

**Title 18**  
**ENVIRONMENT**

**Chapters:**

- 18.04 Environmental Policy and Procedures**
- 18.08 Local Environmental Policies and Procedures**
- 18.12 Sensitive Areas**
- 18.16 Clearing, Grading and Filling**
- 18.20 Tree Preservation Ordinance**

**Chapter 18.04**  
**ENVIRONMENTAL POLICY AND PROCEDURES**

**Sections:**

- 18.04.010**      **Adoption of state provisions.**
- 18.04.020**      **Modifications to adopted provisions.**
- 18.04.030**      **Appeals.**

**18.04.010**      **Adoption of state provisions.**

A. There is adopted to be effective for all actions subject to the State Environmental Policy Act within the city, WAC Chapter 173-806, the Model State Environmental Policy Act Ordinance, subject to the terms, conditions, and options selections herein

B. Where a Washington Administrative Code section is cited herein, the option adopted by the city shall be as stated in this chapter. For sections of WAC Chapter 173-806 not cited, said chapter shall be considered to be adopted in total as stated in said modl ordinance, without further reference herein

C. WAC 173-806-010 is adopted as follows: The city adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This chapter contains the city's SEPA procedures and policies. The SEPA rules, WAC Chapter 197-11, shall be used in conjunction with this chapter. (Ord. 159 §§1--3, 1984

**18.04.020**      **Modifications to adopted provisions.**

The following deletions, amendments and additions are made to the provisions adopted in Section 18.04.010 of this chapter:

A. Responsible Official. The department head, or his or her designate, having supervisory or oversight responsibility for the projec or action under consideration shall be the responsible official for purposes of compliance with this chapter

B. WAC 173-806-050(4). Any petition to be initiated pursuant to said section may be initiated by the building inspector or the city council

C. WAC 173-806-053. This section is adopted in total

D. WAC 173-806-055. This provision, optional for the city, is not adopted

E. WAC 173-806-058. This section is adopted as follows

1. For nonexempt proposals, the DNS, a draft DIS, or final EIS for the proposal may accompany the city staff recommendation to any appropriate advisory body, such as the planning commission.

2. If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specification

F. WAC 173-806-070. This section is not adopted

G. WAC 173-806-090. This section, optional in part, s adopted as follows:

1. Option 1 is adopted.

2. This section is mandatory

3. This section is adopted
- H. WAC 173-806-100(3). Fifteen working days shall be required by the responsible official to respond pursuant to said subsection
- I. WAC 173-806-125. This section is not adopted
- J. WAC 173-806-130. The "City of Brier" shall be inserted in Section (1). For purposes of notice as required under Section (2)(b) notice shall be given as stated in Section 2(b)(i), posting the property, for site specific proposals. For Section (2) regarding notice of availability of documents, said notice shall be given by: posting the property for site specific proposals
- K. WAC 173-806-140. The building inspector shall be the responsible official for the duties of this section.
- L. WAC 173-806-160 entitled "Substantive Authority" is adopted in its entirety. In accordance with Section 4(c) the following codes, ordinances, resolutions and plans are adopted as additional authority to condition, deny or amend an action: The comprehensive plan, as presently existing or generally accepted proposed amendments thereto, and the zoning code. For purposes of subsection (5), appeals shall be to the city council and notice of appeal shall be in hand received by the city clerk within ten days of the decision of the responsible official
- M. WAC 173-806-173. Section 1. This option is adopted
- N. WAC 173-806-190. No environmentally sensitive areas are designated at this time
- O. WAC 173-806-200. The following fees are established
1. Environmental Impact Statement
    - (a) This section is adopted in total
    - (b) This section is adopted in total
    - (c) This section is adopted in total
    - (d) This section is adopted in total
    - (e) This section is adopted as stated
    - (f) This section is adopted as stated
- P. WAC 173-806-205. This chapter shall be effective after passage and posting as required by law. (Ord. 159.A §§1, 3, 1986; Ord. 159 §§1--14, 15--20, 1984)

**18.04.030 Appeals.**

- A. All appeals shall be pursuant to WAC 173-806-170(A)(i--iii), (B), (C), (D). The council may, in its sole discretion, appoint a hearing examiner for any appeal pursuant to this subsection, which examiner shall conduct the hearing on behalf of the council and make a record for use by the council, in accordance with WAC 173-806-170(B), and shall also make a recommended decision for the council. After hearing the argument of the parties the council may affirm, modify, deny, or overturn the hearing examiner's recommended decision, in whole or in part, but only for clear error of law or unsupported finding of fact
- B. Official notice under WAC 197-11-680(5) shall be given whenever a permit or approval is granted for which a statute or ordinance establishes a time limit for commencing judicial appeal. Appeals to Superior Court shall be by writ of certiorari only and commenced within the time period established by the city for such appeals. All costs of transcription of the record shall be paid for, in advance, by the appellant. (Ord. 159.A §2, 1986)

**Chapter 18.08**  
**LOCAL ENVIRONMENTAL POLICIES AND PROCEDURES**

**Sections:**

**ARTICLE I. GENERAL**

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- 18.08.020 Implementation.**
- 18.08.030 Substantive authority and mitigation.**
- 18.08.040 SEPA policies--Overview.**
- 18.08.050 Cumulative effects policy.**
- 18.08.060 Fees.**

**ARTICLE II. SPECIFIC ENVIRONMENTAL POLICIES**

- 18.08.070 Air quality.**
- 18.08.080 Construction impacts.**
- 18.08.090 Drainage.**
- 18.08.100 Earth.**
- 18.08.110 Energy.**
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- 18.08.150 Light and glare.**
- 18.08.160 Noise.**
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- 18.08.200 Public services and facilities.**
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**ARTICLE I. GENERAL**

**18.08.010 Purpose.**

The city, recognizing that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment, declares to the fullest extent possible the city will utilize a systematic, interdisciplinary

approach to ensure the integrated use of the natural, physical and social sciences to

- A. Ensure the use of concise, high quality environmental documents and information in making decisions.
- B. Integrate the SEPA process with other laws and decisions
- C. Encourage actions that preserve and enhance environmental quality, consistent with other essential considerations of state policy. (Ord. 204 §1, 1988)

**18.08.020 Implementation.**

- A. See RCW 43.21C.020, 43.21C.030(1), 43.21C.060, 43.21C.075, and 43.21C.080.
- B. Relevant environmental documents, comments, and responses shall accompany proposals through existing agency review processes, as determined by agency practice and procedure, so that agency officials use them in making decisions
- C. When a decisionmaker considers a final decision on a proposal
  1. The alternatives in the relevant environmental documents shall be considered
  2. The range of alternative courses of action considered by decisionmakers shall be within the range of alternatives discussed in the relevant environmental documents. However, mitigation measures adopted need not be identical to those discussed in the environmental documents
  3. If information about alternatives is contained in another decision document which accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make that information available to the public before the decision is made. (Ord. 204 §2, 1988)

**18.08.030 Substantive authority and mitigation.**

- A. Any governmental actions on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations
  1. Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.
  2. Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decisionmaker. The decisionmaker shall cite the city's SEPA policy that is the basis of any condition or denial under this chapter (for proposals of applicants). After its decision, each agency shall make available to the public a document that states the decision. The document shall state the mitigation measures, if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents
  3. Mitigation measures shall be reasonable and capable of being accomplished
  4. Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur
  5. Before requiring mitigation measures, agencies shall consider whether local, state, or federal requirements and enforcement would mitigate an identified significant impact, but shall not be bound by such other rules, regulations, and enactments, exclusively, as a means of mitigation

6. To deny a proposal under SEPA, an agency must find that
  - a. The proposal would be likely to result in significant adverse environmental impacts identified in environmental documents prepared pursuant to SEPA; and
  - b. Reasonable mitigation measures are insufficient to mitigate identified impacts.
- B. Decisionmakers should judge whether possible mitigation measures are likely to protect or enhance environmental quality. EISs should briefly indicate the intended environmental benefits of mitigation measures for significant impacts. EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measure
  1. Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and
  2. Will not be analyzed in a subsequent environmental document prior to their implementation.
- C. The city clerk shall distribute this chapter so that the city's SEPA policies will be known by applicants and members of the public. This document (and any documents referenced in it) shall be readily available to the public and shall be available to applicants prior to preparing a draft EIS.
- D. Required mitigation measures or denials under this section shall be an additional ground for or issue in appeals of decisions otherwise provided by city ordinance; provided that for proposals involving more than one action, such issue may be raised only with regard to the first decision which weighed the environmental impacts of the proposal, or the first decision of each phase if phased review is employed. (Ord. 204 §3, 1988)

**18.08.040 SEPA policies--Overview.**

- A. Purpose of the SEPA Policies.
  1. It is the city's policy to protect the environment and provide for reasonable property development while enhancing the predictability of land use regulation. In order to provide predictability, it is the city's intent to incorporate environmental concerns into its codes and development regulations to the maximum extent possible. However, comprehensive land use controls and other regulations cannot always anticipate or effectively mitigate all adverse environmental impacts.
  2. The policies set forth in those SEPA rules, along with all other identified SEPA policy documents, shall serve as the basis for exercising substantive SEPA authority. Based on these policies, a decisionmaker may condition a proposal to reduce or eliminate its environmental impacts. The decisionmaker may deny a proposed project if reasonable mitigating measures are insufficient to mitigate significant, adverse impacts identified in the environmental impact statement.
- B. Relationship to Other City Policies. Nothing in these SEPA policies shall diminish the independent effect and authority of other environmentally related policies adopted by the city. Such city policies shall be considered together with these SEPA policies to guide discretionary land use decisions such as conditional uses and legislative actions such as rezones, adoption of area plans and siting of city facilities. Such adopted city policies may serve as the basis for exercising substantive SEPA authority with respect to a project only to the extent that they are explicitly referenced in this chapter. (Ord. 204 §4, 1988)

**18.08.050 Cumulative effects policy.**

A. Policy Background.

1. A project or action which by itself does not create undue impacts on the environment may create undue impacts when combined with the cumulative effects of prior or simultaneous developments; further, it may directly induce other developments, due to a causal relationship, which will adversely affect the environment

2. An individual project may have an adverse impact on the environment or public facilities and services which, though acceptable in isolation, could not be sustained even the probable development of subsequent projects with similar impacts

B. Policies.

1. The analysis of cumulative effects shall include, where necessary, a reasonable assessment of:

a. The present and planned capacity of such public facilities as sewer, storm drains, solid waste disposal, parks, schools, streets, utilities, and parking areas to serve the area affected by the proposal;

b. The present and planned public services such as transit, health, police and fire protection and social services to serve the area affected by the proposal;

c. The capacity of natural systems--such as air, water, light, and land--to absorb the direct and reasonably anticipated indirect impacts of the proposal;

d. The demand upon facilities, services and natural systems (present, simultaneous and known future development in the area of the project or action); and

2. Subject to the policies for specific elements of the environment. An action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment

a. When considered together with prior, simultaneous or induced future development;

b. When, taking into account known future development under established zoning, it is determined that a project will use more than its share of present and planned facilities, services and natural systems.

C. Unless otherwise specified in the policies for specific elements of the environment, if the scope of substantive SEPA authority is limited with respect to a particular element of the environment, the authority to mitigate that impact in the context of cumulative effects is similarly limited. (Ord. 204 §5, 198

**18.08.060 Fees.**

The following fees shall be required for actions by the city in accordance with the provisions of this code:

A. Environmental Checklist. The city shall establish a fee for review of an environmental checklist performed by the city, when the city is the lead agency and the proponent is other than the city. This fee shall be collected prior to undertaking a threshold determination

B. Environmental Impact Statements

1. For all noncity initiated proposals when the city is the lead agency and the environmental coordinator determines that an EIS is required, the proponent shall be charged a fee equal to the administrative costs of supervision and preparation of the draft and final EIS'

2. The amount of the fee shall be based on a fee schedule of actual costs or services and materials, plus reimbursement for out-of-pocket expenses borne by the city in complying with the provisions of this code and the SEPA rules

3. The proponent shall make an initial payment to the city in an amount equal to the projected cost estimated by the environmental coordinator, but not less than seven hundred fifty dollars. At the time of issuance of the final EIS, or if the proposal is modified so an EIS is no longer needed, the proponent shall pay any costs in excess of the initial payment, or if costs are less than the initial payment, the city shall refund any excess to the proponent

4. For private proposals, the cost of retaining consultants for assistance in EIS preparation shall be borne by the proponent whether the consultants retained directly by the proponent, by the city or through a third party contract involving the city and the proponent

5. For city proposals, the cost of any required consultants shall be borne by the initiating department or departments

6. No fees shall be charged for any staff review time related to hearings in contested case

7. No fees shall be charged and allowed which provide for overtime or extra compensation to staff charged with reviewing a proposal

C. Consultant Agency Fees. No fees shall be collected by the city for performing its duty as a consultant agency.

D. Document Fees. The city may charge any person for copies of any documents prepared pursuant to the requirements of this code and for mailing thereof, in a manner provided by RCW Chapter 42.17; provided, that no charge shall be levied for circulation of documents as required by this code to other agencies. (Ord. 204 §7, 1988)

## ARTICLE II. SPECIFIC ENVIRONMENTAL POLICIES

### 18.08.070 Air Quality.

#### A. Policy Background.

1. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life

2. The city's air quality is affected by particulates from industries, power plants, and all solid fuel burning devices, the burning of toxics or wastes, and other emissions, including odor impacts

3. Federal auto emission controls, the State inspection/maintenance program, and public transportation improvements are the primary means of mitigating air quality impacts from motor vehicles

4. The Puget Sound Air Pollution Control Agency is responsible for monitoring air quality in the Seattle area, setting standards and regulating development to achieve regional air quality goals. The city may, on its own, in appropriate circumstances, declare its own air quality exceedance episode.

