

## Title 13

### UTILITY CODE

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#### Chapter 13.04

### GENERAL PROVISIONS

#### Sections:

- 13.04.010 Short title.
- 13.04.020 Purpose.
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- 13.04.040 Definitions.
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**13.04.010 Short title.** This title shall be known as the *Steilacoom Utility Code* and may be cited as such. (Ord. 1137 §1(part), 1994).

**13.04.020 Purpose.** It is the purpose of this title to promote the public health, safety and general welfare by providing uniform standards for installation, maintenance, usage and extension of Town utilities. This title is further intended to establish procedures for assessing fees and charges to Town for provision of utility services. (Ord. 1137 §1(part), 1994).

**13.04.030 Application.** The provisions of this title shall apply to all utility services and installations within the designated service limits of the Town of Steilacoom. (Ord. 1137 §1(part), 1994).

**13.04.040 Definitions.** For the purposes of this title, the following terms shall have the following meanings:

- (1) "Customer" means a person to whom utility service is provided by the Town of Steilacoom.
- (2) "Owner" means the legal owner of the premises to which utility service is provided.
- (3) "Person" means any natural person, firm, company, association, society, group or corporation.
- (4) "Sewage" means a combination of water-carried wastes from residences, business buildings, institutions, and industrial establishments, which wastes contain polluted matter subject to treatment such as sanitary sewage and industrial wastes.
- (5) "Town" means the Town of Steilacoom.
- (6) "Utility" means service for any of the following: electric, water, sewer, storm drain or solid waste. (Ord. 1137 §1(part), 1994).

**13.04.050 Violation--Penalties.** Any person violating any of the provisions of this title shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as set forth in SMC 1.04.010. In addition to the penalty hereinabove, the service of any person found guilty of violating the provisions of this chapter shall be disconnected, and the person violating shall be liable for all damages and for all extra current used by reason of such violation. (Ord. 1137 §1(part), 1994).

## **Chapter 13.08**

### **ADMINISTRATION**

#### **Sections:**

- 13.08.010 Responsible official.**
- 13.08.020 Access to property.**
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- 13.08.040 Permits--Required contents.**
- 13.08.050 Permits--Issuance--Denial.**
- 13.08.060 Inspections.**
- 13.08.070 Administrative remedies.**
- 13.08.080 Personal compensation prohibited.**
- 13.08.090 Verbal agreements not binding.**

**13.08.010 Responsible official.** The Town Administrator, or designee, is the responsible official for the administration and enforcement of the provisions of this title. (Ord. 1137 §1(part), 1994).

**13.08.020 Access to property.** The Town Administrator, or any employee of the town acting under his authority, shall have free access at any reasonable time to any and all property furnished with electric, water, sewer or storm drainage service by the Town for the purpose of inspecting utility connections, reading, installing or removing meters, removing or repairing any property of the Town, or for any other reasonable purpose connected with the Town's utility systems. §1(part), 1994).

**13.08.030 Administrative determinations.** The Town Administrator, or designee(s), shall interpret and shall determine compliance with the provisions of this title. (Ord 1137 §1(part), 1994).

**13.08.040 Permits--Required contents.** Every person requesting connection to the Town's electric, water or sewer utilities must complete an application for a connection permit. The permit shall be on a form specified by the Town Administrator and shall be completed in duplicate. (Ord. 1137 §1(part), 1994).

**13.08.050 Permits--Issuance--Denial.** Upon receipt of the permit application, the Town Administrator, or designee, shall forward said application to the Director of Public Works. The Director of Public Works, or designee, shall review the permit for compliance with standards and Town ordinances. Following review, the Director of Public Works shall either approve, approve with conditions or deny the permit. No permit shall be issued unless the fees specified in Chapter 13.32 are paid in full. (Ord. 1137 §1(part), 1994).

**13.08.060 Inspections.** Before any electric, water, sanitary sewer or storm sewer service is connected to the Town's utility lines, the connection shall be inspected for conformity to standards. In the case of the electric utility, the connection shall be inspected by the State Electrical Inspector. In the case of water or sewer connections, the connections shall be inspected by the Director of Public Works or designee. If a connection to the Town's electric, water or sewer lines fails to pass the inspection, no connection shall be made until all deficiencies are rectified. Any reinspection shall be charged as provided for in Chapter 13.32. (Ord. 1137 §1(part), 1994).

**13.08.070 Administrative remedies.**

(a) If an applicant believes a permit denial by the Director of Public Works or designee is in error due to inaccurate or insufficient information or due to a misinterpretation of the requirements or other error of fact, the applicant may appeal the decision to the Town Administrator within ten (10) business days. The Town Administrator shall either affirm the denial of connection permit or find that the permit should be issued.

(b) If an applicant believes denial of an appeal by the Town Administrator is due to inaccurate or insufficient information or due to a misinterpretation of the requirements or other error of fact, the applicant may appeal the decision to the Mayor within ten (10) business days. The Mayor shall either affirm the denial of the appeal or find that the permit should be issued.

(c) If an applicant believes denial of an appeal by the Mayor is due to inaccurate or insufficient information or due to a misinterpretation of the requirements or other error of fact, the applicant may appeal the decision to the Town Council. To appeal the permit denial to the Town Council, the applicant must request, in writing within ten (10) business days of the date of the Mayor's decision, placement on the next available Council agenda at which the Council shall hear the appeal. The decision of the Council on the appeal shall be final. (Ord. 1137 §1(part), 1994).

**13.08.080 Personal compensation prohibited.** It is unlawful for any agent or employee of the Town of Steilacoom to ask, demand, receive or accept any personal compensation for the service rendered to consumers of utility services, or other person in connection with supplying or furnishing utility services by the Town. (Ord. 1137 §1(part), 1994).

**13.08.090 Verbal agreements not binding.** No promise, agreement or representation of any employee or agent of the Town with reference to the furnishing of utility services shall be

binding on the Town unless the same is in writing signed by the Public Works Director in accordance with the provisions of this title. (Ord. 1137 §1(part), 1994).

## Chapter 13.12

### CONNECTIONS

#### Sections:

**13.12.010 Required connections.**

**13.12.020 Connection requirements.**

**13.12.030 Metered connections.**

**13.12.040 Sewer connection outside town limits.**

**13.12.010 Required connections.** 13.08.040 Permits--Required contents. Every person requesting connection to the Town's electric, water or sewer utilities must complete an application for a connection permit. The permit shall be on a form specified by the Town Administrator and shall be completed in duplicate. (Ord. 1137 §1(part), 1994).

**13.12.010 Required connections.** . The following connections are required within the Town limits:

(1) Sanitary Sewer. The owner of each lot or parcel of property within the Town's service area shall cause any building or structure for human occupation or use for any purpose to be connected to the sewage disposal system if the lot or parcel of property is situated within 300 feet of the centerline of a street or alley in which is located a sewer line or lateral, unless, in the judgment of the Public Works Director, connections cannot be made by reasons of sewer elevation. Measurement shall be made from the property line of the lot or parcel to the nearest street or alley containing the sewer line or lateral.

(2) Electric. It is unlawful for any person other than the Director of Public Works or duly authorized employee of the Town, acting under the authority of the Director of Public Works, to connect any house, premises, wires or other appliances with the Town's electric currents (circuits) for the purpose of securing electric current therefrom, or for any other purpose whatever. Electric connections within the Town's service area shall be performed by Town personnel only.

(3) Water. The owner of each lot or parcel of property within the Town's service area, upon which lot or parcel of real property there is situated any building or structure for human occupation or use for any purpose, shall cause the building or structure to be connected to the Town's water system. (Ord. 1446 §1, 2008: Ord. 1137 §1(part), 1994).

**13.12.020 Connection requirements.** Requirements for connecting to the Town's electric, water, sewer or storm drain system shall be as follows:

(1) The application shall contain a legal description of the premises or parcel of property to be served and a warranty that the applicant is the owner of all of the real property described;

(2) The Town shall construct the utility connections at the applicant's expense in compliance with all requirements and specifications of the Town and shall obtain all permits and shall pay all fees necessary and required by the Town for said connecting sewers;

(3) Prior to the issuance of any utility connection permit, the applicant shall pay to the Town, a connection charge as provided in Chapter 13.32. (Ord. 1137 §1(part), 1994).

**13.12.030 Metered connections.** Meters shall be installed by the Town, at the applicant's cost, with all water and electric connections. (Ord. 1137 §1(part), 1994).

**13.12.040 Sewer connection outside town limits.**

(a) Sewer connections outside the town limits shall be made in accordance with the provisions of the sewage service agreement between the Town and Pierce County, as amended.

(b) Persons owning property outside the corporate limits of the Town and which property has not been previously charged for sanitary sewer improvements may connect private sewers to and discharge sewage into the Town's sewer system upon receipt of a sewage disposal permit issued by the Town. Such sewage disposal permit shall be issued only upon compliance with the terms and conditions described in SMC 13.12.020, together with the following terms and conditions:

(1) Permit shall be issued only if the general facilities of the Town are adequate to provide service considering projected development within the Town and in accordance with the Town's comprehensive sewerage plan.

(2) The applicant for such sewage disposal permit shall attach to the application a construction permit duly issued to the applicant or his contractor by the appropriate county and/or political subdivision for construction of the sewer to be connected to the Town's system.

(3) The applicant shall agree to pay a monthly service charge for sewer service as provided in Chapter 13.36.

(c) Each applicant for each house sewer service connection outside of the town limits shall make application to the Town and shall, at the time of making such application, pay a permit fee as provided in Chapter 13.32. On receipt of such application and fees, the Town shall issue a sewer permit to the applicant.

(d) The installation of all house sewer lines under this chapter connecting to the sewer system shall be subject to inspection and approval by a duly authorized representative of the Town.

(e) No sewer user shall connect to the sewer system and receive sewer service without having first:

(1) Paid the sewer permit fee established in Chapter 13.32; and

(2) Received a sewer permit; and

(3) Received approval of the installation of the house connecting line by a duly authorized representative of the Town.

(f) If any sewer user connects to the sewer system without having complied fully with the requirements of this chapter, the Town may file a lien against the subject property until the provisions of this chapter have been complied with. (Ord. 1137 §1(part), 1994).

**Chapter 13.16**

**EXTENSIONS**

**Sections:**

**13.16.010 Water and sewer extensions governed by state statute.**

**13.16.020 Extension policy.**

**13.16.030 Required submittals.**

**13.16.040 Sewer extension standards.**

**13.16.050 Water extension standards.**

**13.16.060 Electric extension standards.**

**13.16.010 Water and sewer extensions governed by state statutes.** Extensions of water and sewer utility services shall henceforth be governed by procedures described in Chapter 35.91, Revised Code of Washington. (Ord. 1137 §1(part), 1994).

**13.16.020 Extension policy.**

(a) All applicants for utility service from the Town, which application requires extension of the present utility transmission lines, shall make application to the Town for such extension. The application shall be reviewed by the Public Works Director or designee who shall determine whether the extension should be constructed by the applicant or by the Town.

(b) Before the issuance of any permit to extend utility lines, the applicant shall provide a performance bond or other similar security to ensure the completion of the extension. The bond shall be no less than one hundred twenty-five percent of the full estimated costs of all anticipated work.

(A) Maintenance Bond. Before the release of a utility extension bond, the applicant shall provide a bond or similar security, to ensure the maintenance of the site improvements. The maintenance bond shall be fifteen percent of the site improvement bond and may be released two years after the release of the utility extension bond.

(B) Release of Bond. The Town Administrator, or designee, shall release a utility extension bond when all work required under the bond has been completed and inspected by the appropriate Town officials. The Town Administrator may release portions of the bond upon completion of phases of work or specific portions of the improvements.

(c) The foregoing charges shall be in addition to any connection charges heretofore required by this title. (Ord. 1564 §b(part), 2017: Ord. 1137 §1(part), 1994).

**13.16.030 Required submittals.**

(a) Water extensions. Four copies of detailed plans or drawings of water line extensions, prepared by a licensed engineer, accurately indicating main size, the location of all valves, fire hydrants, water meters, thrust blocks and other appurtenances to be installed, shall be submitted to the Town prior to the commencement of any construction. Detailed plans should be submitted on a scale of 1" = 50'. A schematic diagram on a scale of 1" = 100', 200' or 300' shall also be submitted, which shows proposed line size, valve location and hydrant location and sheet number of detailed plans, engineering calculations showing capability of the proposed extension to deliver the required fire flow plus domestic flow at the required residual pressure shall be submitted for approval.

(b) Sewer extensions. Four copies of detailed plans or drawings of sewer line extensions, prepared by a licensed engineer, accurately indicating main size, the location of all laterals, manholes, cleanouts and lift stations to be installed, shall be submitted to the Town prior to the commencement of any construction. Detailed plans should be submitted on a scale of 1" = 50'. A schematic diagram on a scale of 1" = 100', 200' or 300' shall also be submitted, which shows line size, manhole locations, lift stations, or cleanouts and sheet number of detailed plans.

(c) Electric extensions. Four copies of detailed plans or drawings of electric line extensions, accurately indicating cable size, transformer size, secondary service size, locations including street lights and other appurtenances shall be submitted to the Town prior to the commencement of any construction. Detailed plans should be submitted on a scale of 1" = 50'. A schematic diagram on a scale of 1" = 100', 200' or 300' shall also be submitted, which shows line size, vaults, transformers and sheet number of detailed plans.

(d) Storm drain extensions. Four copies of detailed plans or drawings of storm drain line extensions, prepared by a licensed engineer, accurately indicating main size, the location of all laterals, manholes, and appurtenances to be installed, shall be submitted to the Town prior to the commencement of any construction. Detailed plans should be submitted on a scale of 1" = 50'. A schematic diagram on a scale of 1" = 100', 200' or 300' shall also be submitted, which shows line size, manhole locations and sheet number of detailed plans. (Ord. 1137 §1(part), 1994).

**13.16.040 Sewer extension standards.**

(a) The Town adopts by reference that certain document issued June, 1971, and revised February 1994, and annually reviewed, entitled "*Conditions and Standards for Constructing Extensions to a Steilacoom Sewer System*," three copies of which heretofore have been lodged with the Town Clerk and which consists of a title page, a cover page listing Town officials and representatives, a table of contents and twenty-nine pages of checklists, applications, regulations, design standards, general conditions, specifications, design details, and bond forms.

(b) All extensions to the Steilacoom sewer system from February, 1994 shall be made in accordance with the procedures and in accordance with the standards set forth in said document referred to in subsection (a) of this section.

(c) The applicant shall pay fees and charges as provided for in SMC Chapter 13.32. (Ord. 1293 §2, 2000: Ord. 1271 §2, 1999: Ord. 1137 §1(part), 1994).

**13.16.050 Water extension standards.**

(a) The Town adopts by reference that certain document issued June, 1971, and revised February 1994, and annually reviewed, entitled "*Conditions and Standards for Constructing Extensions to a Steilacoom Water System*," three copies of which heretofore have been lodged with the Town Clerk and which consists of a title page, a cover page listing town officials and representatives, a table of contents and twenty-nine pages of checklists, applications, regulations, design standards, general conditions, specifications, design details, and bond forms.

(b) All extensions to the Steilacoom water system from February, 1994 shall be made in accordance with the procedures and in accordance with the standards set forth in said document referred to in subsection (a) of this section.

(c) The applicant shall pay fees and charges as provided for in SMC Chapter 13.32. (Ord. 1293 §3, 2000: Ord. 1271 §3, 1999: Ord. 1137 §1(part), 1994).

**13.16.060 Electric extension standards.**

(a) The Town adopts by reference that certain document dated February 1994, and annually reviewed, entitled "*Conditions and Standards for Constructing Extensions to the Steilacoom Electric System*," three copies of which heretofore have been lodged with the Town Clerk and which consists of a title page, a cover page listing Town officials and representatives, a table of contents and twenty-nine pages of checklists, applications, regulations, design standards, general conditions, specifications, design details, and bond forms.

(b) All extensions to the Steilacoom electric system from February, 1994 shall be made in accordance with the procedures and in accordance with the standards set forth in said document referred to in subsection (a) of this section.

(c) The applicant shall pay fees and charges as provided for in SMC Chapter 13.32. (Ord. 1293 §4, 2000: Ord. 1271 §4, 1999: Ord. 1137 §1(part), 1994).

**Chapter 13.20**

**UNDERGROUND UTILITIES**

**Sections:**

**13.20.010 Required--Liability for cost.**

**13.20.020 Drawings and specifications, deposit and inspection required.**

**13.20.030 Cost for larger primary conductors.**

**13.20.040 Supply and installations of transformers.**

**13.20.010 Required--Liability for cost.** All new electric public utility services and facilities, whether in streets, alleys, along other public easements, or on private property, wherever situated within the Town, shall be placed underground at the owner's or developer's expense in accordance with the standards and requirements of the Town. (Ord. 1137 §1(part), 1994).

**13.20.020 Drawings and specifications, deposit, and inspection required.**

(a) Working drawings and specifications for underground utility services, including but not limited to natural gas, telephone and CATV, shall be prepared by the developer at his expense in accordance with the standards, rules, regulations and specifications of the Town, subject to approval by the Director of Public Works.

The developer shall post a deposit with the Town Clerk-Treasurer in an amount as provided in that document entitled "Conditions and Standards for Constructing Extensions to the Steilacoom Electric System." This deposit is to cover the expense in checking and approving the plans and specifications, and providing construction inspection including final inspection and testing. The cost of the expense incurred for such services by the Town Director of Public Works shall be fully paid by the developer prior to hookup to the Town's system.

(b) Qualification of Contractors. The developer shall file with the Town the names of the prime contractor and subcontractors.  
Inspection.

(c) All electrical improvements shall be subject to inspection by the duly authorized representative of the Town, both during the course of construction and after construction is complete. The inspector shall have the authority to determine whether or not materials of construction, methods of construction and workmanship comply with the working drawings and specifications. The contractor shall provide for reasonable tests and proof of quality of materials as required by the inspector.

(d) Approval by the inspector or absence of inspection shall not relieve the developer from full responsibility for adherence by his contractors to specifications and working drawings or for the use by his contractors of high standards of materials, methods and workmanship.

(e) Approval by the inspector shall not be deemed acceptance of the improvement by the Town. Acceptance shall be contingent upon a favorable inspection report signed by the Director of Public Works. (Ord. 1137 §1(part), 1994).

**13.20.030 Cost for larger primary conductors.** The incremental cost of material for larger primary conductors deemed necessary by the Director of Public Works to provide service to areas outside the development shall be paid by the Town. (Ord. 1137 §1(part), 1994).

**13.20.040 Supply and installation of transformers.** Every applicant for subdivision plat approval shall, before final approval is granted, furnish and install, or provide for furnishing and installing, at the applicant's expense, all electrical transformers reasonably needed to serve improvements in the subdivision. If provision is made by the applicant to furnish and install transformers subsequent to plat approval, such provision shall include filing with the Town, for its protection, a performance bond in the amount of one-hundred twenty-five percent of estimated cost and in a form approved by the Town Attorney, issued by an authorized and responsible surety, in the amount of all anticipated costs of furnishing and installing such transformers. (Ord. 1564, 2017: Ord. 1328 §1, 2003: Ord. 1137 §1(part), 1994).

## Chapter 13.24

### UTILITY BILLING



**Sections:**

- 13.24.010 Chapter application.**
- 13.24.020 Administration.**
- 13.24.030 Application for utility service.**
- 13.24.035 Nonliability for interruption of service.**
- 13.24.040 Deposit--Refund.**
- 13.24.050 Monthly billings.**
- 13.24.060 Delinquent bills--Notice--Contract for payment.**
- 13.24.070 Disconnection for nonpayment.**
- 13.24.080 Delinquent bills--Liens authorized.**
- 13.24.090 Partial payments.**
- 13.24.100 Dishonored checks.**
- 13.24.110 Uncollectible accounts—Property owner responsibility.**
- 13.24.120 Disabled meter--Charge.**
- 13.24.130 Averaged billing.**
- 13.24.140 Multifamily tenant direct billing.**
- 13.24.150 Billing adjustments--Limitation.**
- 13.24.160 Forgiveness of water billing.**
- 13.24.170 Temporary cessation of service.**

**13.24.010 Chapter application.** This chapter applies to all customers and customer accounts of the Town's electric, sanitary sewer, water, storm drainage and garbage collection utilities. (Ord. 1137 §1(part), 1994).

**13.24.020 Administration.** Except where this chapter directs that another officer or body perform a responsibility, the administration of this chapter's provisions shall be the responsibility of the Town Administrator and of such officers or employees as he or she designates. (Ord. 1137 §1(part), 1994).

**13.24.030 Application for utility service.**

(a) Any person desiring to receive utility services from the Town shall make application therefor upon a printed form to be furnished for that purpose, which shall be signed by the applicant and filed in the town administrative offices.

(b) The application for utility services shall be considered a contract between the Town and the applicant warranting that the applicant shall pay all fees and charges authorized by Council for the provision of utility services to the applicant.

(c) The contract shall take effect at the time that provision of utility services is initiated.

(d) The contract shall be binding and shall not be discontinued until all charges, fines and penalties imposed are paid in full. (Ord. 1137 §1(part), 1994).

**13.24.035 Nonliability for interruption of service.** The Town will use reasonable diligence to provide a regular and uninterrupted supply of electric current, but in case the supply of current should be interrupted or disturbed for any cause, the Town shall not be liable for personal injuries or property damage or any damage whatsoever resulting therefrom, nor will such failure constitute a breach of agreement for service. (Ord. 1153 §1, 1994).

**13.24.040 Deposit--Refund.** Every applicant for utility service, except applicants who own or are contract purchasers of the premises to which service is furnished, or have had a continuous good pay history with the Town, shall be required to post a deposit securing timely payment of bills. Every customer for whom no deposit is currently held who incurs three

penalties for delinquencies in any twelve-month period shall be required to post a deposit securing timely payment of bills. The deposit shall be as provided in SMC 13.36.080. If a required deposit is not made, utility service may be refused, or existing service terminated. Deposits shall be refunded or applied against bills. (Ord. 1328 §2, 2003: Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.050 Monthly billings.** A customer receiving service of any utility or owning or possessing property to which any utility service is furnished, shall be billed monthly for applicable rates and charges as provided in Chapter 13.36. Billings shall be posted by regular mail to the address of the premises receiving service or to such alternate address as the customer provides. Bills of customers receiving service for more than one utility shall separately reflect the charges for such utility. (Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.060 Delinquent bills--Notice--Contracts for payment.**

(a) Due Date. Every bill for utility service shall be due and payable in full on its due date, as indicated on the billing statement, at the Town's offices by 2:30 p.m. Any bill not fully paid by or before its due date shall be delinquent.

(b) Penalties. A penalty is assessed against every delinquent account as provided in Chapter 13.36.

(c) Notice of delinquency. As soon as practicable after any delinquency, the Town shall notify the customer by regular mail of the delinquency, the applicable penalty schedule, and the prospect for lien foreclosure and/or disconnection of service. In the case of tenant accounts, copies of said notice will be mailed simultaneously to the owner of the subject property.

(d) Contract for payment. A customer whose account is delinquent may sign a contract for installment payments of the amount past due. Customers who hold delinquent tenant accounts must secure the signature of the owner or representative on the contract. No contract may be entered into unless the customer agrees to pay in full the current amount due. No contract shall exceed a term of 180 days.

(e) The Town Administrator and/or designee may establish the terms and conditions of the delinquent payment contract within the following conditions:

(1) No extension will be considered past the 180 day maximum term.

(2) Minimum monthly payment shall be no less than 20% of the outstanding delinquent balance including penalties and interest.

(3) All other utility billings shall be kept current or disconnection will occur without further notice.

(4) Nonsufficient funds (NSF) checks shall be considered as nonpayment and will be processed as such. (Ord. 1544 §a(part), 2016: Ord. 1338 §9, 2003: Ord. 1214 §1(part), 1997: Ord. 1194 §1, 1996; Ord. 1137 §1(part), 1994).

**13.24.070 Disconnection for nonpayment.**

(a) Notice. If an account for utility service is delinquent, the Town shall notify the customer that service will be disconnected without further notice unless the delinquent account and all penalties are immediately paid in full, or a contract for payment is established as promised in SMC 13.24.060(d). Delivery of the notice shall occur in a way reasonably calculated to apprise the customer of the notice's contents. Written notice may be mailed or conspicuously attached to the premises to which service is furnished. The notice shall inform the customer that if the delinquent bill or any part of it is disputed, the customer must contact the utility billing department immediately in which event the dispute will be investigated and resolved before service is disconnected. The notice shall also inform the customer of the date on which service may be disconnected, which shall be not less than forty-eight hours following hand delivery of the notice or ninety-six hours if the notice is mailed.

(b) Disconnection of Service. If no notice is made to the Town that the bill is disputed prior to the time indicated in the customer's notice as the date on which service may be disconnected, the Town shall proceed by disconnecting electric, water or both services to the delinquent customer's premises. All disconnections shall be subject to penalty charges as provided in Chapter 13.36.

(c) Disconnections Limited. Disconnections of service for delinquencies are prohibited after 12:00 noon and the business day before a weekend or holiday.

(d) Reconnection. Following disconnection, and except in the case of after-hours reconnections, service shall not be reconnected until the delinquent account, including all penalties and delinquent charges, is paid in full or until the customer enters into a contract for payment of the delinquent amount as provided for in SMC 13.24.060(d). Reconnections after normal business hours must be paid in full by noon the next business day or be subject to immediate disconnection and all associated charges. All reconnections shall be subject to penalty charges as provided in Chapter 13.36. (Ord. 1544 §a&d(part), 2016: Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.080 Delinquent bills—Recorded and unrecorded liens authorized.**

(a) The Town shall have lien authority and the authority to enforce liens for every delinquent bill as follows:

(1) The provision of all utility services, the Town shall have the right to enforce, in the manner provided by RCW 35.21.290, 35.21.300, SMC Chapter 60.80 and Chapter 13.32;

(2) The provision of sanitary sewage collection, storm drainage service or both, the Town shall have and enforce, in the manner provided by RCW 35.67.200 and succeeding sections, a lien against the premises to which service was furnished.

(b) The Town Administrator or designee may cause to be recorded liens arising from delinquencies, extending for a period in excess of six months, in the payment of bills for sanitary sewer, storm drainage service and garbage collection service; and the Town Attorney shall proceed with foreclosure of such liens. As an additional and concurrent method of enforcing the lien of the Town for charges, the Town Administrator or his designee is authorized and directed to disconnect electrical service to the premises as provided in Chapter 13.34. (Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.090 Partial payments.** Upon the Town's receipt of any partial payment of a utility bill, the sum received shall be applied to reduce portions of the bill in the following priority. The sum shall first be applied to payment of any current balances for sanitary sewerage service, storm drainage utility service, water service and electric service, in that order. The balance, if any, shall next be applied to payment of any delinquencies for sanitary sewerage, storm drainage utility service, water service and electric service, in that order. The remaining balance, if any, shall next be applied to payment of any outstanding penalties. (Ord. 1338 §10, 2003: Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.100 Dishonored checks.** If payment of all or part of a utility bill is tendered in the form of a check which is dishonored when timely presented:

(1) The customer not subject to disconnection shall be notified by U.S. Mail of the amount of the dishonored check. If the unpaid balance is not paid by cash, certified check or postal money order within five (5) days of mailing, the account will be deemed delinquent and processed according to the procedures outlined in SMC Chapter 13.36.

(2) The customer who has received notice of disconnection shall have utility service(s) at the premises discontinued without further notice. No service will be restored until the outstanding balance plus fees, as provided for in Chapter 13.32, is paid in full by cash, certified check or postal money order.

(3) Upon reoccurrence within one (1) year, the Town, for any service, may decline future tenders of payment by check, unless the same be a certified or cashier's check. (Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.110 Uncollectible accounts--Property owner responsibility.** The property owner shall be ultimately responsible for all unpaid balances for all utility services at his or her property resulting from prior tenants and owners.

If an unpaid balance is not recoverable from the tenant or previous owner and the Town's obligations under RCW Chapter 60.80 have been correctly discharged, the following procedures shall apply:

(1) After collection efforts have been attempted by the Town, the Town will issue a letter to the current owner of the property requesting payment of the unpaid balance. The letter will notify the property owner to respond within ten (10) business days from date of letter with full payment or with a request to make arrangements for payment

(2) If the balance has not been paid nor arrangements made for payment of same within the ten day period:

(A) In the case of owner accounts at the subject property:

(1) An order to pay will be hand-delivered or mailed to the residence notifying the owner he has forty-eight (48) hours or ninety-six hours if the notice is mailed to satisfy the outstanding balance or service will be terminated without further notice.

(2) If no payment or dispute of billing is filed within the forty-eight hour period or ninety-six hours if the notice is mailed, utility service(s) at the premises will be discontinued without further notice.

(3) No service will be restored until the outstanding balance plus fees, as provided for in Chapter 13.32 is paid in full

(B) in the case of tenant accounts at the subject property a lien will be filed in accordance with the provisions of 13.24.080. (Ord. 1544 §1&2(part), 2016: Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.120 Disabled meter--Charge.** If the seal of the Town's meter is broken or the meter from any cause does not properly register, the consumer shall be charged with the average daily consumption as shown by the meter during a comparable previous period. Additionally, a \$500 fine will be levied when, in the Town Administrator's opinion, the meter was intentionally damaged or disabled by the utility customer. This fine will be required to be remitted in full along with any outstanding utility balance prior to service being reconnected. (Ord. 1430 §1(part), 2007: Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.130 Averaged billing.** Any customer whose account is current may apply to the Town for permission to be billed and pay for utility service on an averaged monthly basis during the annual signup period as determined by the Town Administration. Billings for each such applicant shall be calculated so as to take into account historic usage at the premises served, seasonal fluctuations in usage, prospective rate changes and other factors deemed relevant. Any customer to whom the privilege of receiving and paying averaged billings is extended shall forfeit that privilege if the customer's account becomes delinquent. In such case, the customer's account including arrearages, current charges and any penalties shall become immediately due and payable in full. If not so paid, the premises shall be subject to penalties and disconnection of service as provided in this chapter. (Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.140 Multifamily tenant direct billing.**

(a) Contract for administration. An owner of a multifamily dwelling complex may contract with the Town for provision of the service of administering and collecting individual utility accounts of tenants.

(b) Surcharge. There is established and shall be collected from each owner contracting as provided in subsection (a) of this section, a surcharge for the Town's services of administering and collecting individual tenant accounts the amount provided in Chapter 13.32.

(c) Liability for Payment--Legal Remedies. The premises to which utility services are furnished by the Town shall remain liable for payment of all rates and charges associated therewith, and in the event of delinquency in the payment of any account the Town shall be entitled to all legal remedies, none of which shall be diminished by the provisions of or implementation of this section. (Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.150 Billing adjustments--Limitation.** If a utility customer disputes the amount or accuracy of the utility billing, an adjustment may be made to the billing amount if it is proven the Town or its agent(s) was in error; provided, however, no billing adjustment will be made under the amount of three dollars (\$3.00). (Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.160 Forgiveness of water billing.**

(a) A customer may request forgiveness of all or a portion of a water billing if all of the following conditions apply:

(1) The usage was excessive and atypical of previous consumption records during like periods; and

(2) The usage was due to an unusual circumstance such as a break in the water line on the customer's side of the meter; and

(3) The customer took immediate and effective action to rectify the problem on the customer's side of the meter.

(b) The Town Administrator or designee is authorized to administratively forgive the excess portion of billings meeting the criteria outlined in subsection (a) of this section up to a maximum of the immediately preceding three months of such billings. (Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.24.170 Temporary cessation of service.** If a customer requests temporary cessation of solid waste service for reasons of vacation or absence from the Town, the service may be suspended; provided, however, no suspension of solid waste service will be allowed for periods of time consisting of fewer than thirty (30) days. No suspensions will be allowed for water, sanitary sewer, storm sewer or electric utility services. (Ord. 1214 §1(part), 1997: Ord. 1137 §1(part), 1994).

## Chapter 13.28

### PROHIBITED ACTIONS

#### Sections:

**13.28.010 Tampering with town property.**

**13.28.020 Prohibited discharges.**

**13.28.010 Tampering with town property.** All meters, wires, sewer pipes and water pipes to and including the meter shall be the property of the Town. It is unlawful for any person other than an employee of the Town, acting in the course of employment, to connect, disconnect, change, alter or in any way interfere with any town property. It is further unlawful for any person

to injure, mutilate, destroy, or in any way tamper with any of the equipment belonging to the Town. A \$500 fine will be levied when, in the Town Administrator's opinion, the meter was intentionally tampered with by the utility customer. This fine will be required to be remitted in full along with any outstanding utility balance prior to service being reconnected. (Ord. 1430 §1(part), 2007: Ord. 1137 §1(part), 1994).

**13.28.020 Prohibited discharges.**

(a) No person shall discharge any storm water, surface water, ground water, or roof runoff waters into the Town's sanitary sewer system.

(b) No person shall discharge or cause to be discharged into the Town's sanitary sewer system any flammable or explosive liquid, solid, or gas, any garbage not properly shredded, any ashes, cinders, sand, mud, oil, grease, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage treatment facility, provided that waste fluids containing minute portions of commercial petroleum oils may be discharged into the Town's sanitary sewer system after the installation of a grease trap inspected and approved by the Town.

(c) No persons shall discharge or cause to be discharged into any part of the town sewage disposal and treatment system any materials from camping vehicle retention tanks. (Ord. 1137 §1(part), 1994).

**Chapter 13.32**

**FEES AND CHARGES**

**Sections:**

**13.32.010 Electric charges.**

**13.32.020 Water charges.**

**13.32.030 Sewer charges.**

**13.32.035 Storm drain charges.**

**13.32.045 Miscellaneous fees.**

**13.32.050 Payment in full.**

**13.32.060 Property lien.**

**13.32.010 Electric charges.**

(a) Connection charges:

(1) Temporary power \$375 per service

(2) Connection fee:

200 AMP \$850 for services less than 50 feet. Services over 50 feet in length will be billed actual costs incurred if more than 9 man hours of staff time is required.

320 AMP \$900 for services less than 50 feet. Services over 50 feet in length will be billed actual costs incurred if more than 9 man hours of staff time is required.

All others Charged at full cost recovery for Town labor and materials

(b) General Facilities Fee: \$1,850.00

(c) Extension charge: \$80 + \$0.20/foot plus town's actual cost on time and expense basis

(d) Usage rates: As provided in Chapter 13.36

(e) Meter checking fee: If meter is more than 2% inaccurate, no charge will be made and the customer's bill will be adjusted accordingly. If the meter is 2% or less inaccurate, then the following charges will be assessed:

- (1) Sent out for testing \$280 per meter
- (2) Tested in-house \$ 85 per meter

(f) Disconnection charge for delinquency: \$25.00

(g) Reconnection charge: \$25.00 if during normal working hours; \$60.00 if done after 4:30 p.m.

(h) Apartment tenant billing surcharge: \$1.50 x units/month

(i) Reinspection charge: \$50.00

(j) Special event electrical use: \$10 per hookup per week

(k) Turn-on and turn-off fees (customer requested):

- 1. \$50 per request if power is disconnected/reconnected at the meter.
- 2. \$250 per request if power is disconnected/reconnected at the transformer.

(l) Metering Tampering: \$500

(Ord. 1570 §k(1), 2017, Ord. 1518 §k, 2014: Ord. 1430 §1(part), 2007: Ord. 1348 §1, 2003: Ord. 1293 §5, 2000: Ord. 1271 §5, 1999: Ord. 1214 §2(part), 1997: Ord. 1137 §1(part), 1994).

**13.32.020 Water charges.**

(a) Connection charges:

(1) Meter installation only (i.e., furnishing and installing meter only, when meter box, service line and all necessary fittings are installed by others):

5/8" x 3/4"	\$215 per service
1"	\$260 per service
1-1/2"	\$450 per service
2"	\$475 per service

(2) Meter and service installation (i.e., furnishing materials and labor to tap existing main, meter box and fittings, restore street and right of way improvements

5/8" x 3/4"	\$1740 per service
1"	\$1790 per service
1-1/2"	\$2165 per service
2"	\$2415 per service

(b) General Facilities:

(A) Single family dwelling:

Water Volume Meter Size	(GPM) Based Fee
5/8" x 3/4"	\$1,155
1 inch	2,888
1-1/2"	5,776
2 inch	9,241
3 inch	17,328
4 inch	28,880
6 inch	57,759
8 inch	115,518

Rates for any service not listed will be calculated based upon the same unit cost consistent with those used to develop the listed rates.

(B)	All other uses:	
	5/8" x 3/4"	\$1,155
	1 inch	2,888
	1-1/2"	5,776
	2 inch	9,241
	3 inch	17,328
	4 inch	28,880
	6 inch	57,759
	8 inch	115,518

Rates for any service not listed will be calculated based upon the same unit cost consistent with those used to develop the listed rates.

(c) Usage rates: As provided in Chapter 13.36.

(d) Turn-on or turn-off fee: \$15.00 except where scheduled during normal working hours when it shall be accomplished free of charge.

(e) Meter checking fee: If less than 2% inaccurate \$280.00 will be assessed. If more than 2% inaccurate, no charge will be made and the customer's bill will be adjusted accordingly up to a period of three months.

(f) Reinspection charge: \$50.00.

(h) Yard sprinkler system inspection: \$205 per system

(i) Other backflow preventing device inspection: Town's actual time and expense costs

(j) Water sampling (customer requested): Town's actual time and expense costs

(k) Water pressure test (customer requested): \$136 per test if the test determines that the Town's system meets regulatory requirements

(l) Water extension fee: \$80 + \$0.20/ft plus Town's actual time and expense costs

(l) Metering Tampering: \$500

(Ord. 1430 §1(part), 2007; Ord. 1319 §1, 2002; Ord. 1293 §6, 2000; Ord. 1271 §6, 1999; Ord. 1255 § 1, 1999; Ord. 1214 §2(part), 1997; Ord. 1162 §1, 1995; Ord. 1137 §1(part), 1994).

**13.32.030 Sewer charges.**

(a) Connection charge: \$300 per service when sewer service stub is not installed to property line. If Town inspection time is more than 4 man hours, the requestor will be billed for additional Town expense.

(b) Every applicant for connection to the town's sanitary sewer utility shall pay a general facilities fee in the following amount:

Use Class	Units	Fee
Single family	per residence	\$1421.00
plus	per detached apt	852.60
Apartments	per unit	952.07
Duplexes	per unit	1,122.59
Hotels, motels, resorts	per unit	895.23
Dorms, rest homes, rooming,	per resident	355.25
Restaurants, tavern	per seating capacity	127.89
Taverns, bars (no kitchens)	per seating capacity	113.68



Churches, lodges, clubs	per seating capacity	7.11
Schools	per seating capacity	56.84
Hospitals	per ERU	calculated
Community office bldg.	per office space	511.56
Single office bldg.	per business	1,932.56
Grocery	per market	11,481.68
Barber/beauty shop	per station (chair)	525.77
Commercial laundry	per facility	11,652.20
Self service laundry	per washing machine	1,634.15
Recreation facility	per restroom equivalent	966.28
Service stations	per station	1,747.83
Swimming pools (public)	per facility	3,893.54
Swimming pools (private)	per facility	calculated
Doctor/dentist office	per room/chair	582.61
Marine service/marina	per facility	calculated

Other: Calculated based on estimated volume converted to an ERU. ERU = 220 gpd.

(c) Usage rates: As provided for in Chapter 13.36.

(d) Side sewer inspections: \$80.00

(e) Reinspection charge: \$25.00

(f) Sewer extension fee: \$80.00 + \$0.20/ft. plus town's actual time and expense costs

(g) Every applicant for a building permit, requiring a new sanitary sewer connection, shall pay a Pierce County sewer capacity charge per residential equivalent according to the following schedule:

Effective January 1, 2015: \$2,410

Effective January 1, 2016: \$3,100

Effective January 1, 2017; \$3,618

Effective July 1, 2019: \$3,491

(Ord. 1603, 2019: Ord. 1514, 2014: Ord. 1470 §1(part), 2010: Ord. 1452 §1, 2008: Ord. 1449 §1, 2008: Ord. 1433 §1, 2007: Ord. 1417 §1, 2006: Ord. 1407 §1, 2005: Ord. 1383 §1, 2005: Ord. 1366 §2, 2004: Ord. 1355 §1, 2004: Ord. 1338 §12, 2003: Ord. 1289 §3, 2000: Ord. 1267 §3, 1999: Ord. 1255 §4, 1999: Ord. 1209 §1(part), 1997: Ord. 1157 §2, 1994: Ord. 1156 §2, 1994: Ord. 1137 §1(part), 1994).

