be made;
  - j. Consultant types, binds and prints approved draft EIS in sufficient quantity to satisfy WAC 197-11-455. The specific number shall be determined by the responsible official;
  - k. Consultant mails draft EIS to agencies with expertise and jurisdiction, affected tribes and persons requesting a copy in compliance with WAC 197-11-455;
  - l. City reviews comments and directs consultant in preparation of changes and additions to draft EIS, responses to draft EIS comments and preparation of final EIS;
  - m. Consultant types and prints final EIS;
  - n. Consultant circulates final EIS.
- D. Public Awareness of Availability of Draft EIS. The responsible official shall inform the public of the availability of the draft EIS and of the procedures for requesting a public hearing by publishing notice in a newspaper of general circulation and by mailing the notice to all public or private groups or individuals who have made timely written request of the city for such notice, including the SEPA mailing list and the neighborhood leader mailing list established under Section 15.28.200(A).

(Ord. 1085 § 2 (part), 1999)

**Article V. Commenting**

[15.28.190 Adoption by reference.](#)

[15.28.200 Public notice.](#)

[15.28.210 Designation of official to perform consulted agency responsibilities for the city.](#)

**15.28.190 Adoption by reference.**

This article contains the rules for requesting consultation, commenting on and responding to all environmental documents under SEPA, and includes the rules for public notice and hearings. The city adopts the following sections of WAC Chapter 197-11 by reference, subject to the additional provisions contained in this article:

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

197-11-550 Specificity of comments

197-11-560 FEIS response to comments

197-11-570 Consulted agency costs to assist lead agency

(Ord. 1085 § 2 (part), 1999)

**15.28.200 Public notice.**

- A. The city shall establish a SEPA mailing list consisting of all public or private groups or individuals who submit a written request with the responsible official that they be notified of all SEPA actions which require public notice under WAC 197-11-510. The city shall also establish a neighborhood leader mailing list which shall include the duly elected chairperson of each neighborhood group. It shall be the responsibility of the neighborhood chairperson or his/her designated representative to notify the responsible official in writing of the name and mailing address of his/her successor. "Neighborhood group" means a group representing a specified geographic area within the city which is formally recognized by the city's office of neighborhoods and which has elected officers and representatives on the council of neighborhoods.
- B. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(1), the city shall give public notice as follows:
  - 1. For site specific proposals, notice shall be given by: (a) mailing notice to the SEPA mailing list; (b) if a proposal is located within the geographical boundaries of a neighborhood group by

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mailing notice to the chairperson of that group; and (c) posting the property in a minimum of two locations readily observable from public right-of-way or adjacent property or whenever the subject property fronts on a public street or alley, the property shall be posted with one sign per frontage, including alleys, plus one additional sign for each one hundred fifty lineal feet of frontage; provided, if more than a total of five hundred lineal feet of frontage exists, then the number of actual signs required and their placement shall be discretionary with the responsible official. All signs required to be posted shall remain in place until the final SEPA determination has been made and the applicant shall provide the responsible official with an affidavit of compliance with the posting requirements of this section.

2. For (nonproject) proposals which are not site specific, notice shall be given by: (a) mailing notice to the SEPA mailing list or (b) publishing notice in a newspaper of general circulation in the City of Cle Elum and Kittitas County.
  3. In exceptional circumstances, where it is determined that methods of notice provided for in subdivisions 1 or 2 of this subsection B would not provide adequate public notice of a proposed action, the responsible official may require additional notice or notice by another reasonable method. Failure to require additional or alternative notice shall not be a violation of any notice procedure.
  4. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 unless the city adopts an Addendum or other environmental document including for those purposes set forth under WAC 197-11-360.
  5. The comment date shall commence on the date that the site is posted or notices published or mailed, whichever occurs later.
- C. Whenever the city issues a draft EIS under WAC 197-11-455(5) or a supplemental FEIS 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
  2. Publishing notice in a newspaper of general circulation in the City of Cle Elum; and
  3. Mailing notice to the SEPA mailing list.
- 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 approvals required for the proposal.
- E. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.
- F. For purposes of computing the time period for public notice, the definition of "days" under Section 15.28.040 shall apply. When computing the time period, the day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050.