5. Federal, state and regional regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts

#### B. Policies.

1. It is the city's policy to minimize or prevent adverse air quality impacts

2. For any project proposal which has a substantial adverse effect on air quality, the decisionmaker shall, in consultation with appropriate agencies with expertise, assess the probable effect of the impact and the need for mitigating measures. Any "non-attainment areas" identified by the Puget Sound Air Pollution Control Agency in the city shall be given special consideration

3. If the decisionmaker makes a written finding that the applicable federal, state and/or

regional regulations did not anticipate or are inadequate to address the particular impact(s) of the project, the decisionmaker may condition or deny the proposal to mitigate its adverse impact

4. Mitigating measures may include but are not limited to
  - a. The use of alternative technologies, including toxic air control technologies
  - b. Controlling dust sources with paving, landscaping, or other means
  - c. Berming, buffering and screening
  - d. Landscaping and/or retention of existing vegetation; and
  - e. A reduction in size or scope of the project or operation
  - f. Limitation on devices which produce contaminants, including elimination of solid fuel burning devices. (Ord. 204 §6(part), 1988)

**18.08.080 Construction Impacts.**

A. Policy Background.

1. For many projects, the construction process itself creates temporary adverse impacts on the site and the surrounding area
2. The city codes do not necessarily adequately address all construction impacts such as those relating to pedestrian flow and safety due to sidewalk and street closures, excessive mud and dust, noise, drainage, and increased truck traffic

B. Policies.

1. It is the city's policy to minimize or prevent temporary adverse impacts associated with construction activities.
2. The decisionmaker may require, as part of the environmental review of a project, an assessment of noise, drainage, pedestrian circulation and transportation, and mud and dust impacts likely to result from the construction phase
3. Based on such assessments, the decisionmaker may condition or deny a project to mitigate adverse impacts of the construction process
4. Noise. Mitigating measures to address adverse noise impacts during construction include, but are not limited to
  - a. Limiting the hours of construction;
  - b. Specifying the time and duration of loud noise
  - c. Specifying a preferred type of construction equipment; and
  - d. Requiring sound buffering and barriers
5. Drainage. Mitigating measures to address adverse drainage impacts during construction may include, but are not limited to
  - a. Sedimentation traps and filters
  - b. Sedimentation tanks or ponds
  - c. Oil separators;
  - d. Retention facilities
  - e. Maintenance programs; and
  - f. Performance bonds.
  - g. Limitation on the duration of any given flow.
6. Pedestrian Circulation. Mitigating measures to address adverse impacts relating to pedestrian circulation during construction may include, but are not limited to

- a. A construction phase transportation plan which addresses ingress and egress of construction equipment and construction worker vehicles at the project sit
- b. Traffic control and street maintenance in the vicinity of the construction sit
- c. Rerouting of public vehicular and pedestrian circulation in the vicinity of the construction site. (Ord. 204 §6(part), 1988)

**18.08.090 Drainage.**

A. Policy Background.

1. Property development and redevelopment often creates increased volumes and rates of storm water runoff, which may cause property damage, safety hazards, nuisance problems and water quality degradation
2. Pollution, mechanical damage, excessive flows, and other conditions in drainage basins will increase the rate of downcutting and/or the degree of turbidity, siltation, and other forms of pollution in streams, creeks, and lakes. They may also reduce low flows or low water levels to a level which endangers aquatic and benthic life within these streams, creeks, and lake
3. The aesthetic quality of the water and watercourses, as well as the suitability of waters for contact recreation and wildlife habitat, may be destroyed

B. Policies.

1. It is the city's policy to protect streams, lakes, drainage basins and property from adverse drainage impacts
2. The decisionmaker may condition or deny projects to mitigate adverse drainage impacts; provided, that the following may specifically be conditioned or denied
  - a. Projects located in environmentally sensitive areas and areas tributary to them
  - b. Projects located in areas where downstream drainage facilities are known to be inadequate;and
  - c. Projects draining into streams identified by the State Department of Fisheries or Wildlife as bearing anadromous fish
3. Repealed by Ord. 325.
4. To mitigate adverse impacts associated with the projects identified in Section 18.08.080, projects may be required to provide drainage control measures. Mitigating measures may include, but are not limited to
  - a. Reducing the size or scope of the project
  - b. Requiring landscaping and/or retention of existing vegetation
  - c. Requiring additional drainage control or drainage improvements either on or off site including limitations on the flow to mitigate all impacts up to a one-hundred-year flood of twenty-four-hour duration; and
  - d. Soil stabilization measures
  - e. Covenants running with the land giving the city an independent right to recover expenses for remedying deficient drainage systems. (Ord. 325 §1(part), 2006; Ord. 204 §6(part), 1988)

**18.08.100 Earth.**

A. Policy Background.

1. Property development and redevelopment sometimes contributes to landslides, accelerated soil creep, settlement and subsidence, and abnormal erosion. They may also be subject to seismic hazards such as strong ground motion and liquefaction.

2. Drainage impacts, which are closely related to earth movement hazards, are addressed separately in subsection (B)(3) of this section

B. Policies.

1. It is the city's policy to protect life and property from loss or damage by landslides, strong ground motion and soil liquefaction, accelerated soil creep, settlement and subsidence, abnormal erosion, and other hazards related to earth movement and instability

2. The decisionmaker may condition or deny projects to mitigate impacts related to earth movement or earth instability; provided, that in addition to projects which meet one or more of the threshold criteria set forth in the overview policy, projects located in environmentally sensitive areas and areas tributary to them may be conditioned or denied.

3. Mitigating measures may include, but are not limited to

- a. Reducing the size or scope of the operation or project
- b. Limiting the duration of the project or the hours of operation
- c. Requiring landscaping, the retention of existing vegetation or revegetation of the site
- d. Requiring additional drainage control measures or drainage facilities; and
- e. Requiring water quality and erosion controls on or off-site to control earth movement.

(Ord. 204 §6(part), 1988)

**18.08.110 Energy.**

A. Policy Background.

1. It is the city's intent to regulate the design of buildings for adequate thermal resistance and low air leakage. It requires the design and selection of mechanical, electrical, water, heating and illumination systems which will enable the efficient use of energy

B. Policies.

1. It is the city's policy to promote energy conservation and the most efficient possible use and production of energy

2. All major projects shall be required to analyze and disclose their energy impacts by fuel type and end-use.

3. For projects with significant adverse energy impacts which involve activities not covered by current codes, the decisionmaker may require that the environmental review include a reasonable assessment of alternatives and mitigating measures.

4. The decisionmaker may condition or deny projects with significant adverse impacts relating to the use of the electrical energy in order to mitigate their adverse impacts to the city's electric utility system. Mitigating measures may include, but are not limited to conservation measures such as the use of alternative technologies

5. In applying these policies to the rehabilitation of structures with historical significance, the decisionmaker shall be flexible in the application of energy conservation measures which may be in conflict with historical preservation goals and shall attempt to achieve a balance in meeting these competing objectives. (Ord. 204 §6(part), 1988)

**18.08.120 Environmental Health.**

A. Policy Background.

1. The use, discharge, disposal, emission or application of toxic or hazardous materials, may pose hazards to human health and to plants, animals and ecological systems. Hazardous materials include such things as pesticides, herbicides, and electromagnetic transmissions:

2. Federal, state and regional regulations are the primary means of mitigating risks associated with hazardous and toxic materials

3. Federal, state and regional regulations cannot always anticipate or eliminate adverse impacts from hazardous materials and transmissions. Public knowledge regarding such hazardous materials and transmissions may develop more quickly than regulations can react and be implemented

B. Policies.

1. It is the city's policy to minimize or prevent adverse impacts resulting from toxic or hazardous materials and transmissions:

2. For all proposed projects involving the use, treatment, transport, storage, disposal, emission, or application of toxic or hazardous chemicals, materials, wastes or transmissions, the decisionmaker shall, in consultation with appropriate agencies with expertise, assess the extent of potential adverse impacts and the need for mitigation

3. If the decisionmaker makes a written finding that applicable federal, state and regional laws and regulations did not anticipate or do not adequately address the adverse impacts of a proposed project, the project may be conditioned or denied to mitigate its adverse impacts. Mitigating measures may include, but are not limited to

- a. Use of an alternative technology
- b. Reduction in the size or scope of a project or operation
- c. Limits on the time and/or duration of operation; and
- d. Alternative routes of transportation. (Ord. 204 §6(part), 1988

**18.08.130 Height, Bulk and Scale.**

A. Policy Background.

1. The city's adopted land use policies are intended to provide for smooth transition between commercial and residential areas, to preserve the character of individual city neighborhoods, and to reinforce natural topography

2. Whenever new land use policies are adopted, adverse impacts may result when height, bulk and scale permitted by previously adopted zoning conflicts with the new land use policies

B. Policies.

1. It is the city's policy that the height, bulk and scale of development projects should be reasonably compatible with the general character of development anticipated by the adopted land use policies listed in A(1) for the area in which they are located, and to provide for a reasonable transition between areas of less intensive zoning and more intensive zoning

2. The decisionmaker may condition or deny a project to mitigate the adverse impacts of substantially incompatible height, bulk and scale. Mitigating measures may include but are not limited to :

- a. Limiting the height of the development
- b. Modifying the bulk of the development

- c. Modifying the development's facade including but not limited to color and finish materials;
- d. Reducing the number or size of accessory structures or relocating accessory structures including but not limited to towers, railings, and antennas;
- e. Repositioning the development on the site; and
- f. Modifying or requiring setbacks, screening, landscaping or other techniques to offset the appearance of incompatible height, bulk and scale. (Ord. 24 §6(part), 1988)

**18.08.140 Land Use.**

A. Policy Background.

- 1. The adopted land use code cannot identify or anticipate all possible uses and all potential land use impacts.
- 2. When land use policy changes are adopted, adverse land use impacts may result when a proposed project includes uses which may be consistent with the applicable zoning requirements but are in conflict with the new land use policies.
- 3. Adverse cumulative land use impacts may result when a particular use or uses permitted under the zoning code occur in an area to such extent that they foreclose opportunities for higher priority, preferred uses called for in the city's land use policies.

B. Policies.

- 1. It is the city's policy to ensure that proposed uses in development projects are reasonably compatible with surrounding use and are consistent with any applicable, adopted city land use policies for the area in which the project is located.
- 2. The decisionmaker may condition or deny any project to mitigate adverse land use impacts associated with a proposed project and achieve consistency with the applicable city land use policies. (Ord. 204 §6(part), 1988)

**18.08.150 Light and glare.**

A. Policy Background.

- 1. Development projects sometimes include lighting and/or reflective surface materials which can adversely affect motorists, pedestrians, and the surrounding area. Such adverse impacts may be mitigated by alternative lighting techniques and surface materials.

B. Policies.

- 1. It is the city's policy to minimize or prevent hazards and other adverse impacts created by light and glare.
- 2. If a proposed project may create adverse impacts due to light and glare, the decisionmaker shall assess the impacts and the need for mitigation.
- 3. The decisionmaker may condition or deny a proposed project to mitigate its adverse impacts due to light and glare.
- 4. Mitigating measures may include, but are not limited to:
  - a. Limiting the reflective qualities of surface materials that can be used in the development.
  - b. Limiting the area and intensity of illumination.
  - c. Limiting the location or angle of illumination.
  - d. Limiting the hours of illumination; and

- e. Providing landscaping. (Ord. 204 §6(part), 1988)

**18.08.160 Noise.**

A. Policy Background.

1. Noise may be injurious to the public health, safety and welfare. It may have adverse impacts on commerce; the use, value, and enjoyment of property; sleep and repose; and the physiological and psychological well-being of those who live and work in Seattle

2. Some noise impacts are not addressed by the city ordinance, such as the continual or repetitive noise of a project's operation

B. Policies.

1. It is the city's policy to minimize or prevent adverse noise impacts resulting from new development or uses

2. The decisionmaker may require, as part of the environmental review of a project, an assessment of noise impacts likely to result from the project

3. Based in part on such assessments, and in consultation with appropriate agencies with expertise, the decisionmaker shall assess the extent of adverse impacts and the need for mitigation

4. The decisionmaker may condition or deny a proposal to mitigate its adverse noise impacts.

5. Mitigating measures may include, but are not limited to:

a. Use of an alternative technology

b. Reduction in the size or scope of a project or operation

c. Limits on the time and/or duration of operation; and

d. Requiring buffering, landscaping, or other techniques to reduce noise impacts offsite. (Ord. 204 §6(part), 1988)

**18.08.170 Parking.**

A. Policy Background.

1. Increased parking demand associated with development projects may adversely affect the availability of parking in an area

2. In some neighborhoods, due to inadequate off-street parking, streets are unable to absorb any additional parking spillover. These policies recognize that the cost of providing additional parking may have an adverse effect on the affordability of housing, however, limits on parking may be imposed as a mitigation measure

B. Policies.

1. It is the city's policy to minimize or prevent adverse parking impacts associated with development projects

2. The decisionmaker may condition a project to mitigate the effects of development in an area on parking. (Ord. 204 §6(part), 1988)

**18.08.180 Plants and Animals.**

A. Policy Background.

1. Many species of birds, mammals, fish, and other classes of animals and plants living in the

urban environments are of aesthetic, educational, ecological and in some cases economic value

2. Local wildlife populations are threatened by habitat loss through destruction and fragmentation of living and breeding areas and travelways, and by the reduction of habitat diversity

B. Policies.

1. It is the city's policy to minimize or prevent the loss of wildlife habitat and other vegetation which have substantial aesthetic, educational, ecological, and/or economic value. A high priority shall be given to the preservation and protection of special habitat types. Special habitat types include, but are not limited to, wetlands and associated areas (such as upland nesting areas), and spawning, feeding, or nesting sites. A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals

2. For projects which are proposed within an identified plant or wildlife habitat or travelway, the decisionmaker shall assess the extent of adverse impacts and the need for mitigation

3. When the decisionmaker finds that a proposed project would reduce or damage rare, uncommon, unique or exceptional plant or wildlife habitat, wildlife travelways, or habitat diversity for species (plants or animals) of substantial aesthetic, educational, ecological or economic value, the decisionmaker may condition or deny the project to mitigate its adverse impacts.