### **13.32.035 Storm drainage charges.**

(a) Hookup fees (into closed system): \$1,200 per hookup

(b) Inspection fee (hookup to closed system): \$60 per hookup

(c) Usage by the Town to pay for water or sewer mains which are larger than necessary to provide adequate water or sewer service to such applicant's property:

(d) Extension fees - \$80 + \$0.20/ft. plus Town's actual cost on time and expense basis,

(e) General Facilities fee – for all new construction, the following will be assessed:

Single family residence \$325 per unit

Duplex \$325 per unit

All other properties \$325 for every 2,500 square feet of impervious surface.

(Ord. 1293 §8, 2000: Ord. 1137 §1(part), 1994).

### **13.32.045 Miscellaneous fees.**

(a) Fire hydrant use: \$50.00/week (1 week minimum) + residential based usage charge +\$100.00 refundable deposit on meter and backflow prevention device, if required.

(b) Latecomers' agreements: \$200.00 + \$25.00 per parcel encumbered plus any additional town labor and expense costs over and above said amounts.

(c) Street extensions: \$80.00 + \$0.20/ft plus Town's actual time and expense costs

(Ord. 1293 §9, 2000; Ord. 1271 §9, 1999).

**13.32.050 Payment in full.** The connection charges authorized by this chapter for connection to the electrical, water and/or sewer systems shall be paid in full before connection is made thereto. (Ord. 1137 §1(part), 1994).

**13.32.060 Property lien.**

(a) All charges for water and sewerage service, for connections therewith, and all charges for turning water on after the same has been cut off as hereinafter provided, together with the penalties and interest thereon as provided in this chapter, shall be a lien on the property upon which such connection is made or water delivered or sewerage service rendered respectively, superior to all other liens or encumbrances except those for general taxes and special assessments.

(b) Enforcement of such lien or liens shall be in the manner provided by law for the enforcement of liens and for delinquent water and sewerage service charges. (Ord. 1137 §1(part), 1994).

## Chapter 13.36

### USAGE RATES

#### Sections:

- 13.36.010 Usage rates.**
- 13.36.020 Electric rates.**
- 13.36.030 Water rates.**
- 13.36.040 Sewer rates.**
- 13.36.050 Storm drainage rates.**
- 13.36.060 Out of Town service.**
- 13.36.070 Account setup fee.**
- 13.36.080 Utility deposits.**
- 13.36.090 Delinquency--Penalties.**
- 13.36.100 Reconnection fee.**
- 13.36.110 Returned check charge.**
- 13.36.120 Customers in good standing.**

**13.36.010 Usage rates.** The rates contained in this chapter shall be charged for usage provided utilities. (Ord. 1209 §1(part), 1997; Ord. 1137 §1(part), 1994).

**13.36.020 Electric rates.** Each customer of the electric utility shall pay a flat rate and a usage rate as follows:

(1) **Residential Customers** (single-family and multifamily):

**Base Charge:** \$22.17

**Rate Blocks:**

0 - 1000 kwh	0.08296
1001 - 2000 kwh	0.08624
2001 kwh and over	0.08956

(2) **Commercial Customers:**

**Base Charge:** \$40.33

**Rate Blocks:**

0 - 5000 kwh	0.08681
5001 - 7500 kwh	0.09173
7501 kwh and over	0.09624

(3) **Churches:**

**Base Charge:** \$34.81

**Rate Blocks:**

0 - 500 kwh	0.07576
500 kwh and over	0.09029

(4) **Government/Schools:**

**Base Charge:** \$88.68

**Rate Blocks:**

0 - 10,000 kwh	0.07738
10,001 - 20,000 kwh	0.08330
20,001 kwh and over	0.08799

(Ord. 1622 (rates), 2020: Ord. 1610 (rates), 2019: Ord. 1594 (rates), 2018: Ord. 1569 (rates), 2017: Ord. 1557 (rates), 2016: Ord. 1535 (rates), 2015: Ord. 1402 §1, 2005: Ord, 1366 §1, 2004:Ord. 1301 §3, 2001: Ord. 1288 §1, 2000: Ord. 1267 §1, 1999; Ord. 1209 §1(part), 1997: Ord. 1157 §1, 1994: Ord. 1156 §1, 1994: Ord. 1138 §1, 1994: Ord. 1137 §1(part), 1994).

**13.36.030 Water rates.** Water use rates for metered service are:  
Meter Charge - \$/Meter/Month

5/8	\$ 22.76
1	36.38
1 ½	70.09
2	110.73
3	205.59
4	341.12
6	679.56
8	1,358.32

Volume Rate - \$/CCF

Single Family Residential	\$3.28
Duplex	3.28
Multiple Family	3.42
Commercial	3.16

Private Fire Protection - \$/Hydrant/Month

2	\$12.42
3	37.30
4	74.61
6	207.24
8	435.22
10	746.07
12	1,181.29

Rates for any service not listed will be calculated based upon the same unit cost consistent with those used to develop the listed rates. (Ord. 1623 (rates), 2020: Ord. 1611 (rates), 2019: Ord. 1595 (rates), 2018: Ord. 1576 (rates), 2017: Ord. 1556 (rates), 2016: Ord. 1536 (rates), 2015: Ord. 1346 §1, 2003: Ord. 1344 §1, 2003: Ord. 1338 §11, 2003: Ord. 1288 §2, 2000: Ord. 1267 §2, 1999: Ord. 1255 §3, 1999: Ord. 1209 §1(part), 1997: Ord. 1157§1,1994: Ord. 1156 §1, 1994: Ord. 1138 §1, 1994: Ord. 1137 §1(part), 1994).

**13.36.040 Sewer rates.**

(a) The following rates are fixed for sewer service for those customers connected to the Town sewer system prior to August 10th, 1987, and listed as part of Exhibit H to the original sewer service and rate agreement between Pierce County and the Town of Steilacoom and who reside within the Steilacoom Town limits:

Single family per residence per month:	\$59.35
plus per detached apartment per month:	\$43.04
Multiple Family per unit per month:	\$53.50

(b) The following rates are fixed for sewer service for those customers not connected to the Town sewer system prior to August 10th, 1987, and not listed as part of Exhibit H to the original sewer service and rate agreement between Pierce County and the Town of Steilacoom and who reside within the Steilacoom town limits:

Single family per residence per month:	\$50.97
Plus per detached apartment per month:	\$36.95
Multiple Family per unit per month:	\$45.13

(c) The following rates are fixed for sewer service for those customers connected to the Town sewer system prior to August 10th, 1987, and listed as part of Exhibit H to the original sewer service and rate agreement between Pierce County and the Town of Steilacoom and who reside outside the Steilacoom town limits:

Single family per residence per month:	\$74.19
Plus per detached apartment per month:	\$53.80
Multiple Family per Unit per Month	\$66.87

(d) The following rates are fixed for sewer service for those customers not connected to the Town sewer system prior to August 10th, 1987, and not listed as part of Exhibit H to the original sewer service and rate agreement between Pierce County and the Town of Steilacoom and who reside outside the Steilacoom town limits:

Single family per residence per month:	\$63.72
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Plus per detached apartment per month:	\$46.19
Multiple family per unit per month	\$56.41

(e) All commercial customers: Each commercial customer shall pay a monthly sewer rate comprised of two components.

Component #1: The Pierce County sewage treatment rate, or "treatment rate" and any account service charge. This rate shall be defined as that cost charged by Pierce County utilities to the Town of Steilacoom to cover the cost of treating each commercial customer's sewage and any additional account service charges/fees. Collectively, this component will include all Pierce County charges related to the account and charged to the Town.

Component #2: The second component shall provide for each customer's proportionate share of the town's operations, maintenance, and debt service costs associated with operating the town's sewer utility. Each account will be charged a monthly service charge of \$4.99 and a commodity usage charge of \$1.68 per CCF of water used or effluent measured, based upon the customer's actual water usage or effluent measured for the prior year. The actual or estimated water used amount will be calculated in the same manner as used when providing this information to Pierce County.

Such commercial sewer rates shall be adjusted annually or more frequently based upon adjustments made by Pierce County to the sewage treatment rate charged to the Town of Steilacoom for each commercial customer, as provided in the Sewer Service and Rate Agreement between the town of Steilacoom and Pierce County.

(f) Rates for any service not specifically stipulated will be calculated based upon the Pierce County charge to the town plus the town component calculated based upon the Pierce County residential equivalency times the present single family resident rate.

(Ord. 1624 (rates), 2020: Ord. 1612 (rates), 2019: Ord. 1600 (correction), 2018: Ord. 1596 (rates) §c, §e (Component 2), 2018: Ord. 1582, §c, §e (Component 2), 2018: Ord. 1574 (rates), 2017: Ord. 1558 (rates), §e, 2016: Ord. 1534 (rates), §e, 2015: Ord. 1514 (rates), 2014: Ord. 1507 (rates), 2013: Ord. 1493, 2012: Ord. 1474 §1, 2011: Ord. 1479 §1. 2011: Ord. 1452 §1, 2008: Ord. 1449 §1, 2008: Ord. 1433 §1, 2007: Ord. 1417 §1, 2006: Ord. 1407 §1, 2005: Ord. 1383 §1, 2005: Ord. 1366 §2, 2004: Ord. 1355 §1, 2004: Ord. 1338 §12, 2003: Ord. 1289 §3, 2000: Ord. 1267 §3, 1999: Ord. 1255 §4, 1999: Ord. 1209 §1(part), 1997: Ord. 1157 §2, 1994: Ord. 1156 §2, 1994: Ord. 1137 §1(part), 1994).

**13.36.050 Storm drainage rates.**

(a) The following rates and charges are fixed for storm and surface water sewerage services furnished by the Town's drainage utility to properties within the Town limits:

- (1) Single family dwellings: \$22.15 per month
- (2) Duplexes: \$22.15 per unit per month
- (3) All other properties, for each 2,500 square feet of impervious surface or portion thereof: \$22.15 per month.

(Ord. 1625 (rates), 2020: Ord. 1613 (rates), 2019: Ord. 1597 (rates), 2018: Ord. 1575 (rates), 2017: Ord. 1555 (rates), 2016: Ord. 1537 (rates), 2015: Ord. 1515, 2014: Ord. 1470 §1(part), 2010: Ord. 1366 §3, 2004: Ord. 1289 §4, 2000: Ord. 1267 §4, 1999: Ord. 1209 §1(part), 1997: Ord. 1156 §3, 1994: Ord. 1137 §1(part), 1994).

**13.36.060 Out of town service.** For all use and users outside the town limits, the rates for any Town utility service shall be one hundred twenty-five percent (125%) of the corresponding rates for service within the town limits. (Ord. 1209 §1(part), 1997: Ord. 1137 §1(part), 1994).

**13.36.070 Account setup fee.** Any new or existing utility customer who requests the commencement of utility service for a location at which they are not presently served, shall, at the time of applying for utility service, pay a nonrefundable account setup fee in the amount of ten dollars (\$10.00). If the utility customer, owner, or management company requests a change in utility service within the same calendar month to a new location either owned or managed by the same individual/group, the owner/management company will be charged an additional \$50 for that change of location or any additional change of location for that same utility customer to a new location either owned or managed by the same individual/group within that same calendar month. (Ord. 1529, 2015: Ord. 1319 §2, 2002: Ord. 1137 §1(part), 1994).

**13.36.080 Utility deposits.**

(a) Applicants for electric current, water supply, sewer service, storm drainage service shall deposit in United States currency with the Clerk-Treasurer such amount as the Council may from time to time determine. No deposit however, shall be less than the following for residential tenants.

- (1) Single family dwellings:
  - (A) All-electric heat \$250.00
  - (B) Other heating source 200.00
- (2) Multiple-family dwellings:
  - (Per unit) 200.00

(b) There may be required, at the Town Administrator's discretion, a deposit of twice the estimated average bill of any service. (Ord. 1338 §13, 2003: Ord. 1293 §10, 2000: Ord. 1271 §10, 1999: Ord. 1214 §3(Part), 1997: Ord. 1137 §1(part), 1994).

**13.36.090 Delinquency—Penalties.** For those utility accounts which are past due, a penalty shall be assessed in the amount of twenty percent (20%) of the delinquent balance for services rendered in the case of common area, "house" accounts and ten percent (10%) of the delinquent balance for services rendered for all other accounts. Penalties shall apply to services rendered only and not to unpaid penalties. (Ord. 1214 §3(part), 1997: Ord. 1137 §1(part) 1994).

**13.36.100 Reconnection fee.** When any utility service is reconnected after all penalties, delinquent charges, and disconnection/reconnection charges are paid in full, the reconnection fee shall be as provided in SMC Chapter 13.32. (Ord. 1544, 2016: Ord. 1214 §3(part), 1997: Ord. 1137 §1(part), 1994).

**13.36.110 Returned check charge.** For each time a check is returned to the Town for reason of insufficient funds, there shall be assessed a returned check fee of \$25.00. (Ord. 1214 §3(part), 1997: Ord. 1137 §1(part), 1994).

**13.36.120 Customers in good standing.**

- (a) A customer in good standing is defined as:
  - (1) A new customer that has made all deposits required by 13.36.080, and
  - (2) A customer that has had no delinquent penalties assessed in the preceding twelve (12) months.
- (b) A delinquent penalty correctly assessed to a customer in good standing will be removed on request from the customer.

(c) Customers in good standing who are owners at the address to which utility services are provided and who have been customers for at least one year will not be disconnected according to the schedule required by SMC 13.24.070. These customers will be subject to the requirements of SMC 13.24.070 on the next regular billing cycle. Prompt payment in full at any time prior to the required disconnection will result in the removal of all penalties accrued to the account. (Ord. 1214 §3(part), 1997).

## **Chapter 13.40**

### **MISCELLANEOUS PROVISIONS**

#### **Sections:**

**13.40.010 Emergency water restrictions.**

**13.40.020 Hydrants.**

**13.40.010 Emergency water restrictions.** In times of emergency the Mayor shall have the authority to proclaim emergency water restrictions which may terminate sprinkling altogether or to alternate the days and hours during which sprinkling will be allowed. (Ord. 1137 §1(part), 1994).

**13.40.020 Hydrants.**

(a) It is unlawful for any person other than the regularly constituted officers and agents of the Town, to take water from, or molest in any way, any fire hydrant, except in case of a fire emergency, without having first obtained permission from the Town.

(b) Any person desiring to obtain the use of such water on a temporary basis, shall first apply for and be granted a special permit to do so by the Town upon payment of a deposit in the amount of (one hundred) \$100.00.

(c) All fire hydrants to be installed shall be approved by the Town or shall be obtained from the Town at a price equaling the cost to the Town plus handling charges. The installation of the fire hydrant may be accomplished by the applicant through a licensed contractor or by payment to the Town for the cost of installation. All installations shall be approved by the Director of Public Works. (Ord. 1137 §1(part), 1994).

## **Chapter 13.41**

### **ELECTRIC NET METERING**

#### **Sections:**

**13.41.010 Purpose and scope.**

**13.41.020 Definitions.**

**13.41.030 Required filings.**

**13.41.040 Technical requirements and standards for interconnection.**

**13.41.050 Application for interconnection.**

**13.41.060 Interconnection agreement.**

**13.41.070 Certificate of completion.**

**13.41.080 General terms and conditions of interconnection.**

**13.41.090 Payment for net energy**

**13.41.100 Adoption by reference.**

**13.41.010 Purpose and scope.** The purpose of this chapter is to establish rules and procedures for determining the terms and conditions governing the interconnection of electric generating facilities with a maximum generating capacity of not more than 100 kilowatts to the Town of Steilacoom electric distribution system. (Ord. 1455 §1(part), 2009).

**13.41.020 Definitions.**

“Applicant” means any person, corporation, partnership, government agency, or other entity applying to interconnect an electric generating facility to the Town of Steilacoom’s electric distribution system pursuant to this chapter.

“Application” means the written notice provided by the applicant to the Town of Steilacoom that initiates the interconnection process.

“Electric System” means all electrical wires, equipment, and other facilities owned or provided by the Steilacoom electric utility to transmit electricity to customers.

“Electric Utility” means the Town of Steilacoom who owns and operates the electrical distribution system, or the electrical distribution system itself, onto which the applicant seeks to interconnect a generating facility.

“Generating Facility” means a source of electricity owned by the applicant or generator that is located on the applicant’s side of the point of common coupling, and all facilities ancillary and appurtenant thereto, including interconnection facilities, which the applicant requests to interconnect to the Town of Steilacoom’s electric system.

“Generator” means the entity that owns and/or operates the generating facility interconnected to the Town of Steilacoom’s electric system.

“Interconnection” means the physical connection of a generating facility to the electric system so that parallel operation may occur.

“Interconnection Agreement” means the written, executed agreement between the Town of Steilacoom and the applicant consistent with the purpose, scope and provisions of this chapter, including but not limited to the provisions of SMC 13.41.080.

“Interconnection Facilities” means the electrical wires, switches, and other equipment used to interconnect a generating facility to the electric system.

“Net Metering” means measuring the difference between the electricity supplied by the Town of Steilacoom and the electricity generated by a generating facility that is fed back to the Town of Steilacoom electric system over the applicable billing period.

“Point of Common Coupling (PCC)” means the point where the generating facility’s local electric power system connects to the Town of Steilacoom electric system, such as the electric power meter or at the location of the equipment designed to interrupt, separate, or disconnect the connection between the generating facility and the Town of Steilacoom electric system.

“Electric Utility” means the Town of Steilacoom who owns and operates the electrical distribution system, or the electrical distribution system itself, onto which the applicant seeks to interconnect a generating facility. (Ord. 1455 §1(part), 2009).

**13.41.030 Required filings.** Applicants shall be required to submit the following forms and receive approval of each form and the generating facility by the Town of Steilacoom prior to approval and/or interconnection to the electric system.

- (a) Application
- (b) Certification of Completion
- (c) Interconnection Agreement. (Ord. 1455 §1(part), 2009).

**13.41.040 Technical requirements and standards for interconnection.**

- (1) General Interconnection Requirements



(a) Any generating facility desiring to interconnect with the Town of Steilacoom electric system or modify an existing interconnection must meet all minimum technical specifications applicable, in their most current approved version, as set forth in this chapter.

(b) The specifications and requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on the Town of Steilacoom electric system, equipment and personnel and on other customers of the Town of Steilacoom electric system. They are not intended to address protection of the generating facility itself, generating facility personnel, or its internal load. It is the responsibility of the generating facility to comply with the requirements of all appropriate standards, codes, statutes and authorities to protect its own facilities, personnel and loads. The Town of Steilacoom accepts no responsibility or liability for any failure of the generating facility or related equipment located anywhere beyond the point of common coupling (PCC) with the Town of Steilacoom electric system.

(c) The specifications and requirements in this section shall apply generally to the non-utility owned electric generation equipment (or any other facilities or equipment not owned by the Town of Steilacoom electric system) to which this standard and agreement(s) apply throughout the period encompassing the generator's installation, testing, commissioning, operation, maintenance, decommissioning and removal of said equipment. The Town of Steilacoom may verify compliance at any time, with reasonable notice.

(d) The Generator shall comply with the requirements in subsections (d)(i), (d)(ii) and (d)(iii) below. However, at its sole discretion, the Town of Steilacoom may approve alternatives that satisfy the intent and/or purpose of these requirements, except local, state and federal building codes.

(i) Codes and standards: Applicant shall conform to all applicable codes and standards for safe and reliable operation of the generator facility, including but not limited to the National Electric Code (NEC), National Electric Safety Code (NESC), the Institute of Electrical and Electronics Engineers (IEEE), American National Standards Institute (ANSI), and Underwriters Laboratories (UL) standards, and local, state and federal building codes. The generator is responsible to obtain all applicable permit(s) for the equipment installations on its property.

(ii) Safety: All safety and operating procedures for joint use equipment shall be in compliance with the Occupational Safety and Health Administration (OSHA) Standards, the NEC, Washington Administrative Code (WAC), the Washington Industrial Safety and Health Administration (WISHA) and equipment manufacturer's safety and operating manuals.

(iii) Power Quality: Installations shall be in compliance with all applicable standards including IEEE Standard 519-1992, Harmonic Limits.

## (2) Specific Interconnection Requirements

(a) Applicant shall furnish and install on applicant's side of the meter, a UL-approved safety disconnect switch which shall be capable of fully disconnecting the applicant's generating facility from the Town of Steilacoom electric system. The disconnect switch shall be located adjacent to the Town of Steilacoom electric meter and shall be of the visible break type in a metal enclosure which can be secured by a Town of Steilacoom padlock. The disconnect switch shall be accessible to Town of Steilacoom personnel at all times.

(b) The requirement in subsection (2)(a) above may be waived by the Town of Steilacoom if: (i) Applicant provides interconnection equipment that applicant can demonstrate, to the satisfaction of the Town of Steilacoom, performs physical disconnection of the generating equipment supply internally; and (ii) applicant agrees that its service may be disconnected entirely if generating equipment must be physically disconnected for any reason.

(c) The Town of Steilacoom shall have the right to disconnect the generating facility at the disconnect switch under the following circumstances: when necessary to maintain safe electrical operating conditions; if the generating facility does not meet required standards or

rules; if the generating facility at any time adversely affects or endangers any person, property of any person, Town of Steilacoom's operation of its electric system or the quality of the Town of Steilacoom's service to other customers; or failure of the owner of record to notify the Town of Steilacoom of a sale or transfer of the generator, interconnecting facilities or the premises where the generator is located.

(d) Nominal voltage and phase configuration of applicant's generating facility must be compatible to the Town of Steilacoom electric system at the point of common coupling.

(e) Applicant must provide evidence that its generation will never result in reverse current flow through the Town of Steilacoom's network protectors. All instances of interconnection to secondary spot distribution networks shall require review and written pre-approval by the Town of Steilacoom. Interconnection to distribution secondary grid networks is not allowed. Closed transition transfer switches are not allowed in secondary network distribution systems.

### (3) Specifications Applicable to all Inverter-based Interconnections

Any inverter-based generating facility desiring to interconnect to the Town of Steilacoom's electric system or modify an existing interconnection must meet the technical specifications, in their most current approved version, as set forth below. The version of the technical specifications approved by the Town of Steilacoom is specified in SMC 13.41.080 and SMC 13.41.100. A more recent approved version may supersede specifications on the list below.

(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power systems, for Systems 10MVA or less.

(b) UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems. Equipment must be UL listed.

(c) IEEE Standard 9929, IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.

### (4) Requirements Applicable to all Non Inverter-based Interconnections.

Non-inverter based interconnection requests may require more detailed review, testing, and approval by the Town of Steilacoom, at the expense of the applicant, of the equipment proposed to be installed to ensure compliance with applicable technical specifications, in their most current approved version, including but not limited to:

(a) IEEE standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, for systems 10MVA or less.

(b) ANSI Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

Applicants proposing such interconnection may also be required to submit a power factor mitigation plan and/or other studies or plans as appropriate for Town of Steilacoom review and approval. (Ord. 1455 §1(part), 2009).

### **13.41.050 Application for interconnection.**

(1) When an Applicant requests interconnection from the Town of Steilacoom, the applicant shall be responsible for conforming to the rules and regulation in effect. The applicant seeking to interconnect a generating facility under these rules must complete and submit a written application form. Information must be accurate, complete, and approved by the Town of Steilacoom prior to installation of the generating facility.

(2) Application Fees. The Town of Steilacoom requires a non-refundable interconnection application fee of \$100.00. Actual expenses in excess of this fee shall be invoiced to the Applicant. All fees shall be paid prior to interconnection.

Application Evaluation. All generation interconnection requests pursuant to this chapter will be reviewed by the Town of Steilacoom for compliance with these rules. If the Town of Steilacoom in its sole discretion finds the application does not comply with these rules and standards, the Town of Steilacoom may reject the application. If the Town of Steilacoom rejects the application, it shall provide the applicant with written notification stating the reasons for rejecting the application. (Ord. 1455 §1(part), 2009).

**13.41.060 Interconnection agreement.**

(1) Once an application is accepted by the Town of Steilacoom as complete, the Town of Steilacoom shall determine if any additional information or studies are required. If in the event additional information or studies are required, the applicant shall be responsible for providing the requested studies and/or information. All expenses related to providing this additional information and/or studies shall be borne by the applicant.

Upon approval of the application for interconnection, the Town will provide an interconnection agreement to the applicant. The interconnection agreement shall be completed and executed by the applicant within 30 days. (Ord. 1455 §1(part), 2009).

**13.41.070 Certificate of completion.**

All generating facilities must obtain an electrical permit and pass electrical inspection before they can be connected or operated in parallel with the Town of Steilacoom electric system. Generator shall provide written certification to the Town of Steilacoom that the generating facility has been installed and inspected in compliance with all local building and/or electrical codes. (Ord. 1455 §1(part), 2009).

**13.41.80 General terms and conditions of interconnection.**

(1) The general terms and conditions listed in this section shall apply to all generating facilities interconnecting to the Town of Steilacoom electric system.

(2) Any electrical generating facility with a maximum electrical generating capacity of 100 kW or less must comply with these rules to be eligible to interconnect and operate in parallel with the Town of Steilacoom's electric system. The rules under this chapter shall apply to all interconnecting generating facilities that are intended to operate in parallel with the Town of Steilacoom's electric system irrespective of whether the applicant intends to generate electricity to serve all or part of the applicants' load; or to sell the output.

(3) In order to ensure system safety and reliability of interconnected operations, all interconnected generating facilities shall be constructed and operated by the generator in accordance with this chapter and all other applicable federal, state and local laws and regulations.

(4) Prior to initial operation, all generators must submit a completed certificate of completion to the Town of Steilacoom; execute an interconnection agreement, and any other agreement(s) reasonably required by these rules for the disposition of the generating facility's electric power output. The interconnection agreement between the Town of Steilacoom and generator outlines the interconnection standards, cost allocation and billing agreements, and on-going maintenance and operation requirements.

(5) Applicant or generator shall promptly furnish the Town of Steilacoom with copies of such plans, specifications, records and other information relating to the generating facility or the ownership, operation, use, or maintenance of the generating facility, as may be reasonably requested by the Town of Steilacoom from time to time.

(6) For the purposes of public and personnel safety, any non-approved generation interconnection discovered will be immediately disconnected from the Town of Steilacoom electric system.

(7) To ensure reliable service to all Town of Steilacoom customers and to minimize possible problems for other customers, the Town of Steilacoom will review the need for a dedicated-to-single-customer distribution transformer. If the Town of Steilacoom requires a dedicated distribution transformer, the applicant or generator shall pay for all costs of the new transformer and related facilities.

(8) For all net metering for fuel cells, facilities that produce electricity and used and useful thermal energy from a common fuel source, or facilities that use water, wind, solar energy, or biogas from animal waste as a fuel as set forth in RCW 80.60: The Town of Steilacoom shall install, own and maintain a kilowatt-hour meter or meters capable of registering bi-directional flow of electricity at the point of common coupling (PCC) at a level of accuracy that meets all applicable standards, regulations and statutes. The meters may measure such parameters as time of delivery, power factor, voltage and such other parameters as the Town of Steilacoom shall specify. The applicant shall provide space for metering equipment. It will be the applicant's responsibility to provide the current transformer enclosure (if required), meter socket(s) and junction box after the applicant has submitted drawings and equipment specifications for Town of Steilacoom approval. The Town of Steilacoom may approve other generating sources for net metering but is not required to do so.

(9) Common labeling furnished or approved by the Town of Steilacoom and in accordance with NEC requirements must be posted on meter base, disconnects, and transformers informing working personnel that generation is operating at or is located on the premises.

(10) No additional insurance will be necessary for a net metered facility that is a qualifying generating facility under Chapter 80.60 RCW. A qualifying facility under RCW 80.60 is one that is 100 kW or less; and that uses water, wind, solar energy, or biogas from animal waste as a fuel, fuel cells, or that produces electricity and used and useful thermal energy from a common fuel source. For other generating facilities permitted under these standards but not a qualifying facility under Chapter 80.60 RCW, additional insurance, limitations or liability and indemnification may be required by the Town of Steilacoom.

(11) Prior to any future modification or expansion of the generating facility, the generator will obtain Town of Steilacoom review and approval. The Town of Steilacoom reserves the right to require the generator, at the generator's expense, to provide corrections or additions to existing electrical devices in the event of modification of government or industry regulations and standards. For the overall safety and protection of the Town of Steilacoom electric system, RCW 80.60 currently limits interconnection of generation for net metering to 0.25% of The Town of Steilacoom's peak demand during 2006 and .50% in 2014. Additionally, interconnection of generating facilities to individual distribution feeders will be limited to 10% of the feeder's peak capacity.

(12) It is the responsibility of the generator to protect its facilities, loads and equipment and comply with the requirements of all appropriate standards, codes, statutes and authorities.

(13) Charges by the Town of Steilacoom to the applicant or generator in addition to the application fee, if any, will be cost-based and applied as appropriate. Such costs may include but not limited to, transformers, production meters, and Town of Steilacoom testing, qualification, and approval of non UL 1741 listed equipment. The Generator shall be responsible for any costs associated with any future upgrade or modification to its interconnected system required by modifications in the Town of Steilacoom's electric system.

(14) This chapter governs the terms and conditions under which the applicant's generating facility will interconnect with, and operate in parallel with, the Town of Steilacoom's electric system. This chapter does not govern the settlement, purchase, or delivery of any power generated by the applicant's generating facility. The purchase or delivery of power, including net metering of electricity pursuant to Chapter 80.60 RCW, and other services that the applicant may require will be covered by separate agreement or pursuant to the terms, conditions and

rates as may be from time to time approved by the Town of Steilacoom. Any such agreement shall be completed prior to the initial operation and filed with the Town of Steilacoom.

(15) Generator may disconnect the generating facility at any time; provided the generator provides reasonable advance notice to the Town of Steilacoom.

Generator shall notify the Town of Steilacoom prior to the sale or transfer of the generating facility, the interconnection facilities or the premises upon which the facilities are located. The applicant or generator shall not assign its rights or obligations under any agreement entered into pursuant to these rules without the prior written consent of the Town of Steilacoom, which consent shall not be unreasonably withheld. (Ord. 1455 §1(part), 2009).

**13.41.090 Payment for net energy.** The Town of Steilacoom shall measure the electricity produced and consumed by the generator during each billing period, in accordance with normal metering practices.

(1) If the electricity supplied by the Town of Steilacoom exceeds the electricity generated by the generator during the billing period, or any portion thereof, then the generator shall be billed for the net electricity supplied by the Town of Steilacoom together with the appropriate base charge paid by other customers of the Town of Steilacoom in the same rate class.

(2) If the electricity generated by the generator during the billing period, or any portion thereof, exceeds the generator's electricity usage, then the generator shall be billed for the appropriate base charge as other customers in the same rate class; and credited for the net excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the customer's bill for the following period.

(3) On April 30<sup>th</sup> of each calendar year, any remaining unused kilowatt-hour credit accumulated by the generator during the previous year shall be granted to the Town of Steilacoom without any compensation to the customer.

(4) Generator shall pay any amount owing for electric service provided by the Town of Steilacoom in accordance with applicable rates and policies. Nothing in this section shall limit the rights of the Town of Steilacoom under applicable rate schedules, Town ordinances, customer service policies and general provisions of the Steilacoom Municipal Code. (Ord. 1455 §1(part), 2009).

**13.41.100 Adoption by reference.** The Town of Steilacoom adopts by reference all and/or portions of regulations and standards identified below as they now exist or as they are modified in the future.

(1) The National Electric Code (NEC), as published by the National Fire Protection Association (NFPA).

(2) The National Electric Safety Code, (NESC).

(3) The Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(4) Institute of Electrical and Electronics Engineers (IEEE) Standard 929, Recommended Practice for Utility Interface with Photovoltaic (PV) Systems.

(5) American National Standards Institute (ANSI) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(6) Institute of Electrical and Electronic Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(7) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems.

(8) Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.269. Washington Division of Occupational Safety and Health (DOSH) Standard, Chapter 296-155 WAC. (Ord. 1455 §1(part), 2009).

## Chapter 13.42

### RENEWABLE ENERGY COST RECOVERY INCENTIVE PROGRAM

#### Sections:

- 13.42.010 Purpose.**
- 13.42.020 Policy.**
- 13.42.030 Responsibility.**
- 13.42.040 Definitions.**
- 13.42.050 Application.**
- 13.42.060 Provisions.**
- 13.42.070 Certificate of completion.**
- 13.42.080 Required findings—Exceptions.**

**13.42.010 Purpose.** The purpose of this Chapter is to establish procedures to enable Town of Steilacoom Electric Utility customers to qualify for benefits through the Washington State Renewable Energy System Cost Recovery Incentive program applicable to qualifying Renewable Energy generation facilities.

The provisions of this policy are intended to be consistent with the requirements of the portions of RCW 82.15 and WAC 458-20-273 that pertain to 2005 SSB 5101 as initially adopted, and or, subsequently amended. (Ord. 1496 §1(part), 2013).

**13.42.020 Policy.** It shall be the policy of the Town of Steilacoom, herein referred to as the Town, to participate in the Washington State Renewable Energy System Cost Recovery Incentive program as set forth in 2005 SSB 5101 as initially adopted, and or, subsequently amended for qualifying projects. . (Ord. 1496 §1(part), 2013).

**13.42.030 Responsibility.** The responsibility for implementation of this policy shall be the Town Administrator working through and with the Director of Public Works. . (Ord. 1496 §1(part), 2013).

#### **13.42.040 Definitions.**

*“Application”* means the Town of Steilacoom Application for Participation in the Renewable Energy System Cost Recovery Incentive program provided by the Applicant to the Town that initiates the process.

*“Certificate of Completion”* means the certificate furnished by the Town to be completed by the Applicant and the electrical inspector having jurisdiction over the installation of the facilities indicating completion of installation and inspection of the Generating Facility.

*“Certification”* means documentation verifying that the project is a Qualified Renewable Energy Project provided under the Washington State Renewable Energy System Cost Recovery Incentive Program as certified by the Washington State Department of Revenue.

*“Customer”* means any person, corporation, partnership, government agency, or other entity that pays for and takes service from the Town of Steilacoom Electric Utility.

“*Customer in Good Standing*” means a new customer that has made all deposits required by SMC 13.36.080 and a customer that has had no delinquent penalties assessed in the preceding twelve (12) months.

“*Electric System*” means all electrical wires, equipment, and other facilities owned or provided by the Town that are used to transmit electricity to Customers.

“*Generating Facility*” means a source of electricity provided by a Qualified Renewable Energy Project owned by the Applicant that is located on the Applicant’s side of the meter, and all facilities ancillary and appurtenant thereto, including a meter base for a Town provided production meter that may or may not be interconnected with the Electric System.

“*Incentive Payment*” means that subsidy provide by the Town to the Applicant for power generated between July 1 and June 30 of each year in the amount of fifteen cents per economic development kilowatt-hour, as defined in Section 2(2) of 2005 SSB 5101, amended by 2009 ESSB 6170, and or, subsequently amended multiplied by the applicable factors (if any) specified in Section 3(5) of 2005 SSB 5101, amended by 2009 ESSB 6170, and or, subsequently amended, provided that the total Renewable Incentive payments to the Customer shall not exceed \$5,000 in any fiscal year. Customer shall not be eligible for any payments for electricity generated prior to August 1, 2013, or after June 30, 2020.

“*The Town*” shall mean the Town of Steilacoom.

“*Qualified Renewable Energy Project*” – means a source of electricity provided by wind system, solar system, or certain type of anaerobic digester that processes manure from cattle into biogas and dried manure using microorganisms in a closed oxygen free container as set forth in REC 82.16 and WAC 458-20-273 pertaining to 2005 SSB 5101, amended by 2009 ESSB 6170, and or, subsequently amended, and is certified by the Washington State Department of Revenue as a qualifying project. . (Ord. 1496 §1(part), 2013)

#### **13.42.050 Application.**

(A) Applications under this policy will only be accepted after the Customer has successfully completed the requirements in SMC Chapter 13.41 Net Metering. The Applicant seeking to participate in the program shall be a Customer in Good Standing who shall fill out and submit a signed Application. The Application must be complete and information must be accurate.

(B) The Town requires no fees with application at this time but reserves the rights to do so.

(C) All Applications made under this policy will be reviewed by the Town for compliance with this policy and all applicable rules. If the Town, in its sole discretion, finds that the Application does not comply with the provisions of this policy, the Town may reject the Application. (Ord. 1568 §A, 2017; Ord. 1496 §1(part), 2013)

**3.42.060 Provisions.** The general terms and conditions listed in this section shall apply to all Applicants and Projects.

(A) Application to the Town. Upon receipt of initial certification from the Washington State Department of Revenue that the project qualifies, the Applicant must file an Application with the Town meeting all requirements of Section 3(4)(a) of 2005 SSB 5101 as initially adopted, and or, subsequently amended.

(B) Signed Agreement. Applicant must submit a signed Town of Steilacoom Agreement to Offer Incentive Payments pursuant to the Washington State Renewable Energy System Cost Recovery Incentive Program.

(C) Annual Incentive Payments. Prior to the payment of any Annual Incentive Payments, the Customer shall provide verification to the Town that the project is a Qualified Renewable Energy Project provided under the Washington State Renewable Energy System Cost Recovery Program as certified by the Washington State Department of Revenue. For electricity produced

after August 1, 2013, by a Qualified Renewable Project that has received Certification; the Applicant must file a Renewable Energy System Cost Recovery Annual Incentive Payment Application for electricity generated from July to June with the Town by August 1<sup>st</sup> for each year thereafter until this program is discontinued. Failure to provide a Renewable Energy System Cost Recovery Incentive Payment Application by this date results in forfeiture of the incentive payments for this period. Within 60 days (pursuant to Section 3(4)(b) of 2005 SSB 5101 as initially adopted, and or, subsequently amended) of receipt of this renewal certification, the Town will notify the Customer regarding acceptance of applications for generation produced.

(D) Incentive Payment Limitations. The amount of Incentive Payment requested by Customer will not exceed the amount that the Town has been authorized to pay under 2005 SSB 5101, amended by 2009 ESSB 6170, and or, subsequently amended. The issuing of Incentive Payments by the Town is limited by the greater of: (a) fifty one hundredths of one percent (0.50%) of the utilities taxable sales under Washington law; or (b) one hundred thousand dollars (\$100,000). This limitation applies to the cumulative total of all qualified Incentive Payments issued by the Town to Applicants in a given fiscal year. Should Incentive Payments owed by the Town in a fiscal year exceed this limitation; the Town will reduce the Applicant's Incentive Payment in the same proportion that it reduces all other qualified Incentive Payments owed in that fiscal year until the limitation is no longer exceeded.

(E) Project Information. Applicant agrees to promptly furnish the Town with copies of such plans, specifications, records, and other information relating to the Generating Facility, as may be reasonably requested by the Town from time to time.

(F) Project Compliance. The Applicant acknowledges their responsibility to protect its facilities, loads, and equipment and comply with the requirements of all appropriate standards, codes, statutes and authorities.

(G) Ownership. Applicant must own the property upon which the Generating Facility is installed, and the energy is used. Applicant shall notify the Town prior to the sale or transfer of the Generating Facility, or the premises upon which the facilities are located. The Applicant shall not assign its rights or obligations under any agreement entered into pursuant to these rules. (Ord. 1568 §C, 2017; Ord. 1496 §1(part), 2013)

**13.42.070 Certificate of Completion.** Applicant must obtain an electrical permit and pass electrical inspection of its Generating Facility. Applicant shall provide written certification to the Town that the Generating Facility has been installed and inspected in compliance with the local building and/or electrical codes and/or the Town's Interconnection Requirements or Renewable Generating Requirements. This documentation must include a copy of the electrical inspection and Certification from the Department of Revenue regarding the project's qualification for Incentive Payments.

(A) Production Meter. Upon the Town's receipt of the customer's Certificate of Completion the Town will provide and install, at the customer's expense, a Town-supplied production meter. (Ord. 1496 §1(part), 2013).

**13.42.080 Required Filings – Exceptions.**

(A) The Town shall maintain on file for inspection by Customers, the charges, terms and conditions required for application to receive the "Incentive Payments" as set forth in the Washington State Renewable Energy System Cost Recovery Incentive for Renewable Energy Program. This information will include the following documents and contracts:

(1) Washington State Department of Revenue for Renewable Energy System Cost Recovery Certification Form.