(Ord. 1085 § 2 (part), 1999)

### **15.28.210 Designation of official to perform consulted agency responsibilities for the city.**

- A. The city mayor at telephone number (509) 674-2262 shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in predraft consultation, participation in scoping, and reviewing a draft EIS.
- B. The responsible official, Cle Elum City Hall, 301 Pennsylvania, Cle Elum, WA 98922, shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency

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and is authorized to develop operating procedures which will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

(Ord. 1085 § 2 (part), 1999)

### **Article VI. Using Existing Environmental Documents**

[15.28.220 Adoption by reference.](#)

#### **15.28.220 Adoption by reference.**

This article contains rules for using and supplementing existing environmental documents prepared under SEPA or The National Environmental Policy Act (NEPA) to meet the city's environmental review responsibilities under SEPA. The city adopts the following sections of WAC Chapter 197-11 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

(Ord. 1085 § 2 (part), 1999)

### **Article VII. SEPA and Agency Decisions**

[15.28.230 Adoption by reference.](#)

[15.28.240 Substantive authority.](#)

[15.28.245 Adoption of SEPA policies.](#)

[15.28.250 Appeals.](#)

[15.28.260 Notice—Statute of limitations.](#)

#### **15.28.230 Adoption by reference.**

This article contains rules and policies for the use of SEPA's substantive authority, such as decisions to require mitigation of adverse environmental impacts in compliance with policies contained in this chapter, or decisions to deny a proposal on the basis of significant adverse impacts identified in the environmental review documents prepared under SEPA. This article also contains procedures for

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appealing SEPA determinations to agencies or the courts. The city adopts the following sections of WAC Chapter 197-11 by reference, subject to the additional provisions contained in this article:

WAC

197-11-650 Purpose of this Part

197-11-655 Implementation

197-11-660 Substantive authority and mitigation

197-11-680 Appeals, except as amended by hearing examiner's rules under Article XII Hearing Examiners.

(Ord. 1085 § 2 (part), 1999)

### 15.28.240 Substantive authority.

- A. The policies, procedures and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all branches of government of this state, including state agencies, municipal and public corporations, and counties.
- B. The city may attach conditions to a permit or approval for a proposal so long as:
  - 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
  - 2. Such conditions are in writing; and
  - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
  - 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 cited in the approval or decision document (such as a DNS, MDNS or decision document issued pursuant to the publication of an EIS).
- 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 final EIS or final supplemental EIS prepared pursuant to this chapter; and
  - 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the significant adverse identified impact; and
  - 3. The denial is based on one or more policies identified in sections identified in writing in the decision document.
- D. In addition to the policies established under sections 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;

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- 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 recognizes its duty to comply with and implement State Health Department and Health Department and Ecology Department requirements for comprehensive water supply and sewage system facilities to serve the city and its service area, including areas designated in the city within its urban growth area or subareas consistent with regional service needs of upper Kittitas County as recognized in agreements between the city, Kittitas County, other entities and jurisdictions and private land owners providing utility services, facilities, supplies or capabilities.