4. Mitigating measures may include but are not limited to

- a. Relocation of the project on the site
- b. Reducing the size or scale of the project
- c. Preservation of specific on-site habitats, such as trees or vegetated areas
- d. Limitations on the uses allowed on the site
- e. Limitations on times of operation during periods significant to the affected species (i.e., spawning season, etc.); and
- f. Landscaping and/or retention of existing vegetation. (Ord. 204 §6(part), 1981)

**18.08.190 Landscaping.**

A. Policy Intent. Recognizing that certain developments, although consistent with zoning, may require separation from adjacent uses or modification if they are to exist in harmony with the surrounding area, the city official or authorizing agency may require foliage and greenery to promote the aesthetic and natural qualities of the city. Also, recognizing that vegetation can sometimes mitigate adverse environmental impacts, the city official or authorizing agency may require landscaping to reduce stormwater runoff, erosion and aesthetic compatibility with the surrounding area

B. Policies.

1. Landscaping may be required when it can provide a buffer between incompatible land uses or zones such as between parking areas and pedestrian ways

2. Landscaping may be required when it can reduce the potential for erosion or excessive storm water runoff.

3. Landscaping may be required for new development to reduce the site coverage by impervious surfaces and to add to the beauty of the city

4. Where structures prevent on site landscaping, street trees may be required as a substitute

5. Preference shall be given for species compatible to surrounding flora and wildlife

6. The city official may require existing vegetation to be retained

7. Maintenance of landscaped areas and replacement of dying or dead plants shall be the

responsibility of the property owner. (Ord. 204 §6(part), 1988

**18.08.200 Public Services and Facilities.**

A. Policy Background. A single development, though otherwise consistent with zoning regulations, may create excessive demands upon existing public services and facilities. "Public services and facilities" in this context includes facilities such as sewers storm drains, solid waste disposal facilities, parks, schools, and streets and services such as transit, solid waste collection, public health services, and police and fire protection, provided by either a public agency or private entity

B. Policies.

1. It is the city's policy to minimize or prevent adverse impacts to existing public services and facilities.
2. The decisionmaker may require, as part of the environmental review of a project, a reasonable assessment of the present and planned condition and capacity of public services and facilities to serve the area affected by the proposal.
3. Based upon such analyses, a project which would result in adverse impacts on existing public services and facilities may be conditioned or denied to lessen its demand for services and facilities, or required to improve or add services and/or facilities for the public

**18.08.210 Public view protection.**

A. Policy Background.

1. The city has a magnificent natural setting of greenery, mountains, and water; visual amenities and opportunities are an integral part of the city's environmental quality
2. The city has developed particular sites for the public's enjoyment of views of mountains, water and skyline
3. Obstruction of public views may occur when a proposed structure is located in close proximity to the street property line, when development occurs on lots situated at the foot of a street that terminates or changes direction because of a shift in the street grid pattern, or when development along a street creates a continuous wall separating the street from the view
4. Adopted land use codes attempt to protect private views through height and bulk controls and other zoning regulations but it is impractical to protect private views through project-specific review

B. Policies.

1. It is the city's policy to protect public views of significant natural and human-made features: the Olympic and Cascade Mountains, and major bodies of water
2. Mitigating measures may include, but are not limited to
  - a. Requiring a change in the height of the development
  - b. Requiring a change in the bulk of the development
  - c. Requiring a redesign of the profile of the development;
  - d. Requiring on-site view corridors or requiring enhancements to off-site view corridors
  - e. Relocating the project on the site
  - f. Requiring a reduction or rearrangement of walls, fences or plant material; and
  - g. Requiring a reduction or rearrangement of accessory structures including, but not limited to towers, railings and antennae. (Ord. 204 §6(part), 1988

**18.08.220 Shadows on Open Spaces.**

A. Policy Background.

1. Access to sunlight, especially in Puget Sound's climate, is an amenity of public open spaces.
2. It is possible to design and locate structures to minimize the extent to which they block light from public open spaces
3. The city's land use code attempts to protect private property from undue shadow impacts through height, bulk and setback controls, but it is impractical to protect private properties from shadows through project-specific review

B. Policies.

1. It is the city's policy to minimize or prevent light blockage and the creation of shadows on open spaces most used by the public. Areas to be protected are as follows
  - a. Publicly owned parks;
  - b. Public schoolyards;
  - c. Private schools which allow public use of schoolyards during non-school hours; and
2. The decisionmaker shall assess the extent of adverse impacts and the need for mitigation. The analysis of sunlight blockage and shadow impacts shall include an assessment of the extent of shadows, including times of the year, hours of the day, anticipated seasonal use of open spaces, availability of other open spaces in the area, and the number of people affected
3. When the decisionmaker finds that a proposed project would substantially block sunlight from open spaces listed in subsection (A)(1) at a time when the public most frequently uses that space, the decisionmaker may condition or deny the project to mitigate the adverse impacts of sunlight blockage
4. Mitigating measures may include, but are not limited to
  - a. Limiting the height of the development
  - b. Limiting the bulk of the development
  - c. Redesigning the profile of the development
  - d. Limiting or rearranging walks, fences, or plant material
  - e. Limiting or rearranging accessory structures, i.e., towers, railing, antennae; and
  - f. Relocating the project on the site. (Ord. 204 §6(part), 1988

**18.08.230 Traffic and Transportation.**

A. Policy Background.

1. Excessive traffic can adversely affect the stability, safety and character of the city's communities
2. Substantial traffic volumes associated with major projects may adversely impact surrounding areas.
3. Individual projects may create adverse impacts on transportation facilities which service such projects. Such impacts may result in a need for turn channelization, right-of-way dedication, street widening or other improvements including traffic signalization

B. Policies.

1. It is the city's policy to minimize or prevent adverse traffic impacts which would

undermine the stability, safety and/or character of a neighborhood or surrounding area

2. In determining the necessary traffic and transportation impact mitigation, the decisionmaker shall examine the expected peak traffic and circulation pattern of the proposed project weighed against such factors as the availability of public transit; existing vehicular and pedestrian traffic conditions; accident history; the trend in local real development; parking characteristics of the immediate area; the use of the street and the availability of goods, services and recreation within reasonable walking distance; population and employment forecasts for future background traffic level:

3. Mitigating measures which may be applied to projects may include, but are not limited to :
- a. Changes in access;
  - b. Changes in the location, number and size of curb cuts and driveway;
  - c. Provision of transit incentives including transit pass subsidies;
  - d. Bicycle parking;
  - e. Signage;
  - f. Improvements to pedestrian and vehicular traffic operations including signalization, turn channelization, right-of-way dedication, street widening, or other improvements proportionate to the impacts of the project; and
  - g. Transportation management plans
  - h. For all traffic related safety issues, require that any unsafe roadway or identified unsafe condition be completely mitigated, as a condition of approval
  - i. Monetary payment sufficient to offset identified present and future impacts. (Ord. 204 §6(part), 1988)

#### **18.08.240 Water quality.**

##### **A. Policy Background.**

1. The city's water quality is adversely affected primarily by the dumping of pollutants and drainage-related sewage overflows into any lakes, streams, creeks, and other systems draining into Puget Sound.
2. The city's water quality is also adversely affected by storm drainage runoff; nonpoint source discharges from streets, parking lots and other impervious surfaces; construction site run-off; and sewage.
3. Federal, state and regional water quality regulations and programs cannot always anticipate or eliminate adverse impacts to water quality

##### **B. Policies.**

1. It is the city's policy to minimize or prevent adverse water quality impact
2. For any project proposal which poses a potential threat to water quality in the city, the decisionmaker shall assess the probable effect of the impact and the need for mitigating measures. The assessment shall be completed in consultation with appropriate agencies with expertise
3. If the decisionmaker makes a written finding that the applicable federal state and regional regulations did not anticipate or are inadequate to address the particular impact(s) of the project, the decisionmaker may condition or deny the project to mitigate its adverse impact
4. Mitigating measures may include, but are not limited to
  - a. Use of an alternative technology
  - b. Reduction in the size or scope of the project or operation

- c. Landscaping; and
- d. Limits on the time and duration of the project or operation. (Ord. 204 §6(part), 198:

**Chapter 18.12  
SENSITIVE AREAS**

**Sections:**

- 18.12.010 Findings.**
- 18.12.020 Purpose.**
- 18.12.030 Definitions.**
- 18.12.040 Generally.**
- 18.12.050 Lands to which this chapter applies.**
- 18.12.060 Wetlands rating system.**
- 18.12.070 Washington state four-tier wetlands rating system.**
- 18.12.080 Allowed activities.**
- 18.12.090 Standards for permit decisions.**
- 18.12.100 Lot potential mitigation.**
- 18.12.110 Wetland buffers.**
- 18.12.120 Fish and wildlife habitat conservation areas.**
- 18.12.130 Frequently flooded areas.**
- 18.12.140 Geologically hazardous area buffers.**
- 18.12.150 Avoiding sensitive area impacts.**
- 18.12.160 Minimizing sensitive area impacts.**
- 18.12.170 Acting on the application.**
- 18.12.175 Suspension--Revocation.**
- 18.12.180 Appeals**
- 18.12.190 Modification of permits.**
- 18.12.200 Resubmittal of denied permit applications.**
- 18.12.210 Temporary emergency permit.**
- 18.12.220 Violation--Penalty.**
- 18.12.230 Nonconforming activities.**
- 18.12.240 Assessment relief.**

**18.12.010 Findings.**

The city hereby finds that

A. Sensitive areas and their buffers are valuable and fragile natural resources with significant development constraints due to flooding, erosion, septic disposal limitations, and land slide hazard

B. The state has enacted a Growth Management Act (RCW 36.70A), and under this act the city is adopting regulations protecting environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas:

C. In their natural state, wetlands provide many valuable social and ecological services, including

1. Controlling flooding and stormwater runoff by storing or regulating natural flow
2. Protecting water resources by filtering out water pollutants, processing biological and chemical oxygen demand, recycling and storing nutrients, and serving as settling basins for naturally occurring sedimentation

3. Providing areas for surface water recharge  
4. Preventing shoreline erosion by stabilizing the substrate  
5. Providing habitat areas for many species of fish, wildlife, and vegetation, many of which are dependent on wetlands for their survival, and many of which are on Washington State and Federal Endangered Species lists

6. Providing open space and visual relief from intense development in urbanized areas
7. Providing recreation opportunities; and
8. Serving as areas for scientific study and natural resource education

D. Frequently flooded and geologically hazardous areas shall be preserved in order to protect public and private resources and facilities from injury, loss of life, and property or financial damage due to flooding, erosion, landslides, or steep slope failure

E. Development in sensitive areas can result in

1. Increased soil erosion and sedimentation of downstream water bodies
2. Increased shoreline erosion
3. Degraded water quality due to increased turbidity and loss of pollutant removal processes ;
4. Elimination or degradation of wildlife and fisheries habitat
5. Loss of fishery resources from water quality degradation, increased peak flow rates, decreased summer low flows, and changes in the streamflow regime
6. Loss of stormwater retention capacity and slow-release detention resulting in flooding, degraded water quality, and changes in the streamflow regimen of watersheds
7. Loss of groundwater recharge areas;
8. Loss of slope and soil stability caused by the removal of trees, shrubs, and root systems of vegetative cover on steep slopes

F. Buffer areas and building setbacks surrounding sensitive areas are essential to maintenance and protection of sensitive area functions and values. Buffer areas protect sensitive areas from degradation by

1. Stabilizing soil and preventing erosion
2. Filtering suspended solids, nutrients and harmful toxic substances;
3. Moderating impacts of stormwater runoff
4. Moderating system microclimate
5. Protecting wetland wildlife habitat from adverse impacts
6. Maintaining and enhancing habitat diversity and/or integrity
7. Supporting and protecting wetlands plant and animal species and biotic communities
8. Reducing disturbances to wetland resources caused by intrusion of humans and domestic animals;
9. Protecting steep slopes from erosion and landslides

G. The city is experiencing increased development pressure and resulting natural system changes, and must plan for protection of its natural resources. It is therefore the policy of the city to ensure protection for sensitive areas by prohibiting development activities in wetlands, one-hundred-year floodplains, slopes of forty percent or greater; and discouraging development activities within sensitive area buffers. (Ord. 251 §1(part), 1992)

#### **18.12.020 Purpose.**

A. It is the policy of the city to require site planning to prohibit damage to sensitive areas wherever

possible, and to establish criteria to balance the rights of property owners with the preservation of sensitive areas.

B. In addition, it is the intent of the city that activities in or affecting sensitive areas not threaten public safety, cause nuisances, or destroy or degrade sensitive areas by

1. Impeding flood flows, reducing flood storage capacity, or impairing natural flood control functions, thereby resulting in increased flood heights, frequencies, or velocities on other land
2. Increasing water pollution through location of domestic waste disposal systems or livestock in wetlands; unauthorized application of pesticides and herbicides; disposal of solid waste at inappropriate sites; creation of unstable fills; or the destruction of wetland soils and vegetation
3. Increasing erosion and landslide hazard
4. Decreasing breeding, nesting, and feeding areas for rare and endangered species of wildlife;
5. Interfering with the exchange of nutrients needed by fish and other forms of wildlife
6. Decreasing habitat for fish and other forms of wildlife
7. Adversely altering the recharge or discharge functions of wetlands, thereby impacting groundwater or surface water supplies;
8. Significantly altering wetland hydrology and thereby causing either short- or long-term changes in vegetational composition, soils characteristics, nutrient cycling, or water chemistry
9. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas
10. Interfering with public rights for passive recreational opportunities provided by wetlands such as bird-watching, photography, hiking and other similar uses;
11. Destroying or damaging property values

C. The purposes of this chapter are to protect the public health, safety and welfare by preventing the adverse environmental impacts of development enumerated in Sections 18.12.010 and 18.12.020 of this chapter by:

1. Preserving and protecting sensitive areas by regulating development within them and their buffers;
2. Protecting the public against losses from
  - a. Unnecessary maintenance and replacement of public facilities
  - b. Publicly funded mitigation of avoidable impacts.
  - c. Cost for public emergency rescue and relief operations, and
  - d. Potential litigation from improper construction practices
3. Alerting appraisers, assessors, owners, and potential buyers or lessees to the development limitations of properties on which sensitive areas are located
4. Providing city officials with information to evaluate, approve, condition, or deny public or private development proposals. (Ord. 251 §1(part), 1992)

### **18.12.030 Definitions.**

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

"Applicant" means a person who files an application for permit under this chapter and who is either the owner of the land on which that proposed activity would be located, a contractor, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such a

person.

"Best management practices" means conservation practices or systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; and

2. Minimize adverse impacts to surface and groundwater flow, circulation patterns, and to the chemical, physical, and biological characteristics of sensitive areas.

"Critical habitat" means habitat necessary for the survival of endangered, threatened, rare, or sensitive species.

"Developable area" means an area of land outside of sensitive areas and their buffer

"Department" means the city of Brier.

"Erosion hazard areas" are those areas containing soils which, according to the United States Department of

Agriculture Soil Conservation Service Soil Classification System, may experience severe to very severe erosion.

"Exotic" means any species of plants or animals that are foreign to the planning area.

"Existing and ongoing agriculture" includes those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock, for example, the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring an area into agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five 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. Forest practices are not included in this definition.

"Fish and wildlife conservation areas" include the following:

1. Areas with which endangered, threatened, and sensitive species have a primary association;
2. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat

3. Waters of the state as defined in Title 222 WAC; or

4. Lakes, ponds, stream, and rivers planted with gam by a governmental or tribal entity

"Frequently flooded areas" are lands in the floodplain subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, the floodplains of streams, rivers, ponds and lakes.

"Functions," "beneficial functions," or "functions and values" means the beneficial roles served by sensitive areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, landslide control, and recreational opportunities. These beneficial roles are not listed in order of priority.