(2) Application for Participation in the Renewable Energy System Incentive Payment Program. The Town Agreement to Offer Incentive Payments pursuant to the Washington State Renewable Energy System Cost Recovery Incentive Program.



- (3)Certificate of Completion.
- (4)Renewable Energy System Cost Recovery Annual Incentive Payment Application.
- (5)Process Outline. (Ord. 1496 §1(part), 2013).

## **Chapter 13.48**

### **STORM DRAIN UTILITY**

#### **Sections:**

- 13.48.010 Title.**
- 13.48.020 Utility created.**
- 13.48.030 Chapter purpose.**
- 13.48.040 Chapter applicability.**
- 13.48.050 Municipal powers.**
- 13.48.060 Management responsibility.**
- 13.48.070 Rules and regulations.**
- 13.48.080 Additional rules and regulations.**
- 13.48.090 Property served.**
- 13.48.100 Transfer of rights from other utilities and departments.**

**13.48.010 Title.** This chapter shall be known as the "Drainage Utility Rules and Regulations" of the Town of Steilacoom. (Ord. 1137 §1(part), 1994).

**13.48.020 Utility created.** A public utility for the collection, control and disposal of storm and surface waters is created and established, and shall be known as the "Steilacoom Drainage Utility." (Ord. 1137 §1(part), 1994).

**13.48.030 Chapter purpose.** It is the purpose of this chapter to specify the rules and regulations which will apply to the operation and use of the drainage utility of the Town. (Ord. 1137 §1(part), 1994).

**13.48.040 Chapter applicability.** This chapter shall apply to all lands as indicated on the map of the drainage area and system attached to Ordinance 563 as Exhibit 1 and on file with the Town Clerk-Treasurer, and shall include those lands which are outside the Town limits which discharge storm and surface water into the Town and which are subject to a subsequent intergovernmental agreement between the Town and affected neighboring jurisdictions. (Ord. 1137 §1(part), 1994).

**13.48.050 Municipal powers.** The Town shall exercise, in the manner described by this chapter and any amendments hereto, all lawful powers necessary and appropriate to plan, expand, acquire, build, improve, maintain and operate storm and surface drainage facilities, and to regulate the use thereof. The Town shall, in addition, exercise powers incidental to the foregoing, including, without limitation, power to purchase and condemn property, fix, impose and collect charges, and regulate actions taken with respect to public and private property which affect the flow of storm and surface water and the use of drainage facilities, within the storm drainage basins identified herein. (Ord. 1137 §1(part), 1994).

**13.48.060 Management responsibility.** The Town Administrator, or a representative designated by the Town Administrator, is charged with the management, administration of and compliance with the Rules and Regulations. (Ord. 1137 §1(part), 1994).

**13.48.070 Rules and regulations.** The rules and regulations for use and operation of the drainage utility are specified and adopted as set forth in Exhibit 2, which is attached to Ordinance 563 and on file with the Town Clerk-Treasurer, and which is by this reference made a part of this chapter. (Ord. 1137 §1(part), 1994).

**13.48.080 Additional rules and regulations.**

(a) The rules and regulations shall be supportive of, among others, the following:

(1) Federal River and Harbors Act of 1899;  
(2) Washington State Water Quality Standards (Chapter 172-201 of the Washington Administrative Code);

(3) Washington State Shoreline Management Act of 1971 (RCW Chapter 90.58);

(4) Surface Right Act (RCW Chapter 90.03);

(5) Ground Water Act (RCW Chapter 90.44);

(6) Flood Control Zone Act (RCW Chapter 86.16);

(7) Hydraulic Acts (RCW Chapter 86.16);

(8) Washington State Environmental Policy Act of 1971 (RCW Chapter 75.20);

(b) Satisfaction of the rules and regulations shall not be construed as compliance with any of the acts cited in subsection (a) of this section as may be required. Similarly, compliance with any of the acts shall not obviate the need for compliance with the rules and regulations. (Ord. 1137 §1(part), 1994).

**13.48.090 Property served.** Property served by the drainage utility shall include all areas within and without the limits of the Town which are designated as being within the limits of the nine storm drainage basins represented on that certain map designated as "Exhibit A" on file in the Clerk-Treasurer's office and incorporated herein by reference. (Ord. 1137 §1(part), 1994).

**13.48.100 Transfer of rights from other utilities and departments.** There is transferred to the drainage utility from other utilities and departments of the Town all properties, interests and physical and intangible rights of every kind and nature, however acquired, insofar as they relate to or concern storm or surface water sewerage, further including without limitation, all such properties, interests and rights acquired by adverse possession or by prescription, directly or through another, in and to the drainage or storage, or both of storm or surface waters, or both, through, under, or over lands, landforms, watercourses, sloughs, streams, ponds, lakes, and swamps, all beginning, in each case or instance, at a point where storm or surface waters first enter the storm or surface water system of the Town and ending in each case or instance at a point where such storm or surface waters exit from the storm or surface water system of the Town, and in width to the full extent of inundation caused by the largest storm or flood condition. Each town utility and department transferring properties, interests and rights is released from the primary responsibility of maintaining the same; such primary responsibility is assigned to the drainage utility of the said properties, interests and rights is equal to the release from primary responsibility heretofore borne by the transferring utility or department. (Ord. 1137 §1(part), 1994).

## Chapter 13.50

### STORMWATER MANAGEMENT

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**ARTICLE 1: FINDINGS OF FACT, NEED AND PURPOSE**

**13.50.010 Findings of fact.** The Town Council finds that:

(1) Stormwater pollution is a problem associated with land utilization and development and the common occurrence of potential pollutants such as pesticides, fertilizers, petroleum products, pet wastes and numerous others.

Land utilization and development is also known to increase both the volume and duration of peak flows. The resulting erosion, scouring, and deposition of sediment affect the ecological balance in the stream.

Sedimentation and stormwater pollution cause diversity of species to decrease and allows more tolerant (and usually less desirable) species to remain.

Stormwater pollution can cause or contribute to closures of shellfish beds and swimming beaches and other restrictions on public use of the waters within the Town of Steilacoom

(2) An expanding population and increased development of land have led to:

Water quality degradation through discharge of nutrients, metals, oil and grease, toxic materials, and other detrimental substances including, without limitation, insect and weed control compounds;

Drainage and storm and surface water runoff problems within the Town of Steilacoom; and

Safety hazards to both lives and property posed by uncontrolled water runoff on streets and highways.

(3) Continuation of present stormwater management practices, to the extent that they exist, will lead to water quality degradation, erosion, property damage, and endanger the health and safety of the inhabitants of the Town of Steilacoom.

(4) In the future such problems and dangers will be reduced or avoided if existing properties and future developers, both private and public, provide for stormwater quality and quantity controls.

(5) Stormwater quality and quantity controls can be achieved when land is developed or redeveloped by implementing appropriate best management practices.

(6) Best management practices can be expected to perform as intended only when properly designed, constructed and maintained. (Ord. 1307 §1(part), 2002).

**13.50.020 Need.** The Town Council finds that this chapter is necessary in order to:

(1) Minimize or eliminate water quality degradation;

(2) Prevent erosion and sedimentation in creeks, streams, ponds, lakes and other water bodies;

(3) Protect property owners adjacent to existing and developing lands from increased runoff rates which could cause erosion of abutting property;

(4) Preserve and enhance the suitability of waters for contact recreation, fishing, and other beneficial uses;

(5) Preserve and enhance the aesthetic quality of the water;

(6) Promote sound development policies which respect and preserve the Town's surface water, ground water and sediment;

(7) Ensure the safety of Town of Steilacoom roads and rights-of-way;

(8) Decrease stormwater-related damage to public and private property from existing and future runoff; and

(9) To protect the health, safety and welfare of the inhabitants of the Town. (Ord. 1307 §1(part), 2002).

**13.50.030 Purpose.** The provisions of this chapter are intended to guide and advise all who conduct new development or redevelopment within the Town. The provisions of this chapter establish the minimum level of compliance which must be met to permit a property to be developed or redeveloped within the Town. It is the purpose of this chapter to:

- (1) Minimize water quality degradation and sedimentation in streams, ponds, lakes, wetlands and other water bodies;
- (2) Minimize the impact of increased runoff, erosion and sedimentation caused by land development and maintenance practices;
- (3) Maintain and protect groundwater resources;
- (4) Minimize adverse impacts of alterations on ground and surface water quantities, locations and flow patterns;
- (5) Decrease potential landslide, flood and erosion damage to public and private property;
- (6) Promote site planning and construction practices that are consistent with natural topographical, vegetational and hydrological conditions;
- (7) Maintain and protect the town stormwater management infrastructure;
- (8) Provide a means of regulating clearing and grading of private and public land while minimizing water quality impacts in order to protect public health and safety; and
- (9) Provide minimum development regulations and construction procedures which will preserve, replace or enhance, to the maximum extent practicable, existing vegetation to preserve and enhance the natural qualities of land, wetlands and water bodies.
- (10) Meet the requirements of the Western Washington Phase II Municipal Stormwater Permit. (Ord. 1560 §10, 2017; Ord. 1307 §1(part), 2002).

## **ARTICLE 2: DEFINITIONS**

For the purposes of this chapter, the following definitions shall apply:

**13.50.040 Administrator.** "Administrator" means the Town of Steilacoom's Administrator. (Ord. 1307 §1(part), 2002).

**13.50.050 Approval.** "Approval" means the proposed work or completed work conforms to this chapter in the opinion of the Director, or designee. (Ord. 1307 §1(part), 2002).

**13.50.055 Arterial.** "Arterial" means a road or street primarily for through traffic. The term generally includes roads or streets considered collectors. It does not include local access roads which are generally limited to providing access to abutting property. (Ord. 1560, 2017).

**13.50.060 Basin plan.** "Basin plan" means a plan and all implementing regulations and procedures including but not limited to, land use management adopted by ordinance for managing surface and storm water management facilities and features within individual sub-basins. (Ord. 1307 §1(part), 2002).

**13.50.070 Best management practice.** "Best management practice" or "BMP" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water. BMPs are listed and described in the manual. (Ord. 1307 §1(part), 2002).

**13.50.075 Bioretention.** "Bioretention" means engineered facilities that treat stormwater by passing it through a specified soil profile, and either retain or detain the treated stormwater for flow attenuation. Refer to the *Stormwater Management Manual for Western Washington (SWMMWW)*, Chapter 7 of Volume V for Bioretention BMP types and design specifications. (Ord. 1560, 2017).

**13.50.077 Certified Erosion and Sediment Control Lead (CESCL).** "Certified Erosion and Sediment Control Lead (CESCL)" means an individual who has current certification through

an approved erosion and sediment control training program that meets the minimum training standards established by the Washington State Department of Ecology (Ecology) (see BMP C160 in the Stormwater Management Manual for Western Washington (SWMMWW)). A CESCL is knowledgeable in the principles and practices of erosion and sediment control. The CESCL must have the skills to assess site conditions and construction activities that could impact the quality of stormwater and, the effectiveness of erosion and sediment control measures used to control the quality of stormwater discharges. Certification is obtained through an Ecology approved erosion and sediment control course. (Ord. 1560, 2017).

**13.50.080 Civil engineer.** "Civil engineer" means a professional engineer licensed in the state of Washington in civil engineering. (Ord. 1307 §1(part), 2002).

**13.50.090 Civil engineering.** "Civil engineering" means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of mankind. (Ord. 1307 §1(part), 2002).

**13.50.100 Clearing.** "Clearing" means the destruction and removal of vegetation by manual, mechanical, or chemical methods. (Ord. 1307 §1(part), 2002).

**13.50.110 Commercial agriculture.** "Commercial agriculture" means those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five (5) years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity. (Ord. 1307 §1(part), 2002).

**13.50.115 Converted vegetation (areas).** "Converted vegetation (areas)" means the surfaces on a project site where native vegetation, pasture, scrub/shrub, or other unmaintained non-native vegetation (e.g., Himalayan blackberry, scotch broom) are converted to lawn or landscaped areas, or where native vegetation is converted to pasture. (Ord. 1560, 2017).

**13.50.120 Critical areas.** "Critical areas" means, at a minimum, areas which include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems. Critical areas are regulated in Chapter 16.16 SMC. (Ord. 1307 §1(part), 2002).

**13.50.130 (Deleted).** (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.140 Detention.** "Detention" means the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system, the difference being held in temporary storage. (Ord. 1307 §1(part), 2002).

**13.50.150 Detention facility.** "Detention facility" means an above or below ground facility, such as a pond or tank, that temporarily stores stormwater runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored stormwater. (Ord. 1307 §1(part), 2002).



**13.50.155 Discharge Point.** "Discharge point" means the location where a discharge leaves the Town's MS4 through the Town's MS4 facilities/BMP's designed to infiltrate. (Ord. 1560, 2017).

**13.50.160 Drainage basin.** "Drainage basin" means a geographic and hydrologic subunit of a watershed. (Ord. 1307 §1(part), 2002).

**13.50.170 Director.** "Director" means the Town of Steilacoom Public Works Director. (Ord. 1307 §1(part), 2002).

**13.50.180 Earth material.** "Earth material" means any rock, natural soil or fill and/or any combination thereof. (Ord. 1307 §1(part), 2002).

**13.50.190 Ecology.** "Ecology" means the Washington State Department of Ecology. (Ord. 1307 §1(part), 2002).

**13.50.195 Effective impervious surface.** "Effective impervious surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system. Impervious surfaces are considered effective if: 1) the runoff is dispersed through at least one hundred feet of native vegetation in accordance with BMP T5.30-"Full Dispersion" as described in Chapter 5 of Volume V of the Stormwater Management Manual for Western Washington; 2) residential roof runoff is infiltrated in accordance with Downspout Full Infiltration Systems in BMP T5.10A in Volume III of the Stormwater Management Manual for Western Washington; or 3) approved continuous runoff modeling methods indicated that the entire runoff file is infiltrated. (Ord. 1560, 2017).

**13.50.197 Erodible or leachable materials.** "Erodible or leachable materials" means wastes, chemicals, or other substances that measurably alter the physical or chemical characteristics of runoff when exposed to rainfall. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage. (Ord. 1560, 2017).

**13.50.200 Erosion.** "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Detachment and movement of soil or rock fragments by water, wind, ice, or gravity. (Ord. 1307 §1(part), 2002).

**13.50.210 Excavation.** "Excavation" means the mechanical removal of earth material. (Ord. 1307 §1(part), 2002).

**13.50.220 (Deleted).** (Ord. 1560, 2017; Ord. 1307 §1(part), 2002).

**13.50.230 Experimental BMP.** "Experimental BMP" means a BMP that has not been tested and evaluated by the Department of Ecology in collaboration with local governments and technical experts. (Ord. 1307 §1(part), 2002).

**13.50.240 Fill.** "Fill" means a deposit of earth material placed by artificial means. (Ord. 1307 §1(part), 2002).

**13.50.250 Forest practice.** "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but

not limited to: road and trail construction; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees and brush control. (Ord. 1307 §1(part), 2002).

**13.50.260 Frequently flooded areas.** "Frequently flooded areas" means the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program. (Ord. 1307 §1(part), 2002).

**13.50.270 Geologically hazardous areas.** "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake or other geological events, are not suited to the siting of commercial, residential or industrial development consistent with public health or safety concerns. (Ord. 1307 §1(part), 2002).

**13.50.280 Grade.** "Grade" means the slope of a road, channel, or natural ground. The finished surface of a canal bed, roadbed, top of embankment, or bottom of excavation; any surface prepared for the support of construction such as paving or the laying of a conduit. (Ord. 1307 §1(part), 2002).

**13.50.290 To grade.** "To grade" means to finish the surface of a canal bed, roadbed, top of embankment or bottom of excavation. (Ord. 1307 §1(part), 2002).

**13.50.300 Ground water.** "Ground water" means water in a saturated zone or stratum beneath the surface of land or a surface water body. (Ord. 1307 §1(part), 2002).

**13.50.305 Hard Surface.** "Hard Surface" means an impervious surface, a permeable pavement, or a vegetated roof. (Ord. 1560, 2017).

**13.50.307 Highway.** "Highway" means a main public road connecting towns and cities. (Ord. 1560, 2017).

**13.50.310 Hydroperiod.** "Hydroperiod" means the seasonal occurrence of flooding and/or soil saturation; it encompasses depth, frequency, duration, and seasonal pattern of inundation. (Ord. 1307 §1(part), 2002).

**13.50.320 Illicit connection.** "Illicit connection" means any man-made conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.330 Illicit discharge.** "Illicit discharge" means any direct or indirect non-stormwater discharge to the Town's storm drain system, except as expressly exempted by this chapter. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.335 Impervious surface.** "Impervious surface" means a non-vegetated surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces

which similarly impeded the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling. (Ord. 1560, 2017).

**13.50.340 Interflow.** "Interflow" means that portion of precipitation that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface for example, in a wetland, spring or seep. (Ord. 1307 §1(part), 2002).

**13.50.350 Land disturbing activity.** "Land disturbing activity" means any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening, are not considered land disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.355 Low impact development (LID).** "Low impact development (LID) means a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning and disturbed stormwater management practices that are integrated into a project design. (Ord. 1560, 2017).

**13.50.360 (Deleted).** (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.363 LID best management practice.** "LID best management practice means distributed stormwater management practices, integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration. LID BMP's include, but are not limited to, bioretention/rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, minimal excavation foundations, vegetated roofs, and water re-use. (Ord. 1560, 2017).

**13.50.365 LID Principles.** "LID Principles" means land use management strategies that emphasize conservation, use of on-site natural features, and site planning to minimize impervious surfaces, native vegetation loss, and stormwater runoff. (Ord. 1560, 2017).

**13.50.367 Maintenance.** "Maintenance" means repair and maintenance activities conducted on currently serviceable structures, facilities, and equipment that involves no expansion or use beyond that previously existing and results in no significant adverse hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include replacement of dysfunctional facilities, including cases where environmental permits require preplacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. One example is the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the same span or width of roadway. In regard to stormwater facilities, maintenance includes assessment to ensure ongoing proper operation, removal of built up pollutants (i.e. sediments), replacement of failed or failing

treatment media, and other actions taken to correct defects as identified in the maintenance standards of Chapter 4, Volume V of the Stormwater Management Manual for Western Washington. (Ord. 1560, 2017).

**13.50.370 Mitigation.** "Mitigation" means, in the following order of preference:

- (a) Avoiding the impact altogether by not taking a certain action or part of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- (e) Compensation for the impact by replacing, enhancing, or providing substitute resources or environments. (Ord. 1307 §1(part), 2002).

**13.50.373 Municipal separate storm sewer system (MS4).** "Municipal separate storm sewer system" or "MS4" means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (a) Owned or operated by a state, Town, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to water of the United States;
- (b) Designed or used for collected and conveying stormwater;
- (c) Which is not a combined sewer; and
- (d) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR122.2. (Ord. 1560, 2017).

**13.50.375 National pollutant discharge elimination system stormwater discharge permit (NPDES permit).** "National Pollutant Discharge Elimination System Stormwater Discharge Permit" or "NPDES Permit" means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC section 1342(b)) that authorizes the discharge of pollutants to the waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis. (Ord. 1560, 2017).

**13.50.377 Native vegetation.** "Native vegetation" means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas Fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed. (Ord. 1560, 2017).

**13.50.380 Natural location.** "Natural location" means the location of those channels, swales, and other non-manmade conveyance systems as defined by the first documented topographic contours existing for the subject property, either from maps or photographs, or such other means as appropriate. (Ord. 1307 §1(part), 2002).

**13.50.383 New development.** "New development" means land disturbing activities, including Class IV general forest practices that are conversions from timber land to other uses,

structural development, including construction, installation or expansion of a building or other structure, creation of hard surfaces; and subdivision, short subdivision and binding site plans as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development. (Ord. 1560, 2017).

**13.50.385 On-site stormwater management BMP's.** "On-site stormwater management BMPs" is a synonym for Low impact development BMPs. (Ord. 1560, 2017).

**13.50.387 Outfall.** "Outfall" means a point source as defined by 40 CFR 122.2 at the point where a discharge leaves the Town's MS4 and enters a surface receiving waterbody or surface receiving waters. Outfall does not include pipes, tunnels, or other conveyances which connect segments of the same stream or other surface waters and are used to convey primarily surface water (i.e. culverts). (Ord. 1560, 2017).

**13.50.390 Permeable pavement.** "Permeable pavement" means pervious concrete, porous asphalt, permeable pavers or other forms of pervious or porous paving material intended to allow passage of water through the pavement section. It often includes an aggregate base that provides structural support and acts as a stormwater reservoir. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.400 (Deleted).** (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.410 Person.** "Person" means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated. (Ord. 1307 §1(part), 2002).

**13.50.415 Pervious surface.** "Pervious surface" means any surface material that allows stormwater to infiltrate into the ground. Examples include lawn, landscape, pasture, native vegetation areas, and permeable pavements. (Ord. 1560, 2017).

**13.50.420 Pollution.** "Pollution" means contamination or other alteration of the physical, chemical, or biological properties, of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. (Ord. 1307 §1(part), 2002).

**13.50.423 Pollution-generating impervious surface (PGPS).** "Pollution-generating impervious surface (PGIS)" means those impervious surfaces considered to be a significant source of pollutants in stormwater runoff. Such surfaces include those which are subject to: vehicular use; industrial activities (as further defined in the glossary of the Stormwater Management Manual for Western Washington); or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall; metal roofs unless they are coated with an inert, non-leachable material (e.g. baked-on enamel coating); or roofs that are subject to venting significant amounts of dust, mists, or fumes from manufacturing, commercial, or other indoor activities. (Ord. 1560, 2017).

**13.50.425 Pollution-generating pervious surfaces (PGPS).** “Pollution-generating pervious surfaces (PGPS)” means any non-impervious surface subject to vehicular use, industrial activities (as further defined in the glossary of the Stormwater Management Manual for Western Washington); or storage of erodible or leachable materials, wastes, or chemicals, and that receive direct rainfall or run-on or blow-in rainfall, use of pesticides and fertilizers or loss of soil. Typical PGPS include permeable pavement subject to vehicular use, lawns and landscaped areas including golf courses, parks, cemeteries, and sports fields (natural and artificial turf). (Ord. 1560, 2017).

**13.50.427 Pre-developed condition.** “Pre-developed condition” means the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The pre-developed condition shall be assumed to be a forested land cover unless reasonable, historic information is provided that indicates the site was prairie prior to settlement. (Ord. 1560, 2017).

**13.50.430 Project site.** “Project site” means that portion of property, properties or right-of-way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces. (Ord. 1560, 2017; Ord. 1307 §1(part), 2002).

**13.50.433 Rain garden.** “Rain Garden” means a non-engineered shallow landscaped depression, with compost-amended native soils and adapted plants. The depression is designed to pond and temporarily store stormwater runoff from adjacent areas, and to allow stormwater to pass through the amended soil profile. Refer to the Rain Garden Handbook for Western Washington Homeowners (WSU 2007 or as revised) for rain garden specifications and construction guidance. (Ord. 1560, 2017).

**13.50.435 Receiving waterbody.** “Receiving waterbody” or “Receiving waters” means naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, or groundwater, to which a MS4 discharges. (Ord. 1560, 2017).

**13.50.436 Redevelopment.** “Redevelopment” means, on an already substantially developed site (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces, the expansion of a building footprint or addition or replacement of a structure, structural development including construction, installation or expansion of a building or other structure, and/or replacement of hard surface that is not part of a routine maintenance activity, and land disturbing activities. (Ord. 1560, 2017).

**13.50.437 Replaced hard surface.** “Replaced hard surface” means for structures, the removal and replacement of hard surfaces down to the foundation. For other hard surfaces, the removal down to bare soil or base course and replacement. (Ord. 1560, 2017).

**13.50.438 Replaced impervious surface.** “Replaced impervious surface” means for structures, the removal and replacement of any exterior impervious surfaces or foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement. (Ord. 1560, 2017).

**13.50.440 Regional retention/detention system.** “Regional retention/detention system” means a stormwater quantity control structure designed to correct existing excess surface water runoff problems of a basin or sub-basin. The area downstream has been previously identified

as having existing or predicted significant and regional flooding and/or erosion problems. This term is also used when a detention facility is used to detain stormwater runoff from a number of different businesses, developments or areas within a catchment. (Ord. 1307 §1(part), 2002).

**13.50.450 Retention/detention facility (R/D).** "Retention/detention facility (R/D)" means a type of drainage facility designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground; or to hold surface and stormwater runoff for a short period of time and then release it to the surface and stormwater management system. (Ord. 1307 §1(part), 2002).

**13.50.460 Site.** "Site" means the area defined by legal boundaries of a parcel or parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.470 Slope.** "Slope" means the degree of deviation of a surface from the horizontal; measured as a numerical ratio, percent, or in degrees. Expressed as a ratio, the first number is the horizontal distance (run) and the second is the vertical distance (rise), as 2:1. A 2:1 slope is a 50 percent slope. Expressed in degrees, the slope is the angle from the horizontal plane, with a 90° slope being vertical (maximum) and 45° being a 1:1 or 100 percent slope. (Ord. 1307 §1(part), 2002).

**13.50.480 (Deleted).** (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.490 Soil.** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants. (Ord. 1307 §1(part), 2002).

**13.50.500 Source control BMP.** "Source Control BMP" means a structure of operation that is intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. The *Stormwater Management Manual for Western Washington (SWMMWW)* separates source control BMPs into two types. Structural Source Control BMPs are physical, structural or mechanical devices, or facilities that are intended to prevent or reduce pollutants from entering stormwater. Operational BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater. See Volume IV of the SWMMWW. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.510 Stormwater.** "Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility. (Ord. 1307 §1(part), 2002).

**13.50.520 Stormwater drainage system.** "Stormwater drainage system" means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter stormwater. (Ord. 1307 §1(part), 2002).

**13.50.530 Stormwater facility.** "Storm-water facility" means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches,

culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catchbasins, oil/water separators, sediment basins and modular pavement. (Ord. 1307 §1(part), 2002).

**13.50.540 Stormwater Management Manual (Manual).** "Stormwater Management Manual" or "Manual" means the 2014 edition of the State of Washington, Department of Ecology's "*Stormwater Management Manual for Western Washington*" and all amendments and additions thereto. The Manual contains BMPs to prevent or reduce pollution. (Ord. 1560, 2017; Ord. 1307 §1(part), 2002).

**13.50.550 Stormwater site plan.** "Stormwater site plan" means a comprehensive report containing all of the technical information and analysis necessary for the Town to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements. Guidance on preparing a Stormwater Site Plan is contained in the SWMMWW. (Ord. 1560, 2017; Ord. 1307 §1(part), 2002).

**13.50.555 Threshold discharge area.** "Threshold Discharge Area" means an onsite area draining to a single natural discharge location or multiple natural discharge locations that combine within one-quarter mile downstream (as determined by the shortest flow path). The examples in Figure 2.3.1 in Volume I of the SWMMWW illustrate this definition. The purpose of this definition is to clarify how the thresholds are applied to project sites with multiple discharge points. (Ord. 1560, 2017).

**13.50.560 Treatment BMP.** "Treatment BMP" means a BMP that is intended to remove pollutants from stormwater. A few examples of treatment BMPs are detention ponds, oil/water separators, biofiltration swales and constructed wetlands. (Ord. 1307 §1(part), 2002).

**13.50.570 Unstable slopes.** "Unstable slopes" means those sloping areas of land which have in the past exhibited, are currently exhibiting, or will likely in the future exhibit, mass movement of earth. (Ord. 1307 §1(part), 2002).

**13.50.575 Vehicular use.** "Vehicular Use" means regular use of an impervious or pervious surface by motor vehicles. The following are subject to regular vehicular use: roads, un-vegetated road shoulders, bike lanes within the traveled lane of a roadway, driveways, parking lots, unrestricted access fire lanes, vehicular equipment storage yards, and airport runways. The following are not considered subject to regular vehicular use: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles, restricted access fire lanes, and infrequently used maintenance access roads. (Ord. 1560, 2017).

**13.50.580 Water body.** "Water body" means surface waters including rivers, streams, lakes, marine waters, estuaries, and wetlands. (Ord. 1307 §1(part), 2002).

**13.50.590 Watershed.** "Watershed" means a geographic region within which water drains into a particular river, stream, or body of water as identified and numbered by the State of Washington Water Resource Inventory Areas (WRIAs) as defined in Chapter 173-500 WAC. (Ord. 1307 §1(part), 2002).

**13.50.600 Wetlands.** "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands



do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were intentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetland areas. (Ord. 1560, 2017; Ord. 1307 §1(part), 2002).

**13.50.610 Vegetation.** "Vegetation" means all organic plant life growing on the surface of the earth. (Ord. 1307 §1(part), 2002).

### **ARTICLE 3: GENERAL PROVISIONS**

**13.50.620 Abrogation and greater restrictions.** It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 1307 §1(part), 2002).

**13.50.630 Interpretation.** The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 1307 §1(part), 2002).

### **ARTICLE 4: APPLICABILITY**

**13.50.640 More strict applies.** When any provision of any other chapter of the Town's regulations conflicts with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter. (Ord. 1307 §1(part), 2002).

**13.50.645 Thresholds.** Not all of the Minimum Requirements apply to every development or redevelopment project. The applicability varies depending on the project type and size. Use the flow charts in Figures 2.4.1 and 2.4.2 in Volume I of the Stormwater Management Manual for Western Washington to determine which of the Minimum Requirements apply. Use the thresholds at the time of application for a subdivision plat, short plat, building permit, or other construction permit. The plat or short plat approval shall identify all stormwater BMPs that are required for each lot. For projects involving only land disturbing activities (e.g., clearing or grading), the thresholds apply at the time of application for the permit allowing or authorizing that activity. (Ord. 1560, 2017).

**13.50.650 Written procedures.** The Director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. (Ord. 1307 §1(part), 2002).

**13.50.660 (Deleted).** (Ord. 1560, 2017; Ord. 1307 §1(part), 2002).

### **ARTICLE 5: REGULATED ACTIVITIES AND ALLOWED ACTIVITIES**

**13.50.670 Regulated activities.** Prior to fulfilling the requirements of this chapter, the Town shall not grant any approval or permission to conduct a regulated activity including but not limited to the following:

Building permit, commercial or residential; conditional use permit; franchise right-of-way construction permit; grading and clearing permit; planned area development; right-of-way permit; shoreline substantial development permit; shoreline variance; shoreline conditional use

permit; shoreline environmental redesignation; variance; zone reclassification; subdivision; short subdivision; special use permit; utility and other use permit; or any subsequently adopted permit or required approval not expressly exempted by this chapter.

(1) New Development:

- (a) Land disturbing activities;
- (b) Structural development, including construction; installation or expansion of a building or other structure;
- (c) Creation of impervious surfaces;
- (d) Class IV general forest practices that are conversions from timber land to other uses;
- (e) Subdivision, or short subdivision, as defined in Ch.58.17.020 RCW.

(2) Redevelopment. Redevelopment on an already developed site, the creation or addition of impervious surfaces, structural development including construction, installation or expansion of a building or other structure, land disturbing activity, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities associated with structural or impervious redevelopment.

(3) Prohibited Discharges –

(a) No person shall throw, drain, or otherwise discharge, cause or allow others under his/her control to throw, drain or otherwise discharge into the Town's stormwater drainage system (MS4) any materials other than stormwater.

(b) Examples of prohibited contaminants include but are not limited to the following:

- Trash or debris.
- Construction materials.
- Petroleum products including but not limited to oil, gasoline, grease, fuel oil and heating oil.
- Antifreeze and other automotive products.
- Metals in either particulate or dissolved form.
- Flammable or explosive materials.
- Radioactive material.
- Batteries.
- Acids, alkalis, or bases.
- Paints, stains, resins, lacquers, or varnishes.
- Degreasers and/or solvents.
- Drain cleaners.
- Pesticides, herbicides, or fertilizers.
- Steam cleaning wastes.
- Soaps, detergents, or ammonia.
- Swimming pool cleaning wastewater or filter backwash.
- Chlorine, bromine, or other disinfectants.
- Heated water.
- Domestic animal wastes.
- Sewage.
- Recreational vehicle waste.
- Animal carcasses.
- Food wastes.
- Bark and other fibrous materials.
- Lawn clippings, leaves, or branches.
- Silt, sediment, concrete, cement or gravel.
- Dyes. Unless approved by the Town.
  - Chemicals not normally found in uncontaminated water.

- Any other process-associated discharge except as otherwise allowed in this section.
- Any hazardous material or waste not listed above.

(4) Allowable discharges – The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the Town determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- Diverted stream flows.
- Rising ground waters.
- Uncontaminated ground water infiltration –as defined in 40 CFR 35.2005(20).
- Uncontaminated pumped ground water.
- Foundation drains.
- Air conditioning condensation.
- Irrigation water from agricultural sources that is commingled with urban stormwater.
- Springs.
- Water from crawl space pumps.
- Footing drains.
- Flows from riparian habitats and wetlands.
- Discharges from emergency firefighting activities.

(5) Conditional Discharges – The following types of discharges shall not be considered illegal discharges for the purposes of this chapter, if they meet the stated conditions, or unless the Town determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

(a) Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. These planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system.

(b) Lawn watering and other irrigation runoff.

(c) De-chlorinated swimming pool discharges. These discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater system.

(d) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. These discharges shall be permitted, if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.

(e) Non-stormwater discharges covered by another NPDES permit. These discharges shall be in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations.

(f) Other non-stormwater discharges. These discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed and approved by the Town, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

(6) Prohibited Connections –

(a) The construction, use, maintenance, or continued existence of illicit connections to the stormwater system is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) A person is considered to be in violation of this section, if the person connects a line conveying sewage to the MS4 or allows such a connection to continue. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.680 (Deleted).** (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

## ARTICLE 6: GENERAL REQUIREMENTS

**13.50.690 Stormwater Management Manual adopted.** The Washington State Department of Ecology's 2014 edition of the *Stormwater Management Manual for Western Washington (SWMMWW)* is hereby adopted by reference and is herein referred to as the Manual. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.700 Stormwater best management practices (BMPs).** BMPs shall be used to control pollution from stormwater. BMPs shall be used to comply with the standards in this chapter. BMPs are in the Manual. (Ord. 1307 §1(part), 2002).

**13.50.710 Experimental BMPs.** In those instances where appropriate, BMPs are not in the manual, experimental BMPs should be considered. Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the manual in an effort to improve stormwater quality technology. Experimental BMPs must be approved in accordance with the approval process outlined in the manual. (Ord. 1307 §1(part), 2002).

**13.50.720 Illicit discharges.** Illicit discharges to stormwater drainage systems are prohibited. (Ord. 1307 §1(part), 2002).

## ARTICLE 7: APPROVAL STANDARDS

### 13.50.730 Development standards.

(a) New Development - All new development shall comply with Minimum Requirement #2.

(b) The following new development shall comply with Minimum Requirements #1 through 5 for the new and replaced hard surfaces and the land disturbed:

- Results in 2,000 square feet, or greater, of new plus replaced hard surface area or,
- Has land disturbing activity of 7,000 square feet or greater.

(c) The following new development shall comply with Minimum Requirements #1 through #9 for the new and replaced hard surfaces and the converted vegetation areas:

- Results in 5,000 square feet, or greater, of new plus replaced hard surface area or,
- Converts  $\frac{3}{4}$  acres, or more, of vegetation to lawn or landscaped areas, or,
- Converts 2.5 acres, or more, of native vegetation to pasture.

(d) Redevelopment - All redevelopment shall comply with Minimum Requirement #2.

(e) The following redevelopment shall comply with Minimum Requirements #1 through 5 for the new and replaced hard surfaces and the land disturbed:

- Results in 2,000 square feet, or greater, of new plus replaced hard surface area or,
- Has land disturbing activity of 7,000 square feet or greater.

(f) The following redevelopment shall comply with Minimum Requirements #1 through #9 for the new and replaced hard surfaces and the converted vegetation areas:

- Adds 5,000 square feet, or more of new hard surfaces or,
- Converts  $\frac{3}{4}$  acres, or more, of vegetation to lawn or landscaped areas, or,
- Converts 2.5 acres, or more, of native vegetation to pasture.

(g) For road-related projects, runoff from the replaced and new hard surfaces (including pavement, shoulders, curbs, and sidewalks) and the converted vegetation areas shall meet all the Minimum Requirements if the new hard surfaces total 5,000 square feet or more and total 50% or more of the existing hard surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.

(h) Other types of redevelopment projects shall comply with Minimum Requirements #1 through #9 for the new and replaced hard surfaces and the converted vegetation areas if the total of new plus replaced hard surfaces is 5,000 square feet or more, and the valuation of proposed improvements – including interior improvements – exceeds 50% of the assessed value of the existing site improvements.

(i) The Town may exempt or institute a stop-loss provision for redevelopment project from compliance with Minimum Requirement #5: On-Site Stormwater Management; Minimum Requirement #6: Runoff Treatment; Minimum Requirement #7: Flow Control; Minimum Requirement #8: Wetlands Protection; as applied to the replaced hard surfaces if the Town has adopted a plan and a schedule that fulfills those requirements in regional facilities.

(j) The Town may grant a variance/exemption to the application of the flow control requirements to replaced impervious surfaces if such application imposes a severe economic hardship.

(k) Minimum Requirements – This section describes the Minimum Requirements for stormwater management to new development and redevelopment sites. The previous section should be consulted to determine which of the minimum requirements apply to a given project. Figures 2.4.1 and 2.4.2 in Volume I of the SWMMWW should be consulted to determine whether the minimum requirements apply to new surfaces, replaced surfaces, or new and replaced surfaces.

(1) Minimum Requirement #1 – Preparation of Stormwater Site Plans. A Stormwater Site Plan is required from all projects meeting the thresholds in the previous section. Stormwater Site Plans shall use site-appropriate development principles to retain native vegetation and minimize impervious surfaces to the extent feasible. Stormwater Site Plans shall be prepared in accordance with Chapter 3 of Volume 1 of the Stormwater Management Manual for Western Washington (SWMMWW).

(2) Minimum Requirement #2 – Construction Stormwater Pollution Prevention Plan (SWPPP). An individual site is considered to be in compliance with this Minimum Requirements if the site is covered under Ecology's General NPDES Permit for Stormwater Discharges Associated with Construction Activities and fully implementing the requirements of that permit.

(A) *Thresholds.* All new development and redevelopment projects are responsible for preventing erosion and discharge of sediment and other pollutants into receiving waters.

A Construction Stormwater Pollution Prevention Plan (SWPPP) is required for all projects which result in 2,000 sq. ft. or more of new plus replaced hard surface area, or which disturb 7,000 sq. ft. or more of land.

Projects below those thresholds are not required to prepare a Construction SWPPP, but must consider all of the Elements listed below for Construction SWPPPs and develop controls for all elements that pertain to the project site.

(B) *General Requirements.*

(1) The SWPPP shall include a narrative and drawings. All BMPs shall be clearly referenced in the narrative and marked on the drawings. The SWPPP narrative shall include documentation to explain and justify the pollution prevention decisions made for the project. Each of the thirteen elements listed below must be considered and included in the SWPPP unless site conditions render the element unnecessary and the exemption from that element is clearly justified in the narrative of the SWPPP.

(2) Clearing and grading activities for developments shall be permitted only if conducted pursuant to an approved site development plan (e.g., subdivision approval) that establishes permitted areas of clearing, grading, cutting, and filling. These permitted clearing and grading areas and any other areas required to preserve critical or sensitive areas, buffers, native growth protection easements, or tree retention areas, shall be delineated on the site plans and the development site.

(3) The SWPPP shall be implemented beginning with initial land disturbance and until final stabilization. Sediment and Erosion control BMPs shall be consistent with the BMPs contained in chapter 4 of Volume II of the Stormwater Management Manual for Western Washington (SWMMWW).

(4) Seasonal Work Limitations - From October 1 through April 30, clearing, grading, and other soil disturbing activities may only be authorized if silt-laden runoff will be prevented from leaving the site through a combination of the following:

(a) Site conditions including existing vegetative coverage, slope, soil type and proximity to receiving waters; and

(b) Limitations on activities and the extent of disturbed areas; and

(c) Proposed erosion and sediment control measures.

(5) The following activities are exempt from the seasonal clearing and grading limitations:

(a) Routine maintenance and necessary repair of erosion and sediment control BMPs,

(b) Routine maintenance of public facilities or existing utility structures that do not expose the soil or result in the removal of the vegetative cover to soil, and

(c) Activities where there is one hundred percent infiltration of surface water runoff within the site in approved and installed erosion and sediment control facilities.