(Ord. 1085 § 2 (part), 1999)

### **15.28.245 Adoption of SEPA policies.**

For purposes of RCW 43.21C.060 and substantive, supplemental authority to condition or deny proposals and actions, the following policies have been adopted and are incorporated by reference as if set forth verbatim:

- A. RCW 43.21C.020 policies relating to the protection and enhancement of the natural and built environments as defined by SEPA as may hereinafter be amended, and SEPA implementing regulations at WAC Chapter 197-11 as may herein after be amended;
- B. Any interlocal agreements, consent orders, compliance orders and court orders entered into between the city and any other local jurisdiction, special purpose district, agency or jurisdiction relating to environmental and development standards, compliance with federal and state laws (including health related requirements for water and sewer supply);
- C. The city's comprehensive plan as may herein after be amended;
- D. Any utility agreements entered into between the city and any property owner within the Bull Frog Subarea Plan boundaries as identified in the Bull Frog Urban Growth Area Resolution No. 6/23/98-1 with incorporated consultant attachments;
- E. The Storm Water Manual of Kittitas County, as may hereinafter be amended for purposes of requiring stormwater analysis and improvements for proposal and actions which are not categorically exempt;
- F. The city's shoreline management and critical areas codes as may hereinafter be amended;
- G. The city's zoning code and development code as may hereinafter be amended;
- H. Ordinance No. \_\_\_\_\_ pertaining to annexations and utility service to properties in excess of five acres seeking utility service from the city;
- I. Those policies enumerated in Sections 15.28.060 and 15.28.240.

(Ord. 1159 § 1, 2001; Ord. 1137 § 1, 2001; Ord. 1085 § 2 (part), 1999)

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### 15.28.250 Appeals.

The city authorizes the following administrative appeals and establishes the following appeal procedures under Chapter 36.70B RCW 43.21C.075 and WAC 197-11-680:

- A. Appeals authorized. Administrative appeals shall be available for threshold determinations (determination of significance, determination of nonsignificance, and mitigated determination of nonsignificance "DS; DNS; MDNS" herein) and final environmental impact statement ("FEIS") adequacy. All appeal hearings under this section shall be conducted by the hearing examiner, who shall make a recommendation to the city council. There shall be no appeal of the city's use or failure to use substantive SEPA authority (implementing SEPA based mitigation) except as part of any appeal of the underlying project permit decision.
- B. Jurisdictional procedural requirements. The following criteria shall be satisfied for all appeals:
  1. Standing is limited to aggrieved persons.
  2. Appeals shall be commenced by filing with the city a written statement (hereinafter "written appeal statement") requesting an appeal setting forth the name and address of the person aggrieved, an explanation of why the person is aggrieved and a clear and concise statement of the specific issues for the appeal on a form provided by the city.
  3. Written appeal statements shall be accompanied by a nonrefundable five hundred dollar fee.
  4. Written appeal statements shall be received by the city no later than fourteen days following the issuance of the threshold determination or FEIS. If the fourteenth day is a Saturday, Sunday, or legal holiday as set forth in RCW 1.16.050, then the next non-Saturday, Sunday, or legal holiday shall be the fourteenth day. When computing the time period, the day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included.
- C. Appeal to hearing examiner. SEPA appeals shall be conducted by the hearing examiner, who holds an open record public hearing ("Section C hearing") consistent with the procedural requirements of this chapter, and shall make a recommendation to city council.
- D. Hearing examiner procedures for SEPA appeals. All SEPA appeals conducted by the hearing examiner under this section shall utilize the following procedures:
  1. Notice of the appeal and hearing schedule shall be sent by mail to the appellant, applicant and to all persons who have filed with the responsible official a written request for notice of the pertinent SEPA decision. Notice shall include the deadline for submitting written memoranda to the hearing examiner, the date, time and place of the open record hearing before the hearing examiner, and staff contact information. Notice of the hearings shall be published in a newspaper of general circulation at least fourteen days prior to the hearing.
  2. Unless specifically amended by a prehearing order or schedule, SEPA appeals shall adhere to the following schedule:
    - a. At least twenty days prior to the date of the scheduled hearing, the appellant shall file with the office of the hearing examiner a memorandum setting forth the appellant's arguments and authority. Such arguments and authority shall be restricted to those issues set forth in appellant's written appeals statement;
    - b. At least ten days prior to the date of the scheduled hearing, city staff shall file with the office of the hearing examiner and provide the appellant with a staff report responding to the appellant's memorandum concerning the appeal. The project proponent, if not the appellant, may also file a written statement regarding the appeal at this time; and
    - c. At least five days prior to the date of the scheduled hearing, the appellant shall file with the office of the hearing examiner any reply memorandum that the appellant

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desires to file. The scope of the reply memorandum shall respond only to issues raised in the staff report.