"Geologically hazardous areas" are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting residential, commercial, or industrial

development consistent with public health or safety concerns. See also "landslide hazard areas" and "steep slopes."

"High intensity land use" includes land uses which are associated with moderate or high levels of human disturbance or substantial wetland habitat impacts including, but not limited to, medium and high density residential, single-family residential with septic systems, multifamily residential, active recreation and commercial and industrial land use:

"Hydric Soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the most current "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

"Hydrophytic vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the most current "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

"Isolated wetlands" means those regulated wetlands which

1. Are outside of and not contiguous to any one-hundred-year floodplain of a lake, river, or stream; and
2. Have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water.

"Landslide hazard areas" are those areas subject to a severe risk of landslide. They include the following areas:

1. Any area with a combination of slopes greater than fifteen percent, impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominantly sand and gravel), and springs or groundwater seepage
2. Any area which has shown movement during the Holocene epoch (from ten thousand years ago to present) or which is underlain by mass wasting debris of that epoch;
3. Any area potentially unstable as a result of rapid stream incision or stream bank erosion

"Low intensity land use" includes land uses which are associated with low levels of human disturbance or low wetland habitat impacts including, but not limited to, low density single-family residential with adequate sewer and storm water retention/detention/biofiltration facilities, passive recreation, open space, or agricultural or forest management land uses:

"Mitigation" includes avoiding, minimizing or compensating for adverse sensitive area impacts. Mitigation, in the following order of preference is:

1. Avoiding the impact altogether by not taking a certain action or parts of an action
2. 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;
3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment
4. Monitoring the impact and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures

"Monitoring" means evaluating the impacts of development proposals on the biological, hydrologic and geologic elements of such systems and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

"Native vegetation" means plant species which are indigenous to the area in question.

"Practicable alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and having less impact to sensitive areas.

"Regulated activities" means any of the following activities which are directly undertaken or originate in a sensitive area or its buffer:

1. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind
2. The dumping, discharging, or filling with any material except storm water that has been processed by retention/biofiltration or detention/biofiltration facility;
3. The draining, flooding, or disturbing of the water level or water table except for retention, detention, or biofiltration of storm water runoff
4. The driving of pilings
5. The construction of foot paths or foot bridges
6. The reconstruction, demolition, or expansion of any structure
7. The destruction or alteration of wetlands vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a wetland
8. Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of wetlands, including water quantity, or the introduction of pollutants.

"Repair or maintenance" means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter additional wetlands are not included in this definition.

"Riparian wetland" means those wetlands that are connected to a stream by surface water or hydric soils except for existing irrigation and drainage ditches, grass-lined swales, canals, storm water management facilities, wastewater treatment facilities, farm ponds, and landscape amenities.

"Sensitive areas" include the following:

1. Wetlands;
2. Frequently flooded areas;
3. Geologically hazardous areas and steep slopes
4. Fish and wildlife habitat conservation areas

"Sensitive area buffers" or "sensitive area buffer zones" is an area that surrounds and protects a sensitive area from adverse impacts.

"Serviceable" means presently useable.

"Steep slopes" are slopes of forty percent or greater.

"Stream" means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourse unless they are used by salmonids or used to convey streams naturally occurring prior to construction in such watercourse.

"Unavoidable and necessary impacts" are impacts to sensitive areas that remain after a person proposing to alter sensitive areas has demonstrated that no practicable alternative exists for the proposed

project.

"Water-dependent" means requiring the use of surface water that would be essential to fulfill the purpose of the proposed project.

"Wetlands" shall be 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 natural ponds, swamps, marshes, bogs, and similar areas. Wetlands do not include existing irrigation and drainage ditches, grass-lined swales, canals, storm water management facilities, wastewater treatment facilities, farm ponds, and landscape amenities. For identifying and delineating a wetland, the city shall consider the most current "Federal Manual for Identifying and Delineating Jurisdictional Wetland:

"Wetlands permit" means any permit issued, conditioned or denied specifically to implement this chapter.

"Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in this chapter. (Ord. 251 §2, 1992)

#### **18.12.040 Generally.**

A. 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

B. Interpretation. The provisions of the ordinance codified in 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. 251 §3, 1992)

#### **18.12.050 Lands to which this chapter applies.**

##### **A. Applicability.**

1. When any provision of any other ordinance of the city conflicts with this chapter, that which provides more protection to sensitive areas and their buffers shall apply unless specifically provided otherwise in this chapter

2. All new subdivisions, short plats, grading, fill and clearing permits, variances, conditional use permits, rezones and building permits for properties that have not been evaluated for sensitive areas shall be subject to a visual inspection of the property by the public works department for the existence of sensitive areas that may be present and subject to the requirements of this chapter. The results of this inspection will determine if further delineations or studies for sensitive areas are required prior to their consideration of the application. The provisions of this chapter apply only to that portion of the site which is determined to be a sensitive area or within a sensitive area buffer

B. Maps and Inventory. A sensitive areas map of the city shall be constructed from the actual delineations of sensitive areas required for the permits listed in subsection (A)(2) of this section

C. Determination of Sensitive Area Boundary. The exact location of the sensitive area boundary shall be determined, at the applicant's expense, through the performance of a field investigation applying the sensitive area definitions provided in Section 18.12.030 of this chapter. The city shall consult with qualified professionals or technical scientists to perform the delineation. Wetland delineations shall be made using the most current "Federal Manual for Identifying and Delineating Jurisdictional Wetlands." The applicant is

required to show the location of the sensitive area boundary on a scaled drawing as a part of the permit application. In the event the boundary delineation is contested, the applicant may obtain expert services to appeal the delineation. (Ord. 251 §4(part), 1992)

**18.12.060 Wetlands rating system.**

The city has several significant wetland systems that are identified and rated below

A. Swamp Creek is a stream of statewide significance and shall have a two-hundred-foot buffer zone from the ordinary high water mark of the stream plus a fifteen-foot building setback, or a fifty-foot buffer zone from the edge of its riparian wetland plus a fifteen-foot building setback, whichever is greater

B. Scriber Creek shall have a one-hundred-foot buffer zone from the ordinary high water mark of the stream plus a fifteen-foot building setback, or a fifty-foot buffer zone from the edge of its riparian wetland plus a fifteen-foot building setback, whichever is greater

C. Lyon Creek shall have a fifty-foot buffer zone from the ordinary high water mark of the stream plus a fifteen-foot building setback, or a fifty-foot buffer zone from the edge of its riparian wetland plus a fifteen-foot building setback, whichever is greater

D. "Abbey View Pond" shall have a one-hundred-foot buffer zone from the ordinary high water mark of the pond plus a fifteen-foot building setback, or a fifty-foot buffer zone from the edge of its contiguous wetlands plus a fifteen-foot building setback, whichever is greater

E. The drainage basin from "Abbey View Pond" shall have a twenty-five-foot buffer zone from the ordinary high water mark of the stream plus a fifteen-foot building setback, or a twenty-five-foot buffer zone from the edge of its riparian wetlands plus a fifteen-foot building setback, whichever is greater

F. Unnamed tributary to Swamp Creek located east of Old Poplar Way, south of Vine Road, west of Locust Way, and north of Hickory Way and its drainage basin shall have a twenty-five-foot buffer zone from the ordinary high water mark of the stream plus a fifteen-foot building setback, or a twenty-five-foot buffer zone from the edge of its riparian wetland plus a fifteen-foot building setback, whichever is greater

G. All other wetlands within the city shall be classified based on the following rating system. (Ord. 251 §4(part), 1992)

**18.12.070 Washington state four-tier wetlands rating system.**

A. Category I Criteria.

1. Documented habitat for endangered or threatened fish or animal species or for potentially extirpated plant species recognized by state or federal agencies; or

2. High quality native wetland communities, including documented category I or II quality Natural Heritage wetland sites and sites which qualify as a category I or II quality Natural Heritage wetland; or

3. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps; or

4. Wetlands of exceptional local significance. The criteria for such a designation shall be developed and adopted by the local jurisdiction under appropriate public review and administrative appeal procedures. The criteria may include, but not be limited to, rarity, groundwater recharge areas, significant habitats, unique educational sites or other specific functional values within a watershed or other regional boundary.

B. Category II Criteria.

1. Regulated wetlands that do not contain features outlined in category I; ar
2. Documented habitats for sensitive plant, fish or animal species recognized by federal or state agencies; or
3. Rare wetland communities listed in subsection (A)(3) of this sectic which are not high quality; or
4. Wetland types with significant functions which may not be adequately replicated through creation or restoration.
5. Regulated wetlands with significant habitat value based on diversity and siz
6. Regulated wetlands coniguous with salmonid fish-bearing waters, including streams where flow is intermittent; o
7. Regulated wetlands with significant use by fish and wildlif

C. Category III Criteria. Regulated wetlands that do not contain features outlined in Category I, or IV.

D. Category IV Criteria.

1. Regulated wetlands which do not meet the criteria of a Category I or II wetland; ar
2. Isolated wetlands that are less than or equal to one acre in size; and have only one wetland class; and have only one dominant plar species (monotypic vegetation); o
3. Isolated wetlands that are less than or equal to two acres in size, and have only one wetland class and a predominance of exotic species

Wetland rating categories shall be applied as the wetland exists on the date adoption of the rating system by the local government; as the wetland may naturally change thereafter; or as the wetland may change in accordance with permitted activities. Wetland rating categories shall not be altered to recognize illegal modifications (Ord. 251 §4(part), 1992)

**18.12.080 Allowed activities.**

The following uses shall be allowed within a sensitive area or sensitive area buffer to the extent that they are nonpolluting, are not prohibited by any other ordinance or law, and provided they are conducted using best management practices, except where uch activities result in the conversion of a wetland or wetland buffer to a use to which it was not previously subjected and provided further that forest practices and conversions shall be governed by RCW Chapter76.09 and its rules:

- A. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlif
- B. Outdoor recreational activities, including fishing, birdwatching, hiking, nonmotorized boating, swimming, and other similar nonpolluting passive activitie
- C. The harvesting ofwild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water souces;
- D. Existing and ongoing agricultural activities including farming, horticulture, aquaculture, and irrigation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an ongoing operation. Activities which bring an areainto agricultural use are not part of an ongoing operation. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary resume operations;
- E. The maintenance or modification of irrigation and drainage ditches, grass-lined swales, canals,

storm water management facilities, farm ponds, and landscape amenities in existence prior to the adoption of this chapter;

F. Education, scientific research, and use of nature trails

G. Boundary markers;

H. Site investigative work necessary for land use application submittals such as surveys, soil logs, and other related activities. In every case, sensitive area impacts shall be minimized and disturbed areas shall be immediately restored

I. The following uses are allowed within wetlands and/or wetland buffers provided that written notice at least ten days prior to the commencement of such work has been given to the city and provided that wetland impacts are minimized and that disturbed areas are immediately restored

1. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road

2. Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions, and

3. Flood control measures may be taken to protect property from damage due to upstream development as allowed by the U.S. Army Corps of Engineers

J. Public retention/detention and biofiltration facilities for improving surface water quality. (Ord. 251 §5(part), 1992)

#### **18.12.090 Standards for permit decisions.**

A permit shall only be granted if the permit, as conditioned, is consistent with the provisions of this chapter for all sensitive areas categories. Additionally, permits shall only be granted

A. A proposed action avoids adverse impacts to sensitive areas or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impact

B. Denial of a permit would deprive the applicant minimum reasonable economic use of the property. Minimum reasonable economic use shall be one single-family residence with a maximum of eight thousand square feet for house, yard, driveway, and other similar home uses, provided that any alteration to the sensitive area or its buffer must be the minimum necessary. Conditions may be imposed to ensure that the project is consistent with the intent of this chapter to protect and minimize impacts to sensitive areas and their buffers including but not limited to obtaining all necessary permits such as U.S. Army Corps of Engineers floodplain delineation and 404 permit, Department of Fisheries hydraulics permit, SEPA review, geotechnical reports, and similar such mitigations. (Ord. 251 §6(part), 1992)

#### **18.12.100 Lot potential mitigation.**

All categories of sensitive areas as defined in Section 18.12.030 of this chapter shall be delineated and mapped by the proponent, then verified by a Brier city agent. Sensitive areas will include small isolated nonsensitive areas that are landlocked by environmentally sensitive areas. A basic plat design using all current zoning criteria to determine minimum lot size (i.e., twelve thousand five hundred or twenty thousand square feet), and showing lots, roads, right-of-ways for roads, sidewalks, pedestrian walkways, stormwater detention/retention facilities, and building areas outside the delineated sensitive areas, shall be

submitted to verify the maximum lot potential. The plat map establishing lot potential must represent a legal and feasible subdivision that complies with current Brier subdivision and zoning ordinances. Once lot potential is established, a plat design showing reduced lot sizes with sensitive area buffers excluded from building areas will be proposed. The portion of any lot that is not part of a sensitive area and its buffer shall be no less than eight thousand square feet. The maximum number of lots for the proposed project shall not exceed the established lot potential. Lot widths at the building line may be reduced to seventy feet on lots that are contiguous to sensitive area buffers and/or lots that are less than twelve thousand five hundred square feet. The portion of the property that is a sensitive area and/or its buffer may either be privately owned or dedicated to the city. If the sensitive area and/or its buffer is dedicated to the city, it shall be protected as described in Section 18.12.170 with the city designated as the enforcing agent. Fencing between the sensitive area buffers and lots may be required to prevent encroachment. (Ord. 251.A §1, 1994; Ord. 251 §6(part), 1992)

**18.12.110 Wetland buffers.**

A. Wetland buffer zones shall be required for all activities adjacent to wetlands. All buffers shall be measured from the wetland boundary as surveyed in the field pursuant to the requirements of Section 18.12.030. Wetland buffer zone widths not previously specified by Section 18.12.060 shall be determined according to wetland category and the proposed land use:

1. Category I
  - High intensity 300 feet
  - Low intensity 200 feet
2. Category II
  - High intensity 200 feet
  - Low intensity 100 feet
3. Category III
  - High intensity 100 feet
  - Low intensity 50 feet
4. Category IV
  - High intensity 50 feet
  - Low intensity 25 feet

B. Permitted Uses in a Wetland Buffer Zone

1. Regulated activities shall not be allowed in a buffer zone except for the following:
  - a. Activities having minimal adverse impacts on buffers and no adverse impacts on wetlands. These may include low intensity, passive recreational activities such as pervious trails, nonpermanent wildlife watching blinds, short term scientific or educational activities, and sportfishing;
  - b. Stormwater management facilities having no reasonable alternative on-site location.