(C) *Construction Stormwater Pollution Prevention Plan (SWPPP) Elements*

(1) Preserve Vegetation/Mark Clearing Limits:

(a) Before beginning land disturbing activities, including clearing and grading, clearly mark all clearing limits, sensitive areas and their buffers, and trees that are to be preserved within the construction area.

(b) Retain the duff layer, native top soil, and natural vegetation in an undisturbed state to the maximum degree practicable.

(2) Establish Construction Access:

(a) Limit construction vehicle access and exit to one route, if possible.

(b) Stabilize access points with a pad of quarry spalls, crushed rock, or other equivalent BMPs, to minimize tracking of sediment onto public roads.

(c) Locate wheel wash or tire baths on-site, if the stabilized constructions entrance is effective in preventing tracking sediment onto roads.

(d) If sediment is tracked off site, clean the affected roadways thoroughly at the end of each day, or more frequently as necessary (for example, during wet weather). Remove sediment from roads by shoveling, sweeping, or pick up and transport the sediment to a controlled sediment disposal area.

(e) Conduct street washing only after sediment is removed in accordance with 2.d, above.

(f) Control street wash wastewater by pumping back on-site, or otherwise prevent it from discharging into systems tributary to waters of the State.

(3) Control Flow Rates:

(a) Protect properties and waterways downstream of development sites from erosion and the associated discharge of turbid waters due to increases in the velocity and peak volumetric flow rate of stormwater runoff from the project site.

(b) Where necessary to comply with 3.a, above, construct stormwater retention or detention facilities as one of the first steps in grading. Ensure that detention facilities function properly before constructing site improvements (e.g., impervious surfaces).

(c) If permanent infiltration ponds are used for flow control during construction, protect these facilities from siltation during the construction phase.

(4) Install Sediment Controls:

(a) Design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants.

(b) Construct sediment control BMPs (sediment ponds, traps, filters, etc.) as one of the first steps in grading. These BMPs shall be functional before other land disturbing activities take place.

(c) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.

(d) Direct stormwater runoff from disturbed areas through a sediment pond or other appropriate sediment removal BMP, before the runoff leaves a construction site or before discharge to an infiltration facility. Runoff from fully stabilized areas may be discharged without a sediment removal BMP, but must meet the flow control performance standard in 3.a, above.

(e) Locate BMPs intended to trap sediment on-site in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages.

(f) Where feasible, design outlet structures that withdraw impounded stormwater from the surface to avoid discharging sediment that is still suspended lower in the water column.

(5) Stabilize Soils:

(a) Stabilize exposed and unworked soils by application of effective BMPs that prevent erosion. Applicable BMPs include, but are not limited to: temporary and permanent seeding, sodding, mulching, plastic covering, erosion control fabrics and matting, soil application of polyacrylamide (PAM), the early application of gravel base early on areas to be paved, and dust control.

(b) Control stormwater volume and velocity within the site to minimize soil erosion.

(c) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion.

(d) Soils must not remain exposed and unworked for more than the time periods set forth below to prevent erosion:

- During the dry season (May 1 – September 30): 7 days
- During the wet season (October 1 – April 30): 2 days

(e) Stabilize soils at the end of the shift before a holiday or weekend if needed based on the weather forecast.

(f) Stabilize soil stockpiles from erosion, protect with sediment trapping measures, and where possible, locate away from storm drain inlets, waterways and drainage channels.

(g) Minimize the amount of soil exposed during construction activity.

(h) Minimize the disturbance of steep slopes.

(i) Minimize soil compaction and, unless infeasible, preserve topsoil.

(6) Protect Slopes:

(a) Design and construct cut-and-fill slopes in a manner to minimize erosion. Applicable practices include, but are not limited to, reducing continuous length of slope with terracing and diversions, reducing slope steepness, and roughening slope surfaces (for example, track walking).

(b) Divert off-site stormwater (run-on) or ground water away from slopes and disturbed areas with interceptor dikes, pipes and/or swales. Off-site stormwater should be managed separately from stormwater generated on the site.

(c) At the top of slopes, collect drainage in pipe slope drains or protected channels to prevent erosion.

- Temporary pipe slope drains must handle the peak volumetric flow rate calculated using a 10-minute time step from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year 1-hour flow rate predicted by an approved continuous runoff model, increased by a factor of 1.6, may be used. The hydrologic analysis must use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis must use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the Western Washington Hydrology Model to predict flows, bare soil areas should be modeled as "landscaped area."

(d) Place excavated material on the uphill side of trenches, consistent with safety and space considerations.

(e) Place check dams at regular intervals within constructed channels that are cut down a slope.

(7) Protect Drain Inlets:

(a) Protect storm drain inlets made operable during construction so that stormwater runoff does not enter the conveyance system without first being filtered or treated to remove sediment.

(b) Clean or remove and replace inlet protection devices when sediment has filled one-third of the available storage (unless a different standard is specified by the product manufacturer).

(8) Stabilize Channels and Outlets:

(a) Design, construct, and stabilize all on-site conveyance channels to prevent erosion from the following expected peak flows:

- Channels must handle the peak volumetric flow rate calculated using a 10-minute time step from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year, 1-hour flow rate indicated by an approved continuous runoff model, increased by a factor of 1.6, may be used. The hydrologic analysis must use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis shall use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the Western Washington Hydrology Model to predict flows, bare soil areas should be modeled as "landscaped area."



(b) Provide stabilization, including armoring material, adequate to prevent erosion of outlets, adjacent stream banks, slopes, and downstream reaches at the outlets of all conveyance systems.

(9) Control Pollutants:

(a) Design, install, implement and maintain effective pollution prevention measures to minimize the discharge of pollutants.

(b) Handle and dispose all pollutants, including waste materials and demolition debris that occur on-site in a manner that does not cause contamination of stormwater.

(c) Provide cover, containment, and protection from vandalism for all chemicals, liquid products, petroleum products, and other materials that have the potential to pose a threat to human health or the environment. On-site fueling tanks must include secondary containment. Secondary containment means placing tanks or containers within an impervious structure capable of containing 110% of the volume contained in the largest tank within the containment structure. Double-walled tanks do not require additional secondary containment.

(d) Conduct maintenance, fueling and repair of heavy equipment and vehicles using spill prevention and control measures. Clean contaminated surfaces immediately following any spill incident.

(e) Discharge wheel wash or tire bath wastewater to a separate on-site treatment system that prevents discharge to surface water, such as closed-loop recirculation or upland application, or to the sanitary sewer, with Town approval.

(f) Apply fertilizers and pesticides in a manner and at application rates that will not result in loss of chemical to stormwater runoff. Follow manufacturers' label requirements for application rates and procedures.

(g) Use BMPs to prevent contamination of stormwater runoff by pH modifying sources. The sources for this contamination include, but are not limited to: bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, dewatering concrete vaults, concrete pumping and mixer washout waters.

(h) Adjust the pH of stormwater if necessary to prevent violations of water quality standards.

(i) Ensure that washout of concrete trucks is performed off-site or in designated concrete washout areas only. Do not wash out concrete trucks onto the ground, or into storm drains, open ditches, streets, or streams. Do not dump excess concrete on-site, except in designated concrete washout areas. Concrete spillage or concrete discharge to surface waters of the State is prohibited.

(j) Obtain written approval from Ecology before using chemical treatment other than CO<sub>2</sub> or dry ice to adjust pH.

(10) Control De-Watering:

(a) Discharge foundation, vault, and trench de-watering water, which have similar characteristics to stormwater runoff at the site, into a controlled conveyance system before discharge to a sediment trap or sediment pond.

(b) Discharge clean, non-turbid de-watering water, such as well-point ground water, to systems tributary to, or directly into surface waters of the State, as specified in 8, above, provided the de-watering flow does not cause erosion or flooding of receiving waters. Do not route clean dewatering water through stormwater sediment ponds. Note that "surface waters of the State" may exist on a construction site as well as off site; for example, a creek running through a site.

(c) Handle highly turbid or otherwise contaminated dewatering water separately from stormwater.

- (d) Other treatment or disposal options may include:
  - (i) Infiltration
  - (ii) Transport off-site in vehicle, such as a vacuum flush truck, for legal disposal in a manner that does not pollute state waters.
  - (iii) Ecology-approved on-site chemical treatment or other suitable treatment technologies.
  - (iv) Sanitary or combined sewer discharge with Town approval, if there is no other option.
  - (v) Use of a sedimentation bag that discharges to a ditch or swale for small volumes of localized dewatering.

(11) Maintain BMPs:

(a) Maintain and repair all temporary and permanent erosion and sediment control BMPs as needed to ensure continued performance of their intended function in accordance with BMP specifications.

(b) Remove all temporary erosion and sediment control BMPs within 30 days after achieving final site stabilization or after the temporary BMPs are no longer needed.

(12) Manage the Project:

(a) Phase development projects to the maximum degree practicable and take into account seasonal work limitations.

(b) Inspection and monitoring – Inspect, maintain, and repair all BMPs as needed to ensure continued performance of their intended function.

(c) Maintaining an updated construction SWPPP – Maintain, update, and implement the SWPPP.

(d) Projects that disturb one or more acres must have site inspections conducted by a Certified Erosion and Sediment Control Lead (CESCL). Project sites disturbing less than one acre may have a CESCL or a person without CESCL certification conduct inspections. By the initiation of construction, the SWPPP must identify the CESCL or inspector, who must be present on-site or on-call at all times.

(13) Protect Low Impact Development BMPs

(a) Protect all Bioretention and Rain Garden BMPs from sedimentation through installation and maintenance of erosion and sediment control BMPs on portions of the site that drain into the Bioretention and/or Rain Garden BMPs. Restore the BMPs to their fully functioning condition if they accumulate sediment during construction. Restoring the BMP must include removal of sediment and any sediment-laden Bioretention/rain garden soils, and replacing the removed soils with soils meeting the design specification.

(b) Prevent compacting Bioretention and Rain Garden BMPs by excluding construction equipment and foot traffic. Protect completed lawn and landscaped areas from compaction due to construction equipment.

(c) Control erosion and avoid introducing sediment from surrounding land uses onto permeable pavements. Do not allow muddy construction equipment on the base material or pavement. Do not allow sediment-laden runoff onto permeable pavements or base materials.

(d) Pavements fouled with sediments or no longer passing an initial infiltration test must be cleaned using procedures from the local stormwater manual or the manufacturer's procedures.

(e) Keep all heavy equipment off existing soils under LID BMPs that have been excavated to final grade to retain the infiltration rate of the soils.

(3) Minimum Requirement #3 – Source Control of Pollution. All known, available and reasonable source control BMPs are required for all projects. Source control BMPs must be selected, designed, and maintained in accordance with Volume IV of the Stormwater

Management Manual for Western Washington or an approved equivalent manual approved by Ecology.

(4) Minimum Requirement #4 – Preservation of Natural Drainage Systems and Outfalls. Natural drainage patterns shall be maintained, and discharges from the project site shall occur at the natural location, to the maximum extent practicable. The manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters and down gradient properties. All outfalls require energy dissipation.

(5) Minimum Requirement #5 – On-Site Stormwater Management.

(a) *Applicability.* Except as provided below, all projects must incorporate On-site Stormwater Management BMPs in accordance with the following project thresholds, standards, and lists to infiltrate, disperse, and retain stormwater runoff on-site to the extent feasible without causing flooding or erosion impacts. Projects qualifying as flow control exempt in accordance with Section 2.5.7 Volume I of the SWMMWW do not have to achieve the LID performance standard, nor consider bioretention, rain gardens, permeable pavement, and full dispersion if using List #1 or List #2. However, those projects must implement BMP T5.13; BMPs T5.10A, B, or C; and BMP T5.11 or T5.12 (Volume IV, Source Control BMPs, SWMMWW), if feasible.

(b) *Project Thresholds.*

(1) Projects triggering only Minimum Requirements #1 through #5 shall either:

(A) Use On-site Stormwater Management BMPs from List #1 for all surfaces within each type of surface in List #1; or

(B) Demonstrate compliance with the LID Performance Standard.

Projects selecting this option cannot use Rain Gardens. They may choose to use Bioretention BMPs as described in the SWMMWW.

(2) Projects triggering Minimum Requirements #1 through #9 must meet the requirements in the following table:

<b>Project Type and Location</b>	<b>Requirement</b>
New development on any parcel inside the UGA, or new development outside the UGA on a parcel less than 5 acres	Low Impact Development Performance Standard and BMP T5.13 or List #2 (applicant option).
New development outside the UGA on a parcel of 5 acres or larger	Low Impact Development Performance Standard and BMP T5.13.
Redevelopment on any parcel inside the UGA, or redevelopment outside the UGA on a parcel less than 5 acres	Low Impact Development Performance Standard and BMP T5.13 or List #2 (applicant option).
Redevelopment outside the UGA on a parcel of 5 acres or larger	Low Impact Development Performance Standard and BMP T5.13.

(c) *Low Impact Development Performance Standard.* Stormwater discharges shall match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 8% of the 2-year peak flow to 50% of the 2-year peak flow. Refer to the Standard Flow Control Requirement section in Minimum Requirement #7 for information about the assignment of the pre-developed condition. Project sites that must also meet minimum requirement #7 shall match flow durations between 8% of the 2-year flow through the full 50-year flow.

(d) *List #1: On-site Stormwater Management BMPs for Projects Triggering Minimum Requirements #1 through #5.* For each surface, consider the BMP's in the order listed for that type of surface. Use the first BMP that is considered feasible. No other On-site Stormwater

Management BMP is necessary for that surface. Feasibility shall be determined by evaluation against:

- (1) Design criteria, limitations, and infeasibility criteria identified for each BMP in the *SWMMWW*; and
- (2) Competing Needs Criteria listed in Chapter 5 of Volume V of the *SWMMWW*.
  - (A) Lawn and landscaped areas:  
Post-Construction Soil Quality and Depth in accordance with BMP T5.13 in Chapter 5 of Volume V of the *SWMMWW*
  - (B) Roofs:
    - (1) Full Dispersion in accordance with BMP T5.30 in Chapter 5 of Volume V of the *SWMMWW*, or Downspout Full Infiltration Systems in accordance with BMP T5.10A in Section 3.1.1 of Volume III of the *SWMMWW*.
    - (2) Rain Gardens in accordance with BMP T5.14A in Chapter 5 of Volume V, or Bioretention in accordance with Chapter 7 of Volume V of the *SWMMWW*. The rain garden or bioretention facility must have a minimum horizontal projected surface area below the overflow which is at least 5% of the area draining to it.
    - (3) Downspout Dispersion Systems in accordance with BMP T5.10B in Section 3.1.2 of Volume III of the *SWMMWW*.
    - (4) Perforated Stub-out Connections in accordance with BMP T5.10C in Section 3.1.3 of Volume III of the *SWMMWW*.
  - (A) Other Hard Surfaces:
    - (1) Full Dispersion in accordance with BMP T5.30 in Chapter 5 of Volume V of the *SWMMWW*.
    - (2) Permeable pavement in accordance with BMP T5.15 in Chapter 5 of Volume V of the *SWMMWW*, or Rain Gardens in accordance with BMP T5.14A in Chapter 5 of Volume V, or Bioretention in accordance with Chapter 7 of Volume V of the *SWMMWW*. The rain garden or bioretention facility must have a minimum horizontal projected surface area below the overflow which is at least 5% of the area draining to it.
    - (3) Sheet Flow Dispersion in accordance with BMP T5.12, or Concentrated Flow Dispersion in accordance with BMP T5.11 in Chapter 5 of Volume V of the *SWMMWW*.

(e) *List #2: On-site Stormwater Management BMPs for Projects Triggering Minimum Requirements #1 through #9.* For each surface, consider the BMPs in the order listed for that type of surface. Use the first BMP that is considered feasible. No other On-site Stormwater Management BMP is necessary for that surface. Feasibility shall be determined by evaluation against:

- (A) Design criteria, limitations, and infeasibility criteria identified for each BMP in the *SWMMWW* and;
- (B) Roofs:
  - (1) Full Dispersion in accordance with BMP T5.30 in Chapter 5 of Volume V of the *SWMMWW*, or Downspout Full Infiltration Systems in accordance with BMP T5.10A in Section 3.1.1 of Volume III of the *SWMMWW*
  - (2) Bioretention (See Chapter 7 of Volume V of the *SWMMWW*) facilities that have a minimum horizontally projected surface area below the overflow which is at least 5% of the of the total surface area draining to it
  - (3) Downspout Dispersion Systems in accordance with BMP T5.10B in Section 3.1.2 of Volume III of the *SWMMWW*
  - (4) Perforated Stub-out Connections in accordance with BMP T5.10C in Section 3.1.3 of Volume III of the *SWMMWW*.
- (C) Other Hard Surfaces:

(1) Full Dispersion in accordance with BMP T5.30 in Chapter 5 of Volume V of the *SWMMWW*

(2) Permeable pavement<sup>2</sup> in accordance with BMP T5.15 in Chapter 5 of Volume V of the *SWMMWW*

(3) Bioretention (See Chapter 7, Volume V of the *SWMMWW*) facilities that have a minimum horizontally projected surface area below the overflow which is at least 5% of the total surface area draining to it.

(4) Sheet Flow Dispersion in accordance with BMP T5.12, or Concentrated Flow Dispersion in accordance with BMP T5.11 in Chapter 5 of Volume V of the *SWMMWW*

(6) Minimum Requirement #6 – Runoff Treatment

(a) *Project Thresholds*. When assessing a project against the following thresholds, only consider those hard and pervious surfaces that are subject to this minimum requirement as determined in Section 3 of this Appendix.

The following require construction of stormwater treatment facilities:

- Projects in which the total of pollution-generating hard surface (PGHS) is 5,000 square feet or more in a threshold discharge area of the project, or
- Projects in which the total of pollution-generating pervious surfaces (PGPS) – not including permeable pavements - is three-quarters (3/4) of an acre or more in a threshold discharge area, and from which there will be a surface discharge in a natural or man-made conveyance system from the site.

(b) *Treatment-Type Thresholds*

(1) Oil Control: Treatment to achieve Oil Control applies to projects that have “high-use sites.” High-use sites are those that typically generate high concentrations of oil due to high traffic turnover or the frequent transfer of oil. High-use sites include:

(A) An area of a commercial or industrial site subject to an expected average daily traffic (ADT) count equal to or greater than 100 vehicles per 1,000 square feet of gross building area;

(B) An area of a commercial or industrial site subject to petroleum storage and transfer in excess of 1,500 gallons per year, not including routinely delivered heating oil;

(C) An area of a commercial or industrial site subject to parking, storage or maintenance of 25 or more vehicles that are over 10 tons gross weight (trucks, buses, trains, heavy equipment, etc.);

(D) A road intersection with a measured ADT count of 25,000 vehicles or more on the main roadway and 15,000 vehicles or more on any intersecting roadway, excluding projects proposing primarily pedestrian or bicycle use improvements.

(2) Phosphorus Treatment: The requirement to provide phosphorous control is determined by the Town (e.g., through a lake management plan), or the Department of Ecology (e.g., through a waste load allocation). The Town may have developed a management plan and implementing ordinances or regulations for control of phosphorus from new/redevelopment for the receiving water(s) of the stormwater drainage. The Town can use the following sources of information for pursuing plans and implementing ordinances and/or regulations:

(A) Those waterbodies reported under section 305(b) of the Clean Water Act, and designated as not supporting beneficial uses due to phosphorous;

(B) Those listed in Washington State's Nonpoint Source Assessment required under section 319(a) of the Clean Water Act due to nutrients.

(3) Enhanced Treatment: Except where specified below under “4. Basic Treatment, Enhanced treatment for reduction in dissolved metals is required for the following project sites that: 1) discharge directly to fresh waters or conveyance systems tributary to fresh

waters designated for aquatic life use or that have an existing aquatic life use; or 2) use infiltration strictly for flow control – not treatment – and the discharge is within ¼ mile of a fresh water designated for aquatic life use or that has an existing aquatic life use:

Industrial project sites,  
Commercial project sites,  
Multi-family project sites, and  
High AADT roads as follows:

(A) Within Urban Growth Management Areas:

Fully controlled and partially controlled limited access highways with Annual Average Daily Traffic (AADT) counts of 15,000 or more

All other roads with an AADT of 7,500 or greater

(B) Outside of Urban Growth Management Areas:

Roads with an AADT of 15,000 or greater unless discharging to a 4th Strahler order stream or larger;

Roads with an AADT of 30,000 or greater if discharging to a 4th Strahler order stream or larger (as determined using 1:24,000 scale maps to delineate stream order).

Any areas of the above-listed project sites that are identified as subject to Basic Treatment requirements (below), are not also subject to Enhanced Treatment requirements. For developments with a mix of land use types, the Enhanced Treatment requirement shall apply when the runoff from the areas subject to the Enhanced Treatment requirement comprise 50% or more of the total runoff within a threshold discharge area.

(4) Basic Treatment: Basic Treatment is required in the following circumstances:

(A) Project sites that discharge to the ground, UNLESS:

(1) The soil suitability criteria for infiltration treatment are met (See Chapter 3, Volume III of the *SWMMWW*), and alternative pretreatment is provided (see Chapter 6, Volume V of the *SWMMWW*); or

(2) The project site uses infiltration strictly for flow control – not treatment - and the discharge is within ¼-mile of a phosphorus sensitive lake (use a Phosphorus Treatment facility), or

(3) The project site is industrial, commercial, multi-family residential, or a high AADT road (consistent with the Enhanced Treatment-type thresholds listed above) and is within ¼ mile of a fresh water designated for aquatic life use or that has an existing aquatic life use.(use an Enhanced Treatment facility).

(B) Residential projects not otherwise needing phosphorus control as designated by USEPA, the Department of Ecology, or by the Town;

(C) Project sites discharging directly (or indirectly through a municipal separate storm sewer system) to Basic Treatment Receiving Waters (Appendix I-C of the *SWMMWW*),

(D) Project sites that drain to fresh water that is not designated for aquatic life use, and does not have an existing aquatic life use; and project sites that drain to waters not tributary to waters designated for aquatic life use or that have an existing aquatic life use.

(E) Landscaped areas of industrial, commercial, and multi-family project sites, and parking lots of industrial and commercial project sites that do not involve pollution-generating sources (e.g., industrial activities, customer parking, storage of erodible or leachable material, wastes or chemicals) other than parking of employees' private vehicles. For developments with a mix of land use types, the Basic Treatment requirement shall apply when

the runoff from the areas subject to the Basic Treatment requirement comprise 50% or more of the total runoff within a threshold discharge area.

(F) *Treatment Facility Sizing.* Size stormwater treatment facilities for the entire area that drains to them, even if some of those areas are not pollution-generating, or were not included in the project site threshold decisions (Section 3 of this appendix) or the treatment threshold decisions of this minimum requirement.

(G) *Water Quality Design Storm Volume:* The volume of runoff predicted from a 24-hour storm with a 6-month return frequency (a.k.a., 6-month, 24-hour storm). Wetpool facilities are sized based upon the volume of runoff predicted through use of the Natural Resource Conservation Service curve number equations in Chapter 2 of Volume III of the SWMMWW), for the 6-month, 24-hour storm. Alternatively, when using an approved continuous runoff model, the water quality design storm volume shall be equal to the simulated daily volume that represents the upper limit of the range of daily volumes that accounts for 91% of the entire runoff volume over a multi-decade period of record.

(H) *Water Quality Design Flow Rate:*

(1) *Preceding Detention Facilities or when Detention Facilities are not required:* The flow rate at or below which 91% of the runoff volume, as estimated by an approved continuous runoff model, will be treated. Design criteria for treatment facilities are assigned to achieve the applicable performance goal (e.g., 80% TSS removal) at the water quality design flow rate. At a minimum, 91% of the total runoff volume, as estimated by an approved continuous runoff model, must pass through the treatment facility(ies) at or below the approved hydraulic loading rate for the facility(ies).

*Downstream of Detention Facilities:* The water quality design flow rate must be the full 2-year release rate from the detention facility.

(2) *Treatment Facility Selection, Design, and Maintenance.*

Stormwater treatment facilities shall be:

(a) Selected in accordance with the process identified in Chapter 4 of Volume I, and Chapter 2 of Volume V of the SWMMWW,

(b) Designed in accordance with the design criteria in Volume V of the SWMMWW, and

(c) Maintained in accordance with the maintenance schedule in Volume V of the SWMMWW.

(d) *Additional Requirements.* The discharge of untreated stormwater from pollution-generating hard surfaces to ground water must not be authorized by the Town, except for the discharge achieved by infiltration or dispersion of runoff through use of On-site Stormwater Management BMPs in accordance with Chapter 5, Volume V and Chapter 7, Volume V of the SWMMWW; or by infiltration through soils meeting the soil suitability criteria in Chapter 3 of Volume III of the SWMMWW.

(7) *Minimum Requirement #7 – Flow Control.*

(a) *Applicability.* Except as provided below, the Town must require all projects provide flow control to reduce the impacts of stormwater runoff from hard surfaces and land cover conversions. The requirement below applies to projects that discharge stormwater directly, or indirectly through a conveyance system, into a fresh water body.

(1) Flow control is not required for projects that discharge directly to, or indirectly through an MS4 to a water listed in Appendix I-E of the SMMWW subject to the following restrictions:

(A) Direct discharge to the exempt receiving water does not result in the diversion of drainage from any perennial stream classified as Types 1, 2, 3, or 4 in the State of Washington Interim Water Typing System, or Types “S”, “F”, or “Np” in the Permanent Water Typing System, or from any category I, II, or III wetland; and

(B) Flow splitting devices or drainage BMP's are applied to route natural runoff volumes from the project site to any downstream Type 5 stream or category IV wetland:

(1) Design of flow splitting devices or drainage BMP's will be based on continuous hydrologic modeling analysis. The design will ensure that flows delivered to Type 5 stream reaches will approximate, but in no case exceed, durations ranging from 50% of the 2-year to the 50-year peak flow.

(2) Flow splitting devices or drainage BMP's that deliver flow to category wetlands will also be designed using continuous hydrologic modeling to preserve pre-project wetland hydrologic conditions unless specifically waived or exempted by regulatory agencies with permitting jurisdiction; and

(C) The project site must be drained by a conveyance system that is comprised entirely of manmade conveyance elements (e.g., pipes, ditches, outfall protection) and extends to the ordinary high water line of the exempt receiving water; and

(D) The conveyance system between the project site and the exempt receiving water shall have sufficient hydraulic capacity to convey discharges from future build-out conditions (under current zoning) of the site, and the existing condition from non-project areas from which runoff is or will be collected; and

(E) Any erodible elements of the manmade conveyance system must be adequately stabilized to prevent erosion under the conditions noted above.

If the discharge is to a stream that leads to a wetland, or to a wetland that has an outflow to a stream, both this minimum requirement (Minimum Requirement #7) and Minimum Requirement #8 apply.

(b) *Thresholds.* When assessing a project against the following thresholds, consider only those impervious, hard, and pervious surfaces that are subject to this minimum requirement as determined in Section 3 of this Appendix.

(1) The following circumstances require achievement of the standard flow control requirement for western Washington:

(A) Projects in which the total of effective impervious surfaces is 10,000 square feet or more in a threshold discharge area, or

(B) Projects that convert  $\frac{3}{4}$  acres or more of vegetation to lawn or landscape, or convert 2.5 acres or more of native vegetation to pasture in a threshold discharge area, and from which there is a surface discharge in a natural or man-made conveyance system from the site, or

(C) Projects that through a combination of hard surfaces and converted vegetation areas cause a 0.10 cubic feet per second (cfs) increase or greater in the 100-year flow frequency from a threshold discharge area as estimated using the Western Washington Hydrology Model or other approved model and one-hour time steps (or a 0.15 cfs increase or greater using 15-minute time steps). The 0.10 cfs (one-hour time steps) or 0.15 cfs (15-minute time steps) increase should be a comparison of the post-project runoff to the existing condition runoff. For the purpose of applying this threshold, the existing condition is either the pre-project land cover, or the land cover that existed at the site as of a date when the Town first adopted flow control requirements into code or rules.

(c) *Standard Flow Control Requirement.* Stormwater discharges shall match developed discharge durations to pre-developed durations for the range of pre-developed discharge rates from 50% of the 2-year peak flow up to the full 50-year peak flow. The pre-developed condition to be matched shall be a forested land cover unless:

(1) Reasonable, historic information is available that indicates the site was prairie prior to settlement (modeled as "pasture" in the Western Washington Hydrology Model); or

(2) The drainage area of the immediate stream and all subsequent downstream basins have had at least 40% total impervious area since 1985. In this case, the pre-developed



condition to be matched shall be the existing land cover condition. The map in Appendix I-G of the SMMWW depicts those areas which meet this criterion. Where basin-specific studies determine a stream channel to be unstable, even though the above criterion is met, the pre-developed condition assumption shall be the “historic” land cover condition, or a land cover condition commensurate with achieving a target flow regime identified by an approved basin study.

This standard requirement is waived for sites that will reliably infiltrate all the runoff from hard surfaces and converted vegetation areas.

*(d) Western Washington Alternative Requirement.* An alternative requirement may be established through application of watershed-scale hydrological modeling and supporting field observations. Possible reasons for an alternative flow control requirement include:

(1) Establishment of a stream-specific threshold of significant bedload movement other than the assumed 50% of the 2-year peak flow;

(2) Zoning and Land Clearing Ordinance restrictions that, in combination with an alternative flow control standard, maintain or reduce the naturally occurring erosive forces on the stream channel; or

(3) A duration control standard is not necessary for protection, maintenance, or restoration of designated and existing beneficial uses or Clean Water Act compliance.

*(e) Additional Requirement.* Flow Control BMPs shall be selected, designed, and maintained in accordance with Volume III of the SWMMWW or an approved equivalent.

(8) Minimum Requirement #8 – Wetlands Protection

*(a) Applicability.* The requirements below apply only to projects whose stormwater discharges into a wetland, either directly or indirectly through a conveyance system.

*(b) Thresholds.* The thresholds identified in Minimum Requirement #6 – Runoff Treatment, and Minimum Requirement #7 – Flow Control shall also be applied to determine the applicability of this requirement to discharges to wetlands.

Standard Requirement Projects shall comply with Guide Sheets #1 through #3 in Appendix I-D of the SWMMWW. The hydrologic analysis shall use the existing land cover condition to determine the existing hydrologic conditions unless directed otherwise by a regulatory agency with jurisdiction.

*(c) Additional Requirements.* Stormwater treatment and flow control facilities shall not be built within a natural vegetated buffer, except for:

(1) Necessary conveyance systems as approved by the Town; or

(2) As allowed in wetlands approved for hydrologic modification and/or treatment in accordance with Guide Sheet 2 in Appendix I-D of the SWMMWW.

(9) Minimum Requirement #9 – Operation and Maintenance. An operation and maintenance manual that is consistent with the provisions in Volume V of the SWMMWW for proposed stormwater facilities and BMPs is required. The party (or parties) responsible for maintenance and operation shall be identified in the operation and maintenance manual. For private facilities approved by the Town, a copy of the operation and maintenance manual shall be retained on-site or within reasonable access to the site, and shall be transferred with the property to the new owner. For public facilities, a copy of the operation and maintenance manual shall be retained in the appropriate department. A log of maintenance activity that indicates what actions were taken shall be kept and be available for inspection by the Town.

(10) Minimum Requirement #10 – Financial Liability. Performance bonding or other appropriate financial instruments shall be required for all projects to ensure compliance with these standards. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.740 (Deleted).** (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

## ARTICLE 8: ADMINISTRATION

**13.50.750 Director.** The Director, or designee, shall administer this chapter. The Director, or designee, shall have the authority to develop and implement administrative procedures to administer and enforce this chapter. (Ord. 1307 §1(part), 2002).

**13.50.760 Review and approval.** The Director, or designee may approve, conditionally approve or deny an application for activities regulated by this chapter. (Ord. 1307 §1(part), 2002).

**13.50.770 Enforcement authority.** The Director, or designee, shall enforce this chapter. (Ord. 1307 §1(part), 2002).

**13.50.780 Inspection.** All activities regulated by this chapter, except those exempt in Article 5 shall be inspected by the Director, or designee. The Director, or designee, shall inspect projects at various stages of the work requiring approval to determine that adequate control is being exercised. Stages of work requiring inspection include, but are not limited to, preconstruction; installation of BMPs; land disturbing activities; installation of utilities, landscaping, retaining walls and completion of project. When required by the Director, or designee, a special inspection and/or testing shall be performed. (Ord. 1307 §1(part), 2002).

## ARTICLE 9: ENFORCEMENT

**13.50.790 General.** Enforcement action for violations of this Chapter shall be governed by the provisions of Chapter 14.32 SMC. (Ord. 1543 §2, 2016: Ord. 1307 §1(part), 2002).

**13.50.800** (Repealed). (Ord. 1542 §3, 2016: Ord. 1307 §1(part), 2002).

### **13.50.810 Civil penalty.**

(A) A person who fails to comply with the requirements of this chapter, who fails to conform to the terms of an approval or order issued, who undertakes new development without first obtaining Town approval, or who fails to comply with a stop work order issued under these regulations shall be subject to a civil penalty.

(B) Penalty Recovered. Penalties recovered for enforcement of this Chapter shall be paid to the Storm Drain Utility Fund. (Ord. 1543 §4, 2016: Ord. 1307 §1(part), 2002).

## ARTICLE 10: EXCEPTIONS/EXCEPTIONS

**13.50.820 Exemptions.** Unless otherwise indicated in this Chapter, the practices described in this section are exempt from the Minimum Requirements, even if such practices meet the definition of new development or redevelopment: (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

(a) Forest Practices: Forest practices regulated under Title 222 WAC, except for Class IV General forest practices that are conversions from timberland to other uses, are exempt from the provisions of the minimum requirements.

(b) Commercial Agriculture: Commercial agriculture practices involving working the land for production are generally exempt. However, the conversion from timberland to agriculture, and the construction of impervious surface are not exempt.

(c) Oil and Gas Field Activities or Operations: Construction of drilling sites, waste management pits, and access roads, as well as construction of transportation and treatment infrastructure such as pipelines natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations are exempt. Operators are encouraged to implement and maintain Best Management Practices to minimize erosion and control sediment during and after construction activities to help ensure protection of surface water quality during storm events.

(d) Pavement Maintenance: The following pavement maintenance practices are exempt: pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, pavement preservation activities that do not expand the road prism, and vegetation maintenance.

The following pavement maintenance practices are not categorically exempt. The extent to which this Appendix applies is explained for each circumstance. Western Washington Phase II Municipal Stormwater Permit

- Removing and replacing a paved surface to base course or lower, or repairing the pavement base: If impervious surfaces are not expanded, Minimum Requirements #1 - #5 apply.
- Extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders: These are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for new or redevelopment projects are met.
- Resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete; or upgrading from a bituminous surface treatment (“chip seal”) to asphalt or concrete: These are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for new or redevelopment projects are met.

(e) Underground Utility Projects: Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement #2, Construction Stormwater Pollution Prevention.

Adjustments – Adjustments to the Minimum Requirements may be granted by the Town provided that a written finding of fact is prepared, that addresses the following:

- The adjustment provides substantially equivalent environmental protection
- Based on sound engineering practices, the objectives of safety, function, environmental protection and facility maintenance, are met. (Ord. 1560, 2017).

**13.50.830 Exceptions.** Exceptions/Variations – Exceptions/variances (exceptions) to the Minimum Requirements may be granted by the Town following legal public notice of an application for an exemption or variance, legal public notice of the Town decision on the application, and written findings of fact that documents the Town’s determination to grant an exception. The Town shall keep records, including the written findings of fact, of all local exceptions to the Minimum Requirements. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.840 Public hearings.** After a public hearing, the Town Council may grant an exception from the requirements of this chapter. In granting any exception, the Town Council may prescribe conditions that are deemed necessary or desirable for the public interest. By resolution, the Town Council may set a fee for the exception process. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.850 Findings of fact.** Exceptions to minimum requirements #1 through #10 may be granted prior to permit approval and construction. An exception may be granted following a public hearing, provided that a written finding of fact is prepared, that addresses the following:

(A) The exception provides equivalent environmental protection and is in the overriding public interest; and that the objectives of safety, function, environmental protection and facility maintenance, based upon sound engineering, are fully met;

(B) That there are special physical circumstances or conditions affecting the property such that the strict application of these provisions would deprive the applicant of all reasonable use of the parcel of land in question, and every effort to find creative ways to meet the intent of the minimum standards has been made;

(C) That the granting of the exception will not be detrimental to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and

(D) The exception is the least possible exception that could be granted to comply with the intent of the minimum requirements. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.860 Prior approval.** Any exception shall be approved prior to permit approval and construction. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.870 Duration of exception.** Exceptions granted shall be valid for 2 years, unless granted for a shorter period. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

**13.50.880 Right of appeal.** All actions of the Town Administrator shall be final and conclusive, unless within twenty (20) days of the date of the Town Administrator's action, the original applicant or an adverse party gives written notice of appeal to the Town Council for review of the action. (Ord. 1560, 2017: Ord. 1307 §1(part), 2002).

Project-specific design exceptions based on site-specific conditions do not require prior approval of Ecology. The Town must seek prior approval by Ecology of any jurisdiction-wide exception.

The Town may grant an exception to the minimum requirements if such application imposes a severe and unexpected economic hardship. To determine whether the application imposes a severe and unexpected hardship on the project applicant, the Town must consider and document with written findings of fact the following:

- The current (pre-project) use of the site, and
- How the application of the minimum requirement(s) restricts the proposed use of the site compared to the restrictions that existing prior to the adoption of the minimum requirements; and
- The possible remaining uses of the site if the exception were not granted; and
- The uses of the site that would have been allowed prior to the adoption of the minimum requirements; and

- A comparison of the estimated amount and percentage of value loss as a result of the minimum requirements versus the estimated amount and percentage of value less as a result of requirements that existed prior to adoption of the minimum requirements; and
- The feasibility for the owner to alter the project to apply the minimum requirements.

In addition, any exception must meet the following criteria:

- The exception will not increase risk to the public health and welfare, not be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
- The exception is the least possible exception that could be granted to comply with the intent of the minimum requirements. (Ord. 1560, 2017).

## **ARTICLE 11: SEVERABILITY.**

If any provision of this chapter or its application to any person, entity, or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons, entities, or circumstances shall not be affected. (Ord. 1560, 2017; Ord. 1307 §1(part), 2002).

### **Chapter 13.51**

#### **STORMWATER MAINTENANCE**

##### **Article 1: Findings of Fact, Need, and Purpose**

**13.51.010 Findings of fact.**

**13.51.020 Need.**

**13.51.030 Purpose.**

##### **Article 2: Definitions**

**13.51.040 Best management practices.**

**13.51.050 Person.**

**13.51.060 Interflow.**

**13.51.070 Stormwater.**

**13.51.080 Stormwater drainage system.**

**13.51.090 Stormwater facility.**

**13.51.100 Stormwater Management Manual.**

##### **Article 3: General Provisions**

**13.51.110 Abrogation and greater restrictions.**

**13.51.120 Interpretation.**

##### **Article 4: Applicability**

**13.51.130 Conflicts.**

**13.51.140 Written procedures.**

## **Article 5: General Requirements**

- 13.51.150 Maintenance required.**
- 13.51.160 Minimum standards.**
- 13.51.170 Disposal of waste from maintenance activities.**
- 13.51.180 Compliance**

## **Article 6: Administration**

- 13.51.190 Director.**
- 13.51.200 Inspection authority.**
- 13.51.210 Enforcement authority.**

## **Article 7: Inspection Program**

- 13.51.220 Inspection.**
- 13.51.230 Procedures.**
- 13.51.240 Inspection schedule.**
- 13.51.250 Inspection and maintenance records.**

## **Article 8: Enforcement**

- 13.51.260 General.**
- 13.51.270 (Repealed).**
- 13.51.280 (Repealed).**
- 13.51.290 (Repealed).**
- 13.51.300 Penalty recovered.**

## **Article 9: Severability**

### **ARTICLE 1: FINDINGS OF FACT, NEED AND PURPOSE**

**13.51.010 Findings of fact.** The Town Council finds that: Stormwater facilities are a common feature of urban development; in order to function properly so that they will perform as designed to prevent or remove pollution and/or to reduce flooding, stormwater facilities must be regularly inspected and maintained; if not adequately maintained, stormwater facilities can become sources of pollutants to surface water and groundwater; and If not adequately maintained, stormwater facilities could fail and cause considerable damage to the public. (Ord. 1307 §2(part), 2002).