Failure to comply with the requirements of this section may result in the examiner taking such action in regard to the failure as is appropriate including, but not limited to, continuing the hearing, postponing the hearing, striking evidence, limiting the number of witnesses, or limiting testimony at the hearing. The examiner may establish additional procedures for the administration of SEPA appeals.

3. All oral argument concerning the SEPA appeal shall be limited to those issues raised in the written statement of appeal, staff report, or reply memorandum.
  4. The hearing examiner's recommendation regarding the threshold determination or FEIS adequacy may be to uphold the responsible official's decision, remand the responsible official's decision, or remand the responsible official's decision with conditions. The hearing examiner may also recommend dismissal of the appeal when the examiner determines that the appeal is untimely, non-compliant with B.2. and B.3. above, without merit on its face, frivolous, beyond the scope of the examiner's jurisdiction, not supported by the evidence or that the appellant lacks standing.
  5. The examiner's recommendation shall consist of written findings and conclusions from the record supporting the examiner's recommendation. Within fourteen days of the conclusion of a hearing, unless the appellant agrees to a longer period, the examiner shall render his or her recommendation, including the findings and conclusions.
  6. The examiner's recommendation shall be sent by mail to appellants, applicants, and all other parties to the appeal. The original recommendation shall be sent to the city council. Publication shall not be required.
- E. City council.
1. The city council shall make a final determination regarding the appeal based upon the record prepared by the examiner. The city council may substitute its judgment for that of the examiner on all issues.
  2. The city council may grant or deny the appeal, or remand the matter to the examiner for further findings.
- F. City council procedures for SEPA appeals.
1. Written argument shall be permitted if received within seven days of the date scheduled for city council action. Written argument shall be limited to why the record supports or fails to support the examiner's recommendation.
  2. Clerical errors may be corrected by the council on its own action and copies mailed to the parties.
  3. Notice of the city council's decisions shall be sent by mail to appellants, applicants, and any other parties to the appeal. The decision shall also be transmitted to the decision making authority for the appeal of the underlying action. Publication shall not be required.
- G. Consolidation requirements.
1. Appeals of determinations of significance shall not be consolidated with appeals of the underlying project, if any.
  2. Type II applications. Appeals of a determination of nonsignificance, or FEIS adequacy issued for Type II applications or Type I applications which trigger SEPA shall be consolidated with the appeal of the underlying application. A decision on the SEPA appeal shall be reached pursuant to subsections B, C, D, E and F above, provided, however that Section C hearing held by the examiner shall be consolidated with the open record public hearing in front of the city planner.

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3. Type III applications. Appeals of a determination of nonsignificance, mitigated determination of nonsignificance, or FEIS adequacy issued for Type III applications shall be consolidated with the appeal of the underlying application. A decision on the SEPA appeal shall be reached pursuant to subsections B, C, C, E and F above, provided, however, that the Section C hearing held by the examiner shall be consolidated with the open record public hearing in front of the decision body.
  4. Appeals of a determination of nonsignificance, mitigated determination of nonsignificance, of FEIS adequacy issued for Type IV applications shall be reached pursuant to subsections B, C, D, E and F above, provided, however, that the Section C hearing held by the examiner shall be consolidated with the open record public hearing in front of the planning commission.
  5. There shall be no additional administrative SEPA appeals beyond those provided for above.
- H. Substantial weight. The determinations made by the city's responsible official shall be entitled to substantial weight before the examiner and the city council.