C. A building setback line of fifteen feet is required from the edge of any wetland buffer. Minor structural intrusions into the area of the building setback may be allowed if the city determines that such intrusions will not negatively impact the wetland. The setback shall be identified on a site plan which is filed as an attachment to the notice on title. (Ord. 251 §6(part), 1992)

**18.12.120 Fish and wildlife habitat conservation areas.**

Naturally occurring ponds, wetlands, and streams within the city shall be considered fish and wildlife habitat conservation areas. (Ord. 251 §6(part), 1992)

**18.12.130 Frequently flooded areas.**

Areas of one- hundred-year flood, base flood elevations and flood hazard factors have not yet been delineated for most flood hazard areas within the city. All new subdivisions, short plats, grading, fill and clearing permits, variances, conditional use permits, building permits and rezones within a flood zone of the Flood Insurance Rate Map (FIRM) for the city shall undergo a floodplain delineation by the U.S. Army Corps of Engineers prior to project approval. All permits shall comply with Chapter 15.28 (with the exception of Sections 15.28.050 and 15.28.120E) of this code to assure flood damage prevention. (Ord. 251 §6(part), 1992)

**18.12.140 Geologically hazardous area buffers.**

Development proposals on sites containing a geologically hazardous area shall meet the following requirements

A. A minimum buffer shall be established at twenty-five feet from the boundary of a geologically hazardous area, including but not limited to step slopes and landslide hazard areas. Existing native vegetation within the buffer area shall be maintained, except as provided below for the removal of trees that have been determined to be hazardous by the city

B. There shall be no removal of any vegetation from any geologically hazardous areas or their buffers except for the limited plant removal necessary for surveying purposes, removal of hazardous trees, or as allowed in subsection (E)(4) of this section

C. A minimum buffer shall be established at horizontal distance of twenty-five feet from the top, toe, and along all sides of slopes forty percent or steeper. The buffer may be extended beyond these limits as required to mitigate landslide and erosion hazards, or as otherwise necessary to protect the public health, safety and welfare, based upon information contained in a geotechnical report. Existing native vegetation within the sensitive area or its buffer shall be maintained, except as provided above for the removal of trees that have been determined to be hazardous by the city.

D. Slopes of forty percent and steeper with a vertical elevation change of up to ten feet may be exempted from the provisions of this section

E. Alterations to geologically hazardous areas and their buffers may be allowed only as follows:

1. Geologically hazardous areas may be used for surface water conveyance. When located on steep slopes, installation techniques shall minimize disturbance to the slope and vegetation

2. Construction of public and private trails may be allowed. When located on steep slopes they shall site specific approval by the city as guided by the construction and maintenance standards in the U.S. Forest Service "Trails Management Handbook" and "Standard Specifications for Construction of Trails." In no case shall trails be constructed of concrete, asphalt or other impervious surface which would contribute to surface water runoff unless such construction is necessary for soil stabilization or soil erosion prevention.

3. Construction of public and private utility corridors may be allowed. Construction on steep slopes is allowed provided that a special sensitive area study indicates that such alteration will not subject the area to increased risk of landslide or erosion

4. Restrictions for vegetation and tree removal shall be required. All cutting and removal shall be done using hand-type tools, leaving the top soil and root structures undisturbed. All work on steep slopes shall be performed during the dry season only and shall allow for adequate time for revegetation prior to the wet winter season

5. Disturbed areas shall be landscaped with vegetation in sufficient quantities to provide groundcover and erosion control immediately upon completion of cutting and removal activities. Native trees and vegetation, and self-sustaining landscaping are preferred. Top soil shall be disturbed only during replanting of vegetation and shall be done using hand-type tools. Other soil stabilizing techniques which do not disturb the natural topography may be required in conjunction with revegetation and landscaping. (Ord. 251 §6(part), 1992)

**18.12.150 Avoiding sensitive area impacts.**

A. Regulated activities shall not be authorized in a sensitive area except where it can be demonstrated that the impact is both unavoidable and necessary or that all reasonable economic uses are denied

B. An applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property. (Ord. 251 §6(part), 1992)

**18.12.160 Minimizing sensitive area impacts.**

A. After it has been determined by the city pursuant to Section 18.12.090 that losses of sensitive areas are necessary and unavoidable or that all reasonable economic use has been denied, the applicant shall take deliberate measures to minimize sensitive area impacts.

B. Minimizing impacts to sensitive areas shall include but is not limited to

1. Limiting the degree or magnitude of the regulated activity
2. Limiting the implementation of the regulated activity
3. Using appropriate and best available technology;
4. Taking affirmative steps to avoid or reduce impacts
5. Sensitive site design and siting of facilities and construction staging areas away from sensitive areas and their buffers
6. Involving resource agencies early in site planning; and
7. Siltation prevention measures, scheduling the regulated activity to avoid interference with wildlife and fisheries rearing, resting, nesting or spawning activities

C. A monitoring plan shall be provided to the public works department for its review and approval as part of the mitigation plan. The monitoring plan shall outline the approach for monitoring construction of the project and for assessment of the completed project, and shall include a schedule. (Ord. 251 §6(part), 1992)

**18.12.170 Acting on the application.**

A. Sensitive Area Tracts. As a condition of any permit issued pursuant to this chapter, the permit holder shall be required to create a separate sensitive area tract or tracts containing the areas determined to be sensitive area and/or sensitive area buffer in field investigations performed pursuant to Section

18.12.050(C). Sensitive area tracts are legally created tracts containing sensitive areas and their buffers that shall remain undeveloped in perpetuity. Sensitive area tracts are an integral part of the lot in which they are created, are not intended for sale, lease or transfer separate from the parent lot. Sensitive area buffers shall be included in the area of the parent lot for purposes of subdivision method and minimum lot size.

B. Protection of Sensitive Area Tracts. The city shall require, as a condition of any permit issued pursuant to this chapter, that the applicant select one of the following methods to protect the sensitive area tract or tracts created pursuant to subsection (A) of this section:

1. The permit holder shall establish and record a permanent and irrevocable deed restriction on the property title of all lots containing a sensitive area tract or tracts created as a condition of this permit. Such deed restriction(s) shall prohibit in perpetuity the development, alteration, or disturbance of vegetation within the sensitive area tract except as allowed for in Sections 18.12.080 and 18.12.090 of this chapter or for purposes of habitat enhancement as part of an enhancement project which has received prior written approval from any agency with jurisdiction over such activity; c

2. The permit holder shall convey an irrevocable offer to dedicate to the city or other public or nonprofit entity specified by the city an easement for the protection of native vegetation within a sensitive area and/or its buffer.

C. The deed restriction shall contain the following language

Before beginning and during the course of any grading, building construction, or other development activity on a lot or development site subject to this deed restriction, the common boundary between the area subject to the deed restriction and the area of development activity must be identified and marked

D. Regardless of the legal method of protection chosen, responsibility for maintaining tracts shall be held by the property owner, the permit applicant or designee, adjacent lot owners, a homeowners association, or other entity as designated on the deed

E. The following note shall appear on the face of all plats, short plats, or other approved site plans containing separate sensitive area tracts, and shall be recorded on the title of record for all affected lots

NOTE: All lots adjoining separate sensitive area tracts identified as Native Vegetation Protection Easements or protected by deed restriction are responsible for maintenance and protection of the tracts. Maintenance includes insuring that no alterations except those allowed by Sections 5 and 6 of the Sensitive Areas Ordinance of the City of Brier occur within the separate tract and that all vegetation remains undisturbed unless the express written authorization of the City of Brier has been received

F. The common boundary between a separate sensitive area tract and the adjacent land must be permanently identified. This identification shall include permanent wood or metal signs on treated or metal posts. Signs shall be worded as follows

Protection of this natural area is in your care. Alteration or disturbance is regulated by law. Please refer to Brier's Sensitive Areas Ordinance or call the City of Brier for more information

Sign locations and size specifications shall be approved by the city. The city shall require permanent fencing of the sensitive area tract or tracts when there is a substantial likelihood of the presence of domestic grazing animals within the development proposal. The city shall also require as a permit condition that such fencing be provided if, subsequent to approval of the development proposal, domestic grazing animals are in fact introduced

G. Additional Conditions. The location of the outer extent of the sensitive area buffer and the areas to be disturbed pursuant to an approved permit shall be marked in the field, and such field marking shall be

approved by the city prior to the commencement of permitted activities. Such field markings shall be maintained throughout the duration of the permit.

H. Other Laws and Regulations. No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval. (Ord. 251 §6(part), 1992)

**18.12.175 Suspension--Revocation.**

A. In addition to other penalties provided for elsewhere, the city may stop work on a project if it finds that the applicant or permittee has not complied with any or all of the conditions or limitations set forth in the permit, has exceeded the scope of work set forth in the permit, or has failed to undertake the project in the manner set forth in the approved application. Work may resume when the applicant has complied. (Ord. 251 §6(part), 1992)

**18.12.180 Appeals.**

Any decision of the city in the administration of this chapter may be appealed to the city council or a qualified hearing examiner.

A. Appeals to the City Council and/or Hearing Examiner for Claim of Loss of Minimum Economic Use. Any firm, person, or individual subject to the terms, conditions and limitations of this chapter who, by reason of application of this chapter to property owned by them, believes that this chapter will, in part or in total, deprive them of a minimum economic use of their property such that just compensation is due, shall, within fifteen days of notice of application of this chapter to said property, file written notice of appeal of the claimed loss of use by following the procedures then required for the filing and obtaining of appeals to the city council of decisions or determinations administratively, and including the payment of any filing fee due. Failure to appeal shall bar the applicant from any further claim for loss of use. Upon receipt of notice of such appeal, the term, condition or limitation resulting from application of this chapter and resulting in a claimed loss of minimum economic use, shall be suspended and shall not apply until such time the council has conducted a full hearing and entered written findings of fact, conclusions of law and a decision on the claimed loss of minimum economic use, or has appointed a hearing examiner to make such a ruling or determination followed by acceptance of such ruling by the council. During the pendency of any such appeal, the city may suspend further review or consideration of the project or proposal, in part or in total, until such time as the outcome of such appeal is known. As part of the review in any such appeal, the council may, in its sole judgment, offset any claimed loss of minimum economic use by the granting of any offsetting concession or benefit, including lot potential mitigation, credit for loss of developable property, applicable tax or fee assessment or benefit, or all such other relief measures as are available to the council at the time of the consideration of the appeal. Failure to appeal as provided herein shall constitute a waiver of any claim of loss of minimum economic use by the applicant proponent, its agents, persons acting on its behalf or benefited thereby.

B. Appeals to Superior Court. Any person aggrieved by any action taken pursuant to this chapter, after having exhausted all remedies available by way of appeal or review, or further consideration by the city, shall, within the time period for the then applicable time for the filing for a writ or certiorari in the Snohomish County Superior Court, appeal to said court in accordance with the ordinance for review of

land use proceeding as presently existing or hereinafter amended. (Ord. 251 §6(part), 1992)

**18.12.190 Modification of permits.**

Modifications to permits issued pursuant to this chapter may be requested by the permit holder and approved by the city council. (Ord. 251 §6(part), 1992)

**18.12.200 Resubmittal of denied permit applications.**

Applications which have been denied may be modified and resubmitted no earlier than thirty days following action on the original application. A permit application shall be considered a resubmittal if the site proposed for development was the subject of an application within the previous thirty days. (Ord. 251 §6(part), 1992)

**18.12.210 Temporary emergency permit.**

A. Notwithstanding the provisions of this chapter or any other laws to the contrary, the city may issue a temporary permit for a project within a sensitive area if:

1. The city determines that an unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and

2. The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this chapter and other applicable law

B. Any emergency permit granted shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for nonemergency activities under this chapter and shall:

1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed ninety days; and

2. Require, within this ninety-day period, the restoration of any sensitive area altered as a result of the emergency activity, except that if more than the ninety days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

C. Issuance of an emergency permit by the city does not preclude the necessity to obtain necessary approvals from appropriate federal and state authorities. The emergency permit may be terminated at any time without process upon a determination by the city that the action was not or is no longer necessary to protect human health, property value, or the environment. (Ord. 251 §7(part), 1992)

**18.12.220 Violation--Penalty.**

The city shall have authority to enforce this chapter, any rule or regulation adopted, and any permit or order issued pursuant to this chapter, against any violation or threatened violation thereof. The city is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, or order issued pursuant to this chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in

connection with enforcement actions may be recovered as damages against the violator

B. Enforcement actions shall include civil penalties, administrative orders and actions for damages and restoration.

1. The city may bring appropriate actions at law or equity, including action for injunctive relief, to ensure that no uses are made of a sensitive area or its buffer which are inconsistent with this chapter.

2. The city may serve upon a person a cease and desist order if an activity being undertaken on a sensitive area or its buffer is in violation of these rules. Whenever any person violates this chapter or any permit issued to implement this chapter, the city may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

a. The order shall set forth and contain

i. A description of the specific nature, extent, and time of violation and the damage or potential damage; and

ii. A notice that the violation or the potential violation cease and desist or, in appropriate cases, the specific corrective action to be taken within a given time. A civil penalty may be issued with the order.

b. The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the order is directed.

c. Failure to comply with the terms of a cease and desist order can result in enforcement actions including, but not limited to, the issuance of a civil penalty

3. Any person who undertakes any activity within a sensitive area or its buffer without first obtaining a permit required by this chapter, except as allowed in Sections 18.12.080 and 18.12.090, or any person who violates one or more conditions of any permit required by this chapter or of any order issued pursuant to subsection (B)(2) of this section shall incur a penalty allowed per violation. In the case of a continuing violation, each permit violation and each day of activity without a required permit shall be a separate and distinct violation. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the environmental impact of the violation. The penalty provided in this subsection shall be appealable to the superior court within the subject jurisdiction

4. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the penalty

5. Civil penalties imposed under this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the city. The notice shall describe the violation, approximate the date(s) of violation, and shall order the acts constituting the violation to cease and desist, or, in appropriate cases, require necessary corrective action within a specific time

6. Any person incurring a penalty may apply in writing within thirty days of receipt of the penalty to the city for remission or mitigation of such penalty. Upon receipt of the application, the city may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty

7. Orders and penalties issued pursuant to this subsection may be appealed as provided for by Section 18.12.180.

8. Criminal penalties shall be imposed on any person who willfully or negligently violates this chapter or who knowingly makes a false statement, representation, or certification on any application,

record or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record or methodology required to be maintained pursuant to this chapter. (Ord. 251 §7(part), 1992)

**18.12.230 Nonconforming activities.**

A regulated activity that was approved prior to the passage of this chapter and to which significant economic resources have been committed pursuant to such approval but which is not in conformity with the provisions of this chapter may be continued subject to the following

A. No such activity shall be expanded, changed, enlarged or altered in any way that increases the extent of its nonconformity except for activities allowed with an emergency permit issued under Section 18.12.210;

B. Except for cases of discontinuance as part of normal agricultural practices, if a nonconforming activity is discontinued for twelve consecutive months, any resumption of the activity shall conform to this chapter;

C. If a nonconforming use or activity is destroyed by human activities or an act of God, it shall not be resumed except in conformity with the provisions of this chapter

D. Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming activities. (Ord. 251 §8, 1992)

**18.12.240 Assessment relief.**

The assessors of Snohomish County shall consider sensitive area regulations in determining the fair market value of land. Any owner of an undeveloped sensitive area who has dedicated an easement or entered into a perpetual conservation restriction with the city or a nonprofit organization to permanently control some or all regulated activities in the sensitive area shall have that portion of land assessed consistent with those restrictions. Such landowner shall also be exempted from special assessments on the sensitive area to defray the cost of municipal improvements such as sanitary sewers, storm sewers, and water mains. (Ord. 251 §11, 1992)

**Chapter 18.16**  
**CLEARING, GRADING AND FILLING**

**Sections:**

- 18.16.010**     **Short title.**
- 18.16.020**     **Intent and purpose.**
- 18.16.030**     **Definitions.**
- 18.16.040**     **Permits required.**
- 18.16.050**     **Fees.**
- 18.16.060**     **Application requirements.**
- 18.16.070**     **Permit review and development standards.**
- 18.16.080**     **Violation--Penalty.**
- 18.16.090**     **Appeals.**

**18.16.010**     **Short title.**

This chapter shall be known and may be cited as the "Clearing, grading and filling ordinance of the city of Brier." (Ord. 282 §1, 1996)

**18.16.020**     **Intent and purpose.**

The city of Brier recognizes that property owners have the right to maintain and improve the aesthetics of their property, expand their lawns, gardens, and agricultural activities, remove weeds, harvest firewood and other similar activities. The city also recognizes that land clearing, grading or filling, even several small simultaneous clearing, grading or filling projects, could have a significant environmental impact.