**13.51.020 Need.** The Town Council finds that this chapter is necessary in order to ensure maintenance of all stormwater facilities within the Town by setting minimum standards for the inspection and maintenance of stormwater facilities. (Ord. 1307 §2(part), 2002).

**13.51.030 Purpose.** The provisions of this chapter are intended to:  
Provide for inspection and maintenance of stormwater facilities in the Town to provide for an effective, functional stormwater drainage system;  
Authorize the department of public works to require that stormwater facilities be operated, maintained and repaired in conformance with this chapter; and  
Establish the minimum level of compliance which must be met.

Guide and advise all who conduct inspection and maintenance of stormwater facilities. (Ord. 1307 §2(part), 2002).

## ARTICLE 2: DEFINITIONS

For the purposes of this chapter, the following definitions shall apply:

**13.51.040 Best management practices.** "Best management practices" or "BMP" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, and have been approved by ecology. BMPs are listed and described in the manual. (Ord. 1307 §2(part), 2002).

**13.51.050 Person.** "Person" means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state, or local government unit, however designated. (Ord. 1307 §2(part), 2002).

**13.51.060 Interflow.** "Interflow" means that portion of precipitation that infiltrates into the soil and moves laterally through the upper soil horizons until intercepted by a stream channel or until it returns to the surface for example, in a wetland, spring or seep. (Ord. 1307 §2(part), 2002).

**13.51.070 Stormwater.** "Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility. (Ord. 1307 §2(part), 2002).

**13.51.080 Stormwater drainage system.** "Stormwater drainage system" means constructed and natural features which function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter stormwater. (Ord. 1307 §2(part), 2002).

**13.51.090 Stormwater facility.** "Stormwater facility" means a constructed component of a stormwater drainage system, designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention basins, retention basins, constructed wetlands, infiltration devices, catchbasins, oil/water separators, sediment basins and modular pavement. (Ord. 1307 §2(part), 2002).

**13.51.100 Stormwater Management Manual.** "Stormwater management manual" or "manual" means the most recent version of the manual, as it now exists or as it is hereafter amended, adopted by reference and prepared by ecology that contains BMPs to prevent or reduce pollution. (Ord. 1307 §2(part), 2002).

## ARTICLE 3: GENERAL PROVISIONS

**13.51.110 Abrogation and greater restrictions.** It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 1307 §2(part), 2002).

**13.51.120 Interpretation.** The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter. (Ord. 1307 §2(part), 2002).

#### **ARTICLE 4: APPLICABILITY**

**13.51.130 Conflicts.** When any provision of any other chapter conflicts with this chapter, that which provides more environmental protection shall apply unless specifically provided otherwise in this chapter. (Ord. 1307 §2(part), 2002).

**13.51.140 Written procedures.** The Director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter. (Ord. 1307 §2(part), 2002)

#### **ARTICLE 5: GENERAL REQUIREMENTS**

**13.51.150 Maintenance required.** All stormwater facilities shall be maintained in accordance with this chapter and the most current version of the Ecology Stormwater Management Manual. Systematic, routine preventive maintenance is preferred. (Ord. 1307 §2(part), 2002).

**13.51.160 Minimum standards.** The following are the minimum standards for the maintenance of stormwater facilities:

(A) Facilities shall be inspected annually and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility.

(B) Where lack of maintenance is causing or contributing to a water quality problem, immediate action shall be taken to correct the problem. Within one (1) month of the initial inspection, the Director, or designee shall revisit the facility to assure that it is being maintained. (Ord. 1307 §2(part), 2002).

**13.51.170 Disposal of waste from maintenance activities.** Disposal of waste from maintenance activities shall be conducted in accordance with the minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials from stormwater maintenance activities, and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC. (Ord. 1307 §2(part), 2002).

**13.51.180 Compliance.** Property owners are responsible for the maintenance, operation or repair of stormwater drainage system and BMPs. Property owners shall maintain, operate and repair these facilities in compliance with the requirements of this chapter and the Stormwater Management Manual. (Ord. 1307 §2(part), 2002).

#### **ARTICLE 6: ADMINISTRATION**

**13.51.190 Director.** The Director of the department of public works, or designee, shall administer this chapter. The Director, or designee, shall have the authority to develop and implement administrative procedures to administer and enforce this chapter. (Ord. 1307 §2(part), 2002).

**13.51.200 Inspection authority.** The Director or designee, is directed and authorized to develop an inspection program for stormwater facilities in the Town. (Ord. 1307 §2(part), 2002).



**13.51.210 Enforcement authority.** The Director, or designee, shall enforce this chapter. (Ord. 1307 §2(part), 2002).

## **ARTICLE 7: INSPECTION PROGRAM**

**13.51.220 Inspection.** Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the Director, or designee, is authorized to inspect during regular working hours and at other reasonable times all stormwater drainage systems within the Town to determine compliance with the provisions of this chapter. Property owners shall provide proper ingress and egress to any stormwater facility to the Director or a designee to inspect, monitor, or perform any duty imposed upon the Director by this chapter. (Ord. 1566 §1(part), 2017: Ord. 1307 §2(part), 2002).

**13.51.230 Procedures.** The Town shall have authority to periodically enter upon the property and inspect the facilities to ensure such compliance and to issue orders requiring maintenance and/or repair. In event that the titleholders or other responsible parties do not effect such maintenance and/or repairs, the Town may perform such work, and the cost thereof shall be recoverable by the Town from said titleholders or other responsible parties and/or by filing a lien against the property. Prior to making any inspections, the Director, or designee, shall present identification credentials, state the reason for the inspection and request entry.

(A) If the property or any building or structure on the property is unoccupied, the Director, or designee, shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.

(B) If after reasonable effort, the Director, or designee, is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the stormwater drainage system creates an imminent hazard to persons or property, the inspector may enter.

(C) Unless entry is consented to by the owner or person(s) in control of the property or portion of the property or unless conditions are reasonably believed to exist which create imminent hazard, the inspector shall obtain a search warrant, prior to entry, as authorized by the laws of the state of Washington.

(D) The Director, or designee, may inspect the stormwater drainage system without obtaining a search warrant provided for in subsection (C) above, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained. (Ord. 1566 §2(part), 2017: Ord. 1307 §2(part), 2002).

**13.51.240 Inspection schedule.** The Director, or designee, shall establish a master inspection and maintenance schedule to inspect appropriate stormwater facilities that are not owned by the Town. Inspections shall be annual. Critical stormwater facilities may require a more frequent inspection schedule. (Ord. 1307 §2(part), 2002).

**13.51.250 Inspection and maintenance records.** As existing stormwater facilities are encountered, they shall be added to the master inspection and maintenance schedule. Records of new stormwater facilities shall include the following:

- (A) As-built plans and locations;
- (B) Findings of fact from any exemption granted by the local government;
- (C) Operation and maintenance requirements and records of inspections, maintenance actions and frequencies; and
- (D) Engineering reports, as appropriate.

(Ord. 1307 §2(part), 2002).

## **ARTICLE 8: ENFORCEMENT**

**13.51.260 General.** Enforcement action for violations of this Chapter shall be governed by the provisions of Chapter 14.32 SMC. (Ord. 1543 §5, 2016: Ord. 1307 §2(part), 2002).

**13.51.270** (Repealed). (Ord. 1543 §6, 2016: Ord. 1307 §2(part), 2002).

**13.51.280** (Repealed). (Ord. 1543 §6, 2016: Ord. 1307 §2(part), 2002).

**13.51.290** (Repealed). (Ord. 1543 §6, 2016: Ord. 1307 §2(part), 2002).

**13.51.300 Penalty recovered.** Penalties recovered for enforcement of this Chapter shall be paid to the Storm Drain Utility Fund. (Ord. 1543 §7, 2016: Ord. 1307 §2(part), 2002).

## **ARTICLE 9: SEVERABILITY**

If any provision of this chapter or its application to any person, entity, or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons, entities, or circumstances shall not be affected. (Ord. 1307 §2(part), 2002)

### **Chapter 13.52**

#### **CABLE TV DISTRIBUTION SYSTEMS**

##### **Sections:**

- 13.52.010 Definitions.**
- 13.52.020 Terms of franchise.**
- 13.52.030 Application.**
- 13.52.040 Hearing.**
- 13.52.050 Acceptance.**
- 13.52.060 Police powers.**
- 13.52.070 Town rules and regulations.**
- 13.52.080 Franchising costs.**
- 13.52.090 Allocation of shared costs.**
- 13.52.100 Technical standards.**
- 13.52.110 System capability.**
- 13.52.120 Upgrade construction penalties.**
- 13.52.130 Arbitration.**
- 13.52.140 Parental control devices.**
- 13.52.150 Other interactive services.**
- 13.52.160 Leased access.**
- 13.52.170 Emergency power.**
- 13.52.180 Construction standard.**
- 13.52.190 Construction notification.**
- 13.52.200 Underground installation.**
- 13.52.210 Safety requirements.**
- 13.52.220 Annexed and newly developed areas.**
- 13.52.230 Line extension.**

- 13.52.240 Completion time.**
- 13.52.250 Building moving.**
- 13.52.260 Rates.**
- 13.52.270 Discounts.**
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- 13.52.290 Record inspection.**
- 13.52.300 Periodic reports.**
- 13.52.310 Annual meeting.**
- 13.52.320 Performance tests.**
- 13.52.330 Customer service.**
- 13.52.340 Subscribers' right of privacy.**
- 13.52.350 Programming.**
- 13.52.360 Modification.**
- 13.52.370 Nondiscrimination.**
- 13.52.380 Equal employment opportunity.**
- 13.52.390 Continuity of service.**
- 13.52.400 Franchise renewal.**
- 13.52.410 Transfer of ownership.**
- 13.52.420 Right of Town to purchase.**
- 13.52.430 Removal and abandonment of property of franchisee.**
- 13.52.440 Revocation for cause.**
- 13.52.450 Effect of termination for noncompliance.**
- 13.52.460 Indemnify and hold harmless.**
- 13.52.470 Insurance.**
- 13.52.480 Performance bond.**
- 13.52.490 Inconsistency.**
- 13.52.500 Force majeure.**

**13.52.010 Definitions.**

(1) "Access channels" means free composite channels to be used for educational purposes and by government and other public agencies and/or their representatives (commonly referred to as "PEG" channels).

(2) "Act" means the Cable Communication Policy Act of 1984 and any subsequent amendments.

(3) "Addressability" means the ability of a system allowing the franchisee to authorize by remote control customer terminals to receive, change or to cancel any or all specified programming.

(4) "Applicant" means any person or entity that applies for a franchise.

(5) "Bad debt" means uncollected gross revenues (as defined in this agreement) in excess of one hundred twenty (120) days past due.

(6) "Bandwidth" means the measure of spectrum which transmits audio and visual information.

(7) "Basic services" means any service tier which includes the retransmission of local broadcast signals as defined by the Act or rules now or subsequently adopted by the FCC.

(8) "Cable services" means (i) the one-way transmission to subscriber of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection by the subscriber of such video programming or other programming services.

(9) "CATV" means a community antenna television system as hereinafter defined.

(10) "Channel" means a single path or section of the spectrum which carries a television signal.

(11) "Character generator" means a device used to generate alpha numerical programming to be broadcast on a cable channel.

(12) "Town" means the Town of Steilacoom, a municipal corporation of the state of Washington.

(13) "Combined disposable income" means the disposable income of the person claiming a rate discount, plus the disposable income of each co-tenant occupying the residence during the preceding calendar year, less amounts paid by the person claiming the rate discount of his or her spouse during the previous year for the treatment each person in a nursing home.

(14) "Community antenna television system," "cable television system", or "system", is defined as provided by Public Law 98-549, the Cable Act, Section 602(6).

(15) "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and with an appropriate channel selector which also permits a subscriber to view all signals delivered at designated converter dial locations.

(16) "Council" means the present governing body of the Town or any future board constituting the legislative body of the Town.

(17) "Decoder" means electronic equipment which converts an electronically scrambled picture into a viewable signal.

(18) "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.

(19) "Franchise" means the non-exclusive right or authority to construct, operate and maintain a cable television system by use of Town owned rights-of-way, easements or other publicly owned properties.

(20) "Franchisee" means the person, firm or corporation including any affiliates to whom or which a franchise, as hereinabove defined, is granted by the Council under this chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in Town ordinance.

(21) "Gross revenues" means monthly fees received directly from subscribers by the grantee as a result of the operation of the cable system through the use of the public streets and right of way for which a franchise is required under this chapter. Gross revenues shall not include revenue received from any taxes on services furnished by the franchisee imposed directly upon the franchisee or any subscriber or user by the state or any other governmental entity, including any franchise fee, sales tax, or utility users tax.

(22) "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

(23) "Hub" means a sub-headend fed by signals from a cable headend. Signals are distributed from the hub to subscribers by primary and feeder cables.

(24) "Installation" means the connection of the system from feeder cable to subscribers' terminals.

(25) "Institutional network" (I Network) or (closed "B" loop) means a cable communications network designed principally for the provision of non-entertainment interactive services to schools, public agencies or other nonprofit agencies, separate and distinct from the subscriber network.

(26) "Interconnect" means a link by various technical means to other cable reception systems for purposes of program distribution.

(27) "Leased access channel" means any channel or portion of a channel available for programming for a fee or charge by persons or entities other than the franchisee.

(28) "Office" means the person or entity designated by the Town as being responsible for the administration of the franchise for the Town.

(29) "Town cable representative" means the person or entity designated by the Town as being responsible for the administration of the franchise for the Town.

(30) "PEG" Channels" - See (1) Access channels.

(31) "Premium services" means any service that can be purchased per channel or per viewing opportunity.

(32) "Property of franchisee" means all property owned, installed or used by a franchisee in the conduct of a CATV business in the Town under the authority of a franchise granted pursuant to this chapter.

(33) "Public way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvement located thereon now or hereafter held by the Town in the service area which shall entitle the Town and the franchisee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. "Public way" shall also mean any easement now or hereafter held by the Town within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Town and the franchisee to the use thereof for the purpose of installing or transmitting franchisee's cable service or other service over, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

(34) "Upstream" means transmission of a signal from the terminal to the system's headend. (Ord. 1137 §1(part), 1994).

### **13.52.020 Terms of franchise.**

(a) **AUTHORITY TO GRANT FRANCHISES OR LICENSES FOR CABLE TELEVISION:** It shall be unlawful to engage in or commence construction, operation, or maintenance of a cable communications system without a franchise issued under this chapter. The Council may, by ordinance, award a non-exclusive franchise to construct, operate and maintain a cable communications system which complies with the terms and conditions of this chapter.

Any franchise granted pursuant to this chapter shall be non-exclusive and shall not preclude the Town from granting other or further franchises or permits or preclude the Town from using any roads, rights-of-way, streets or other public properties or affects its jurisdiction over them or any part of them, or limit the full power of the Town to make all necessary changes, as the Town in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all new rights-of-way and thoroughfares and other public properties of any type. In the event the Town grants another cable franchise, the new franchise shall be granted on the same terms as the existing franchise.

(b) **INCORPORATION BY REFERENCE:**

(1) The provisions of this chapter shall be incorporated by reference in any franchise ordinances or licenses approved hereunder.

(2) The provisions of any proposal submitted and accepted by the Town shall be incorporated by reference in the applicable franchise or license. However, in the event of any conflict between the proposal and this chapter, the ordinance codified in this chapter having been reached by negotiation with the franchisee, will be the prevailing document.

(c) **NATURE AND EXTENT OF THE GRANT:** Any franchise granted hereunder by the Town shall authorize the franchisee, subject to the provisions herein contained:

(1) To engage in the business of operating and providing cable service and sale of such service to subscribers within the Town;

(2) To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant; to the cable communications system; and , in addition, so to use, operate, and provide similar facilities, or properties rented or leased from others persons, firms or corporations, including but no limited to any public utility or other Franchisee franchised or permitted to do business in the Town.

(3) No privilege or exemption shall be granted or conferred upon franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

(d) **TERM OF FRANCHISE:** The franchise and rights and privileges granted shall remain in force and effect for a period of fifteen (15) years from the effective date of such franchise. Furthermore, the Town may ask that a review be made of the terms of a new franchise to determine whether unforeseen circumstances, not present at the time of the original franchise are now pertinent to the Town, and that such conditions, if any, be incorporated in a new franchise agreement acceptable to the Town. This review shall take place on the 5th and 10th anniversaries of the agreement upon one hundred eighty (180) days' notice of intent to alter the agreement. The intent of the review shall be to include unforeseen legislative and/or technological changes since the time of the original agreement and to incorporate those changes beneficial to the service of the Town of Steilacoom. (Ord. 1137 §1(part), 1994).

**13.52.030 Application.** An applicant for a franchise to construct, operate, or maintain a cable communication system with the Town shall file an application in a form satisfactory to the Town, providing sufficient information as required by the Town or its designee. (Ord. 1137 §1(part), 1994).

**13.52.040 Hearing.** After the application has been received, the Town Council shall conduct a public hearing to determine the following:

- (a) That the public will be benefited by the granting of a franchise to the applicant.
- (b) That the applicant has requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area.
- (c) That the applicant has no conflicting interest, either financial or commercial, which will be contrary to the interests of the Town.
- (d) That the applicant will comply with all terms and conditions placed upon the franchisee by this chapter.
- (e) That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise. (Ord. 1137 §1(part), 1994).

**13.52.050 Acceptance.**

- (a) No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the ordinance granting same has become effective.
- (b) Within thirty (30) days after the effective date of the ordinance awarding a franchise or within such extended period of time as the Council in its discretion may authorize, the franchisee shall file with the Town Clerk its written acceptance, in form satisfactory to the Town Attorney, of the franchise, together with the bond and insurance policies required by SMC 13.52.470 and 13.52.480. (Ord. 1137 §1(part), 1994).

**13.52.060 Police powers.** In accepting any franchise, the franchisee acknowledges that its rights hereunder are subject to the police power of the Town to adopt and enforce general

ordinances necessary to the safety and welfare of the public and, it agrees to comply with all applicable general laws enacted by the Town pursuant to such power. (Ord. 1137 §1(part), 1994).

**13.52.070 Town rules and regulations.**

(a) In addition to the inherent powers of the Town to regulate and control any franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the Town, or agreed to and provided for in a franchise, the right and power is hereby reserved by the Town to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers provided further they do not increase the material burdens nor diminish the rights of the franchise.

(b) The Town Council reserves the right to delegate its authority for franchise administration to the Town Administrator or his/her designee. (Ord. 1137 §1(part), 1994).

**13.52.080 Franchising costs.** The franchisee shall pay to the Town, upon acceptance of any franchise granted hereunder, the Town's out-of-pocket costs, to a maximum of \$2,000, associated with the franchising process. Costs shall include such items as specific labor expenses for in-person and telephone negotiations between representatives of the franchisee and representatives of the Town, and the costs of publishing notices and ordinances, etc. Such payment is not deductible or considered in lieu of franchise fee payments. Payment is due within sixty (60) days of receipt of appropriate invoice from the Town. (Ord. 1137 §1(part), 1994).

**13.52.090 Allocation of shared costs.** If more than one franchisee is awarded a franchise, certain costs such as ongoing training expenses, equipping and providing manpower for access studio, other access and institutional network costs, bidirectional cable installed to municipal and educational buildings, emergency power and override, etc., will be shared proportionately to basic subscribers held by each franchisee. The franchisee with the greater number of basic subscribers will provide such facilities and manpower required. The franchisee(s) with the lesser number of basic subscribers will reimburse the furnishing franchisee, at direct cost, for its percentage share of all such services and equipment. Such arrangements will be made directly between the franchisees, but the Town may be called upon to arbitrate any dispute in case of conflict between operators. (Ord. 1137 §1(part), 1994).

**13.52.100 Technical standards.**

(a) Franchisee shall comply with FCC Rules, Part 76, Subpart K, Section 76.601 through 76.610 and as amended, at the minimum, the following:

- (1) Applicable town, county, state and national federal codes and ordinances;
- (2) Applicable utility joint attachment practices;
- (3) The National Electrical Safety Code; ANSI C2;
- (4) Local utility code requirements;
- (5) Local rights-of-way procedures;
- (6) NCTA Manual 741 Signal Leakage and Interference Control.

(b) PREVENTATIVE MAINTENANCE: A comprehensive routine preventative maintenance program shall be developed, effected and maintained for each system by the respective franchisee to ensure continued top quality cable communications operating standards in conformance with FCC. Part 76. (Ord. 1137 §1(part), 1994).

**13.52.110 System capability.** Franchisee shall provide at least a 300 MHz system capable of thirty-five (35) operational channels which will be activated with an initial minimum of

twenty-eight (28) operational channels of service within twenty-four (24) months of the date of franchise. (Ord. 1137 §1(part), 1994).

**13.52.120 Upgrade construction penalties.** A franchisee may be assessed the sum of five hundred dollars (\$500.00) per day as compensatory liquidated damages for each day the installation of original or upgraded service is not fully completed after the expiration of the twenty-four (24) month period following the awarding of the franchise, or, in the case of upgrading when directed by the Town, except for delays due to acts of God. Franchisee may obtain extensions of upgrade deadlines due in delays caused by circumstances beyond franchisee's control. The Town shall have the right, solely and exclusively within its reasonable discretion, to grant such extensions and to waive such penalties. Any such extension or waiver, which must be in writing, shall not constitute waiver of future rights to enforce this penalty. (Ord. 1137 §1(part), 1994).

**13.52.130 Arbitration.** In the event the Town and franchisee are unable to reach agreement as to whether the test of SMC 13,70.110, 13.52.150 and 13.52.430 are satisfied, the parties agree to resolve such question by arbitration. The Town shall select an arbitrator who is knowledgeable in cable communications matters and franchisee shall select a similarly qualified person. The two arbitrators selected by the parties shall select a third arbitrator. The decision of the majority of the arbitrators shall be binding and conclusive. The cost of such arbitration shall be shared equally by the Town and the franchisee. (Ord. 1137 §1(part), 1994).

**13.52.140 Parental control devices.** Franchisee will make available a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber. The fee for this device will be a one time charge equal to no more than franchisee's actual cost for the device. (Ord. 1137 §1(part), 1994).

**13.52.150 Other interactive services.** The Town may, during specified franchise reopeners, negotiate under the terms of those reopeners for the franchisee's provision of such services as addressability, security, computer interaction, banking, shopping etc. upon a "two-way" basis. (Ord. 1137 §1(part), 1994).

**13.52.160 Leased access.** The franchisee will comply with Section 612 of the Act to make available a cable channel for local commercial use as soon as the various criteria of that section are reached. (Ord. 1137 §1(part), 1994).

**13.52.170 Emergency power.** Franchisee shall provide a standby power system to automatically activate equipment at the headends in the event of primary electrical failure. Such system shall be operational within six (6) months from the effective date of the franchise. (Ord. 1137 §1(part), 1994).

**13.52.180 Construction standard.** All facilities constructed under this chapter shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of State of Washington, and town regulations pertaining to such construction. (Ord. 1137 §1(part), 1994).

**13.52.190 Construction notification.** The Town may establish reasonable minimum requirements for advance notification to residents adjacent to proposed construction areas. (Ord. 1137 §1(part), 1994).



**13.52.200 Underground installation.** In those areas and portions of the Town where the transmission or distribution facilities of the public utility providing electric service are underground or hereafter may be placed underground, then the franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground. Amplifiers and associated equipment in franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground as approved by the Town. (Ord. 1137 §1(part), 1994).

**13.52.210 Safety requirements.**

(a) The franchisee shall, at all times, employ professional care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) All structures and all lines, equipment and connections in, under, and upon the streets, sidewalks, alleys, and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

(c) The Town reserves the general right to see that the system of the franchisee is constructed and maintained in a safe condition. If an unsafe condition is found to exist by the Town, it may order the franchisee to make necessary repairs within thirty (30) days from the receipt of the Town's notification thereof, the Town may make the repairs itself or have them made, and collect all reasonable cost thereof from the franchisee. (Ord. 1137 §1(part), 1994).

**13.52.220 Annexed and newly developed areas.** All annexed and newly developed areas shall be provided cable service if such areas are contiguous to the Town limits, within six (6) months from the time of obtaining necessary permits. A list of such permits shall be provided to the Town, upon request, by the franchisee together with the dates for which application was made. Franchisee shall take immediate action to apply for such permits and licenses and will continue to pursue diligently the issuance of such required documents. It is understood that within these areas certain minimum density requirements, as outlined in Section 24 must be met.

In cases of new development (such as new subdivision not yet meeting density requirements) and where utilities are to be placed underground, franchisee shall install required equipment at its expense to provide future service. The developer shall be required to give franchisee reasonable notice of any construction or development, including a copy of any final plan, and of the particular date on which open trenching or other facilities shall be available for franchisee's installation of conduit or cable. Franchisee may be charged no more for use of such trench than charged other users.

If technical equipment such as prewiring or distribution system is installed by the developer, it is the developer's responsibility to make certain that such equipment meets FCC standards. (Ord. 1137 §1(part), 1994).

**13.52.230 Line extension.** Franchisee agrees to provide cable communications service to all areas within the Town, subject to the condition that there are at least thirty (30) dwelling units per street mile or one such unit within one hundred fifty (150) feet for aerial construction or 85 feet for underground construction of franchisee's distribution system as measured from existing system or such ratio thereof.

In the event request is made for service by a resident living in an area not meeting such criteria, the franchisee shall make such installation available to the requesting subscriber on a time and material cost basis for all construction beyond the above defined "normal installation costs" of 85' feet underground and 150' aerial. (Ord. 1137 §1(part), 1994).

**13.52.240 Completion time.** In the event that the Town of Steilacoom finds it necessary to solicit proposals from, and grant the franchise to, another applicant other than the present franchise holder, the franchisee so selected must agree to complete the new or rebuild system so as to cause no interruption in service to existing subscribers. Therefore, such franchisee shall complete the construction of described system including hook ups to all those so desiring in not less than twenty-four (24) months from the award of the franchise. (Ord. 1137 §1(part), 1994).

**13.52.250 Building moving.** Whenever any person has obtained permission from the Town to use any street for the purpose of moving any building, a franchisee, upon seven (7) days written notice from the Director of Public Works, shall remove, at the expense of that person desiring to move the building, any of its or their wires which may obstruct the removal of such building provided that the moving of such building shall be done in accordance with regulations and general ordinances of the Town. Where more than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference with the lines of franchisee and other franchise holders. It is further provided that the person or persons moving such building shall indemnify and save harmless said franchisee of an from any and all damages or claims of any kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of the franchisee. (Ord. 1137 §1(part), 1994).

**13.52.260 Rates.** Upon request, within sixty (60) days after the grant of any franchise hereunder, franchisee will file with the Town a complete schedule of all rates to be charged to subscribers, including but not limited to:

- (1) Installation of basic service.
- (2) Charges for basic service.
- (3) Installation of premium service.
- (4) Charges for premium service.
- (5) Installation of FM service.
- (6) Charges for FM service (including rates for FM service as a primary service).
- (7) Charges for relocation and reconnection.
- (8) Converter charges.
- (9) Charges for parental control keys.
- (10) Installation charges for additional outlet service.
- (11) Charges for additional outlet service.
- (12) Discounts for multiple premium services, etc.
- (13) Extended drop installation charges.
- (14) All other charges proposed.

Notice of Rate Change. Prior to implementation of any change in rates or charges for any service or equipment provided by franchisee, franchisee shall be required to provide Town and all subscribers a minimum of thirty (30) days prior written notice of such change. (Ord. 1137 §1(part), 1994).

**13.52.270 Discounts.** Franchisee shall offer a discount to those individuals permanently disabled or sixty two (62) years old or older who are the legal owner of lessee/tenant of their residence provided that their combined disposable income from all sources does not exceed the Federal Poverty Level for the current and preceding calendar year. Such discounts will consist of eight and one half percent (8.5%) with a minimum deduction of two dollars (\$2.00) from the normal charge for basic residential services as well as a fifty percent (50%) reduction in normal residential installation charges. The franchisee shall be responsible for reviewing discount

applications, and certifying that such applicants conform to the specified criteria. (Ord. 1137 §1(part), 1994).

**13.52.280 Franchise fee.** Franchisee shall pay to the Town a sum equal to five percent (5%) of gross revenues as defined herein, excluding "bad debt," as defined herein. Such payments will be made on a quarterly basis. (Ord. 1137 §1(part), 1994).

**13.52.290 Record inspection.** Subject to statutory and constitutional limits and reasonable advance notice, the Town reserves the right to inspect the records of the franchisee at any time during normal business hours provided the Town shall maintain the confidentiality of any trade secrets or their proprietary information in the possession of the franchisee. Such documents shall include such information as financial records, subscriber records within the context of Section 631 of the Act, tax returns and plans. Such data, however, is understood to be limited to such information that pertains solely to franchisees' operational and financial status, thus affecting its ability to operate and maintain the cable television system within the Town of Steilacoom. (Ord. 1137 §1(part), 1994).

**13.52.300 Periodic reports.** The franchisee shall furnish to the Town, upon written request, and within sixty (60) days of the conclusion of the Town's fiscal year, a report of its activities, including, but not limited to the following:

- (1) Annual report.
- (2) A copy of the 10-K Report, if required by the Security Exchange Commission.
- (3) The number of homes passed.
- (4) The number of subscribers with basic services.
- (5) The number of subscribers with premium services.
- (6) The number of subscribers using two-way or interactive services.
- (7) The number of hookups in period.
- (8) The number of disconnects in period.
- (9) The number of miles of cable laid in period.
- (10) Total number of miles of cable in Town.
- (11) Summary of complaints received by category, length of time taken to resolve and action taken to provide resolution.
- (12) Plans for future programming and/or changes as decided upon by franchisee which affect services within the franchise area.
- (13) Maps indicating existing location of headend equipment, trunk and distribution lines and projected routes with construction completion estimate by month or quarter in the event of a rebuild of the existing system.
- (14) A statement of its current billing practices.
- (15) A current copy of its access rules.
- (16) A current copy of its subscriber service contract.
- (17) A statement listing all production equipment provided for access programming.
- (18) Report on operations - Such other reports with respect to its operation, affairs, transactions or property that may be appropriate. However, it is recognized that certain of these reports, such as the corporate annual report and the 10-K may be delayed beyond this sixty (60) day period, but shall be submitted by the franchisee as soon as practicable thereafter. (Ord. 1137 §1(part), 1994).

**13.52.310 Annual meeting.** On a yearly basis, upon thirty (30) days' written notice from the Town, the franchisee shall meet with designated Town officials and/or designated representative(s) to review the performance of the franchisee over the preceding twelve (12)

months. The subjects shall include, but not be limited to those items covered in the periodic reports and performance tests listed above, as well as possible items for discussion such as:

- (1) Computer uses;
- (2) Service rate structures;
- (3) Interconnection;
- (4) Franchise fees;
- (5) Penalties;
- (6) Free or discounted services;
- (7) Application of new technologies;
- (8) Technical standards;
- (9) System performance;
- (10) Services provided;
- (11) Programming offered;
- (12) Access channels, facilities and support;
- (13) Municipal uses of cable;
- (14) Use and promotion of institutional network;
- (15) Local origination;
- (16) Consumer protection;
- (17) Privacy;
- (18) Amendments to this franchise;
- (19) Judicial rulings;
- (20) Congressional actions;
- (21) FCC rulings;
- (22) Line extension policies;
- (23) Insurance;
- (24) Franchisee rules;
- (25) Town rules.

(Ord. 1137 §1(part), 1994).

**13.52.320 Performance tests.** If the Town determines that reasonable evidence exists of inadequate CATV system performance pursuant to SMC 13.52.100, it may require franchisee to perform tests and analyses directed toward such suspected inadequacies at the franchisee's own expense. Franchisee shall fully cooperate with Town in performing such testing and shall prepare results and the report prepared by franchisee shall include at least:

- (1) A description of the problem in CATV system performance which precipitated the special test.
- (2) What CATV system component was tested.
- (3) The equipment used and procedures employed in testing.
- (4) The method, if any, by which such CATV system performance problem was resolved.
- (5) Radiation limits tests, such as those heretofore for required by the FCC.
- (6) Any other information pertinent to said test and analyses which may be required by Town, or determined when the test is performed.

If the results of testing shall indicate that the franchisee was operating within the established parameters as described in SMC 13.52.100; then the Town shall be responsible for the costs of such test. If the technical analysis shows that the franchisee is in violation of such parameters, the franchisee shall reimburse the Town for such actual costs of testing. If such violation is shown, franchisee shall correct all violation within sixty (60) days after written notice from the Town. (Ord. 1137 §1(part), 1994).

**13.52.330 Customer service.**

(a) Franchisee shall maintain a Pierce County office which shall be open during normal business hours, shall have a publicly listed telephone which is toll-free to subscribers to the Steilacoom cable system, and shall be operated to receive customer inquiries on a 24 hours per day, 7 day-a-week basis. A record of all complaints requiring service calls shall be maintained for a two-year period. Franchisee's local office shall be staffed a minimum of regular business office hours from Monday through Friday, except holidays for a prompt response to any complaint concerning billing, employee courtesy, programming, safety, or company policy.

(b) Franchisee shall render repair service to restore the quality of the signal at no less than the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A written or computerized log shall be maintained for a period of one year for all service interruptions which can be inspected upon notice.

(c) An employee of franchisee shall answer and respond to all individual complaints received prior to 5:00 p.m. weekdays. Franchisee may use an answering service to receive complaints after 5:00 p.m. weekdays and on weekends and holidays. A standby technician shall check with the answering service until 9:00 p.m. on weekdays and until 5:00 p.m. on weekends and holidays and will respond to any system outage affecting more than one customer.

(d) Franchisee shall instruct its answering service to immediately notify a standby technician during the weekend or on a holiday if it receives calls indicating an outage affecting more than one customer.

(e) Franchisee will maintain a sufficient repair force to respond to individual customer complaints or requests for repair service within twenty-four (24) hours after receipt of the complaint or request except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven (7) days, to the extent reasonable. Upon a request by customer, no charge for the period of the outage shall be made to the customer if the customer was without service for a period exceeding twenty-four (24) hours, unless the outage was due to an Act of God or events beyond the reasonable control of franchisee.

(f) A standby technician shall be on call seven (7) days a week. Franchisee shall respond immediately to service complaints involving a system outage affecting more than five (5) customers. For purposes of this section, a system outage shall mean a customer is without all services.

(g) Franchisee shall strive to supply at the time of a new connection, the title, address and telephone number of the Steilacoom town official or his/her designee, to whom system subscribers may direct their concerns.

(h) All customers, access programmers and members of the general public may direct comments regarding the company's service or performance to the Town or its designee. The Town will provide a method whereby all customers, access programmers and members of the general public have recourse to a review by the Town or its designee regarding any complaints. (Ord. 1137 §1(part), 1994).

**13.52.340 Subscribers' right of privacy.** The franchisee shall comply with all of the provisions of Section 631 of the Act. (Ord. 1137 §1(part), 1994).

**13.52.350 Programming.** For informational purposes only, the franchisee shall file, upon granting of the franchise, a complete listing of its channels including a breakdown of its basic and tier schedule. Such listing shall become the initial programming and cost schedule to be considered as the basis from which any changes may be contemplated in the future. This information, however, does not accord the Town any greater rights of regulation than those granted in the Act. (Ord. 1137 §1(part), 1994).

**13.52.360 Modification.** In the event the franchisee shall seek to have the existing franchise modified, Section 625 of the Act shall govern the procedure for the modification request unless Town and franchisee shall otherwise agree. (Ord. 1137 §1(part), 1994).

**13.52.370 Nondiscrimination.** The franchisee shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges which may be waived or modified during promotional campaigns of franchisee.

Installation and household hardware shall be uniform throughout the Town, except that the franchisee shall be free to change its hardware and installation procedure as state of the art progresses.

The franchisee will not deny access to cable communications service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides. (Ord. 1137 §1(part), 1994).

**13.52.380 Equal employment opportunity.** The franchisee shall comply with all provisions of Section 634 of the Act. (Ord. 1137 §1(part), 1994).

**13.52.390 Continuity of service.**

(a) It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to the company are fulfilled.

In this regard the franchisee shall act so far as it is within the control of the franchisee so as to ensure that all subscribers receive continuous uninterrupted service during the term of this franchise.

(b) In the event the franchisee fails to operate a system for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the Town or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond franchisee's control, the Town may, after notice and an opportunity for franchisee to commence operations at its option, operate the system until such time as the franchisee restores service to conditions acceptable to the Town or a permanent franchisee is selected. If the Town is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the Town for all reasonable costs or damages in excess of revenues from the system received by the Town that are the result of the franchisee's failure to perform. (Ord. 1137 §1(part), 1994).

**13.52.400 Franchise renewal.** The provision of Section 626 of the Act will govern the actions of the Town and the franchisee in proceedings relating to franchise renewal. The Town expressly reserves the right to establish guidelines and monitoring systems in accordance with the provisions of the Act to measure the effectiveness of the franchisee's performance during the term of such franchise. (Ord. 1137 §1(part), 1994).

**13.52.410 Transfer of ownership.** Any franchise awarded by the Town shall be based upon an evaluation by the Town of each application, the qualifications, and other criteria as such pertain to each particular applicant. No franchise can be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary, consolidation or otherwise, unless approval is granted by the Town Council under the same terms, and conditions as the original franchise or as it may be subsequently amended by mutual agreement to insure a review of unforeseen circumstance not present at the time of the original franchise. Town's approval shall not be unreasonably withheld. Such costs associated with this process

shall be reimbursed to the Town by the new prospective Franchisee. Notwithstanding the foregoing, franchisee may assign or otherwise transfer the franchise with any internal reorganization, merger or similar plan, to any direct or indirect parent subsidiary or affiliate entity under common control with franchisee. Any such action will not require the consent of the Town nor will it constitute or be deemed to be a change of control requiring the Town's consent. An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

The franchisee shall promptly notify the Town prior to any proposed change in, or transfer of, or acquisition by any other party of control of the franchisee's company. Every change, transfer or acquisition of control of the franchisee's company shall make the franchise subject to cancellation unless and until the Town shall have consented thereto. In the event that the Town adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the Town may cancel the franchise unless control by the franchisee is restored to a status acceptable to the Town.

Such approval of transfer, subject to conditions enumerated above, shall not be unreasonably withheld. Approval of the Town shall not be required if said transfer is from franchisee to another person or entity, controlling, controlled by or under common control with the franchisee. Approval shall not be required for mortgaging purposes provided that less than fifty percent (50%) of the beneficial interests, as described above are affected by such mortgage.

Upon the commencement of a foreclosure action or other actions which could possibly result in a judicial sale of all or a substantial part of the cable system, the franchisee shall notify the Town of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this ordinance governing the consent of the Town Council to such change in control of the franchise shall apply.

Any transfer or assignment approved by the Town shall be evidenced by a written instrument, a duly execute copy of which shall be filed in the office within sixty (60) days after the approval of the transfer or assignment by the Town. By said instrument, the assignee shall agree to comply with all terms of this chapter, the franchise ordinance, and the assignor's application. The Town shall have the right, at its sole discretion, to require that any conditions in the original franchise be fulfilled prior to such transfer. (Ord. 1137 §1(part), 1994).

**13.52.420 Right of Town to purchase.** The Town reserves the right to purchase the existing system pursuant to Section 627 of the Act. (Ord. 1137 §1(part), 1994).

**13.52.430 Removal and abandonment of property of franchisee.** The Town may direct the franchisee to temporarily disconnect or bypass any equipment of the franchisee in order to complete street construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the Town. Such removal, relocation or other requirement shall be at the sole expense of the franchisee.

In the event that the use of any part of the CATV system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this chapter or owned ordinances or this chapter has been terminated, cancelled or has expired, the franchisee shall promptly, upon being given ten (10) days' notice, remove within one hundred and eighty (180) days from the streets or public places all such property of such system other than any which the Town may permit to be abandoned in place. In the event of such removal, the franchisee shall promptly restore the street or other areas from which such property has been

removed to a condition similar to that condition existing before such removal: Or franchisee shall have the right to dispose of cable system to a third party at fair market value.

Any property of the franchisee remaining in place one hundred and eighty (180) days after the termination or expiration of the franchise shall be considered permanently abandoned. The Town may extend such time not to exceed an additional ninety (90) days. Such a request shall not be unreasonably withheld.