(Ord. 1159 § 1, 2001; Ord. 1137 § 1, 2001; Ord. 1085 § 2 (part), 1999)

### **15.28.260 Notice—Statute of limitations.**

- 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 in WAC 197-11-990. The notice shall be published by the city clerk or proponent pursuant to RCW 43.21C.080.

(Ord. 1085 § 2 (part), 1999)

### **Article VIII. Categorical Exemption**

[15.28.270 Adoption by reference.](#)

### **15.28.270 Adoption by reference.**

The city adopts by reference the following sections of WAC Chapter 197-11 for categorical exemptions:

WAC

197-11-800 Categorical exemptions

197-11-880 Emergencies

197-11-890 Petitioning DOE to change exemptions

(Ord. 1085 § 2 (part), 1999)

### **Article IX. Agency Compliance**

[15.28.280 Adoption by reference.](#)

[15.28.290 Environmentally sensitive areas.](#)

[15.28.300 Fees.](#)

**15.28.280 Adoption by reference.**

This article contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city adopts the following sections of WAC Chapter 197-11 by reference, subject to the additional provisions contained in this article:

WAC

- 197-11-900 Purpose of this Part
- 197-11-902 Agency SEPA policies
- 197-11-924 SEPA Fees and Costs
- 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 agency 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

(Ord. 1085 § 2 (part), 1999)

**15.28.290 Environmentally sensitive areas.**

- A. In cooperation with affected federal, state and local agencies, and tribes, the responsible official shall develop an inventory of environmentally sensitive or critical area sites, which shall be designating environmentally sensitive sites:
  - a. SEPA resource inventory study;
  - b. Location of land adjacent to parks, steams, bluffs, contiguous environmentally sensitive parcels, lakes and bogs;
  - c. Contains steep slopes in ravine areas;
  - d. Contains drainage swales, bogs, streams or other surface water bodies;
  - e. Unstable or water-bearing soils;
  - f. Unique flora and unique fauna;
  - g. Historic and archaeological sites.
- 2. In conjunction with the inventory of environmentally sensitive sites, the responsible official shall submit a list of categorical exemptions that do not apply within the designated environmentally sensitive area.
- 3. The inventory of environmentally sensitive sites and a map designating such areas along with a list of categorical exemptions that do not apply in such areas shall be presented to the city council, which shall hold a public hearing on the proposed environmentally sensitive areas.
- 4. After final adoption by the city council, the responsible official shall file maps designating environmentally sensitive areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with the city clerk and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.
- 5. Revisions to the inventory, designation and map's environmentally sensitive areas shall be accomplished using the procedures set forth in this section.
- B. The city shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The city shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.
- C. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

(Ord. 1085 § 2 (part), 1999)

**15.28.300 Fees.**

- A.
  - 1. Except as otherwise noted in this chapter, all fees required for processing of actions by the city in accordance with the provisions of this chapter shall be established by the land use development permit fee ordinance.
  - 2. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee.
- B. Environmental Impact Statement.
  - 1. Notwithstanding any provisions of this chapter, the responsible official may with the concurrence of the applicant contract directly with a consultant or subconsultant for preparation of an EIS, or a portion of the EIS and may bill such costs and expenses directly to

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the applicant. The city may require that the applicant post bond or other guaranty device satisfactory to the city to otherwise ensure payment of such costs:

2. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under this subsection which remain after incurred costs are paid.
- C. 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 proposals.
- D. The city shall not collect a fee for performing its duties as a consulted agency.
- E. 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 RCW Chapter 42.17.

(Ord. 1085 § 2 (part), 1999)

### **Article X. Forms**

[15.28.310 Adoption by reference.](#)

#### **15.28.310 Adoption by reference.**

- A. The City of Cle Elum adopts the following forms and sections of WAC Chapter 197-11 by reference, subject to the additional provisions contained in this article:

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

- B. The city shall use the forms substantially as set forth in the SEPA rules. However, the responsible official may modify the forms if he or she determines that a modified format would improve clear presentation of the proposed action, the environmental impacts of the proposed action, the environmental determination being made by the city, and/or the opportunity for commenting on the proposed action or environmental determination.