It is the intent of this chapter to allow clearing, grading and filling on private property while assuring that such activities are environmentally responsible and safe through site planning and project mitigations.

The ordinance codified in this chapter is enacted for the following purpose:

- A. To implement the conditions of the comprehensive plan;
- B. To minimize water quality degradation and sedimentation of streams, ponds, lakes and wetlands;
- C. To minimize the adverse impact on nonconsenting property owners of increased runoff, erosion, sedimentation and land destabilization caused by land development and maintenance practices, regardless of whether or not such activities are in compliance with other city code;
- D. To minimize storm drainage facilities maintenance and associated costs to the city and its residents;
- E. To promote site planning, site preparation and building practices that preserve and protect the city's groundwater and surface water resources, natural topographical features and natural vegetation;
- F. To ensure prompt and effective restoration and replanting after land clearing, landfilling or grading;
- G. To retain clusters of trees, shrubs and other vegetation for noise abatement, protection from wind, detention of stormwater, and enhancement of the appearance and character of the city; and
- H. To minimize devaluation of property values in the city resulting from unnecessary removal of trees, shrubs and other vegetation that contribute to the natural beauty of the area.

This chapter requires a permit for land clearing, grading or filling as defined herein; however, most

clearing activities of residents for other than development purposes are exempt from this chapter. (Ord. 282 §2, 1996)

**18.16.030 Definitions.**

As used in this chapter

"City" means the city of Brier

"Clearing" means the act of damaging, mutilating or removing trees or other vegetation or the root structure of vegetation by manual, mechanical or chemical means

"Filling" means depositing material which increases the ground surface level, where "material" refers to that which is cut from other areas on the site as well as to that which is imported

"Fish and wildlife conservation areas" include the following:

1. Areas with which endangered, threatened, and sensitive species have a primary association;
2. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat
3. Waters of the state as defined in Title 222 WAC; or
4. Lakes, ponds, stream, and rivers planted with game by a governmental or tribal entity

"Frequently flooded areas" are lands in the floodplain subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, the floodplains, streams, rivers, ponds and lakes

"Geologically hazardous areas" are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting residential, commercial, or industrial development consistent with public health or safety concerns. See also Landslide hazard areas and Steep slopes.

"Grading" means any act that changes the elevation or slope of the ground surface

"Hand clearing" means cutting the aboveground portion of trees, shrubs and other vegetation exclusively with hand tools such as axes, chain saws, machetes, etc., and removing the cut vegetation without damaging the root structure of the vegetation and without exposing topsoil

"Landslide hazard areas" are those areas subject to a severe risk of landslide. They include the following areas:

1. Any area with a combination of slopes greater than fifteen percent, impermeable soils (typically silt and clay) frequently interbedded with granular soils (predominantly sand and gravel), and springs or groundwater seepage
2. Any area which has shown movement during the Holocene epoch (from ten thousand years ago to present) or which is underlain by mass wasting debris of that epoch
3. Any area potentially unstable as a result of rapid stream incision or stream bank erosion

"Property that is capable of being subdivided" is property that can be legally subdivided, either by short plat or full plat, given the present zoning code and lot sizes without the requirement of a variance

"Sensitive areas" are: wetlands, frequently flooded areas, geologically hazardous areas and steep slopes, fish and wildlife habitat conservation areas

"Sensitive area buffers" or "sensitive area buffer zones" are areas that surround and protect sensitive areas from adverse impacts. The size requirements of sensitive area buffers are given in the sensitive areas regulations of the Brier Municipal Code

"Steep slopes" mean slopes of forty percent or greater

"Vegetation" means any plants, including grasses, shrubs, trees and other perennial plants

"Wetlands" shall be those areas that are inundated or saturated by surface or groundwater 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 natural ponds, swamps, marshes, bogs, and similar areas. Wetlands and buffers do not include existing irrigation and drainage ditches, grass-lined swales, canals, stormwater management facilities, wastewater treatment facilities, farm ponds, and landscape amenities. For identifying and delineating a wetland, the city of Brier shall consider the most current Federal Manual for Identifying and Delineating Jurisdictional Wetlands. (Ord. 282 §3, 1996)

**18.16.040 Permits required.**

A. Permits Required. No person shall, on their own or on behalf of another, engage in or cause any property to be cleared, graded or filled, in whole or in part, without first obtaining a clearing, grading and filling permit unless otherwise exempt per subsection C of this section.

B. Prohibited. Clearing, grading or filling of sensitive areas or their buffers is prohibited except for the activities in subsection (C)(11) of this section and for the following purposes for which a permit must first be obtained.

1. Clearing associated with conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife

2. The modification of irrigation and drainage ditches, grass-lined swales, canals, stormwater management facilities, farm ponds, and landscape amenities in existence prior to the adoption of the ordinance codified in this chapter

3. Site investigative work necessary for land use application submittals such as surveys, soil logs, and other related activities. In every case, sensitive area impacts shall be minimized and disturbed areas shall be immediately restored

C. Exemptions. The following clearing activities shall be allowed without a clearing and filling permit:

1. Clearing of trees, shrubs and other vegetation on property other than property that is capable of being subdivided, provided the property owner currently resides on the property and the areas to be cleared are not within a sensitive area or sensitive area buffer

2. Clearing of trees, shrubs and other vegetation and grading within sixty feet of the property owner's residence not within a sensitive area or sensitive area buffer

3. Hand clearing of trees, not within a sensitive area or sensitive area buffer, for the sole purpose of providing firewood for a residence on the property;

4. Hand clearing of trees in any area that is considered hazardous by the city

5. Hand clearing of vegetation in any area in emergency situations involving immediate danger to life or property

6. Landscape maintenance or new improvements not exceeding a total of fifteen yards over the life of the project, including the addition of topsoil, gravel, beauty bark or mulch; provided, they are not within sensitive areas, sensitive area buffers or natural drainage contours; also provided, the activity will not modify existing contours or increase the elevation of the property so as to adversely affect neighboring properties by altering, impeding, blocking or diverting existing drainage or by causing silt, soil or sand to be washed on to neighboring properties or into the city's storm drainage system

7. Clearing of blackberry vines or Scotch broom, including their root structure, in areas not

within a sensitive area or sensitive area buffer

8. Maintenance and improvement of existing driveway;
9. Planned and approved clearing, grading and filling authorized by a building permit or within subdivisions and short subdivisions that have been granted preliminary plat approval;
10. Filling involving the use of less than ten cubic yards of approved fill material in areas not within a sensitive area or sensitive area buffer
11. The following uses are allowed without a permit in sensitive areas or sensitive area buffers provided that the area to be cleared and the impacts are minimized, and that disturbed areas are immediately restored
  - a. Emergency flood control measures taken to protect property as allowed by the U.S. Army Corps of Engineers.
  - b. Public retention/detention and biofiltration facilities for improving surface water quality
  - c. Surveying and placement of boundary markers
  - d. The maintenance of irrigation and drainage ditches, grass-lined swales, canals, stormwater management facilities, farm ponds, and landscape amenities in existence prior to the adoption of the ordinance codified in this chapter (Ord. 282.A §1, 1998; Ord. 282 §4, 1996)

**18.16.050 Fees.**

Permit fees shall be those established in the current general fee ordinance of the city. (Ord. 282 §5, 1996)

**18.16.060 Application requirements.**

The permit application shall contain the following information:

- A. The name, address and telephone number of the applicant
- B. Written consent of owner(s) if applicant is not the owner
- C. Vicinity map and two plot plans (to scale) showing
  1. Delineation of any sensitive areas or sensitive area buffers
  2. Topographical information showing existing and proposed grade
  3. Location of existing and proposed structures, driveways and utilities
  4. Areas to be cleared and proposed use for each area
- D. Proposed plan for clearing, grading or filling, including equipment to be used
- E. Purpose of proposed clearing, grading or filling, including proposed uses for the areas involved
- F. Schedule of work including timetable for replanting or hydroseeding
- G. Plan for restoration of the site, including landscaping, replanting and/or hydroseeding
- H. Erosion control plan
- I. SEPA checklist and review may be required. (Ord. 282 §6, 1996)

**18.16.070 Permit review and development standards.**

A. Permits may be granted only if consistent with the intent and purposes of this chapter stated in Section 18.16.020 and:

1. A proposed action avoids adverse impacts on the environment and neighboring properties

or takes affirmative and appropriate measures to minimize and compensate for unavoidable impact:

2. Mitigations for minimizing impacts include but are not limited to
  - a. Limiting the degree or magnitude of the regulated activity
  - b. Limiting the implementation of the regulated activity
  - c. Using appropriate and best available technology

B. The following development standards shall be met:

1. A permit shall not be granted if the proposed plan calls for the unnecessary removal of vegetation that is not required to be removed for the proposed uses or does not meet the provisions of this chapter.

2. A permit shall not be granted for clearing, grading or filling in a sensitive area or its buffer except as provided for in Section 18.16.040B

3. A permit shall not be granted for filling using anything other than natural earth material. Material containing tree stumps or solid waste, as defined in RCW 70.95.030 and WAC 173-304-100 is not permitted as fill material; solid waste includes, but is not limited to demolition and construction waste.

4. A permit shall not be granted for grading a cut of undisturbed soils to create a slope steeper than 2:1, or for grading an approved fill to create a slope steeper than 3:

5. The city may restrict the date or season in which land may be cleared when such restrictions are necessary for the public health, safety and welfare, or for the protection of the environment.

6. The city may require the applicant to replace vegetation, provide erosion control methods, hydroseed exposed slopes or protect the site as needed.

7. Protection measures shall be imposed for all vegetation which is to be retained on-site during the clearing process.

C. The following are conditions for clearing permit approval:

1. A permit will be issued if a city site inspection reveals that the plan is in compliance with the provisions of this chapter.

2. The permit may be revoked or suspended by the city upon discovery that incorrect information was supplied or upon any violation of the provisions of this chapter.

3. Approved plans may not be amended without written authorization from the city.

4. The permit is valid for one year from the date of issuance.

5. The city may restrict the timing of work to specific dates, times or seasons to protect the environment.

6. No work may commence on a permit granted under the procedure described in subsection (D)(1) through (4) of this section until the appeal period provided by law for land use decisions has expired.

7. Once land clearing has started, it must be completed within the time period specified on the permit.

D. Procedure. The approval or denial of a permit for clearing, grading or filling on lots other than those that are capable of being subdivided shall be granted by the superintendent of public works after conducting a site visit and reviewing the permit application. The superintendent of public works may require plan modifications and mitigation:

The following procedure shall apply to all applications for a permit for clearing, grading or filling on lots that are capable of being subdivided and thereby might reasonably be considered a predevelopment activity:

1. Notice of Planning Commission Hearing. The city clerk shall set a date for a public hearing by the planning commission after staff has reviewed the application and prepared a report for the planning commission. The planning commission's decision and recommendation to the city council shall be made within ninety days after the request is filed with the city clerk; provided, however, that any time required for SEPA review and for the applicant to provide requested additional information or plan modifications shall not be included in computing the ninety day

Notices of the planning commission's public hearing shall contain the following

- a. A statement of the nature of the permit application
- b. The date, hour and location of the hearing
- c. A legal description of the subject property; and
- d. A vicinity sketch and a nonlegal description in language that advises the general public of the location of the subject property

Not less than ten days prior to the date of the public hearing, copies of the notice shall be posted at the official posting locations of the city; the notice shall also be published in at least one publication in a newspaper of general circulation delivered to the city. Notices shall also be sent to the adjacent property owners within three hundred feet of the subject property by using preaddressed, stamped envelopes provided by the applicant. These notices shall be deposited in the United States mail not less than ten days prior to the date of the hearing. At least three notices of proposed land use shall be posted in conspicuous places on or adjacent to the subject property

2. Hearings May Be Continued. If for any reason a public hearing cannot be completed on the date set for the hearing, the presiding officer at the hearing may before adjournment or recess publicly announce the time and place to and at which the hearing will be continued, and no further notice is required.

3. Recommendation to City Council. Upon completion of the public hearing, the planning commission shall transmit to the city council its recommendation and a report of the pertinent evidence offered at the hearing. The recommendation of the planning commission on the permit application shall be advisory only.

4. City Council Action. Upon receipt of the planning commission's recommendations and report, the city council shall set a date for a public meeting on the application. No additional notice shall be required. At the conclusion of the public hearing the city council shall consider the recommendations of the planning commission together with any additional facts presented, and may grant, deny, or modify the requested permit application, and shall prepare written findings and conclusions that support and explain its decision.

5. Reapplication. Upon denial of a permit by the city council, no application for the same permit on the subject property will be permitted within a period of one year from the date of the denial.