Any property of the franchisee to be abandoned in place shall be abandoned in such manner as the Town shall prescribe. Upon permanent abandonment of the property of the franchisee in place, the property shall become that of the Town, and the Franchisee shall submit to the Town Clerk an instrument in writing, to be approved by the Town Attorney, transferring to the Town the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under state federal law or the Constitution. In the event the Town and the franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of this section either party may invoke arbitration to resolve such question. (Ord. 1137 §1(part), 1994).

#### **13.52.440 Revocation for cause.**

(a) Any franchise granted by the Town may be terminated during the period of such franchise for the following reasons:

- (1) Failure of the franchisee to comply with material provisions of this chapter.
- (2) Failure of the franchisee to comply with FCC regulations, or other provisions of the

Act.

(b) The procedure to be followed resulting in termination for any of the above reasons, save franchisee's request will be:

- (1) Town will direct, in writing, franchisee to correct such deficiencies or comply with such regulations within thirty (30) days or a reasonable period of time.
- (2) Failure to do so will cause the matter of termination to be brought before the Town.
- (3) At such hearing the franchisee and other interested parties may offer evidence explaining or mitigating such noncompliance. The Town Council in its sole discretion, will make the determination as to whether such noncompliance was without just cause. In the event the Town finds that such noncompliance was without just cause, the Town may at its sole discretion fix an additional time period to cure such deficiency(ies). If the deficiency has not been cured at the expiration of any additional time period or if the Town does not grant any additional period, the Town may by ordinance declare the franchise to be terminated and forfeited.

(4) If the franchisee appeals the revocation and termination of the franchise through legal remedies, the revocation of such franchise shall be held in abeyance pending such de novo judicial review by a court of competent jurisdiction.

(5) Provided, nothing contained in the above subsections of this section shall prevent the issuance of a new franchise containing terms similar to or identical to a franchise which previously was revoked, on satisfactory assurances made to the Town that the terms and conditions of this chapter can be met by the franchisee. (Ord. 1137 §1(part), 1994).

**13.52.450 Effect of termination for noncompliance.** Subject to state and federal law, if any franchise is terminated by the Town by reason of the franchisee's noncompliance, that part of the system under such franchise located in the streets and public property, shall, at the election of the Town, become the property of the Town at a cost consistent with the provisions of Section 627 (b) (1) of the Act. If the Town, or a third party, does not purchase the system, the franchisee shall, upon order of the Town Council, remove the system as required under SMC 13.52.450. (Ord. 1137 §1(part), 1994).



**13.52.460 Indemnify and hold harmless.** The franchisee will indemnify and hold harmless the Town, its officials, agents and employees from any and all liabilities, fees, costs and damages except in the case of negligence, gross negligence, willful misconduct, or fraud on the part of the Town, whether to person or property, or expense of any type or nature which may occur to the Town by reason of the construction, operation, maintenance, repair and alterations of franchisee's facilities or any other actions of franchisee in the Town of Steilacoom. In any case in which suit or action is instituted against the Town by reason or damages or injury caused by franchisee, the Town shall cause written notice thereof to be given to the franchisee and franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the Town. The franchisee shall have no obligation to pay damages, penalties or fines which are levied on the Town as a result of a finding that its officials, employees or agents were involved in negligence, gross negligence, willful misconduct, or fraud. (Ord. 1137 §1(part), 1994).

**13.52.470 Insurance.** The franchisee shall concurrently with the filing of an acceptance of award of any franchise granted hereunder, furnish to the Town and file with the Town Clerk and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the Town, its officers, boards, commissions, agents and employees, protecting the Town and all persons against liability for loss or damage for personal injury, death and property damage, and errors or omissions, occasioned by the operations of franchisee under such franchise, with minimum limits of one million dollars (\$1,000,000) for both personal injury and/or property damage. The policies mentioned in the foregoing paragraph shall name the Town, its officers, boards, commission, agents and employees, as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the Town thirty (30) days in advance of the effective date thereof; if such insurance is provided by a policy which also covers Franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement. (Ord. 1137 §1(part), 1994).

**13.52.480 Performance bond.** Franchisee shall promptly repair or cause to be repaired any damage to Town property caused by franchisee or any agent of franchisee. Franchisee shall comply with all present and future ordinances and regulations regarding excavation or construction and if deemed necessary by the Town shall be required to post a performance bond in an amount not to exceed fifteen thousand dollars (\$15,000), in favor of the Town warranting that all restoration work will be done promptly and in a workmanlike manner. (Ord. 1137 §1(part), 1994).

**13.52.490 Inconsistency.** If any portion of this chapter should be inconsistent with any rule or regulation now or hereinafter adopted by the FCC or other federal legislation, then to the extent of the inconsistency, shall control for so long, but only for so long, as such rule or regulation shall remain in effect, but the remaining provisions of this chapter shall not hereby be affected. (Ord. 1137 §1(part), 1994).

**13.52.500 Force majeure.** In the event that the franchisee's performance of any of the terms, conditions, obligations or requirements of this chapter is prevented or impaired due to any cause(s) beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. (Ord. 1137 §1(part), 1994).

**Chapter 13.53**  
**UTILITIES FRANCHISES**

**Sections:**

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**13.53.010 Purpose.** The purpose and intent of this chapter is to:

- (A) Establish a local policy concerning the use of public ways and Town property by telecommunication carriers and other utilities;
- (B) Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of the public ways and Town property;
- (C) Promote competition in telecommunication services;
- (D) Minimize unnecessary local regulation of telecommunication providers;

(E) Encourage the provision of advanced and competitive telecommunication services on the widest possible basis to the businesses, institutions and residents of the Town;

(F) Permit and manage reasonable access to the public ways of the Town for telecommunication and other utility purposes on a competitively neutral basis;

(G) Conserve the limited physical capacity of the public ways held in public trust by the Town;

(H) Assure that the Town's current and ongoing costs of granting and regulating private access to and use of the public ways and Town property are fully paid by the persons seeking such access and causing such costs;

(I) Secure fair and reasonable compensation to the Town and the residents of the Town for permitting private use of the public ways and Town property;

(J) Assure that all telecommunication carriers and other utility providers providing facilities or services within the Town comply with the ordinances, rules and regulations of the Town;

(K) Assure that the Town can continue to fairly and responsibly protect the public health, safety and welfare;

(L) Enable the Town to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition and technological development. (Ord. 1581, 2018).

**13.53.020 Definitions.** For the purpose of this chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

"Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

"Applicant" means any person or entity that applies for any permit or franchise pursuant to this chapter.

"Cable Act" shall mean the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunication Reform Act of 1996, all codified at 47 USC 521 et seq. as now exists and is hereafter amended.

"Town" means the Town of Steilacoom, Washington.

"Town property" means and includes all real property owned by the Town, other than public ways and utility easements as those terms are defined herein, and all property held in a proprietary capacity by the Town, which are not subject to right-of-way licensing and franchising as provided in this chapter.

"Council" means the Town Council of the Town of Steilacoom, Washington.

"Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the Town including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

"Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, hand hole or other utility facility within a public way that is or will be available for use for additional telecommunication facilities or other utility.

"FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunication carriers, services and providers on a national level.

"Fiber optics" means the technology of guiding and projecting light for use as a communications medium.

"Other ways" means the highways, streets, alleys, utility easements or other rights-of-way within the Town, but under the jurisdiction and control of a governmental entity other than the Town.

“Overhead facilities” means utility poles, utility facilities and telecommunication facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

“Person” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

“Personal wireless services” means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services as defined by federal laws and regulations.

“Public way” means and includes any highway, street, alley, utility easement, or other public right-of-way for motor vehicle travel under the jurisdiction and control of the Town which has been acquired, established, dedicated or devoted to highway purposes now or hereafter owned by the Town, but only to the extent of the Town’s right, title, interest or authority to grant a license or franchise to occupy the same for telecommunication and utility facilities.

“Record” means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, magnetic and laser disk files, and photographs.

“Resident” means any natural person residing within the Town.

“State” means the State of Washington.

“Surplus space” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the federal or State orders and regulations, to allow its use by a telecommunication carrier or other utility for a pole attachment.

“Telecommunication carrier” means and includes every person or entity that directly or indirectly owns, controls, operates or manages telecommunication facilities within the Town, used or to be used for the purpose of offering or furnishing telecommunication service within or outside the Town.

“Telecommunication facilities” means the plant, equipment and property, including but not limited to cables, wires, conduits, ducts, pedestals, antennas, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunication services.

“Telecommunication service” means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

“Underground facilities” means utility and telecommunication facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

“Usable space” means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in any federal or State orders and regulations.

“Utility” means a service, such as electrical power, natural gas, sanitary sewer, potable water, cable, telephone and similar services.

“Utility easement” means any easement owned by the Town and acquired, established, dedicated or devoted for public utility purposes.

“Utility facilities” means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or

above the surface of the ground within the public ways of the Town and used or to be used for the purpose of providing utility or telecommunication services.

“Utility provider” means and includes every person or entity that directly or indirectly owns, controls, operates or manages utility facilities within the Town, used or to be used for the purpose of offering or furnishing utility service within or outside the Town, except for the Town of Steilacoom.

“Year” means a full 12-month calendar year, unless designated otherwise, such as a fiscal year. (Ord. 1581, 2018).

**13.53.030 Franchise required.** Any telecommunication carrier or utility provider who desires to construct, install, operate, maintain, or otherwise locate telecommunication or other utility facilities in, under, over or across any public way of the Town for the purpose of providing telecommunication or other utility service to persons and areas within or outside the Town shall first obtain a franchise granting the use of such public ways from the Town pursuant to this chapter. (Ord. 1581, 2018).

**13.53.040 Facilities lease required.** No telecommunication carrier, or other entity, or other utility, who desires to construct or erect telecommunication, utility or other equipment on Town property shall locate such facilities or equipment on Town property unless granted a facilities lease from the Town. The Town Council reserves unto itself the sole discretion to lease Town property for telecommunication and other facilities, and no vested or other right shall be created by this section or any provision of this chapter applicable to such facilities leases. (Ord. 1581, 2018).

**13.53.050 Construction and right-of-way permits required.** The holder of a franchise granted pursuant to this chapter shall, in addition to the franchise, be required to obtain construction and right-of-way use permits from the Town. No work, construction, development, excavation, or installation of any equipment or facilities shall take place within the public ways until such time as the appropriate permits are issued. (Ord. 1581, 2018).

**13.53.060 Application to existing franchise ordinances, agreements, leases, and permits –Effect of other laws.**

(A) This chapter shall have no effect on any existing franchise ordinance, lease, or permit to use or occupy a public way in the Town until:

(1) The expiration of said franchise ordinance, agreement, lease, or permit; or

(2) The amendment to an unexpired franchise ordinance, franchise agreement, lease, or permit, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

(B) Nothing in this chapter shall be deemed to create an obligation upon any person for which the Town is forbidden to require a permit, license, or franchise by federal, State, or other law. (Ord. 1581, 2018).

**13.53.070 Relief and Remedies.**

(A) The Town may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this chapter. Violation of the terms of this chapter may also result in the revocation of any franchise, facilities lease, or permit issued or granted hereunder.

(B) Nothing in this chapter shall be construed as limiting any judicial remedies that the Town may have, at law or in equity, for enforcement of this chapter. All penalties and other remedies set forth in this chapter are in addition to any enforcement provisions set forth in any permit, franchise, or lease granted by the Town. (Ord. 1581, 2018).

**13.53.080 Fees and compensation not a tax.** The fees, charges and fines provided for in this chapter and any compensation charged and paid for the public ways provided for herein, whether monetary or in-kind (to the extent permitted by law), are separate from, in addition to, any and all federal, State, local, and Town taxes as may be lawfully levied, imposed or due from a telecommunications carrier, a utility provider, customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications service or other utility service. (Ord. 1581, 2018).

**13.53.090 Franchise application.** Any person that desires a utility franchise shall file an application with the Town which shall include the following information:

(A) The name, address, and telephone number of the applicant.

(B) A brief description of the services that are or will be offered or provided by the applicant over its facilities.

(C) A brief description of the transmission medium that will be used by the applicant to offer or provide such services.

(D) Preliminary engineering plans, specifications and a network map of the facilities to be located within the Town, all in sufficient detail to identify:

(1) The location and route requested for applicant's proposed facilities;

(2) The location of all overhead and underground public utility, telecommunication, cable, water, sewer drainage and other facilities in the public way along the proposed route;

(3) The location(s), if any, for interconnection with the facilities of other similar carriers or providers;

(4) The specific trees, structures, improvements, facilities and obstructions in the public way to temporarily or permanently remove or relocate.

(E) If applicant is proposing an underground installation in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(1) The excess capacity currently available in such ducts or conduits before installation of applicant's facilities;

(2) The excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's facilities.

(F) If applicant is proposing an underground installation with new ducts or conduits to be constructed within the public ways:

(1) The location proposed for the new ducts or conduits;

(2) The excess capacity that will exist in such ducts or conduits after installation of applicant's proposed facilities.

(G) A preliminary construction schedule and completion date.

(H) A preliminary traffic control plan in accordance with the Town's adopted street standards.

(I) An application fee. (Ord. 1581, 2018).

**13.53.100 Issuance/denial of franchise.**

(A) Upon receipt of an application for a franchise, the Town Administrator, or designee, shall review the application for compliance with this chapter and shall insure that the following items are addressed as necessary:

- (1) Compensation to the Town including attachment fees
- (2) Term of the franchise
- (3) Renewal provisions
- (4) Amendment provisions
- (5) Assignments or transfers of franchise

- (6) Transactions affecting control of franchise
- (7) Notice and duty to cure
- (8) Standards for revocation or lesser sanctions
- (9) Termination and revocation provisions
- (10) Location of facilities
- (11) Installation of applicant's utility poles in lieu of Town's
- (12) Installation of electric meters
- (13) Replacement of equipment
- (14) Maintenance and repair
- (15) Subletting
- (16) Additional ducts or conduits
- (17) Relocation or removal of facilities
- (18) Building moving
- (19) Abandonment of equipment
- (20) Authority to trim trees
- (21) Survey of underground facilities
- (22) Hazardous substances
- (23) Indemnity provisions
- (24) Identification of Town and applicant contact and notification information
- (25) Insurance
- (26) Bonding

The Town Administrator, or designee, shall prepare a staff report for review by the Town Council describing the proposed franchise and the proposed terms of the franchise. The Town Council shall review the staff report at a public hearing. Notice of the public hearing shall be reasonably calculated to inform the affected public and shall include public postings, mailed and published notifications and any other suitable method.

(B) Within 120 days after receiving a complete application under SMC 13.53.090, the Town shall issue a written determination granting or denying the franchise in whole or in part. The Town Council shall make a decision to grant or deny a franchise under this chapter based upon the following standards. If the franchise is denied, the written determination shall include the reason(s) for denial.

- (1) The capacity of the public ways to accommodate the applicant's proposed facilities.
- (2) The capacity of the public ways to accommodate additional utility, cable, and telecommunication facilities if the franchise is granted.
- (3) The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.
- (4) The public interest in minimizing the cost and disruption of construction within the public ways.
- (5) The effect, if any, on public health, safety and welfare if the franchise is granted.
- (6) The availability of alternate routes and/or locations for the proposed facilities.
- (7) Applicable federal and State laws, regulations and policies.
- (8) Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.

(C) Unless otherwise provided by State statute or other law, all actions seeking review of a final action of the Town, whether in the form of an appeal, declaratory judgment action, petition for writ of review, or other extraordinary writ, or in any other form shall be filed with a court having jurisdiction over such action within 14 working days of the decision, and otherwise shall be barred. (Ord. 1581, 2018).

**13.53.110 Nonexclusive grant.** No authorization granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public ways of the Town for delivery of telecommunications or other utility services or any other purposes. (Ord. 1581, 2018).

**13.53.120 Obligation to cure as a condition of renewal.** No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the franchise, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the Town. (Ord. 1581, 2018).

**13.53.130 Acceptance.** No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the grant has been unconditionally accepted by the grantee. Within 60 days after the effective date of the ordinance or other Town action granting a franchise, or within such extended period of time as may be authorized by the Town, the applicant shall file written acceptance of the franchise in a form satisfactory to the Town Attorney, together with the bonds, insurance policies, and security fund required by this chapter. Acceptance of a franchise shall consist of executing the written agreement granting the franchise and returning said franchise to the Town within the period of time specified herein. (Ord. 1581, 2018).

**13.53.140 Effect of franchise approval and police power.**

(A) No franchise granted under this chapter shall be deemed to be an exclusive grant and shall not in any manner prevent the Town from constructing, operating, and/or maintaining a telecommunication or other utility system or facility of its own or granting other franchises to do so in, along, over, through, under, below or across any of the public ways, streets, avenues, and other public land and properties of every type and description. No franchise granted hereunder shall prevent or prohibit the Town from using any of said roads, rights-of-way, streets or other public properties or affect the Town's jurisdiction over them. The Town reserves full power to make all necessary changes, relocations, repairs, maintenance and improvement of all public ways and thoroughfares and other public properties of every type.

(B) In accepting any franchise the grantee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the Town to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the Town pursuant to such power.

(C) In addition to the inherent powers of the Town to regulate and control any franchise it issues, the authority granted to it by the Cable Act, and those powers expressly reserved by the Town, or agreed to and provided for in any franchise, the right and power is hereby reserved by the Town to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers giving due regard to the rights of grantees hereunder. Except as provided in this chapter, the foregoing does not allow for amendment by the Town of material terms of any franchise it issues without the consent of the grantee. The Town Council reserves the right to delegate its authority for franchise administration to a designated agent.

(D) No approval granted under this chapter shall convey any right, title or interest in the public ways or Town property, but shall be deemed a franchise only to use and occupy the public ways or Town property for the limited purposes and term stated in the approval. Further, no approval shall be construed as any warranty of title. (Ord. 1581, 2018).

**13.53.150 Compliance with 1 call locator service.** All grantees shall, before commencing any construction in the public ways, comply with all regulations of Chapter 19.122 RCW, the 1 call locator service. (Ord. 1581, 2018).



**13.53.160 Interference with the public ways.** No grantee may locate or maintain its facilities so as to unreasonably interfere with the use of the public ways by the Town, by the general public or by other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by the grantee, at the grantee's cost, temporarily or permanently, as determined by the Public Works Director. (Ord. 1581, 2018).

**13.53.170 Damage to property.** No grantee nor any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any Town property, public ways of the Town, other ways or other property, whether publicly or privately owned, located in, on or adjacent thereto. (Ord. 1581, 2018).

**13.53.180 Notice of work.** Unless otherwise provided in a franchise agreement, no grantee, nor any person acting on the grantee's behalf, shall commence any nonemergency work in or about the public ways of the Town or other ways without 10 working days' advance notice to the Town. (Ord. 1581, 2018).

**13.53.190 Repair and emergency work.** In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the grantee shall notify the Town as promptly as possible, before such repair or emergency work commences or as soon thereafter if advance notice is not practicable, but no more than 48 hours after such emergency repair commences. (Ord. 1581, 2018).

**13.53.200 Removal of unauthorized facilities.** Within 30 days following written notice from the Town, any grantee or other person that owns, controls or maintains any unauthorized telecommunication or utility system, facility or related appurtenances within the public ways of the Town shall, at its own expense, remove such facilities or appurtenances from the public ways of the Town. A telecommunication or utility system or facility is unauthorized and subject to removal in the following circumstances:

(A) Upon expiration or termination of the grantee's franchise.

(B) Upon abandonment of a facility within the public ways of the Town. Such property shall be deemed abandoned if the grantee does not respond within 120 days of notice of abandonment from the Town.

(C) If the system or facility was constructed or installed without the prior grant of a franchise.

(D) If the system or facility was constructed or installed without the prior issuance of a required construction permit.

(E) If the system or facility was constructed or installed at a location not permitted by the franchise.

Provided, however, that the Town may, in its sole discretion, allow a grantee, or other such persons who may own, control, or maintain telecommunication facilities or other utility facilities within the public ways of the Town, to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the Town. Any plan for abandonment or removal of a grantee's facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of the property of such persons in place, the property shall become that of the Town, and such persons shall submit to the Public Works Director an instrument in writing, to be approved by the Town Attorney, transferring to the Town the ownership of such property. The provisions of this section shall survive the expiration, revocation, or termination of a franchise granted under this chapter. (Ord. 1581, 2018).

**13.53.210 Emergency removal or relocation of facilities.** The Town retains the right and privilege to cut or move any telecommunication or other utility facilities located within the public ways of the Town, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The Town shall not be liable to any telecommunication carrier, utility provider, grantee, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the Town's actions under this section. (Ord. 1581, 2018).

**13.53.220 Damage to facilities.** Unless directly and proximately caused by the willful, intentional or malicious acts of the Town, the Town shall not be liable for any damage to or loss of any telecommunication facility or other utility upon Town property or within the public ways of the Town as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such Town property or within the public ways by or on behalf of the Town, nor shall the Town be liable with respect to any actions in connection with any emergency removal or relocation of facilities under Section 210. (Ord. 1581, 2018).

**13.53.230 Restoration of public ways, other ways and Town property.**

(A) When a grantee, or any person acting on its behalf, does any work in or affecting any public ways, other ways or Town property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property in accordance with applicable Town standards.

(B) If weather or other conditions do not permit the complete restoration required by this section, the grantee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(C) A grantee or other person acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

(D) The Public Works Director shall be responsible for inspection and final approval of the condition of the public ways and Town property following any construction and restoration activities therein. Further, the provisions of this section shall survive the expiration, revocation, or termination of a franchise granted pursuant to this chapter.

(E) A grantee that has determined to discontinue its operations in the Town must submit to the Town, within 90 days of the planned date for discontinuance of operation, a proposal and instruments for transferring ownership of its facilities to the Town. If a grantee proceeds under this clause, the Town may at its option:

(1) Purchase the facilities at a mutually determined price or the grantee may seek bids from other persons; or

(2) Require the grantee, at its own expense, to remove the facilities.

(F) Facilities of a grantee who fails to comply with the preceding subsection and which, for 120 days, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. After the lapsing of such 120 days and upon 30 days' notice to the occupant, the Town may exercise any remedies or rights it has at law or in equity, including but not limited to:

(1) Abating the nuisance;

(2) Requiring removal of the facilities at the expense of the grantee; or

(3) Removing abandoned facilities in conjunction with a proposed construction project.

(Ord. 1581, 2018).

**13.53.240 Facilities maps.** Each grantee shall provide the Town with an accurate map or maps certifying the location of all facilities within the public ways. The map or maps will be supplied both as a paper copy and in a digital format acceptable to the Public Works Director. Each grantee shall provide the Town with updated maps each time a new facility is added. (Ord. 1581, 2018).

**13.53.250 Duty to provide information.**

(A) Within 10 days of a written request from the Public Works Director, each grantee shall furnish the Town with information sufficient to demonstrate:

(1) That grantee has complied with all requirements of this chapter.

(2) That all sales, business and occupation, utility and/or telecommunication taxes due to the Town in connection with the services and facilities provided by the grantee have been properly collected and paid by the grantee.

(B) All books, records, maps and other documents maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the Town at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require a grantee to violate State or federal law regarding subscriber privacy, nor shall this section be construed to require a grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. (Ord. 1581, 2018).

**13.53.260 Construction standard and permits.**

(A) No person shall commence or continue with the construction, installation or operation of facilities within the Town except as provided in this chapter.

(B) Facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, State and local codes, rules and regulations.

(C) No person shall construct, install, repair or maintain any telecommunications or utility facilities within the public ways of the Town or upon Town property without first obtaining the appropriate right-of-way work permit, provided, however:

(1) No right-of-way work permit shall be issued for the construction or installation of facilities within the Town unless the telecommunications carrier or utility provider has filed an application for a business license;

(2) No permit shall be issued for the construction or installation of telecommunications or utility facilities in the public ways unless the telecommunications carrier or utility provider has applied for and received a franchise pursuant to this chapter;

(3) No permit shall be issued for the construction or installation of telecommunications or utility facilities without payment of any applicable construction permit fee; and

(4) No permit shall be issued for the construction or installation of telecommunications or other utility equipment on Town property unless the telecommunications carrier or utility provider has applied for and received a facilities lease from the Town. The Town Council reserves unto itself the sole discretion to lease Town property for telecommunications and other utility facilities, and no vested or other rights shall be created by this section or any provision of this chapter applicable to such facilities' leases. (Ord. 1581, 2018).

**13.53.270 Applications for telecommunication and utility facilities.** Applications for permits to construct telecommunication facilities or other utilities shall be submitted upon forms to be provided by the Town. All applications for construction permits shall be submitted at least 30 days prior to the need for the construction permit. Applications for complex projects should be submitted at least 120 days prior to the planned need for the construction permit. If unforeseen conditions or circumstances require expedited processing time, the Town will

reasonably attempt to cooperate where practicable, but additional fees to cover additional costs to the Town shall be charged. Application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(A) That the facilities will be constructed in accordance with all applicable codes, rules and regulations;

(B) The location and route of all facilities to be installed on existing utility poles;

(C) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways;

(D) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant;

(E) The location of all other facilities to be constructed within the Town, but not within the public ways;

(F) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public ways;

(G) The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction;

(H) Proposed construction schedule and work hours which may be limited by the Town (including the requirement of working at night for traffic flow and other public health, safety and welfare related issues);

(I) The location of all survey monuments which may be displaced or disturbed by the proposed construction; and

(J) Whether the proposed use is in compliance or would be compliant with this chapter and any other applicable regulations with respect to use and management of public ways, other ways and Town property. (Ord. 1581, 2018).

**13.53.280 Engineer's certification.** All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. (Ord. 1581, 2018).

**13.53.290 Traffic control plan.** All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. (Ord. 1581, 2018).

**13.53.300 Issuance of permit.** Within 30 days after submission of all plans and documents required of the applicant and payment of the permit fees required by this article, the Public Works Director, if satisfied that the applications, plans and documents comply with all requirements of this chapter and are complete, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as he may deem necessary or appropriate. In the event that the construction permit is denied, the Public Works Director shall set forth the reasons of such denial in writing. (Ord. 1581, 2018).

**13.53.310 Appeal of permit decision.** Any person aggrieved by the granting or denying of a construction permit pursuant to this chapter shall have the right to appeal to the Town Council as follows:

(A) All appeals filed pursuant to this section must be filed in writing with the Public Works Director within 10 working days of the date of the decision appealed from;

(B) All appeals filed pursuant to this section shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the Public Works Director's decision, which shall constitute the basis of the appeal;

(C) Upon receipt of a timely written notice of appeal, the Public Works Director shall advise the Town Council of the pendency of the appeal and request that a date for considering the appeal be established;

(D) All relevant evidence shall be received during the hearing on the appeal;

(E) Unless substantial relevant information is presented which was not considered by the Public Works Director, such decision shall be accorded substantial weight, but may be reversed or modified by the Town Council if, after considering all of the evidence in light of the applicable goals, policies, and provisions of this chapter, the Town Council determines that a mistake has been made. Where substantial new relevant information which was not considered in the making of the decision appealed from has been presented, the Town Council shall make its decision only upon the basis of the facts presented at the hearing of the appeal, or may elect to remand the matter for reconsideration by the Public Works Director in light of the additional information;

(F) For all appeals decided pursuant to this section, the Town shall provide for a record that shall consist of written findings and conclusions and a taped transcript;

(G) Unless otherwise provided by State statute or other law, all actions seeking review of a final action of the Town, whether in the form of an appeal, declaratory judgment action, petition for writ of review or other extraordinary writ, or in any other form, shall be filed with a court having jurisdiction over such action within 15 days of the decision, or the expiration of the reconsideration period, whichever is later, and otherwise shall be barred; and

(H) No action to obtain judicial review shall be commenced unless all rights of appeal provided by this section are fully exhausted. The cost of transcription of all records ordered certified by the court for such review shall be borne by the party seeking such review and shall be paid in advance to the Town Clerk. If a transcript is prepared by such party, it shall be submitted to the Town for confirmation of its accuracy. (Ord. 1581, 2018).

**13.53.320 Completion of construction.** The grantee shall promptly complete all construction activities so as to minimize disruption of the public and other ways and other public and private property. All construction work authorized by a permit within public and other ways, including restoration, must be completed within 120 days of the date of issuance, unless otherwise extended by the Public Works Director. (Ord. 1581, 2018).

**13.53.330 As-built drawings.** Within 60 days after completion of construction, the grantee shall furnish the Town with complete sets of plans, drawn to scale and certified to the Town as accurately as reasonably possible and depicting the horizontal and vertical location and configuration of all facilities constructed pursuant to the construction permit. The Public Works Director shall have the discretion to prescribe the number of copies and format of said record drawings, consistent with Town codes and policies, and to require submission of such record drawings in a digital format. (Ord. 1581, 2018).

**13.53.340 Restoration after construction, installation, maintenance, repair or replacement.** Upon completion of any construction, maintenance, repair or replacement work, the grantee shall promptly repair any and all public and private property improvements, fixtures, structures and facilities in the public ways, other ways or Town property or otherwise damaged during the course of construction, installation, maintenance, repair or replacement, restoring the same as nearly as practicable to its condition before the start of construction, installation,

maintenance, repair or replacement. All survey monuments disturbed or displaced shall be referenced and replaced as required by Chapter 332-120 WAC. The referencing and replacement of survey monuments shall be performed by a licensed land surveyor. The Public Works Director shall have final approval of the completeness of all restoration work and all grantees shall warrant said restoration work for a period of 1 year. (Ord. 1581, 2018).

**13.53.350 Landscape restoration.**

(A) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of telecommunication or other utility facilities, whether or not such work is done pursuant to a permit, shall be replaced or restored as nearly as may be practicable to the condition existing prior to performance of work.

(B) All restoration work within the public ways shall be done in accordance with landscape plans approved by the Public Works Director. (Ord. 1581, 2018).

**Chapter 13.54**

**SMALL CELL DEPLOYMENT—FRANCHISE AND SMALL CELL PERMITS**

**Sections:**

- 13.54.010 Overview.**
- 13.54.020 Definitions.**
- 13.54.030 Design zones designated.**
- 13.54.040 Franchise application.**
- 13.54.050 Application and designation of facilities.**
- 13.54.060 Implementation—Right-of-way permits for small cell deployment.**
- 13.54.070 Review process.**
- 13.54.080 Right-of way permits for small cells.**
- 13.54.090 Amendments to the franchise agreement.**
- 13.54.100 Review of wireless communications facilities other than small cell deployments.**
- 13.54.110 Ground-mounted equipment—ADA compliance required.**
- 13.54.120 Small cell facilities in undergrounded areas or design zones.**
- 13.54.130 Compliance with state processing limitations.**
- 13.54.140 Determination of appropriate regulation.**
- 13.54.150 Additional review procedures.**

**13.54.010 Overview and Purpose.** The Town of Steilacoom is uniquely situated on Puget Sound, the first incorporated town in the State of Washington. The Town was the first in Washington State to establish a National Historic District encompassing its downtown and much of its original residential areas. Overhead wires and other visual clutter can obstruct views throughout Town and introduce unwarranted intrusions of modern devices into the Historic District. The Town has made substantial investments of public effort and expense to protect its vistas and history by placing utilities underground.

The Town of Steilacoom has adopted this process for the deployment of small cell technology in order to manage its rights-of-way in a thoughtful manner. The process balances the need to accommodate new and evolving technologies with the preservation of the natural, historic and aesthetic environment of the Town, while complying with the requirements of state and federal law. Service providers who seek to utilize the public rights-of-way for small cell deployment in order to provide wireless communication, data transmission or other related services to the citizens of the Town must have a valid franchise to provide the specific service

seeking to utilize the rights-of-way and a right-of-way permit to deploy the technology. Entities with franchises who wish to utilize a small cell deployment to upgrade or expand their existing services shall utilize the processes set forth in this chapter to deploy their technology and obtain design approval of specific installations. The right-of-way permit process administers deployment under the franchise. An entity without a franchise shall apply for a franchise and adjunct right-of-way permit which shall be processed concurrently as one master permit within the meaning of RCW 35.99.010(3) and 35.99.030. SMC 13.54.050 outlines the process for entities with a valid franchise.

(A) Nothing in this chapter revises or diminishes the rights and obligations of an existing franchise.

(B) The term “small cell deployment” shall include the deployment of small cell facilities as that term is defined herein. Small cell deployment elements which require SEPA review may utilize these processes only in conjunction with SEPA review.

(C) Existing franchisees with franchises that do not specifically permit small cell deployment shall be required to either amend their existing franchise or enter into a new franchise with the Town.

**13.54.020 Definitions.** Terms used in this chapter have the following meanings:

(a) *Action* or *to act* on a siting application means the Town’s grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna* means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of title 47 CFR.

(c) *Antenna equipment* means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antenna equipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means the permit issued by the Town pursuant to this Chapter.

(g) *Collocation*, means

(1) Mounting or installing an antenna facility on a pre-existing structure, and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(h) *Concealment* means designing transmission facilities to look like some feature other than a wireless tower or base station or minimizing the visual impact of an antenna or other equipment by use of non-reflective materials, appropriate colors and/or a concealment canister.

(i) *Deployment* means placement, construction, or modification of a personal wireless service facility.

(j) *Facility* or *personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

(k) *Franchise* is the non-exclusive grant by the Town to operate a wireless communication system using Town rights-of-way.

(l) *Right-of-way permit* is the permission given by the Town to install small cell facilities in specific locations.

(m) *Siting application* or *application* means a written submission to the Town requesting authorization for the deployment of a personal wireless service facility at a specified location.

(n) *Small wireless facilities* or *small cell facility* are facilities that meet each of the following conditions:

(1) The facilities

(i) are mounted on structures 50 feet or less in height including their antennas as defined herein, or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or

(iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna herein), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under FCC regulations in part 17 of Title 47 CFR; and

(5) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in under FCC regulations in Title 47 CFR.

(o) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service, whether on its own or comingled with other types of services.

(p) *Utility pole* means a structure designed and used primarily for the support of electrical wires, telephone wires, television cable, traffic signals, or lighting for streets, parking areas, or pedestrian paths.

**13.54.030 Design zones designated.** The following areas are hereby designated “design zones” for the purpose of this chapter. Design zones shall include the following districts:

(A) Steilacoom Historic District as defined in Chapter 2.14 SMC.

**13.54.040 Franchise application.** Applicants for a small cell facility franchise shall apply using the Town’s franchise application form and submit a fee according to the Town’s fee schedule. The Town Administrator is charged with administration of small cell deployments and other wireless communication review processes established under this chapter. All franchise applications shall designate the entire Town right-of-way as the franchise boundary. Small cell facility franchises shall comply with all provisions of Chapter 13.53 SMC Utilities Franchises excluding the timeframes for issuance under SMC 13.53.100. Small cell facility franchises shall be issued as provided herein.

**13.54.050 Application and designation of facilities.** The following information shall be provided by all applicants for franchises seeking small cell deployment. Existing franchisees who seek to implement an existing franchise for small cell deployment shall provide the following information as a part of their right-of-way permit application:

(A) The application shall identify and provide:

(1) Specific locational information including GIS coordinates of all proposed small cell deployment facilities;

(2) Whether and where small cell facilities are to be located on existing utility poles including Town-owned light standards;

(3) Whether the deployment will utilize replacement utility poles, new poles, towers, and/or other structures and where such replacement will take place; and

(4) Detailed schematics and visual renderings of the facilities.



(B) Conduit and/or ground-mounted equipment necessary for and intended for use in the deployment shall also be specified regardless of whether these facilities are constructed by the applicant or leased from an infrastructure provider.

(C) An email contact and telephone number for public comment as provided in SMC 13.54.070 D.

(D) Liability insurance naming the Town of Steilacoom as an additional insured, in amounts the Town Administrator shall determine are sufficient to provide protection for the Town, but not less than \$1,000,000.00.

(E) Failure to provide sufficient detail may result in a later need to modify the permit if the significant elements were not shown on the originally approved franchise exhibit. Failure to include significant elements may also result in the requirement that new or undocumented elements complete the approval processes detailed in Section 13.54.080.

**13.54.060 Implementation—Right-of-way permits for small cell deployment.** The rights granted under the franchise are implemented through the issuance of right-of-way permits. The franchise application may be accompanied by one or more applications for a right-of-way permit to deploy small cells. An initial franchise and all related right-of-way permit applications shall be processed concurrently as one master permit under Chapter 35.99 RCW.

(A) Up to twenty sites may be specified in one right-of-way permit application for processing. At the discretion of the Town Administrator, up to five additional sites may be included in order to consider small cell sites within one service area in one application.

(B) Issuance of a right-of-way permit to install a small cell deployment shall be contingent upon approval of a franchise or the possession of a valid franchise.

(C) If more than one application for a right-of-way permit is submitted by an applicant, they shall be considered in the order received. If multiple applications are submitted on the same date, the applicant shall indicate which application shall be considered first. All right-of-way permits which are submitted in conjunction with a franchise application shall be considered as one master permit. Any element of a deployment which qualifies as either an eligible facilities request or a colocation shall be specifically designated by the applicant and may be addressed separately by the Town Administrator in order to comply with the shot clocks established by federal law and Chapter 18.22 SMC.

(D) The Town Administrator may approve, deny or conditionally approve all or any portion of the sites proposed in the right-of-way permit application.

(E) Any application for a right-of-way permit which contains an element which is not exempt from SEPA review shall simultaneously apply under Chapter 42.21C RCW and Chapter 16.04 SMC

(F) Radio Frequency (RF) Certification. The applicant shall submit a sworn affidavit signed by an RF engineer with knowledge of the proposed project affirming that the small cell deployment will be compliant with all FCC and other governmental regulations in connection with human exposure to radio frequency emissions for every frequency at which the small cell facility and associated wireless backhaul will operate. An existing franchisee applying for a right-of-way permit for small cell deployment shall provide an RF certification for all facilities included in the deployment which are to be installed by the franchisee. If facilities which produce RF radiation are necessary to the small cell deployment and will be provided by another franchisee, then the small cell deployment in the initial franchise or in a subsequent right-of-way permit shall be conditioned on an RF certification showing that the cumulative impact of the RF emissions from the entire installation meets federal requirements.

(G) Regulatory Authorization. The applicant shall submit proof of FCC and other regulatory approvals required to provide the service(s) or utilize the technologies sought to be installed.

(H) Shot clocks, Tolling and Review Time Frames for Small Cell Applications. The FCC has established “shot clocks” which are time frames within which the Town must act on an

application for deployment of Small Cell facilities. Shot clock periods are equal to the number of days the Town has to review the application, set forth in subsection 2, plus any days tolled under subsection 3.

(1) General. The Town Administrator or his/her designee shall review an application for completeness and shall notify the applicant on or before the 10th day after submission if the application is materially incomplete, and clearly and specifically identify any missing documents or information along with the specific rule or regulation creating the obligation to submit such documents or information.

(a) If an application is deemed incomplete, the time frame for review shall be tolled as provided herein.

(b) Following resubmission of documents by the applicant, the Town Administrator or his/her designee shall review an application for completeness and shall notify the applicant on or before the 10th day after resubmission if the application is materially incomplete. If it is incomplete the Town Administrator shall issue a notice of deficiency, clearly and specifically identify any missing documents or information along with the specific rule or regulation creating the obligation to submit such documents or information.

(c) No application shall be deemed complete without the required fee deposit.

(2) Time frames. The Town shall act on applications seeking authorization for deployments in the categories set forth below:

(a) The time frame for review of an application to collocate a Small Wireless Facility using an existing structure is 60 days.

(b) The time frame for review of an application to deploy a Small Wireless Facility using a new structure is 90 days.

(c) For single applications seeking authorization for multiple deployments, all of which collocate a Small Wireless Facility using existing structures, the time frame for review is 60 days.

(d) For single applications seeking authorization for multiple deployments, all of which deploy a Small Wireless Facility on new structures, the time frame for review is 90 days.

(e) For single applications seeking authorization for multiple deployments, the components of which are a mix of deployments on existing and new structures the time frame for review is 90 days.

(3) Tolling periods.

(a) The Town and an applicant may agree in writing to modify the tolling periods herein.

(b) In the absence of a written agreement between the Town and an applicant modifying the tolling periods set forth below, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the Town to render the application complete.

(c) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from the day after the date the Town issues the notice of deficiency, until the date the applicant submits all the documents and information identified by the Town to render the application complete

(4) Shot clock date.

The shot clock date for a siting application is determined by counting forward, beginning on the day after the date the application is submitted, by the number of calendar days of the shot clock period identified pursuant to this section. If the date calculated in this manner is a legal holiday, the shot clock date is the next business day after such date.