(Ord. 1085 § 2 (part), 1999)

### **Article XI. Third Party Liability**

[15.28.320 Third party liability.](#)

**15.28.320 Third party liability.**

- A. This chapter provides for and promotes the health, safety and welfare of the general public. and does not create or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this chapter.
- B. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the city, its officers, employees or agents, for any injury or damage resulting from the failure of any applicant to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or completed in connection with the implementation or enforcement pursuant to this chapter or by reason of any action or inaction on the part of the city related in any manner to the enforcement of this chapter by its officers, employees or agents.

(Ord. 1085 § 2 (part), 1999)

**Article XII. Hearing Examiners for Review of SEPA Actions**

[15.28.365 Dismissal—Exhaustion.](#)

[15.28.400 Appeal of city's decision.](#)

**15.28.365 Dismissal—Exhaustion.**

- A. The hearing examiner may summarily dismiss an appeal or application in whole or in part without hearing when the examiner determines that the appeal or application is untimely, without merit on its face, frivolous, beyond the scope of his or her jurisdiction, not supported by evidence or fact, is merely conclusory, represents solely community displeasure with a proposal, action or application, brought merely to secure a delay, or that the applicant/appellant lacks standing. Summary dismissal orders shall be issued within fifteen days following receipt of an appeal or request of an order of dismissal by any party to the proceedings.
- B. No person may seek judicial review of any decision or determination of the city unless the person first exhausts the administrative remedies provided by the city.

(Ord. 1085 § 2 (part), 1999)

**15.28.400 Appeal of city's decision.**

The decision of the examiner constitutes the final decision of the city except when the examiner makes a recommendation to city council, then the final decision of the city shall be the city council's. Appeals of the city's final decision shall be to Kittitas County Superior Court in accordance with Part VII (appeals) of the Regulatory Reform Act (Chapter 347 of the 1995 Laws of the state of Washington) now codified as RCW 36.70C; provided, however, appeals from the city's final decision on shoreline management substantial development permits shall be to the Shoreline Hearings Board pursuant to RCW Chapter 90.58. All costs of transcription, copying, assembly and staff time required to prepare a return or administrative record for any judicial appeal shall be borne by the party appellant.

(Ord. 1085 § 2 (part), 1999)

**Chapter 15.30 GRADING, EXCAVATION AND LAND FILLING**

**Sections:**

[15.30.010 Purpose.](#)

[15.30.020 Permit required.](#)

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[15.30.030 Exemptions.](#)

[15.30.040 Prohibited excavation, grading and filling.](#)

[15.30.050 Permit application.](#)

[15.30.060 Standards.](#)

[15.30.070 Application review.](#)

[15.30.080 Sureties.](#)

[15.30.090 Expiration of permit.](#)

[15.30.100 Grading, excavation and land filling permit fee.](#)

### **15.30.010 Purpose.**

The purpose of this chapter includes but is not limited to regulating the grading, excavation and filling of land in order to minimize erosion and sedimentation of watercourses and wetlands, minimize the need for and maintenance of drainage facilities, minimize adverse effects on ground and surface waters, minimize their potential for earth slides and slippage, and maintain the maximum natural vegetation.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### **15.30.020 Permit required.**

A grading permit is required for grading, excavation or filling of land except as exempted under Section 15.30.030 of this chapter.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### **15.30.030 Exemptions.**

A grading permit is not required for:

- A. Excavation and grading in association with a building permit;
- B. Excavations required for installation of public improvements;
- C. Excavations for the study of soil and groundwater conditions;
- D. Landscape installation which does not result in a fill more than one foot in depth placed on natural terrain with a gradient less than twenty percent or an earth berm not more than four feet in height and which does not exceed fifty cubic yards on any one lot; or
- E. Excavations, grading or filling when required as a condition of a preliminary plat, short plat, or binding site plan.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### **15.30.040 Prohibited excavation, grading and filling.**