E. Bonding. The applicant shall post a performance bond with the city in the amount to cover installation of all temporary erosion control measures and the replanting or hydroseeding work to be done on the property. (Ord. 282 §7, 1996)

#### **18.16.080 Violation--Penalty.**

Violations of any provisions of this chapter or any rule, regulation or order issued in conjunction herewith shall constitute a misdemeanor and may be prosecuted as such in accordance with the general fine and penalty provisions for violation of misdemeanors and gross misdemeanors as stated in the Brier Municipal Code. Each day during which any violation of or failure to comply with any of the provisions of

this chapter is committed, continued or permitted shall constitute a separate offense. Second, and subsequent, or ongoing violations for the same offense shall constitute gross misdemeanors. As an alternative to or in addition to the misdemeanor and gross misdemeanor penalties, the city may assess a penalty of up to four times the market value of the timber from all trees that are damaged, destroyed or removed as a result of a violation of this chapter, or a penalty of up to four times the assessed value per square foot of the property for any area cleared or hand cleared in violation of this chapter, whichever is greater. The city may also issue stop work orders, where appropriate, or orders requiring restoration of vegetation, provision of erosion control, hydroseeding of exposed slopes, and restoration of specific sites on properties where activities in violation of this chapter have taken place. (Ord. 282 §8, 1996)

**18.16.090 Appeals.**

Any decision made pursuant to this chapter may be appealed to the city of Brier city council, or by appointment of the council, to a qualified hearing examiner, under appeal procedures available for appeals of staff or administrative decisions. Any person aggrieved by any action taken pursuant to this chapter, after having exhausted all administrative remedies available, shall, within the time period specified for review of land use matters by writ of certiorari or the Land Use Petition Act, file an appeal or be forever barred from challenging the decision made in any court proceeding. (Ord. 282 §9, 1996)

**Chapter 18.20**  
**TREE PRESERVATION ORDINANCE**

**Sections:**

- 18.20.010 Intent and purpose.**
- 18.20.020 Definitions.**
- 18.20.030 General regulatory authority.**
- 18.20.040 Tree preservation and protection guidelines.**
- 18.20.050 Permits.**
- 18.20.060 Exemptions.**
- 18.20.070 Application requirements.**
- 18.20.080 Preservation of significant trees.**
- 18.20.090 Permit review criteria.**
- 18.20.100 Solar access.**
- 18.20.110 Tree replacement.**
- 18.20.120 Exceptions.**
- 18.20.130 Protection measures.**
- 18.20.140 Maintenance.**
- 18.20.150 Performance assurance.**
- 18.20.160 Enforcement.**
- 18.20.170 Appeals.**

**18.20.010 Intent and purpose.**

The purpose of this chapter is to

- A. Preserve the maximum number of trees that are determined to be appropriate for preservation in the Brier urban environment that have a reasonable chance of long-term survival;
- B. Lessen the impact of tree removal by requiring that trees are replaced to an appropriate and sustainable level;
- C. Assure that newly planted trees are an appropriate species for the given environment;
- D. Aid in the stabilization of soil by the prevention of erosion and the enhancement of sedimentation;
- E. Reduce stormwater runoff and the costs associated therewith and replenish ground water supplies;
- F. Aid in the removal of carbon dioxide and generation of oxygen in the atmosphere;
- G. Provide a visual buffer and screen against traffic and some buffer against noise pollution;
- H. Provide protection against severe weather;
- I. Aid in the control of drainage and restoration of denuded soil subsequent to construction or grading;
- J. Provide a haven for birds, which in turn assist in the control of insect populations;
- K. Conserve and enhance the city's physical and aesthetic environment;
- L. Generally protect and enhance the quality of life and the general welfare of the city; and
- M. Carry out the goals of the updated 2004 Brier Comprehensive Plan
  - 1. The city of Brier shall preserve and protect environmentally sensitive areas to support important ecological functions and to avoid potential hazards to life and property;
  - 2. Maintain the natural wooded character of environmentally sensitive areas, greenbelts,

gateways, etc.

3. As slopes increase, development intensity, site coverage and vegetation removal should be discouraged to reduce problems of erosion, landslides, siltation and drainage

4. In areas susceptible to erosion, native ground cover should be retained if at all possible or replaced immediately after construction. Limitations on the time when the site work can demonstrate that slopes will be stable after site modifications

5. Discourage development in the areas where slopes are known to be unstable. In areas where the stability of slopes is in question, allow development only after a qualified professional can demonstrate that slopes will be stable after site modification

6. Strive to preserve steep hillsides and wooded areas in a natural vegetated or wooded condition. Encourage replanting of denuded areas to decrease potential erosion hazard

7. Recognize the importance of all levels of vegetation (i.e., trees, shrubs, understory) in regard to the drainage system

8. A tree and ground cover removal ordinance should be compiled and implemented as soon as possible. Any clearing of vegetation should be selective and removal severely limited to maintain adequate erosion control and in order to preserve the rural character of the city and the goals and policies of this comprehensive plan.

9. Douglas fir's sporadic (every three or four years) seed crop production and its need for a warm seedbed situation makes natural germination a slow, unpredictable process. Therefore, Douglas fir seedlings should be planted in open areas to give them a competitive edge over alders. Douglas fir will suppress alder, thereby reducing the time for natural succession to a subclimax forest

10. To minimize erosion, silting of streams, clogging of storm sewers, and other related problems, existing trees and ground cover will be required to be maintained where possible, rather than removed or buried. Selective clearing, reseeding, and replanting practices can help minimize these problems and should be included in the clearing ordinance. (Ord. 340 §1(par 2006)

#### **18.20.020 Definitions.**

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When consistent with the context, words used in the present tense include the future and words in the singular number include the plural number. The word "shall" is always mandatory and not directory.

A. "Applicant" means any person, corporation, or other public or private entity that has applied for a tree removal permit, as regulated by this chapter

B. "Arborist" means a tree professional certified by the Tree Care Industry Association

C. "City" means the city of Brier

D. Clearing, Grading and Filling Permits. See Chapter 18.16 of the Brier Municipal Code

E. "Department" means the department of public works and/or community development and planning.

F. "Developed single-family residential lot" shall mean a legally platted lot that is not capable of being further subdivided, upon which a single-family habitable dwelling exists

G. "Development activity" means any construction, development, earth movement, clearing, or other site disturbance activity which requires a permit, and/or an approval, and/or authorization from the city of Brier.

H. "Diameter" means a straight line passing from side to side of any figure or body through its center.

I. "Director" means the director of the department of community development and planning or

department of public works, or his or her designee

J. "Diseased tree" means any tree with a combination of structural defect and/or a health condition, which makes it subject to a high probability of failure

K. "Nonsignificant tree" shall be any tree less than eight inches in diameter at four and one-half feet above natural grade or those included on the following list, regardless of size

1. Black locust (*Robinia pseudoacacia*);
2. Cottonwood (*Populus trichocarpa*);
3. Native alder (native *Alnus* only)
4. Lombardy poplar (*Populus nigra*).

L. "Permit" means a tree removal and replacement permit as described within this chapter

M. "Landscaping area" means the area that extends from the beginning of the property line to the building envelope of the site

N. "Partially developed single-family lot" means a developed single-family lot which is capable of being divided into one or more additional lots

O. "Person" means any public or private individual, group, company, firm, corporation, partnership, association, society or any other combination of human beings, whether legal or natural, that are engaged in any activity regulated by this chapter

P. "Plat" means any subdivision of land for residential purposes

Q. "Private tree" means any tree not located on property owned or controlled by the city

R. "Public tree" means any tree located on property owned or controlled by the city

S. "Removal" means the actual removal or causing the effective removal through damage, poisoning or other direct or indirect actions likely to result in the death of a tree

T. "Significant tree" shall be any tree that is at least eight inches in diameter at a height of four and one-half feet above natural grade. A tree growing with multiple stems shall be considered significant if at least one of the stems, measured at a point six inches from the point where the stems diverge from the main trunk, is at least four inches in diameter. Any tree that is planted to fulfill requirements set forth by this chapter shall be considered significant, regardless of size or species

U. "Tree" means any self-supporting woody plant together with its root system, growing upon the earth with one trunk of at least three inches in diameter at a height of six inches above natural grade or a multistemmed trunk system with a definitely formed crown

V. "Tree fund" refers to the fund created by Section 18.20.110(C)(2).

W. "Tree removal permit" refers to a permit that must be obtained prior to the removal of significant tree. (Ord. 340 §1(part), 2006)

#### **18.20.030 General regulatory authority.**

A. Administrative Responsibility. The director, or his designee, shall have the authority and responsibility to administer and enforce all provisions of this chapter, except for criminal violations which shall be prosecuted by the city attorney

B. Enforcement. It shall be unlawful for any person to hinder, prevent, delay or interfere with the city while engaged in the lawful execution or enforcement of this chapter. This shall not be construed as an attempt to prohibit the pursuit of any legal or equitable remedy in a court of competent jurisdiction for the protection of personal or property rights by any property owner within the city of Brier. Violation of any part or portion of this chapter may be prosecuted as a misdemeanor, with fines and penalties up to the maximum then allowed for punishment of misdemeanors as of the date of filing a complaint. Any fines,

penalties, prosecution or criminal complaints shall be in addition to any civil penalties as proscribed herein. Repeat violations of this chapter may be prosecuted as a gross misdemeanor with fines and penalties to the maximum allowed for punishment of misdemeanors. Every day of a continuing violation shall be considered a separate and specific offense. (Ord. 340 §1(part), 2006

**18.20.040 Tree preservation and protection guidelines.**

The director may adopt tree preservation and protection guidelines to further the purposes of this chapter. The guidelines may include

- A. The species of trees recommended and preferred to be planted, preserved, replaced or replanted on the streets and public properties of the city
- B. The procedure and criteria for applying and approving tree fund grant
- C. Any other tree preservator, protection, and planting procedures that the director deems necessary. (Ord. 340 §1(part), 2006)

**18.20.050 Permits.**

No person shall engage in or cause any tree removal without obtaining a tree removal and replacement permit as required by this chapter. Any tree removal and replacement permit shall be in addition to, and not in lieu of, any other permit required by stat law or city ordinance. (Ord. 340 §1(part), 2006

**18.20.060 Exemptions.**

The following shall be exempt from the provisions of this chapte

- A. Tree removal on a developed single-family lot for which there is no potential for subdivision, except for:
  - 1. That portion of the lot that is located in a designated sensitive area and sensitive area buffer;
  - 2. That portion of the lot that is located within the buffer area of any stream or wetland system referred to in Sections18.12.060 and 18.12.070;
  - 3. That portion of the lot that is a "geologically hazardous area" as defined in Section 18.12.030 or is a "landslide hazard area" as defined in Sectio18.12.030;
- B. Routine landscape maintenance, gardening and removal of nonsignificant trees as defined by Section 18.20.020(K);
- C. Removal of trees and/or ground cover by the department of community development and planning, fire department and/or publicor private utility in situations involving danger to life or property, substantial fire hazards, or interruption of services provided by a utility
- D. Installation and maintenance of public utilities, after approval of the route by the director or his or her designee, except in parks or environmentally sensitive area
- E. Emergency situations on private property involving danger to life or property or substantial fire hazards. (Ord. 340 §1(part), 2006)

**18.20.070 Application requirements.**

- A. An application for a tree removal and replacement permit shall be submitted on a form provided by the city, together with a site plan and other information as described hereaft
  - 1. Name, address and telephone number of the applican
  - 2. Legal status of applicant with respect to the land
  - 3. Written consent of owner(s) of the land, if the applicant is not the sole owne

4. Name of person preparing the map, drawing or diagram submitted with the application, along with credentials, if applicable
5. Location of the property, including street number and address
6. A list of the names and addresses of all the property owners within one hundred feet of the subject property as listed in the records of the Snohomish County tax assessor, with self-addressed aamped envelopes for each of those property owners
7. A tree removal and replacement plan, drawn to scale by a registered landscape architect, of the property depicting the following items (scale one inch equals thirty feet or as approved by the director):
  - a. Topographic information
  - b. Location of all existing and/or proposed structures, driveways, and utilities
  - c. Areas proposed for clearing and the proposed use for such area
  - d. Designation of all diseased or damaged trees
  - e. Any proposed grade change that might adversely affect or endanger trees on the property and specifications to maintain them
  - f. Designation of trees to be removed and trees to be maintained as well as the diameter of the trunk measured four and one-half feet above natural grade
  - g. Designation of all wetlands, streams, environmentally sensitive areas, geologically hazardous areas and landslide hazard areas
8. A statement outlining the purpose of the tree removal (e.g., building construction, street or roadway, driveway, recreation area, patio, dead, diseased or dying, or parking lot), together with a proposed timetable for when the work will occur
9. The manner in which the cleared areas on the property will be reclaimed with vegetation and the timetable for replanting
10. Any other information deemed necessary by the city to allow adequate review and implementation in conformance with the purposes of this chapter

B. Upon receipt of the application for a tree removal and replacement permit, the staff shall inspect the site and contiguous properties. If the staff determines that the plan is in compliance with the provisions of this section and will result in the removal of no more trees or vegetation than is necessary to achieve the proposed development, the permit shall be approved.

The city may require a modification of the tree removal and replacement plan or the associated land development plan to ensure the retention of the maximum number of trees.

If the staff determines that the plan will result in the destruction of more trees and vegetation than is reasonably necessary to achieve the proposed development, the permit shall be denied.

C. Any permit granted under the provisions of this section shall expire one year from the date of issuance. No work may commence on the permit until the appeal time limit has expired. Upon receipt of a written request, a permit may be extended for six months.

D. Approved plans shall not be amended without written authorization from the city. The permit may be revoked or suspended by the city upon discovery that incorrect information was supplied or upon any violation of the provisions of this chapter.

E. Applications for tree removal shall be referred to other city departments or agencies for review and approval as deemed necessary by the director. Applications for tree removal and replacement in parks shall always be referred to the mayor for review and approval. (Ord. 340 §1(part), 2006)

**18.20.080 Preservation of significant trees.**

A. Landscaping Area. The applicant shall retain all significant trees which will not constitute a safety hazard. The area within the building envelope or driveway, the area within sight distance of fifteen feet from a driveway or street intersection and the area to be cleared for required roads, utilities, sidewalks, trails, or storm drainage improvements are exempt from this requirement.