(l) Removal.

(1) The permits issued herein are for small cell facilities that are in active use only. The applicant, or successor in interest, shall remove any small cell facility including antennas and other equipment within six months of cessation of use.

(2) After removal of the facility and all equipment, the applicant, or successor in interest, shall restore any street light pole, utility pole, sidewalk, paving, and landscaping to a condition equal to or better than that existing prior to removal.

**13.54.070 Review process.** The following provisions relate to applications for a franchise or right-of-way permit for small cell deployments:

(A) Review of Facilities. Review of the site locations proposed by the applicant shall be governed by the provisions of 47 USC Section 253 and 47 USC Section 332 and applicable case law. Applicants for franchises and the right-of-way permits which implement the franchise shall be treated in a competitively neutral and nondiscriminatory manner with other service providers utilizing supporting infrastructure which is functionally equivalent, that is, service providers whose facilities are similarly situated in terms of structure, placement or cumulative impacts. Franchise and right-of-way permit review under this chapter shall neither prohibit nor have the effect of prohibiting the ability of an applicant to provide telecommunications services.

(B) Concealment for Small Cell. In any zone not designated as a design zone the Town will permit small cell deployment on existing or replacement utility poles conforming to the Town's generally applicable design standard pursuant to this chapter and in the franchise agreement. The design standards in this section seek to implement concealment of the small cell facilities. Accordingly, small cell facilities installed pursuant to this concealment authorization may be expanded pursuant to an eligible facilities request when the Town Administrator determines that such expansion does not defeat the concealment elements of the facilities as outlined in this chapter. The applicable design standards are as follows:

(1) Design Standards.

(a) One facility per pole. Only one small cell facility is permitted per utility pole.

(b) Phase out of wooden poles. In order to avoid cables on the exterior of utility poles, wooden poles selected as sites for small cell facilities shall be replaced by the applicant with non-wooden poles meeting Town standards.

(c) Internal cables. All conduit, cables, wires and fiber must be routed internally in the non-wooden pole. Full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment, except for the minimum amount necessary to directly connect to the antennas or equipment.

(d) Height Restrictions. All small cell facilities shall be in compliance with height restrictions in SMC 13.54.020.

(e) New and Replacement Poles. The new or replacement poles shall match height, color and material of the original or adjacent non-wooden poles and shall be subject to approval by the Town Administrator, who may approve variances as described in Section 13.54.080.

(f) Interior Concealment. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is otherwise technically infeasible, or is incompatible with the pole design. If technically infeasible, then the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush-mounted to the pole, meaning up to 12 inches off of the pole, or the minimum needed to achieve safety clearances and antenna needs, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of small wireless facilities. If the equipment enclosure is permitted on the exterior of the pole, the applicant is required to place the equipment enclosure behind any banners or road signs that may be on the pole; provided, that such location does not interfere with the operation of the banners or signs.

(g) Flush-Mounted Standoff Brackets or Pole-Top Antennas. In situations when interior concealment pursuant to subsection (B)(1)(d) of this section is not possible, installation of an antenna on a pole shall be flush mounted, if feasible or located at the top of the pole.

Flush mounting includes using brackets that offset the inside edge of such equipment from the utility pole by twelve inches or less, except as otherwise required by the pole owner or a controlling electrical code such as the National Electrical Safety Code, National Electric Code or State Electrical Code and when approved by the Town. Standoff brackets are permitted so long as the antennas are mounted as close to the pole as technically feasible, but no more than twelve inches off the pole.

(h) Antenna Design. Antennas shall be located in an enclosure of no more than three cubic feet in volume, or in case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet. No more than four antennas are permitted on a single utility pole and with a total volume not to exceed nine cubic feet.

The diameter of an antenna on top of an existing pole may not exceed 16 inches, measured at the top of the pole, unless the applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that they appear as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.

(i) Primary Equipment Enclosure Location and Dimensions. The applicant shall minimize the primary equipment enclosure space and use the smallest amount of enclosure possible to fit the necessary equipment. The primary equipment enclosure shall be located using one of the following methods:

(i) Concealed completely within the pole or pole base. If within the pole base, the base shall meet the ADA requirements and not impact the pedestrian access route.

(ii) Located on a pole. If located on a pole, the equipment enclosure shall be twenty-eight cubic feet or less in size.

(iii) Underground in a utility vault. If located underground, the access lid to the primary equipment enclosure shall be located outside the footprint of any pedestrian curb ramp and shall have a nonskid surface meeting ADA requirements if located within an existing pedestrian access route.

(iv) Private property. If located on private property, the applicant shall submit a copy of an executed easement or lease agreement with the private property owner prior to the right-of-way permit issuance.

(j) Material and Color. Small cell facility antennas, conduit, mounting hardware and cabinets shall be painted to match the color of the pole and shall be non-reflective.

(k) No Illumination. Small cell facilities shall not be illuminated, except incidentally from street lighting.

(l) Generators and Backup Battery. Applicant shall not install any generators. Backup battery power is permitted as part of the associated equipment.

(m) Liability. The applicant is responsible for the repair or replacement of any pole damaged during installation of the small cell facility.

(n) Underground Areas and Design Zone Aesthetics. The design plans for all small cell facilities in design zones shall be compatible with the character and aesthetics of the neighborhoods, parks, public spaces, and commercial districts located in whole or in part within the design zone. Applicant shall propose design concepts and the use of camouflage or stealth materials, as necessary to blend its installations with the overall character of the design zone. Applicants are encouraged to meet with the Town prior to submitting a concealment element plan subject to this section and SMC 13.54.130.

(o) Location. New poles shall be placed at the intersection of property lot lines and the street right of way line.

(p) Siting locations along the frontage of properties designated as federal, state or local historic landmarks, and public parks are discouraged unless approved by the Town Administrator to prevent an effective prohibition of telecommunications service in violation of federal law.

(2) Third Party Requirements.

(a) All installations of small cell facilities must have permission from the pole/structure owner to install facilities on such structure. Permission for use of Town-owned poles and structures is included in the issuance of a right-of-way permit under this section.

(b) Governing Construction or Electrical Code. All installations of small cell facilities shall comply with any governing construction or electrical code such as the National Electrical Safety Code, the National Electric Code or state electrical code, as applicable. All installations of ground-mounted or replacement structures shall comply with the Town's adopted standards for construction in the right-of-way.

(c) Electrical Connection. Connection to the Town's electric utility for each small cell facility shall be included in the Town right-of-way permit. Any third party utility providing electricity must obtain a franchise from the Town prior to operating in the rights-of-way.

(d) Transport/Telecommunications Connection. The Town is not responsible for providing transport connectivity (i.e., fiber) to small cell facilities. Any third party utility providing such transport connectivity must obtain a franchise from the Town prior to operating in the rights-of-way.

(C) Design Review. Small cell deployment in design zones and underground areas, as well as certain new or replacement facilities are subject to the design requirements provided for in the approved franchise, this section and SMC 13.54.130.

(D) Public Comment.

(1) The Town shall place a notice of application for franchises and right-of-way permits for small cell deployments on the Town's website upon application. The notice shall include a link to the application, an email contact and telephone number for the applicant to answer citizen inquiries. The applicant shall supply the email contact and telephone number as part of the application.

(2) The applicant is required to host informational meetings for the public regarding the deployment. The Town shall post meeting notices for informational meetings on its website. These meetings are for the public's information and are neither hearings nor part of any land use appeal process.

**13.54.080 Right-of way permits for small cell facilities.**

(A) The Town Administrator shall review applications for a right-of-way permit for a small cell deployment approved by a franchise or described in a concurrent franchise application. The plans submitted may only be approved by the Town Administrator if the dimensions or volume of small cell facilities do not exceed the cumulative total provided by the definition of a small cell facility herein and concealment technologies conform to the applicable design standards.

(B) Variations from design standards. The Town Administrator may approve the following:

(1) Replacement components of an existing, approved small cell facility, and the addition of antennas on a pole that exceed a cumulative total of nine cubic feet, provided, however, that in each instance the replacement components are consistent with the intent of the concealment features set by Town's generally applicable pole design standard adopted pursuant to the franchise, or Section 13.54.070.

(C) Right-of-way permits to install small cell facilities including approval of variations shall be processed within the time frames set forth in SMC 13.54.060. A right-of-way use permit for small cell deployment is a police power regulation adopted pursuant to RCW 35.99.040(2) and accordingly is not subject to the thirty-day use permit issuance requirement contained in RCW 35.99.030(2).



(D) The decision of the Town Administrator to approve or deny a right-of-way permit for a small cell facility with conditions, if any, shall be final and is not subject to appeal under Town code or further legislative review. Appeals of such decisions shall be to Pierce County Superior Court as provided by law.

**13.54.090 Amendments to the franchise agreement.** Amendments to the franchise agreement, for whatever reason, shall be processed in the same manner as a new agreement.

**13.54.100 Review of wireless communications facilities other than small cell deployments.** Wireless communication facilities other than small cell deployment in the public right-of-way shall be reviewed pursuant to Chapter 18.22 SMC.

**13.54.110 Ground-mounted equipment—ADA compliance required.**

(A) In areas of the Town where overhead utility lines have been undergrounded (undergrounded areas), in designated design zones, and in other areas where necessary to permit full use of the public right-of-way by pedestrians, bicycles and other users, all ground-mounted equipment shall be undergrounded in a vault meeting the Town's construction standards, unless not technologically feasible.

(B) The location of ground-mounted equipment (to the extent undergrounding such equipment is not technologically feasible), replacement poles, and/or street lights shall comply with the Americans with Disabilities Act (ADA), Town development standards, and state and federal regulations in order to provide a clear and safe passage within the public right-of-way. Ground-mounted equipment is also permitted on private property adjacent to the public right-of-way with a recorded easement or lease agreement.

**13.54.120 Small cell facilities in undergrounded areas or design zones.**

(A) In order to obtain approval for the use of replacement poles or new street lights to be used as supports for small cell facilities within any undergrounded area or design zone, the applicant must establish that:

(1) The proposed facility complies with an approved stealth installation plan as described in this section for an undergrounded area or design zone; and

(2) The facilities shall comply with SMC Chapter 2.14 for the Historic District, SMC, Chapter 18.22 for Wireless Communication, SMC Chapter 16.08 for Shoreline Management, SMC Chapter 16.16 for Critical Areas and SMC Chapter 16.04 for SEPA; and

(3) For utility poles and/or street lights not owned by the Town, the applicant shall enter into an agreement with the owner of the utility pole or street light to allow the use of the pole or light and provide an executed copy of the agreement to the Town prior to right-of-way permit issuance.

(B) **Stealth Installation Plan Required.** Applications for proposed installations in underground areas and design zones shall be required to submit a stealth installation plan. Such plan shall include the design of the screening, fencing or other concealment technology for a base station, tower, utility pole, or equipment structure, and all related transmission equipment or facilities associated with the proposed wireless facility, including but not limited to fiber and power connections.

(1) **Purpose of Stealth Installation Plan, Generally.** Stealth installation plans shall seek to minimize the visual obtrusiveness of installations using methods including, but not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color and texture—or the appearance thereof—as the surface against which the installation will be seen or on which it will be installed.

(2) Other stealth approaches may include, but not be limited to, use of architectural concealment products, fencing or screening materials, and where appropriate, landscape design, or any other camouflage strategies appropriate for the type of installation. Additionally, the use of a stealth support or concealment device, such as a clock tower, steeple, flagpole, tree, street sign, or other applicable concealment structure may be approved.

(3) The Town Administrator shall apply this section, as well as all design requirements applicable in the underground area or design zone in which an installation is proposed.

(4) Review of Stealth Installation Plan for Non-substantial Change Colocations. Where a proposed collocation does not constitute a substantial change, a stealth installation plan shall be reviewed to ensure the proposed collocation does not defeat the concealment features approved as part of the initial installation at that location.

(5) Review of Stealth Installation Plan for Initial Installations and Substantial Change Colocations. For initial installations and substantial change colocations in underground areas and design zones, the Town Administrator shall conduct an administrative review of stealth installation plans for compliance with this section and all applicable Town design guidelines.

(C) Replacement Utility Pole—Street Lighting. With the Town Administrator's approval, a replacement utility pole or a request for a new utility pole may be permitted in the form of a new street light. The design of the street light shall be in accordance with Town standards for the area surrounding the new street light. Replacement utility poles/street light standards located within a design zone shall conform to the adopted streetscape design standard for the design zone. Wherever technologically feasible, all equipment and cabling shall be internal to the replacement street lighting standard.

The applicant shall pay the costs for the purchase and installation of replacement utility poles and new street light poles. The Town Administrator may enter into a written agreement with an applicant to install replacement utility poles and new street light poles. Following installation, the applicant shall transfer ownership of the replacement utility pole or new street light pole to the Town. Ownership of the small cell facilities shall remain the property of the applicant.

The height of any replacement pole may not extend more than 10 feet above the height of the existing pole or the minimum additional height necessary.

(D) Undergrounded Areas. It is the stated policy of the Town that all utilities shall be underground in areas that currently have underground utilities. No new utility poles shall be erected in undergrounded areas, except that an applicant may request to install a new street light as provided in subsection C.

(E) Franchise and Small Cell Deployment Facility Approvals and Processes. Approval of a franchise, right-of-way permit and/or other approval referenced in this chapter are conditioned on the following requirements:

(1) Satisfy applicable design requirements, including, but not limited to, noise and light regulations.

(2) Comply with adopted design and concealment standards, applicable to replacement utility poles and new utility poles in a design zone or undergrounded areas.

(3) Obtain the written approval of the owner of any utility pole not owned by the Town for the installation of its facilities on such utility pole. Unless specifically provided for in a franchise agreement, approval of a franchise does not authorize attachment to Town-owned utility poles or other structures.

(4) Comply with all Town construction standards and state and federal codes and standards when operating in the right-of-way and obtain a required permit to enter the right-of-way.

(5) A right-of-way permit for small cell deployment which includes a facility not exempt from SEPA review shall be processed in the provisions of Chapter 16.16 SMC.

Small cell facilities approved pursuant to this chapter shall be considered as an outright permitted use when located within the right-of-way.

**13.54.130 Compliance with state processing limitations.** Review of franchise and right-of-way permits shall comply with the provisions of RCW 35.99.030. Applications shall be reviewed, completeness determined and the time frame tolled as provided in 13.54.060. A right-of-way use permit for small cell deployment is a police power regulation adopted pursuant to RCW 35.99.040(2) and accordingly is not subject to the thirty-day use permit issuance requirement contained in RCW 35.99.030(2).

**13.54.140 Determination of appropriate regulation.**

(A) The Town Administrator may request additional information if necessary from the applicant to evaluate the application under other provisions of this chapter and applicable law, including Chapter 18.22 SMC.

(B) The Town Administrator shall determine the applicable Town regulations for the applicant's request, and the request shall be processed in accordance with those regulations.

**13.54.150 Additional review procedure.** Wireless communication facilities in design zones, shoreline management environments, undergrounded areas or critical areas are subject to additional review as provided in SMC Chapter 2.14 for the Historic District, SMC Chapter 18.22 for Wireless Communication, SMC Chapter 16.08 for Shoreline Management, SMC Chapter 16.16 for Critical Areas and SMC Chapter 16.04 for SEPA. (Ord. 1605, 2019)

## Chapter 13.56

### DEVELOPER REIMBURSEMENT AGREEMENTS

#### Sections:

- 13.56.010 Purpose.**
- 13.56.020 Definitions.**
- 13.56.030 Applicability.**
- 13.56.040 Process.**
- 13.56.050 Public facilities agreement.**
- 13.56.060 Application for development reimbursement agreement.**
- 13.56.070 Preliminary determinations.**
- 13.56.080 Preliminary determination notice.**
- 13.56.090 Developer reimbursement agreement.**
- 13.56.100 Recording/effective date/payment of assessment.**
- 13.56.110 Segregation.**
- 13.56.120 Term of developer reimbursement agreements.**
- 13.56.130 Removal of unauthorized connections or taps.**
- 13.56.140 Payment of developer.**
- 13.56.150 Appeal.**
- 13.56.160 Enforcement of obligations.**
- 13.56.170 Town participation on assessment reimbursement.**
- 13.56.180 Existing rights.**

**13.56.010 Purpose.** The purpose of this chapter is to establish a uniform methodology and process for the administration of reimbursement contracts applied for after August 15, 2013, for



developers in circumstances where a developer uses private funds to construct a public utility and/or street system improvement(s) and desires to be compensated by property owners benefited by the improvements.

The provisions of this chapter are in addition to and intended to supplement any other requirements contained elsewhere in the Steilacoom Municipal Code. (Ord. 1500 §2(part), 2013).

### **13.56.020 Definitions.**

(A) **Adjacent** means abutting on public roads, streets, right-of-way or easements in which street system improvements are installed or directly connecting to street system improvements through an interest in real property such as an easement or license.

(B) **Assessment** means an equitable pro rata charge to be paid by an owner of property within the assessment reimbursement area for the cost of private construction of public street and/or utility system improvements made pursuant to a public facilities agreement.

(C) **Assessment reimbursement area** means that area which includes all parcels of real property adjacent to street system improvements or likely to require connection to or service by utility system improvements constructed by a developer.

(D) **Cost of construction** is the sum of the direct construction costs incurred to construct the street and/or utility system improvements. "**Direct construction costs**" include but are not limited to all related design services, engineering, surveying, legal services, bonding costs, environment mitigation, relocation and/or new construction of private utilities as required by the Town, (i.e., power, telephone, cable and gas), relocation and/or installation of street lights, relocation and/or installation of signage, acquisition of right of way and/or easements, government agency fees, testing services, inspection, plan review and approval, labor, materials, equipment rental, and contractor and/or subcontractor fees or charges.

(E) **Developer:** The individual or entity that contracts with the Town for the construction of street and/or utility system improvements, where such improvements are a requirement for development of real property owned by such entity or individual.

(F) **Developer reimbursement agreement** means a written contract between the Town and one or more developers providing partial reimbursement for cost of construction of street system improvements and/or utility system improvements to the developer by owners of property who are likely to utilize the improvements and who did not contribute to the original cost of construction.

(G) **Direct connection** means a service connection, to be owned and maintained by the property owner and not the Town, from existing or new utility improvements based on the following criteria:

(1) Water system direct connections are defined in Chapter 13.12 SMC, as currently enacted or as may be hereafter modified;

(2) Sewer system direct connections are defined in Chapter 13.12 SMC, as currently enacted or as may be hereafter modified;

(3) Storm sewer system direct connections are hereby defined as, but not limited to, tight line, down spout, and roof leader service connections to storm sewer mains for the conveyance of site specific storm sewer.

(H) **Public facilities agreement** means any agreement entered into by an individual or entity with the Town for the purpose of constructing public improvements that are required to be constructed by the Town as a prerequisite to the development of real property.

(I) **Street system improvements** mean public street and alley improvements made in existing or subsequently dedicated or granted rights of way or easements and any improvements associated therewith including but not limited to such things as acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, grading, paving, installation of curbs, gutters, pedestrian facilities, street lighting, bike lanes, and traffic control

devices, relocation and/or construction of private utilities as required by the Town, (i.e., power, telephone, cable and gas), relocation and/or construction of street lights, traffic control devices, signage, and other similar improvements.

(J) **Utility system improvements** means “water or sewer facilities” as defined in Chapter 35.91 RCW. Utility systems improvements to public water, sewer and storm drainage system include the acquisition of right-of-way and/or easements, design, engineering, surveying, inspection, testing, connection fees, and installation of improvements as required by the Town and includes but is not limited to the following:

(1) Water system improvements including but not limited to such things as treatment facilities, reservoirs, wells, mains, valves, fire hydrants, telemetry systems, pumping stations, and pressure reducing stations;

(2) Sewer system improvements including but not limited to such things as treatment plants, gravity mains, lift stations, force mains, and telemetry systems;

(3) Storm sewer system improvements including but not limited to such things as water quality structures and systems, detention and retention facilities, and storm water collection and conveyance facilities. (Ord. 1500 §2(part), 2013).

**13.56.030 Applicability.** This chapter implements the provisions of Chapter 35.72 RCW for street system improvements and Chapter 35.91 RCW for water or sewer facilities improvements where the construction of such improvements are the result of a Town of Steilacoom ordinance or ordinances that require such improvements as a prerequisite to property development. Street system and utility system improvements constructed in order to comply with the Utility Code (Title 13 SMC), the Subdivision Code (Title 17 SMC), the Zoning Code (Title 18 SMC), the Comprehensive Plan and the Streets and Sidewalks Improvement Standards (Chapter 12.16 SMC), are hereby declared to be prerequisites to further property development for the purpose of RCW 35.72.010 and RCW 35.91.020. (Ord. 1500 §2(part), 2013).

**13.56.040 Process.** A developer must comply with this Chapter in order to recover a pro rata share of the costs of construction from other property owners that will later derive a benefit from the street and/or utility system improvements made by developer.

(A) The developer must first enter into a Public Facilities Agreement with the Town to obtain approval for the proposed improvements. The proposed street system improvements and/or utility system improvements must be in the Town or within the Town's utility service area. Public Facilities Agreements are approved by the Public Works Director in accordance with SMC 13.56.050.

(B) Following construction and acceptance of the proposed improvements, the developer must apply for a Developer Reimbursement Agreement. Developer Reimbursement Agreements are approved in accordance with SMC 13.56.060 -.090.

(C) The Public Works Director shall establish policies and procedures for processing applications and complying with the requirements of this ordinance. (Ord. 1500 §2(part), 2013).

**13.56.050 - Public facilities agreement.**

(A) The application for a Public Facilities Agreement shall be made on forms prepared by the Public Works Department. The application shall contain the following information which shall be approved by a State of Washington licensed engineer:

(1) A legal description of the developer's property.

(2) A detailed description of the proposed street and/or utility system improvements, along with such engineering documents, specifications and plans as required by the applicable section of the Steilacoom Utility Code.

(3) A legal description of the properties within the developer's proposed Assessment Reimbursement Area together with the name and address of the owners of each property as shown in the records of the Pierce County Assessor's Office.

(4) Vicinity maps of developer's property.

(5) The developer's proposed Assessment Reimbursement Area and general location of the street and/or utility system improvements.

(B) All proposed system improvements shall be in accordance with the Town Comprehensive Plan and other applicable Town plans and policies. If the proposed system improvement requires an amendment to the Comprehensive Plan or other Town plan or policy, the developer shall apply for and obtain the necessary amendments prior to applying for a Public Facilities Agreement.

(C) Upon approval of the design of the proposed improvements by the Public Works Director, the developer and Town shall enter into a Public Facilities Agreement for construction of the improvements.

(D) Town approval of the proposed improvements shall be conditioned upon:

(1) Construction of the improvements according to plans and specifications approved by the Town;

(2) Inspection and approval of the improvements by the Town;

(3) Transfer to the Town of the improvements, without cost to the Town, upon acceptance by the Town of the improvements.

(4) Full compliance with the owner's obligations under the contract and with the Town's rules and regulations;

(5) Provision of sufficient security to the Town to ensure completion of the improvements and other performance under the contract;

(6) Payment by the developer to the Town of all of the Town's costs associated with the improvements including, but not limited to, engineering, legal, and administrative costs; and

(7) Verification by the Town and approval of all contracts and costs related to the improvements. (Ord. 1500 §2(part), 2013).

### **13.56.060 Application for developer reimbursement agreement.**

(A) The application for a Developer Reimbursement Agreement shall be made on forms prepared by the Public Works Department and shall be accompanied by an application fee of \$250.

(B) The applicant must submit the total costs of a street and/or utility system within 120 days of the completion and acceptance of the improvement. The costs shall be itemized and prepared by an engineer licensed by the State of Washington. The Town shall use this information as the basis for determining reimbursements by future users who benefit from the street and/or utility system improvement but who do not contribute to the original cost. If the applicant fails to meet the foregoing time frame, the Public Works Department may reject the application as untimely.

(C) The applicant shall submit a proposed allocation of costs of construction concurrent with the submittal of the total costs of the improvement.

(D) Within 30 days of receiving the itemized costs and applicant's proposed allocation of costs, the Department of Public Works will prepare and the applicant will record with the County Auditor's Office an application summary. The application summary shall contain at least the following: project description, name of developer, legal descriptions for each of the properties within the Assessment Reimbursement Area together with a statement of intent to collect the proposed allocation of costs of construction to each property. The application summary shall include the following language:

*"This application summary shall have no further force or effect nor shall it constitute an*

*enforceable obligation against any of the properties described herein upon the recording of a Developer Reimbursement Agreement made as to the property herein described.*

*This application summary shall have no further force or effect nor shall it constitute an enforceable obligation against any of the properties described herein after one year from the date of recording; provided, the effective term of the application summary may be extended by filing an extension executed by the developer and approved in writing by the Public Works Department."*

The applicant will provide the Town with proof of recording the application summary. (Ord. 1500 §2(part), 2013).

**13.56.070 Preliminary determinations.** The Public Works Department shall formulate a preliminary assessment reimbursement area and preliminary assessment for real property benefited by the street and/or utility system improvements based on the following and provide the same to the developer:

(A) The likelihood that benefited property will be developed within the time frame of the proposed Developer Reimbursement Agreement.

(B) The likelihood that at the time of development of the benefited property such property will not be required to install similar street and/or utility system improvements because they were already installed by the developer.

(C) For street system improvements, benefited parcels must be adjacent to such street system improvements.

(D) For utility system improvements, the likelihood (1) that such improvements will be tapped into or used (including not only direct connections but also connections to laterals or branches connecting thereto) by properties within the assessment reimbursement area, and that such improvements do not constitute mainline extensions to be owned and maintained by the Town, as such extensions are not defined as Direct Connections or (2) that such properties will receive a special benefit from the utility system improvements such as, but not limited to pump stations, sewer lift stations, and additional utility pipe depth to accommodate future utility expansion.

(E) For street, stormwater system and water system improvements, the assessment shall be determined on a front footage basis.

(F) For sewer system improvements, the assessment shall be determined on an equivalent residential unit (ERU) basis. (Ord. 1500 §2(part), 2013).

**13.56.080 – Preliminary determination notice.**

(A) The preliminary assessment reimbursement area and the preliminary assessment formulated by the Public Works Department shall be sent by certified mail to the property owners of record within the preliminary assessment reimbursement area in accordance with RCW 35.72, as from time to time amended.

(B) The applicant or any property owner within the preliminary assessment reimbursement area may, in writing within 20 days of mailing the notice, request a hearing to be held before the Town Council to contest the preliminary assessment reimbursement area and/or preliminary assessment. The written notice shall include a statement explaining the reason for contesting the preliminary assessment reimbursement area or preliminary assessment. Notice of such hearing shall be given to all property owners within the preliminary assessment reimbursement area and the hearing shall be conducted as soon as is reasonably practical. The Public Works department shall prepare a staff report explaining the preliminary determination and addressing the issues raised by the appellant. The Town Council shall consider the application, the Public Works Department's preliminary determination and staff report, comments from the appellant and general public comments. The Town Council shall adopt findings and conclusions

supporting its decision. The Town Council is the final authority to establish the assessment reimbursement area and the assessment for each property within the assessment reimbursement area.

(C) In the event no written request for a hearing is received as required, the determination of the Public Works Department shall be final. (Ord. 1500 §2(part), 2013).

**13.56.090 Developer reimbursement agreement.**

(A) Based upon the preliminary assessment reimbursement area and the preliminary assessment, if no hearing is requested, or based upon the Town Council's determination of the assessment reimbursement area and assessment if a hearing is requested, the Public Works Department shall prepare and give to the applicant a Developer Reimbursement Agreement.

(B) Developer Reimbursement Agreements shall contain a list of each affected parcel and its assigned assessment amount for each improvement.

(C) A contract entered into under this section must also provide, in accordance with the requirements of this Chapter, for the pro rata reimbursement to the developer or the developer's assigns for the time period as described in SMC 13.56.120.

(D) The contract shall provide that the developer shall provide to the Town a current address and contact person throughout the term of the contract. (Ord. 1500 §2(part), 2013).

**13.56.100 Recording /Effective date /Payment of assessment.**

(A) The developer's right to assessments shall relate back to the date the application summary was recorded pursuant to SMC 13.56.060.

(B) Any property described in the recorded application summary shall be subject to the assessment after it has been approved by the Town pursuant to this chapter.

(C) The Developer Reimbursement Agreement shall be recorded by the applicant with the Pierce County Auditor within 30 days of the agreement's final execution, and the applicant shall provide the Town with proof of recording.

(D) Assessments are due upon the application for a building permit or final subdivision of property, whichever is first. The Building Department shall notify the Public Works Department of applications for building permits for individual lots within the assessment reimbursement area. The Planning Department shall notify the Public Works Department of applications for short subdivisions or final subdivisions of property within the assessment reimbursement area. The Public Works Department shall determine the applicable assessment amount, and that amount shall be added to the building permit fee or subdivision fee as appropriate. No building permit shall be issued for lots within the assessment reimbursement area without payment of the assessment. No short subdivision or final subdivision of property within the assessment reimbursement area shall occur without payment of the assessment.

If a building permit or subdivision application is made while a Developer Reimbursement Agreement's validity is being challenged, any approval of the application will be issued following resolution of the agreement's validity unless the applicant demonstrates that the delay will cause hardship to the applicant. The Town may enter into an agreement with the applicant that ensures payment of the assessment upon resolution of the Developer Reimbursement Agreement's validity.

(E) If improvements are made to a property adjacent to a street improvement or if a property connects to a utility system improvement without payment of an assessment otherwise due, the amount of such assessment shall be a binding obligation upon the owner of record (and successors) of the affected property.

(F) The Town shall use the assessment to reimburse the developer. The reimbursements must be:

- (1) Within the period of time that the contract is effective;

(2) for a portion of the costs of the improvements constructed in accordance with the contract; and

(3) from assessments received by the Town from property owners who subsequently connect to or use the water or sewer facilities, but who did not contribute to the original cost of the facilities. (Ord. 1500 §2(part), 2013).

**13.56.110 Segregation.** The Public Works Department shall, upon the request of any property owner within the assessment reimbursement area, segregate the assessment. The segregation shall be based upon the same factors applied when the assessments were originally established. The property owner seeking segregation of the assessment shall pay an administrative fee to the Town of Steilacoom based upon a segregation fee schedule to be established by the Public Works Department. (Ord. 1500 §2(part), 2013).

**13.56.120 Term of developer reimbursement agreements.**

(A) Each developer reimbursement agreement for streets system improvements shall be valid for a period not to exceed 15 years from the date of its recording.

(B) Each developer reimbursement agreement for utility system improvements shall be valid for a period not to exceed 20 years from the date of its recording, unless an extension is granted as allowed under RCW 35.91.020. (Ord. 1500 §2(part), 2013).

**13.56.130 Removal of unauthorized connections or taps.** Whenever any tap or connection is made into any utility improvement without payment of the assessment being made as required by this Chapter, the Public Works Department is authorized to remove and disconnect, or cause to be removed and disconnected, such unauthorized tap or connection including all connecting tile or pipe located in the right of way and to dispose of such unauthorized material without liability. The owner of the property where the unauthorized connection is located shall be liable for all costs and expenses of any type incurred to remove, disconnect, and dispose of the unauthorized tap or connection. (Ord. 1500 §2(part), 2013).

**13.56.140 Payment of developer.** The Town shall collect the assessment as set forth in SMC 13.56.100. The Town will pay ninety-six percent (96%) of the assessment to the developer within 60 days of receipt, retaining four percent (4%) as a fee for processing the Developer Reimbursement Agreement. Monies so collected shall be placed in the capital facilities funds attributable to the utility or street from which the assessment was derived.

When the assessment for any property has been paid in full, the Public Works Director shall record a certification of payment that will release such property from the Developer Reimbursement Agreement. (Ord. 1500 §2(part), 2013).

**13.56.150 Appeal.** In addition to contesting the preliminary assessment area and/or the preliminary assessment, a developer may appeal the interpretation and/or decisions of the Public Works Department concerning any aspect of this Chapter to the Town Council. The Town Council's determination on the appeal is final. (Ord. 1500 §2(part), 2013).

**13.56.160 Enforcement of obligations.**

(A) In processing and imposing obligations in this chapter for reimbursement of developers, the Town in no way guarantees payment of assessments, or enforceability of assessments, or enforceability of the Developer Reimbursement Agreement, or the amount(s) thereof against such persons or property. The offices and finances of the Town shall not be used for enforcement or collection of reimbursement obligations beyond those duties specifically undertaken by the Town herein. It shall be the obligation of a developer to take whatever

authorized means are available to enforce payment of reimbursement assessments; and, developers are hereby authorized to take such actions. The Town shall not be responsible for locating any beneficiary or survivor entitled to any benefits by or through a Developer Reimbursement Agreement.

(B) Any funds collected under this Chapter that are unclaimed by developers after 3 years from the expiration of the Developer Reimbursement Agreement shall be returned to the parties making payment to the Town, if they may be reasonably found and minus any reasonable administrative processing costs. Any undeliverable funds shall inure to the benefit of the Town. (Ord. 1500 §2(part), 2013).

**13.56.170 Town participation in assessment reimbursement.** The Town may participate in financing street and utility improvement projects as allowed by RCW 35.72.050 and RCW 35.91.020. The Public Works Director is hereby authorized to initiate on behalf of the Town an ordinance providing for an assessment reimbursement area whereby the Town may join in financing of improvement projects and may be reimbursed for the costs of the improvements that benefit that portion of the public who will use the developments within the assessment reimbursement area established pursuant to RCW 35.72.040(1) and/or RCW 35.91.020. (Ord. 1500 §2(part), 2013).

**13.56.180 Existing rights.** This chapter shall not affect any rights existing or accrued, or any latecomer agreement executed prior to August 15, 2013. (Ord. 1500 §2(part), 2013).

## Chapter 13.60

### WELLHEAD PROTECTION

#### Sections:

- 13.60.010 Purpose and intent.**
- 13.60.020 Definitions.**
- 13.60.030 Applicability.**
- 13.60.040 Certain regulated substances in the wellhead protection area.**
- 13.60.050 Wellhead protection areas and zones.**
- 13.60.060 Regulations which apply within zone 1 of a WPA.**
- 13.60.070 Regulations which apply within zone 2 of a WPA.**
- 13.60.080 Regulations for existing solid waste landfills.**
- 13.60.090 Wellhead protection area permits.**
- 13.60.100 Operating permit conditions.**
- 13.60.110 Regulated substances management plan.**
- 13.60.120 Groundwater monitoring plan.**
- 13.60.130 Unauthorized releases.**
- 13.60.140 Closure conditions.**
- 13.60.150 Enforcement.**
- 13.60.160 Notice of violation.**
- 13.60.170 Other laws, rules and regulations.**
- 13.60.180 Penalties.**
- 13.60.190 Administrative rule.**
- 13.60.200 Modifications, waivers, alternatives, tests.**
- 13.60.210 Wellhead protection variance procedures.**

### **13.60.010 Purpose and intent.**

(a) Purpose. The purpose of this chapter is to prevent contamination of aquifers used for potable water supply by the Town of Steilacoom. This chapter establishes regulations for land uses within wellhead protection areas that are defined and delineated herein.

(b) Intent. It is the intent of this chapter to provide a method:

(1) To protect the groundwater resources of the Town of Steilacoom.  
(2) To provide a means of regulating specific land uses within wellhead protection areas.  
(3) To provide a means of establishing safe construction practices for projects built within a wellhead protection area.

(4) To protect the Town of Steilacoom's drinking water supply from impacts by facilities that store, handle, treat, use, or produce substances that pose a hazard to groundwater quality.

(5) To protect public health and the environment by implementing the State Environmental Policy Act (RCW 43.21.C).

(c) Other Sources of Authority:

(1) Cleanups, monitoring and/or studies undertaken under supervision of the Washington Department of Ecology or the U.S. Environmental Protection Agency are established by state and federal laws and are not covered by this chapter.

(2) The generic regulated substances list attached and incorporated as Exhibit 1 to Ordinance 1192 is provided for informational purposes. Persons who store, handle, treat, use, or produce a substance on the generic regulated substances list may be subject to the requirements of this chapter.

(d) Reevaluation. The provisions of this chapter will be reevaluated by the Town Council in June, 1998 to determine whether the chapter is meeting the goal of effective aquifer protection. This review period will allow staff to compile and assess regulated substance data submitted in operating permit applications for wellhead protection area zone 1. (Ord. 1192 §1, 1996).

### **13.60.020 Definitions.**

(a) "Aquifer" means a groundwater-bearing geologic formation or formations that contain enough saturated permeable material to yield significant quantities of water to wells.

(b) "Construction activity" means construction and all activities associated with construction, to include, but not be limited to, mining, grading, land filling, excavating and repair and maintenance of structures, equipment, and other appurtenances.

(c) "Containment device" means a device that is designed to contain an unauthorized release, retain it for cleanup, and prevent released materials from penetrating into the ground. Design requirements for containment devices are as follows:

(1) The containment device shall be large enough to contain one hundred twenty (120) percent of the volume of the container(s) used to store, handle, treat, use, or produce a regulated substance.

(2) All containment devices shall be consistent with the requirements in WAC 173-303-630.

(3) Containment devices shall be capable of containing any unauthorized release for at least the maximum anticipated period sufficient to allow detection and removal of the release.

(4) If the containment device is open to rainfall, then it shall be able to accommodate the volume of precipitation that could enter the containment device during a 24-hour, 100-year storm, in addition to 120 percent of the volume of the regulated substance storage as required above.

(5) Containment devices shall be constructed in a way that permits removal of the regulated substance and regular discharge of any accumulated precipitation. The Director shall have the authority for review and approval of any such construction.

(d) "Director" means the Director of Public Works of the Town of Steilacoom or his/her designee.



(e) "EPA" means the United States Environmental Protection Agency.

(f) "Facility" means all contiguous land within a Wellhead Protection Area, structures, other appurtenances, and improvements on the land wherein regulated substances are stored, handled, treated, used, or produced in quantities greater than the de minimis amounts specified in SMC 13.60.030(c)(1) and (2) of this chapter.

(g) "Groundwater" means water below the land surface in the zone of saturation.

(h) "Groundwater monitoring plan" means a plan containing procedures to be followed to assess groundwater quality for concentrations of those chemicals identified in the operating permit.

(i) "Groundwater monitoring well" means a small-diameter well installed for purposes of sampling and monitoring groundwater.

(j) "Operator" means any person in control of, or having responsibility for, the daily operation of a facility.

(k) "Owner" may include a duly authorized agent or attorney, devisee, fiduciary, and/or a person having vested or contingent interest in the property and/or facility in question.

(l) "Person" shall mean any person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, owner, lessee, tenant, or any other entity whatsoever or any combination of such, jointly or severally.

(m) "Potable water" means water that meets federal drinking water standards.

(n) "Regulated substances" means any flammable liquids, combustible liquids, hazardous materials, and other substances, which are soluble in water, mix with water, are soluble in fluids or can mix with a fluid which can move through soil or follow groundwater flow paths to the water table more particularly defined as:

(1) "Flammable liquid" is any liquid having a flash point below one hundred (100) degrees F and having a vapor pressure not exceeding 40 pounds per square inch (absolute) at 100 degrees F.

(2) "Combustible liquid" is a liquid having a flash point at or above 100 degrees F.

(3) "Hazardous materials" includes such materials as flammable solids, corrosive liquids, radioactive materials, oxidizing materials, highly toxic materials, reactive materials, unstable materials, hyperbolic materials, and pyrophoric materials as defined in the Uniform Fire Code and any substance or mixture of substances which is an irritant or a strong sensitizer or which generates pressure through exposure to heat, decomposition, or other means or any other material as defined by the Uniform Fire Code.

(4) "Other substances" means:

(A) Hazardous substance as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or 1) any substance designated pursuant to Section 311(b) (2) (A) of the Clean Water Act (CWA); 2) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of CERCLA; 3) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (but not including any waste, the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); 4) any toxic pollutant listed under Section 307(a) of the CWA; and 5) any imminently hazardous chemical substance or mixture with respect to which EPA has taken action pursuant to Section 7 of the Toxic Substances Control Act.

(B) Hazardous substances that include any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

(C) Hazardous waste as designated in WAC 173-303 as dangerous or extremely hazardous waste.

(D) Any material that may degrade the potability of groundwater when improperly used, stored, disposed of, or otherwise mismanaged.

(o) "Regulated substances management plan" means a plan containing procedures to be followed to prevent, control, collect, and dispose of any unauthorized release of a regulated substance.