Excavation, grading or filling is prohibited in the following areas and situations:

- A. Within fifty feet of the top of the bank of any watercourse except as required by an approved drainage plan;

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- B. If the work would result in the deposit of materials or otherwise have effects on public rights-of-way, easements and property; or
- C. On slopes greater than forty percent in gradient.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### 15.30.050 Permit application.

The permit application shall be provided by the city planner and include the following:

- A. The name, address and telephone number of the owner of the property on which the work is to be performed;
- B. The name, address and telephone number of the person doing the work;
- C. A map of the site which includes: topography, vegetation, wetlands and watercourses, public improvements, structures and rights-of-way or other easements and such features within three hundred feet of the work site;
- D. The names and addresses of all property owners and residents within three hundred feet of the work site;
- E. A grading plan indicating the areas to be filled or excavated, the contours of the land after filling or excavating and the amount of material to be moved;
- F. An engineered soil compaction plan for all fills;
- G. If material is to be moved from or to another lot or parcel of property, the application shall include the location of the site, the route to be followed, and evidence of compliance with the regulations of the government with jurisdiction over the site to borrow from or receive material;
- H. A plan for the control of erosion and water quality during and after the site work;
- I. A plan for drainage of the site;
- J. A plan for restoration of vegetation or landscaping on the site;
- K. An estimate of the cost of the work to be undertaken;
- L. A SEPA environmental checklist if excavation or fill is over five hundred cubic yards; and
- M. Other such information as may be required by the city planner, including engineering geological study, soils and hydrological studies;
- N. A plan for dust control during grading, excavating or filling.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### 15.30.060 Standards.

The following standards must be met to the satisfaction of the city planner prior to permit issuance:

- A. Cut slopes shall be no steeper than is safe for the intended use and shall not be steeper than two horizontal to one vertical, or as recommended by a soils engineer.
- B. Fills that are intended for building sites shall be constructed in conformance with the requirements of the latest edition of the IBC as adopted by the city.
- C. Except as permitted by the city, no material other than earth material shall be buried or placed in fills. Placement of other than earth material is regulated by state statutes or federal laws and additional permits may be required.
- D. Fills shall be constructed using earth materials, compaction methods and construction techniques, so that stable fills are created.

## Title 15 BUILDINGS AND CONSTRUCTION

- E. Grading, filling, or clearing in or within the vicinity of a wetland shall comply with CEMC Chapter 18.01.
- F. Grading, filling or clearing in an area of special flood hazard shall be done in accordance with the latest version of the City of Cle Elum floodplain management ordinance (CEMC Chapter 15.24) or this chapter, whichever has the more stringent development regulations.
- G. Grading, filling or clearing of archaeological sites shall be done in accordance with WAC Chapter 25-48, as now adopted or as may be amended, or other applicable state or federal law.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### **15.30.070 Application review.**

The city planner shall review all applications for grading permits. The planner shall process the permit application as a Type II application under CEMC Chapter 17.100.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### **15.30.080 Sureties.**

The city planner may require, as a condition of the permit, a surety to be posted to secure the applicant's obligation to comply with the conditions of the permit. The surety may be up to one hundred twenty-five percent of the estimated cost of the work.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### **15.30.090 Expiration of permit.**

A grading permit shall expire six months from the date of issuance. The city planner may grant one extension of time for an additional six months.

(Ord. 1222 § 3 (Exh. C (part)), 2004)

### **15.30.100 Grading, excavation and land filling permit fee.**

A permit fee shall be paid for each grading permit in accordance with fees set by resolution adopted by the Cle Elum city council.

(Ord. 1222 § 3 (Exh. C (part)), 2004)