1. In applying the requirement for retention of significant trees, the director shall consider the preservation of the following types of significant trees a priority:

- a. Healthy significant trees over sixty feet in height;
- b. Significant trees which form a continuous canopy;
- c. Significant trees which contribute to the character of the environment, and do not constitute a safety hazard;
- d. Significant trees which provide winter wind protection or summer shade;
- e. Groups of significant trees which create a distinctive skyline feature;
- f. Significant trees in areas adjacent to sensitive area buffers;

2. The director may approve retention of trees which do not meet the definition of significant trees if a group of trees and its associated undergrowth can be preserved.

B. The applicant shall utilize tree protection techniques approved by the director during land alteration and construction in order to provide for the continual healthy life of retained significant trees. (Ord. 340 §1(part), 2006)

**18.20.090 Permit review criteria.**

All tree removal and replacement shall conform to the following standards and provisions. The following minimum standards and provisions shall be the governing criteria for the issuance or denial of a tree removal and replacement permit under this chapter:

A. The tree and replacement plan will not create or contribute to landslides, accelerated soil creep, settlement and subsidence or hazards associated with strong ground motion and soil liquefaction.

B. The proposal shall contain reasonable provisions for the preservation of natural land and water features, vegetation, drainage and other indigenous natural features on the site.

C. The tree removal and replacement plan will not create or contribute to flooding, erosion or increased turbidity, siltation or other forms of pollution in a watercourse.

D. The tree removal and replacement plan will be undertaken in such a manner as to preserve and enhance the city's aesthetic character.

E. The execution of the tree removal and replacement plan shall be performed in accordance with all applicable laws, rules and regulations pertaining to air and water pollution and the State Forest Practices Act.

F. Except for the use of roads and constructed pathways, land clearing machinery shall be kept outside of the drip line of any trees designated for retention. Damaging of trees designated for retention by scarring, backfilling of trees with heavy soil or compaction of soil around trees or any other activities that may cause damage of roots, trunks or surrounding ground over shall be considered a violation of this chapter and is subject to the penalties described in Section 18.20.160(B). The mitigation measures shall be determined by the director. All requirements for protection of vegetation detailed in plans prepared by a registered landscape architect or in land clearing conditions required by staff such as fencing and other protection measures shall be satisfied. (Ord. 340 §1(part), 2006)

**18.20.100 Solar access.**

While trees have long been used to complement solar planning and site design such as providing deciduous trees in strategic locations to cool areas in summer and providing solar access in winter, the providing of adequate solar access may sometimes conflict with preservation of existing trees, particularly evergreen trees. When established city goals designed for different purposes conflict, balancing of different community and individual needs must be accomplished. In implementing the goals of this chapter, the director shall give due consideration to valid solar access needs. (Ord. 340 §1(part), 2006)

**18.20.110 Tree replacement.**

Prior to any tree removal, the applicant shall demonstrate through the tree removal and replacement plan and, when needed, a sensitive area mitigation plan or other plans acceptable to the director that tree replacement will meet the minimum standards of this section

A. Replacement Required. A significant tree to be removed shall be replaced by three new trees. No tree replacement is required in the following case:

1. The tree is hazardous, dead, diseased, injured or in a declining condition with no reasonable assurance of gaining vigor
2. The tree is proposed to be relocated to another suitable planting site; provided, that relocation complies with the standards in this section

B. On-Site Replacement. Replacement trees shall be planted on the site from which significant trees are removed unless the director accepts one or more of the alternatives set forth in subsection C of this section.

C. Alternatives to On-Site Replacement. When on-site replacement cannot be achieved, the director may consider the following alternatives:

1. Off-Site Tree Replacement
  - a. The number of replacement trees shall be the same as described in subsection A of this section, Replacement Required. Replacement costs (material plus labor) shall be at the applicant's expense.
  - b. Allowable sites for receiving off-site replacement planting:
    - i. City-owned properties identified on the parks, recreation and open space plan map and trail plan or the most current Brier comprehensive plan
    - ii. Other city open space areas or sensitive areas within the Brier city limits, or lands controlled by the city.
  - c. All trees to be replaced off-site shall meet the replacement standards of this section

2. Tree Replacement Fee. A fee in lieu of tree replacement may be allowed, subject to approval by the director, in consultation with a registered landscape architect, after careful consideration of all other options. A tree replacement fee shall be required for each replacement tree required but not planted on the application site

- a. The amount of the fee shall be the tree base fee times the number of trees necessary to satisfy the tree replacement requirements of this section. The tree base fee shall cover the cost of a tree, installation (labor and equipment), maintenance for two years, and fund administration. The tree base fee shall be established by the director and adopted by the city council by resolution
- b. The fee shall be paid to the city prior to the issuance of a tree removal permit
- c. A separate account shall be established by the city for fees collected. Tree replacement fee receipts shall be earmarked specifically for this account. Funds withdrawn from this account shall be

expended only for the planting and maintenance of new trees in city-owned parks, trails, open spaces or rights-of-way.

3. Landscape Restoration. Where appropriate, the director or his designee may consider other measures designed to mitigate the loss of trees by restoring all or parts of the forest landscape and its associated benefits. Measures may include, but are not limited to:

- a. Creation of wildlife snags from trees which would otherwise be removed
- b. Replacement of certain ornamental trees with native shrubs and groundcover
- c. Replacement of hazardous or short-lived trees with healthy new trees more likely to survive;
- d. "Daylighting" and restoration of stream corridors with native vegetation
- e. Protection of nonsignificant trees to provide for the successional stages of forest development

4. At a minimum, fifty percent of the replacement trees shall be planted on-site

D. Tree Replacement Guidelines and Requirement:

1. When individual trees or tree stands are protected, replacement trees shall be planted to re-establish or enhance tree clusters where they previously existed

2. Where appropriate, replacement trees should be planted within sensitive areas or buffers

3. Replacement trees shall be planted in locations appropriate to the species' growth habit and horticultural requirements

4. Replacement trees shall be located away from areas where damage is likely to occur;

5. Replacement trees shall be located to provide screening of the development from adjacent properties, where appropriate

6. Replacement trees shall be planted in areas that connect or are adjacent to sensitive areas or other open space, where appropriate;

7. Replacement trees shall be integrated into the required landscape plans, if any, for a development; and

8. Replacement trees that are to be planted next to or under overhead utility power lines shall be selected with consideration of the trees' maturation and maintenance requirements

E. Size, Species and Condition of Replacement Trees

1. Minimum sizes for replacement plants shall be

a. Three inches in diameter at six inches in height above natural grade for deciduous trees

b. Eight feet in height above natural grade for evergreen trees

2. The director may consider smaller-sized replacement plants if the applicant can demonstrate that smaller plants are more suited to the species, site conditions, and to the purposes of this section, and are planted in sufficient quantities to meet the intent of this section

3. The director may require that a portion of the replacement trees be native species in order to restore or enhance the site to predevelopment character

F. Installation

1. Installation of required replacement plants shall be in accordance with best management practices for landscaping which ensure the tree's long-term health and survival

2. All required tree replacement and other required mitigation shall be completed prior to issuance of the certificate of occupancy, unless the director determines that seasonal or weather conditions at the time of installation would jeopardize plant survival and the applicant has submitted an alternate

planting schedule for approval. The director shall require a bond to cover the cost of installation of the replacement tree(s) in case the applicant fails to perform the task in the mutually agreed-upon time period specified. The bond shall be posted at one and one-half times the actual tree base fee. (Ord. 340 §1(part), 2006)

**18.20.120 Exceptions.**

Where there are exceptional conditions that prevent full compliance with the tree preservation ordinance, the applicant may request an exception. A request for any exception shall be submitted in writing by the property owner for consideration by the director, and shall accompany the application for a permit reviewed under this chapter. The written request shall fully state all substantiating facts and evidence pertinent to the exception request, and include supporting maps or plans. The director may also require the recommendation of a registered landscape architect at the cost of the applicant, in reviewing an exception request.

A. Exception Criteria. An exception shall not be granted unless criteria in subsections (A)(1)(a) and (A)(1)(b) of this section are satisfied

1. The exception is necessary because

a. There are special circumstances related to the size, shape, topograph, location or surroundings of the subject property; and

b. Strict compliance with the provisions of this code may jeopardize reasonable use of property;

B. Proposed vegetation removal, replacement, and any mitigative measures proposed shall be consistent with the purpose and intent of the regulation:

C. The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity. (Ord. 340 §1(part), 2006)

**18.20.130 Protection measures.**

A. Tree Protection Measures. To ensure long-term viability of trees and tree stands identified for protection, permit plans and construction activities shall comply with the following minimum required tree protection:

1. All minimum required tree protection measures shall be shown on the tree protection and replacement plan

2. All construction activities, including staging and traffic areas, shall be prohibited within five feet of the drip line of protected trees

3. Tree protection barriers shall be installed along the outer edge and completely surround the drip line of significant trees to be protected prior to any land disturbance

4. Tree protection barriers shall be a minimum of four feet high, constructed of chain link, or polyethylene laminar safety fencing or similar material, subject to approval by the director. "Tree Protection Area" signs shall be posted visibly on all sides of the fenced areas. On large or multiple-project sites, the director may also require that signs requesting subcontractor cooperation and compliance with tree protection standards be posted at site entrances

5. Where tree protection areas are remote from areas of land disturbance, and where approved by the director, alternative forms of tree protection may be used in lieu of tree protection barriers; provided, that protected trees are completely surrounded with continuous rope or flagging and are accompanied by "Tree Save Area—Keep Out" signs

B. Preventative Measures. In addition to the above minimum tree protection measures, the applicant shall support tree protection efforts by employing, as appropriate, the following preventative measures, consistent with best management practices for maintaining the health of the tree:

1. Pruning of visible deadwood on trees to be protected or relocated;
2. Use of soil amendments and soil aeration in tree protection and planting areas;
3. Mulching over tree drip line areas; and
4. Ensuring proper water availability during and immediately after construction. (Ord. 340 §1(part), 2006)

**18.20.140 Maintenance.**

A. All required replacement trees and relocated trees shown on an approved permit shall be maintained in healthy condition throughout the life of the project, unless the trees are dead, diseased or dying, or unless otherwise approved by the director in a subsequent permit.

B. Cutting and Pruning

1. Protected trees shall not be topped
2. Pruning and maintenance of protected trees shall be consistent with best management practices in the field of arboriculture and further the long-term health of the tree
3. Excessive pruning shall not be allowed unless recommended by a certified arborist in order to protect life and property. (Ord. 340 §1(part), 2006)

**18.20.150 Performance assurance.**

To mitigate damages, should they occur as a result of unauthorized tree removal, the applicant shall submit a bond, letter of credit or other means of assurance acceptable to the director. The following provisions shall apply to such performance assurance:

A. Tree Protection Assurance. The applicant shall post a performance bond or other acceptable security device to ensure the installation, maintenance and adequate performance of tree protection measures. The amount of this bond shall equal three hundred percent of the city's estimated cost of replacing each protected tree. The estimated cost per tree shall be the tree base fee as set forth in Section 18.20.110(C)(2)(a). Prior to issuance of the certificate of occupancy, any protected tree found to be irreparably damaged, severely stressed or dying shall be replaced according to the standards identified under Section 18.20.160(A), Remediation. The bonding period shall be two years from the time of planting. Collection of bond proceeds shall be deposited into the tree replacement fee fund (see Section 18.20.110(C)(2)(c)).

B. Tree Maintenance Assurance. Where replacement trees are required pursuant to this section, the applicant shall post a replacement tree maintenance bond or other acceptable security device to ensure the survival of replacement trees. The amount of the maintenance bond shall equal one hundred fifty percent the cost of plant material, periodic fertilizing and pruning, and labor until tree survival is ensured. In the event a required replacement tree becomes irreparably damaged, severely stressed or dies, the tree shall be replaced according to the standards in Section 18.20.110, Tree replacement. Replacement trees damaged due to natural disasters such as wind storms, hail, ice or snow storms, earthquakes and the like shall be exempt from replacement. The bonding period shall be two years from the time of planting.

C. The required tree protection and maintenance assurances shall be submitted prior to issuance of a tree removal permit.

D. The applicant shall provide an estimate of the costs by a registered landscape architect associated

with the required performance bond or other security as described above. In lieu of an applicant's estimate, the performance assurance shall be equal to city staff's best estimate of possible costs to meet the above requirements. In no case shall the performance assurance exceed an amount equal to two and one-half times the current cost of replacing the plants in accordance with Section 18.20.110, Tree replacement.

E. The performance assessment shall not be fully released without final inspection and approval of completed work by the city, submittal of any postconstruction evaluations or following any prescribed trial maintenance period required in the permit.

F. Performance assurances provided in accordance with this section may be redeemed in whole and in part by the city of Brier upon determination by the director that the applicant has failed to fully comply with approved plans and/or conditions. (Ord. 340 §1(part), 2006)

**18.20.160 Enforcement.**

A. Remediation. Any person who removes a tree in violation of the conditions of a tree removal permit or in violation of this section shall be subject to remedial measures. The following provisions shall apply in instances where such remedial measures are required:

1. The applicant shall satisfy the permit provisions as specified in Section 18.20.050, Permits.
2. a. Remedial measures must conform to the purposes and intent of this section. In addition, remedial measures must meet the standards specified in Section 18.20.110, Tree replacement, except that the number of replacement trees for significant trees damaged, destroyed or removed shall be as follows:

Size of removed tree	Number of replacement trees required
Greater than 8"—11'	4
Greater than 11"—14'	4
Greater than 14"—17'	5
Greater than 17'	6

- b. Replacement trees shall be replanted with trees as follows:
    - i. Deciduous—three inches in diameter at six inches in height above natural grade
    - ii. Evergreen—eight feet in height above natural grade
3. Remedial measures must be completed within the time frame specified by the director.
4. The cost of any remedial measures necessary to correct violation(s) of this section shall be borne by the property owner and/or applicant. Upon the applicant's failure to implement required remedial measures, the director may redeem all or any portion of any security submitted by the applicant to implement such remedial measures, pursuant to the provisions of Section 18.20.150, Performance assurance.

B. Penalties. The director shall impose a penalty for removal of or damage to significant trees in violation of this chapter. The amount of the penalty shall be calculated using a base cost of four thousand dollars for a significant tree that is eight inches in diameter at a height of four and one-half feet above natural grade, plus an additional seven percent for each additional inch in diameter over eight inches. (Ord. 340 §1(part), 2006)

**18.20.170 Appeals.**

Any person who objects to a decision of the community development director may file an appeal to the city council. For the appeals process see Section 18.04.030, Appeals. An appeal will not stay the enforcement of any decision of the director, nor will the requirement for any permit, and the filing of a stay, by itself, be considered as a mitigation of any fine, penalty, or enforcement requirement including the filing of a formal criminal complaint for a violation or the requirements of a stop work order Ord. 340 §1(part), 2006)