(p) "Solid waste" shall be defined as per Chapter 173-304 WAC, Minimal Functional Standards for Solid Waste Handling, WAC 173-304-100(73).

(q) "Unauthorized release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance in a quantity greater than 5 gallons (40 pounds) into an approved containment device or 1 gallon (8 pounds) into groundwater, surface water, surface soils, or subsurface soils. Unauthorized release does not include discharges permitted under federal, state, or local law.

(r) "Underlying permits" means permits required by the Town of Steilacoom, including but not limited to building permits; conditional use permits; mining, excavation, and fill and grade permits; shoreline development permits; site plan reviews; variance rezones; planned unit developments; and subdivision, short subdivision, and land use permits.

(s) "Utility" means the Town of Steilacoom water utility.

(t) "Utility standards" means standard design and construction practices adopted by the Utility.

(u) "Wellfield" means an area which contains one or more wells for obtaining a potable water supply.

(v) "Well" means a pit or hole dug into the earth to reach an aquifer.

(w) "Wellhead protection area" (WPA) shall be the ground surface above an aquifer within the zone of capture and recharge area for a well or well field owned or operated by the Town of Steilacoom, as defined in Exhibit 2 to Ordinance No. 1192.

(x) "Wellhead protection area permit" means an authorization by the Director for a person to store, handle, treat, use or produce a regulated substance within a WPA. The two types of permits that will be issued pursuant to this chapter are an operating permit and a closure permit.

(y) "Wellhead protection areas" are comprised of zones which are designed to provide graduated levels of aquifer protection. WPA will be subdivided into three aquifer protection zones.

(1) Zone 1: The land area 1) situated between a well owned or operated by the Town of Steilacoom and a circle with a calculated fixed radius for the one year horizontal time of travel for groundwater moving to the well, and 2) with an altitude that is above the altitude of the lowest intake point (bottom of the screen) for the well and 3) above an aquifer that is not protected by a confining geologic stratum.

(2) Zone 2: The land area 1) outside of a circle with a calculated fixed radius for the one year horizontal time of travel for groundwater moving to a well owned or operated by the Town of Steilacoom and 2) within a circle with a calculated fixed radius for the five year horizontal time of travel and 3) with an altitude that is above the altitude of the lowest intake point (bottom of the screen) for the well.

(3) Combined Zone 2: If the aquifer supplying water to a well is naturally protected by overlying or confining geologic strata, the Town of Steilacoom may choose not to delineate a zone 1. In such a case, the entire area within a circle with a calculated fixed radius for the one year horizontal time of travel for groundwater moving to the well will be designated as zone 2. Exhibit 2 shows well 4 as having no WPA Zone 1 designation because its intake is below a major confining layer.

(4) Zone 3: The land area 1) outside of a circle with a calculated fixed radius for the five year horizontal time of travel for groundwater moving to a well owned or operated by the Town of Steilacoom and 2) within a circle with a calculated fixed radius for the ten year horizontal time

of travel and 3) with an altitude that is above the altitude of the lowest intake point (bottom of the screen) for the well. (Ord. 1192 §2, 1996).

### **13.60.030 Applicability.**

(a) Compliance. Persons who own and/or operate one or more facilities in a WPA shall comply with this chapter except as preempted by federal or state law. If the operator of the facility is not the owner, then the owner shall enter into a written contract with the operator requiring the operator to comply with this chapter.

(1) All proposals for new facilities within any zone of a WPA must be reviewed for compliance with this chapter including obtaining an operating permit pursuant to this chapter, prior to issuance of any underlying permits.

(2) All owners and/or operators of facilities which store, handle, treat, use, or produce regulated substances or have done so in the past, must comply with the permit requirements, release reporting requirements.

(b) Compliance Timing. The effective date for permit applications is January 1, 1996.

(1) Within six (6) months of the effective date for permit applications, all existing facilities located in zone 1 and zone 2 of a WPA must file a WPA Operating Permit.

(2) All WPA operating permits must be renewed by the Director every year in zone 1 and every five years in zone 2.

(c) Exemptions:

(1) The storage and handling of regulated substances for resale in their original unopened containers of five (5) gallons or twenty-five (25) pounds or less shall be exempt from the permit requirements of this chapter.

(2) De Minimis Usage of Regulated Substances. Facilities that use, store, or handle regulated substances in quantities of five (5) gallons or twenty-five (25) pounds or less of any one regulated substance, and in aggregate quantities of twenty (20) gallons or one-hundred (100) pounds or less of all regulated substances, shall be exempt from the permit requirements of this chapter.

(3) Single family residences and other strictly residential uses are exempt from the permit requirements of this chapter provided that no home business (as defined by the Steilacoom Municipal Code) is operated on the premises which uses materials or whose activities are embodied in this chapter.

(4) Fuel tanks and fluid reservoirs attached to a private or commercial motor vehicle and used directly in the operation of that vehicle shall be exempt from the permit requirements of this chapter.

(5) Existing residential heating systems using fuel oil are exempt from the requirements of this chapter.

(6) If the Director determines that an existing or proposed activity, that is exempt from the permit requirements of this chapter pursuant to this section, has a significant or substantial potential to degrade groundwater quality, then the Director may classify that activity as a facility as defined by this chapter, and therefore require that facility to comply with the permit requirements of this chapter. Such determinations will be based upon site-specific data.

(7) Regulated substances used by the Town of Steilacoom in water treatment processes are exempt from the permit requirements of this chapter.

(8) Regulated substances contained in properly operating sealed units (transformers, refrigeration units, etc.) that are not opened as part of routine use are exempt from the permit requirements of this chapter. (Ord. 1192 §3, 1996).

### **13.60.040 Certain regulated substances used in the wellhead protection area.**

(a) The Application of Regulated Substances by Licensed Commercial Applicators: application of pesticides, herbicides, fungicides, and such in recreational, agricultural, pest

control, and weed control activities, and in quantities greater than the de minimis amounts specified in SMC 1.60.030.C.2, shall be allowed in a WPA provided that:

(1) The application is in strict conformity with the use requirements as set forth by the EPA and as indicated on the containers in which the substances are sold.

(2) Licensed commercial applicators of these regulated substances apply for a WPA operating permit.

(b) Application of Nitrates: The application of fertilizers containing nitrates, and in quantities greater than the de minimis amounts specified in SMC 13.60.030(c)(2), shall be allowed in a WPA provided that:

(1) No application of nitrate-containing materials shall exceed one-half (0.5) pound of nitrogen per thousand square feet per single application or a total yearly application of five (5) pounds of nitrogen per thousand square feet; except that an approved slow-release nitrogen may be applied in quantities of up to nine-tenths (0.9) pound of nitrogen per thousand square feet per single application or eight (8) pounds of nitrogen per thousand square feet per year; and

(2) Applicators of these regulated substances apply for a WPA Operating Permit.

(c) Storage of regulated substances described in SMC 13.60.030(c)(1), in quantities greater than the de minimis amounts specified in SMC 13.60.030(c)(2) shall be subject to the full wellhead protection area operating permit requirements specified in this chapter. (Ord. 1192 §4, 1996).

#### **13.60.050 Wellhead protection areas and zones.**

(a) MAPS: The locations of wellhead protection areas (WPA) in the Town of Steilacoom are defined in Exhibit 2 to Ordinance No. 1192. Wellhead protection area maps are on file with the Town Clerk, the department of planning/building/public works, and the Steilacoom fire department. Exhibit 3 contains the legal description of the WPA.

(b) Facility Location: In determining the location of facilities within the zones defined by Exhibit 2, the following rules shall apply:

(1) Facilities located wholly within a WPA zone shall be governed by the restrictions applicable to that zone.

(2) Facilities having parts lying within more than one zone of a WPA shall be governed as follows: The facility should be reviewed and regulated according to the more stringent of the WPA zone regulations.

(3) Facilities having parts lying both in and out of a WPA shall be governed as follows:

(A) The facility should be reviewed and regulated according to the requirements for the WPA in which it partially falls.

(c) State Environmental Policy Act: The wellhead protection area which is identified herein is designated as an environmentally sensitive area pursuant to the State Environmental Policy Act, WAC 197-11-908, and the Municipal Code. The following SEPA categorical exemptions shall not apply within said area: WAC 197-11-800: (1), (2) c through g, (3), (5), 6(a), 14(c), (24) c, e, f, and (25). (Ord. 1192 §5, 1996).

#### **13.60.060 Regulations which apply within zone 1 of a WPA.**

(a) Review of Proposed Activities:

(1) Within zone 1 of a WPA, no changes in land use and no construction activities shall be allowed unless a finding is made by the Director that the proposal will not impact the long term, short term or cumulative quantity or quality of the aquifer. The finding shall be based on the present or past activities conducted at the facility; regulated substances stored, handled, treated, used or produced; and the potential for the activities or regulated substances to degrade ground-water quality and other such criteria as may be specified by the Director.

(2) Changes in land use and types of new facilities which are prohibited within zone 1 of a WPA include, but are not limited to: any use in which regulated substances are used, stored, treated, or handled; or which produces moderate risk waste, hazardous waste, and/or dangerous waste. The use of regulated substances in de minimis quantities as defined in SMC 13.60.030(c)(2) of this chapter shall be exempt from this provision.

(3) The conversion of heating systems to fuel oil or the installation of new fuel oil heating systems in zone 1 of the WPA after the effective date of this chapter is prohibited.

(4) The following specific changes in land use and types of new facilities will be prohibited within zone 1 of a WPA: surface impoundments (as defined in WAC 173-303); waste piles, hazardous waste treatment, storage, and disposal facilities; all types of landfills including solid waste landfills; transfer stations; recycling facilities that handle regulated substances; underground storage facilities; and petroleum product pipelines.

(5) All applications for changes in land uses and for all underlying permits in zone 1 of the WPA must be reviewed for compliance with this chapter. The focus of review for all permits will be on the substances that will be stored, handled, treated, used or produced; and the potential for these substances to degrade groundwater quality. All permits required pursuant to this chapter must be issued prior to or concurrent with the issuance of permits for construction activities or underlying permits for these activities.

(6) All proposals for changes in land use or for construction activities shall be subject to site plan review pursuant to the Steilacoom Municipal Code.

(7) In zone 1 of a WPA, no change in operations at a facility shall be allowed that increases the quantities of regulated substances stored, handled, treated, used, or produced in excess of quantities reported in the initial WPA operating permit unless granted a special permit.

(b) Pipeline Requirements:

(1) All existing and new pipelines in zone 1 shall be tested for leakage in conformance with the current edition of the APWA & AWWA Standards for Pipeline Testing. Routine leakage testing of all pipelines constructed in zone 1 may be required by the Director. Pipeline leakage testing shall be conducted in accordance with best available technology, to the satisfaction of the Director.

(2) Should pipeline leakage testing reveal any leakage at any level then the Director shall require immediate repairs to the pipeline to the satisfaction of the Director such that no exfiltration of substances conveyed in the pipeline shall occur. The Director may require a monitoring plan to define the area, volume, concentration, and movement of contamination resulting from a leaking pipeline.

(c) Construction Activity Standards: The following standards will be followed for any construction activity which shall be undertaken within zone 1 of a WPA and shall be included as conditions of any underlying permit. These standards shall apply to the storage, handling, treatment, use, or production of regulated substances in quantities greater than the de minimis amounts specified in SMC 13.60.030(2).

(1) No temporary storage of regulated substances on-site shall be permitted unless it can be demonstrated that no other feasible site alternative exists. The feasibility determination shall be made based on avoiding the probable threat to the aquifer balanced against unreasonable or excessive expense and extreme impracticality, not inconvenience. Should regulated substance storage be permitted, then such storage shall be limited to a period not to exceed five (5) consecutive weekdays or longer if security or project personnel are on-site. In any case, temporary regulated substance storage shall be limited to a maximum of fifteen (15) days.

(2) The underlying permit shall specify those regulated substances to be used and/or temporarily stored on-site. These substances shall be limited to the absolute minimum quantity required to accomplish the specific task as demonstrated to the Director.

(3) All regulated substances stored temporarily on-site shall be secondarily contained within leak-proof structures (liners, vaults, paved areas with curbing, etc.). The location of temporary storage must be specified on the building plans or site plans with a copy to the Steilacoom Fire Department and Director.

(4) The construction activity staging area shall be located in zone 1 of a WPA only if no feasible site exists outside zone 1. The staging area shall be limited to the minimum area absolutely required. The staging area must be specified on the approved building or site plans.

(5) The use of petroleum products on site shall be limited during construction activities to the amount which is necessarily required.

(6) All refueling of equipment shall take place outside of zone 1 if feasible. If such refueling is not feasible, then the refueling area must be covered with a leak-proof membrane surrounded by temporary retaining walls constructed to the satisfaction of the Director.

(7) The contractor shall comply with all applicable laws relating to disposal of hazardous substances and shall be contractually responsible for ensuring that all subcontractors comply as well.

(d) Requirements For Wellhead Protection Area Operating Permits Issued To Existing Facilities: The following conditions will be required as part of any operating permit issued in zone 1 of a WPA. These conditions must be met within two (2) years of the effective date for permit applications.

(1) Regulated Substance Monitoring Requirements for Existing Facilities:

(A) A written routine monitoring protocol which includes the name(s) or title(s) of the person(s) responsible for performing the monitoring and/or maintaining the equipment.

(B) Written records of all monitoring performed shall be maintained on-site.

(C) Written records shall include the date and time of all inspections, monitoring, maintenance, inventorying, and analyses.

(D) Visual monitoring must be implemented unless it is determined by the Director to be infeasible to visually monitor.

(E) For facilities located in zone 1 of a WPA, on every day of operation, a responsible person designed by the permittee shall check for breakage or leakage of any container holding regulated substances.

(F) The operator will annually submit a written report to the Director and Fire Marshal of all unauthorized releases as defined in SMC 13.60.020(q).

(G) All requirements of (d)(1) must be kept current and on file with the Director and Fire Marshal.

(2) For facilities located in zone 1 of a WPA, vacuum suction devices, absorbent scavenger materials, or other devices approved by the Director shall be present on-site in sufficient quantity to control and collect the total quantity of regulated substances plus absorbent material. The presence of such emergency collection devices and/or cleanup contract are the responsibility and at the expense of the owner/operator, and shall be documented in the operating permit.

(3) For facilities located in zone 1 of a WPA, owners/operators shall establish procedures for monthly in-house training.

(4) For facilities located in zone 1 of a WPA, owners/operators of all facilities shall keep and maintain an inventory of all regulated substances on site to include recording of all purchases, sales and use. This inventory shall be kept on site for a period of at least three (3) years from the date the inventory was recorded and made available to the Director at all reasonable times for inspection.

(5) Operators of all facilities in zone 1 shall schedule training for all employees twice per year to explain emergency response procedures and the types and quantities of regulated substances on site. (Ord. 1192 §6, 1996).

**13.60.070 Regulations which apply within zone 2 of a WPA.**

(a) Existing Facilities: The storage, handling, treatment, use or production of regulated substances at existing facilities shall be allowed within zone 2 of a WPA upon compliance with the provisions of this chapter.

(b) Review Of Proposed Activities:

(1) Within zone 1 of a WPA, no changes in land use and no construction activities shall be allowed unless a finding is made by the Director that the proposal will not impact the long term, short term or cumulative quantity or quality of the aquifer. The finding shall be based on the present or past activities conducted at the facility; regulated substances stored, handled, treated, used or produced; and the potential for the activities or regulated substances to degrade groundwater quality.

(2) The conversion of heating systems to fuel oil or the installation of new fuel oil heating systems in zone 2 of the WPA after the effective date of this chapter will be permitted only with secondary containment and monitoring.

(3) The following specific changes in land use and types of new facilities will be prohibited within zone 2 of a WPA: hazardous waste surface impoundments and waste piles (as defined in WAC 173-303 and 304); recycling facilities that handle regulated substances; hazardous waste treatment and storage facilities; solid waste landfills; transfer stations; and petroleum product pipelines.

(c) Pipeline Requirements: If the utility has reason to believe that the operation or proposed operation of an existing pipeline in zone 2 of a WPA may degrade groundwater quality, the Director may require leakage testing and repairs such that degradation of groundwater quality is minimized or eliminated.

(d) Construction Activity Standards: Standards to be followed for any construction activity that shall be undertaken within zone 2 of a WPA for any underlying permit issued for the project shall be as specified for zone 1 of a WPA in SMC 13.60.060(c) (1-7).

(e) Requirements For Wellhead Protection Area Operating Permits Issued To Existing And New Facilities: Permit requirements as part of any permit issued in zone 2 of a WPA shall be as specified for zone 1 of a WPA in SMC 13.60.060(d)(1) and (5) as revised. In zone 2, SMC 13.60.060(5) is revised as follows: (5) Operators of all facilities in zone 2 shall schedule training for all employees once per year to explain emergency response procedures and the types and quantities of regulated substances on site and certify said training to the Director.

(f) Potential To Degrade Groundwater:

(1) If the Director determines that an existing or proposed facility located in zone 2 of a WPA has a potential to degrade groundwater quality which equals or exceeds that of a permitted facility in zone 1, then the Director may require that facility to fully comply with SMC 13.60.060.

(2) Criteria used to make this determination shall include, but not be limited to, the present and past activities conducted at the facility; types and quantities of regulated substances stored, handled, treated, used or produced; the potential for the activities or regulated substances to degrade groundwater quality; history of spills at the site, and presence of contamination on site.

(3) Such determinations shall be subject to appeal pursuant to the provisions of this chapter. (Ord. 1192 §7, 1996).

**13.60.080 Regulations for existing solid waste landfills.** There are presently no solid waste landfills within the Town of Steilacoom and no new landfills will be permitted within WPA zones 1 and 2. (Ord. 1192 §8, 1996).

**13.60.090 Wellhead protection area permits.**

(a) Operating Permits: No person, persons, corporation, or other legal entities shall install or operate a facility in a WPA without first obtaining an operating permit from the Director and a permit from the Department of Public Safety pursuant to the Uniform Fire Code, if required.

(1) The Director shall not issue an operating permit for a facility unless adequate plans, specifications, test data, and/or other appropriate information has been submitted by the owner and/or operator showing that the proposed design and construction of the facility meets the intent and provisions of this chapter and will not impact the short term, long term or cumulative quantity or quality of groundwater.

(2) The application for operating permits pursuant to this chapter shall be made on a form provided by the Town. (Ord. 1192 §9, 1996).

**13.60.100 Operating permit conditions.** Specific conditions for operating permits issued to facilities in zones 1 and 2 of a WPA are described in SMC 13.60.060 and 13.60.070, respectively. The following general conditions shall be included as part of an operating permit issued pursuant to this chapter:

(a) Operating Permit Application: The operating permit application (for permits other than application of pesticides, herbicides, fungicides, or fertilizers containing nitrates) shall include at a minimum:

(1) A list of the volumes of all regulated substances which are stored, handled, treated, used, or produced at the facility being permitted in quantities greater than the de minimis amounts specified in SMC 13.60.030(c)(2).

(2) A list of chemicals to be monitored through the analysis of groundwater samples if groundwater monitoring is anticipated to be required.

(3) A detailed description of the activities conducted at the facility that involve the storage, handling, treatment, use or production of regulated substances in quantities greater than the de minimis amounts specified in SMC 13.60.030(c)(2).

(4) A description of the containment devices used to comply with the requirements of this chapter.

(5) A "Regulated Substances Management Plan" for the facility.

(6) A description of the procedures for inspection and maintenance of containment devices.

(7) A description of how the operator will dispose of regulated substances.

(8) A site map showing the location of the facility and its property boundaries and the locations where regulated substances in containers quantities greater than five (5) gallons or twenty-five (25) pounds in size are stored, handled, treated, used, produced. The location of each containment device also should be identified on the site plan.

(b) Inspections: Procedures for the in-house inspection and maintenance of containment devices and areas where regulated substances are stored, handled, treated, used, and produced shall be identified in the operating permit for each facility. Such procedures shall be in writing, and a log shall be kept of all inspection and maintenance activities. Such logs shall be submitted to the Director annually and shall be available for inspection at all reasonable times by the Director. Inspection and maintenance logs shall be maintained on-site by the owner or operator for a period of at least three (3) years after the date the monitoring was performed.

(c) Obligations: The permittee shall report to the Director, in writing, within fifteen (15) days after any changes in a facility including:

(1) The storage, delivery, treatment, use, or processing of new regulated substances.

(2) Changes in monitoring procedures; or

(3) Reconstruction, renovation, or redesign of any part of a facility that is related to the regulated substance(s).



(4) The permittee shall report to the utility any unauthorized release of more than one (1) gallon in an unconfined area and any release of more than five (5) gallons into a contained area as soon as possible, but in no case longer than one hour after the initial incident.

(5) An operating permit, issued by the Director, shall be effective for 1 year. The Director shall not issue a permit to operate a facility until the Director determines that the facility complies with the provisions of these regulations. If an inspection of the facility reveals noncompliance, then the Director must verify by a follow-up inspection that all required corrections have been implemented before renewing the permit. The facility owner shall apply to the Director for permit renewal at least sixty (60) days prior to the expiration of the permit.

(6) Operating permits may be transferred to a new facility owner/operator if the new facility owner does not change any conditions of the permit, the transfer is registered with the Director within thirty (30) days of the change in ownership, and any necessary modifications are made to the information in the initial permit application due to the change in ownership.

(7) Within ten (10) days of receiving an inspection report from the Director, the operating permit holder shall file with the Director a plan and time schedule to implement any required modifications to the facility or to the monitoring plan needed to achieve compliance with the intent of this chapter or the permit conditions. This plan and time schedule shall also implement all of the recommendations of the Director.

(8) Modified operating permits for the application of pesticides, herbicides, fungicides, or fertilizers containing nitrates (use provisions per SMC 13.60.030) shall include the following:

(A) A list of the names and chemical content of each regulated substance used for this purpose.

(B) A description of the containment used in transport of the regulated substances to the site of application and the methods of application.

(C) A regulated substances management plan that includes procedures for monitoring, cleanup, and disposal for leaks and spills of regulated substances.

(D) Procedures for recording the date, amount, type, and location of regulated substances applied. Such records shall be kept up to date and be available for inspection at reasonable times by the Director.

(E) An annual modified operating permit covering all application operations of regulated substances by an applicator shall be obtained by the permittee. (Ord. 1192 §10, 1996).

**13.60.110 Regulated substances management plan.** A regulated substances management plan indicating procedures to be followed to prevent, control, collect, and dispose of any unauthorized release of a regulated substance shall be required as a condition of each operating permit. If a spill prevention control and response (SPCR) plan has been prepared in accordance with 40 CFR 264 or 265, a regulated substances management plan is not required as long as all of the regulated substances are included in the SPCR plan and the facility submits a copy to the Director. The regulated substances management plan shall include:

(1) Provisions to address the regulated substances monitoring requirements of SMC 13.60.060(d).

(2) Provisions to address the pesticide, herbicide, fungicide, and fertilizer requirements of SMC 13.60.040.

(3) Provisions to train employees in the prevention, identification, reporting, control, disposal, and documentation of any unauthorized release of a regulated substance. (Ord. 1192 §11, 1996).

**13.60.120 Groundwater monitoring plan.** If a facility is required to install and monitor groundwater wells pursuant to SMC 13.60.130, then a groundwater monitoring plan will be

required. This plan must indicate procedures to be followed to assess groundwater quality for concentrations of those chemicals identified by the utility in the operating permit. If a groundwater monitoring program is in effect per the requirements of 40 CFR 264 or 265, and this program includes all of the chemicals identified in the operating permit, then a separate groundwater monitoring Plan is not required by the Director and the facility shall submit a copy of this program to the Director.

(1) The groundwater monitoring plan shall include provisions to address the groundwater monitoring requirements of SMC 13.60.130. (Ord. 1192 §12, 1996).

### **13.60.130 Unauthorized releases.**

(a) General Provisions: All unauthorized releases as defined in SMC 13.60.020(q) shall be reported to the Director according to the provisions of this subsection. All unauthorized releases shall be recorded in the owner's inspection and maintenance log. Such an unauthorized release shall be determined to be an "unauthorized release requiring recording" if the release is completely captured by the containment device. If the containment device fails to contain the entire release, the release shall be determined to be an "unauthorized release requiring reporting."

(b) Unauthorized Releases Requiring Recording:

(1) Unauthorized releases requiring recording shall be reported to the utility within twenty-four (24) hours after the release has been detected in accordance with SMC 13.60.130 and an incident report summarizing the release, response and cleanup (below) will be submitted to the Director within ten (10) days after the release is detected.

(2) incident report shall be accompanied by a written record including the following information:

- (A) List of type, quantities and concentration of regulated substances released.
- (B) Method of cleanup.
- (C) Method and location of disposal of the released regulated substances.
- (D) Method of future release prevention or repair. If this involves a change in operation, monitoring or management, the owner must apply for a new operating permit.
- (E) Facility operator's name and telephone number and those of companies, contractors and/or consultants who planned or implemented the control and cleanup of the unauthorized release.
- (F) The approximate costs for cleanup to be submitted voluntarily.

(3) The Director shall review the information submitted pursuant to the report of an unauthorized release requiring recording, shall review the operating permit, and may inspect the facility. The utility shall find that the containment standards of this chapter can continue to be achieved, or the Director shall revoke the permit until appropriate modifications are made to allow compliance with the standards.

(c) Unauthorized Releases Requiring Reporting:

(1) Unauthorized releases requiring reporting shall be reported to the Director within twenty-four (24) hours of discovery of the occurrence.

(2) The report shall contain the following information that is known at the time of filing the report:

- (A) List of type, quantity and concentration of regulated substances released.
- (B) The results of all investigations completed at that time to determine the extent of soil, groundwater or surface water contamination because of the release.
- (C) Method of cleanup implemented to date, proposed cleanup actions and approximate cost of actions taken to date.
- (D) Method and location of disposal of the released regulated substance and any contaminated soils, groundwater, or surface water.
- (E) Proposed method of repair or replacement of the containment device.

(F) The approximate costs for cleanup to be submitted voluntarily.

(3) Until cleanup is complete, as defined by the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC), the owner shall submit reports to the utility every month or at a more frequent interval specified by the Director. The reports shall include the information requested in this chapter. An incident report (Section 13.60.130(b)(2)) will be completed when cleanup is completed.

(d) Utility Review: Semiannually, the Director shall review all groundwater monitoring results submitted by owners in a WPA to determine if an unauthorized release to groundwater has occurred. If contamination is detected in groundwater, then a monitoring plan may be required by the Director. The monitoring plan will be developed by the responsible person and subject to approval by the Director. The plan will be regularly monitored and professionally evaluated by a qualified consultant selected by the Director. All expenses for monitoring, data analysis and cleanup will be born by the contaminating entity. Either one of the following occurrences shall constitute an unauthorized release to groundwater:

(1) A chemical concentration in an owner's monitoring well(s) that exceeds applicable legally-enforceable federal or state groundwater quality standards.

(2) An upward trend in the concentration of a regulated chemical as determined by a statistically based procedure.

(e) Owner Responsibility: Upon confirmation of an unauthorized release to groundwater, the owner and/or operator shall be responsible for immediately accomplishing the following:

(1) Locate and determine the source of the unauthorized release of the regulated substance(s).

(2) Stop and prevent any further unauthorized release(s), if under the control of the owner and/or operator.

(3) Comply with the requirements for unauthorized release(s) requiring reporting.

(4) The owner may not be subject to this mandatory action if the owner can present acceptable technical data that substantiate it is not responsible for the violation. In complying with this subsection, no new regulated substance(s) may be introduced in the place of the regulated substance(s) that caused the violation.

(f) Emergency Powers: If an unauthorized release creates or is expected to create an emergency situation with respect to the drinking water supply of the Town of Steilacoom, and if the facility owner fails to address the unauthorized release within a time period established by the Director. The Director or its authorized agents shall have the authority to implement removal or remedial actions. Such actions may include, but not be limited to, the prevention of further groundwater contamination; installation of groundwater monitoring wells and decontamination wells (pumped wells); collection and laboratory testing of water, soil, and waste samples; and cleanup and disposal of regulated substances. The facility owner shall be responsible for any costs incurred by the Director or its authorized agents in the conduct of such remedial actions.

(g) Other Requirements: Reporting a release to the Director does not exempt or preempt any other reporting requirements under federal, state, or local laws. (Ord. 1192 §13, 1996).

**13.60.140 Closure conditions.** No person shall close, or cause to be closed, a facility regulated pursuant to this chapter without removing regulated substances from the facility, including residual liquids, solids or sludges to levels specified in 173-340 WAC, Model Toxic Control Act Cleanup Regulation. The owner must document to the Director that proper disposal has been completed. (Ord. 1192 §14, 1996).

**13.60.150 Enforcement.** The Town of Steilacoom shall be the administering agency and the Director shall have the power and authority to administer and enforce the provisions of this chapter. The Director shall have the right to conduct inspections of facilities at all reasonable

times and at a minimum of once per year to determine compliance with this chapter. Noncompliance with the provisions of this chapter is a violation. The owner and/or operator cited by the Director shall immediately stop the use of and remove from the site any regulated substances present in quantities greater than de minimis. (Ord. 1192 §15, 1996).

**13.60.160 Notice of violation.** Whenever it is determined that there is a violation of this chapter, the notice of violation issued shall be in writing; and dated and signed by the authorized Town of Steilacoom agent making the inspection; specify the violation or violations; and specify the length of time available to correct the violation after receiving the notice of violation. (Ord. 1192 §16, 1996).

**13.60.170 Other laws, rules, and regulations.** All owners within a WPA must also comply with county, state, and federal laws, rules, and regulations related to the intent of this chapter. (Ord. 1192 §17, 1996).

**13.60.180 Penalties.** A violation of any of the provisions of this chapter shall constitute a misdemeanor and a nuisance. It shall be a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted.

(1) Fines: Any owner or operator who violates any provisions of this chapter shall be subject, upon conviction in court, to a fine not to exceed \$250 per day per facility.

(2) Reimbursement: In addition to any fines and penalties set forth above, the owner or operator shall reimburse the Town of Steilacoom, for all costs incurred as a result of responding to, containing, cleaning up, or monitoring the cleaning up and disposal of any spilled or leaked regulated substance including any professional engineering and consultant costs. (Ord. 1192 §18, 1996).

**13.60.200 Modifications, waivers, alternatives, tests.** Whenever there are practical difficulties involved in carrying out the provisions of this chapter, the Director may grant minor modifications for individual cases provided he/she shall first find that a specific reason makes the strict letter of this chapter impractical and that the minor modification is in conformity with the intent and purpose of this chapter.

(a) Testing: Whenever there is insufficient evidence of compliance with any of the provisions of this code or evidence that any action does not conform to the requirements of this Code, the Director may require tests as proof of compliance to be made at no expense to this jurisdiction.

(1) Test methods shall be by other recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the Director shall determine test procedures. (Ord. 1192 §20, 1996).

**13.60.210 Wellhead protection variance procedures.** If an applicant feels that the strict application of this chapter would deny all reasonable use of the property or would deny installation of public transportation or utility facilities determined by the public agency proposing these facilities to be in the best interest of the public health, safety and welfare, the applicant of a development proposal may apply for a variance. An application for a variance shall be filed with the Director. Requirements for a variance include an environmental review pursuant to (SEPA) Washington Administrative Code 197-11-300 (SEPA). (Ord. 1192 §21, 1996).

## Chapter 13.70

### Site Development Standards

**Sections:**

**13.70.010 Purpose.**

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**13.70.030 Site development permits.**

**13.70.040 Erosion and sediment control plan.**

**13.70.050 Design requirements.**

**13.70.060 Inspection.**

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**13.70.010 Purpose.** During the construction process, soil is the most vulnerable to erosion by wind and water. This eroded soil endangers water resources by reducing water quality, and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches, and the dredging of lakes. In addition, clearing grading during construction causes the loss of native vegetation necessary for terrestrial and aquatic habitat, and to provide a healthy living environment for citizens of the Town of Steilacoom.

The purpose of this local regulation is to safeguard persons, protect property, prevent damage to the environment and promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity which disturbs or breaks the topsoil or results in the movement of earth on land in Steilacoom. (Ord. 1389 §1(part), 2005).

**13.70.020 Definitions.** As used in this chapter, the following terms have the following meanings.

(A) Clearing means any activity which removes the vegetative surface cover.

(B) Construction season means the period of time between May 1 and September 30 each year.

(C) Drainage way means any channel that conveys surface runoff throughout the site.

(D) Development means any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, placement of manufactured home/mobile home, mining, dredging, clearing, filling, grading, paving, excavation, drilling operations, or the subdivision of property.

(E) Erosion control means measures that prevent erosion.

(F) Control plan means a plan that indicates the specific measures and sequencing to be used controlling sediment and erosion on a development site before, during and after construction.

(G) Grading means excavation or fill of material, including the resulting conditions thereof.

(H) Grubbing means the removal and disposing of all unwanted vegetative matter from underground, such as sod, stumps, roots, buried logs, or other debris.

(I) Perimeter control means a barrier that prevents sediment from leaving a site either by filtering sediment-laden runoff, or diverting it to a sediment trap or basin.

(J) Phasing means clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

(K) Sediment control means measures that prevent eroded sediment from leaving the site.

(L) Site means a parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

(M) Site development means construction or alteration of a site, including clearing, grading, and installation of erosion and runoff control devices.

(N) Stabilization means the use of practices that prevent exposed soil from eroding.

(O) Start of construction means the first land-disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

(P) Watercourse means any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water which are delineated by the Town.

(Q) Waterway means a channel that directs surface runoff to a watercourse, or to the public storm drain. (Ord. 1389 §1(part), 2005).

### **13.70.030 Site development permits.**

(A) A site development permit is required for removal, displacement, or deposit of more than a total of 50 cubic yards of material.

(B) No site development permit is required for the following activities:

(1) Any emergency activity which is immediately necessary for the protection of life, property or natural resources.

(2) Existing nursery and agricultural operations conducted as a permitted principal or accessory use.

(3) Stockpiling or broadcasting of less than 100 cubic yards of topsoil, peat, sawdust, mulch, bark, chips or solid nutrients on a lot, tract, or parcel of land, per year.

(C) Each application shall bear the name(s) and address(es) of the owner or developer of the site and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm, include a proposed erosion and sediment control plan, and be accompanied by a filing fee.

(D) Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with an approved erosion and sediment control plan, subject to inspection on all days where construction or grading activity takes place.

(E) Review and approval

(1) The Town Public Works Department shall review each application for a site development permit to determine its conformance with the provisions of this regulation. Within thirty (30) days after receiving an application, the Town shall, in writing:

(a) Approve the permit application;

(b) Approve the permit application subject to conditions necessary to carry out the objectives of this regulation;

(c) Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission. (Ord. 1389 §1(part), 2005).

### **13.70.040 Erosion and Sediment Control Plan.**

(A) The erosion and sediment control plan shall include:

(1) An accurate, legible drawing of the site, at a scale of 20 feet or fewer to the inch, or as determined by the Public Works Director. If more than one sheet is required, an index sheet shall be provided. Each sheet, including the index sheet, shall not exceed a size of twenty-four by thirty-six inches.

The drawing shall contain the following information:

(a) Legal description of the property;

(b) A vicinity sketch;

(c) The location, width and name of all streets, alleys and other public ways within and adjacent to the property;

(d) The location, width and purpose of all easements within the property;

(e) Contour lines in areas to be developed shall be at two foot intervals, or as specified by the Public Works Director. Ten foot intervals may be used in areas not to be developed. All contour lines shall be extended into adjacent property a sufficient distance to show the topographical relationship of adjacent property to the property;

(f) The location of all existing structures within the property and within twenty-five feet of the property;

(g) A drainage plan consistent with the adopted stormwater manual showing existing and proposed drainage facilities for the site and the adjacent areas;

(h) The location of known or suspected soil or geological hazard areas, water bodies, creeks and wetlands areas;

(i) Location of existing and proposed utility lines, sewer and water mains adjacent to or within the property;

(j) The proposed location of clearing limits and erosion control devices.

(2) A sequence of construction of the development site, including grubbing and clearing, rough grading, construction of utilities infrastructure, construction of buildings, and final grading and landscaping.

Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the sequence of clearing, installation of temporary erosion and sediment measures, and establishment of permanent vegetation.

(3) All erosion and sediment control measures necessary to meet the objectives of this chapter throughout all phases of construction and permanently, after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.

(4) For sites of 20,000 square feet or larger, seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.

(5) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.

(B) Modifications to the plan

(1) Major amendments of the erosion and sediment control plan shall be submitted to the Town and shall be processed and approved, or disapproved, in the same manner as the original plans.

(2) The Town may authorize field modifications of a minor nature. (Ord. 1389 §1(part), 2005).

**13.70.050 Design requirements.** Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the stormwater management manual adopted by the Town.

(A) Clearing and Grading

(1) Critical areas and buffers shall not be cleared or graded without specific authorization pursuant to Chapter 16.16 SMC.

(2) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed, stabilized, inspected by the Town and approved.

(3) Cut and fill slopes shall be no greater than 2:1, except as specifically approved by the Town.

(B) Erosion Control

(1) From October 1 through April 30, no soils shall remain exposed and unworked for more than two days. From May 1 through September 30, no soils shall remain exposed and

unworked for more than seven days. This requirement applies to all soils on site, whether at final grade or not. The Town may adjust the time limits if the average time between storm events justifies a different standard.

(2) Soils shall be stabilized at the end of the work shift before a holiday or weekend if needed based on the weather forecast.

(3) If vegetative erosion control methods, such as seeding, have not become established within two weeks, the Town may require that the site be reseeded, or that a non-vegetative option be employed.

(4) On steep slopes or in drainage ways, special techniques that meet the design criteria outlined in the stormwater management manual shall be used to ensure stabilization.

(5) Soil stockpiles must be stabilized or covered at the end of each work day.

(6) At the close of the construction season, the entire site must be stabilized, using a heavy mulch layer, or another method that does not require germination to control erosion.

(7) Techniques shall be employed to prevent the blowing of dust or sediment from the site.

(8) Techniques that divert upland runoff past disturbed slopes shall be employed.

(C) Sediment Controls

(1) Sediment controls shall be provided in the form of settling basins or sediment traps or tanks, and perimeter controls.

(2) Where possible, settling basins shall be designed in a manner that allows adaptation to provide long term stormwater management.

(3) Adjacent properties shall be protected by the use of a vegetated buffer strip, in combination with perimeter controls.

(D) Waterways and Watercourses

(1) When a wet watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided. The stream crossing shall be expressly approved by Town, the state fish and wildlife department, and any other agency with jurisdiction.

(2) When in-channel work is conducted, the channel shall be stabilized before, during and after work.

(3) All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the stormwater management manual.

(4) Stabilization adequate to prevent erosion must be provided at the inlets and outlets of all pipes and paved channels.

(E) Construction Site Access

(1) At least one temporary access road or driveway meeting the requirements of the stormwater manual shall be provided at all sites.

(2) Other measures may be required at the discretion of the Town in order to ensure that sediment is not tracked onto public streets by construction vehicles, or washed into storm drains.

(3) No dirt, mud or other material shall be permitted to leave the construction site. If material does leave the site, the permittee is responsible for promptly cleaning all material on Town streets and in all affected stormwater drains. (Ord. 1389 §1(part), 2005).

**13.70.060 Inspection.**

(A) The Town or its designated agent shall make the following inspections and shall either approve the work completed or notify the permittee of any deficiencies. A copy of the approved plans for grading, grubbing, excavating, and filling shall be at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the Town at least two (2) working days before the following:

(1) Clearing limits delineated/start of construction

(2) Erosion and sediment control measures are in place and stabilized



- (3) Completion of site clearing
- (4) Completion of rough grading
- (5) Completion of final grading
- (6) Close of the construction season
- (7) Project finalization

(B) The permittee or his/her agent shall make daily inspections of all control measures. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for additional control measures. The permittee shall promptly repair or replace any non-functioning control devices, and add new devices as necessary.

(C) The Town or its designated agent shall be permitted to enter the site as deemed necessary to make inspections. (Ord. 1389 §1(part), 2005).

**13.70.070 Enforcement.** Enforcement action for violations of this Chapter shall be governed by the provisions of Chapter 14.32 SMC. (Ord. 1543 §8, 2016: Ord. 1389 §1(part), 2005).

**13.70.080 Fees.** The Town Council shall set the fee for the site development permit by resolution. (Ord. 1389 §1(part), 2005).