

Instructions to reader: This is a new chapter in the Unified Development Code. For a summary of the effect of this chapter from current standards, please visit the Rethink Zoning Library at <https://everettwa.gov/2453/Rethink-Zoning-Library>.

Chapter 19.41 General Authority and Requirements

Table of Contents

CHAPTER 19.41 GENERAL AUTHORITY AND REQUIREMENTS	1
19.41.010 VARIANCES.	1
19.41.020 ENFORCEMENT, VIOLATION AND PENALTIES.	1
19.41.030 BUSINESS LICENSE APPLICATIONS.	2
19.41.040 COMPLIANCE WITH SEPA AND OTHER LAWS.....	2
19.41.050 PROMULGATION OF RULES, PROCEDURES AND INTERPRETATIONS.....	2
19.41.060 MAINTENANCE.	2
19.41.070 ASSURANCE DEVICES.	4
19.41.080 VALIDITY.	6

19.41.010 Variances.

The provisions of this title can be varied on a case-by-case basis if the application of such provisions would result in unreasonable and unusual hardship. The criteria in EMC 15.03.140 must be met in order to approve a variance. See EMC 15.01 for application requirements and EMC 15.02 for procedures and public notice requirements.

19.41.020 Enforcement, violation and penalties.

A. Enforcement.

Enforcement of the provisions of this title and of any permits or approvals issued pursuant thereto shall be performed in accordance with the procedures established in this title and Chapter 1.20.

B. Violation.

No person, firm, association, corporation or any agent thereof shall violate or fail to comply with any provisions of this title nor use any property, erect any structure, occupy or use any structure or place any improvement on any property in violation of any provision of this title. Each such person, firm, association, corporation or agent thereof shall be deemed guilty of a separate offense for each and every day during which any violation of any provision of this title is committed, continued or permitted.

C. Penalties.

Any violation or failure to comply with the provisions of this title shall be subject to the provisions of the enforcement procedures as set forth in Chapter 1.20. Further, any building or structure set up, erected, built, used, moved or maintained or any use of property contrary to the provisions of this title, shall be and the same is declared to be a public nuisance. The city administration, upon concurrence of the city attorney, may file for injunctive or other forms of civil relief in superior court. The penalty and enforcement provisions provided in this title shall not be exclusive, and the city may pursue any remedy or relief it deems appropriate.

D. Right of Entry.

Whenever necessary to make an inspection to enforce any of the provisions of this title, or whenever the code compliance officer has reasonable cause to believe that there exists in any building or upon any property any condition which makes such building or property to be in violation of this title, the code compliance officer may enter such building or property at all reasonable times to inspect the same or to perform any duty imposed upon the code compliance officer by this title; provided, that if such building or property be occupied, he/she shall first

present proper credentials and demand entry; and if such building or property be unoccupied, he/she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or property and demand entry. If such entry is refused, code compliance officer shall have recourse to every remedy provided by the law to secure entry. If the owner or occupant denies entry, the code compliance officer shall obtain a proper inspection warrant or other remedy provided by law to secure entry. No owner or occupant or other person having charge, care or control of any building or property shall fail or neglect, after proper request is made as provided in this chapter, to promptly permit entry therein by the code compliance officer for the purpose of inspection and examination pursuant to this title.

19.41.030 Business License Applications.

All applications for business license which are submitted to the city clerk shall be reviewed by the planning department to determine whether the proposed business meets the requirements of this title and the specific requirements of the zone in which the business is proposed to be located.

19.41.040 Compliance with SEPA and other laws.

- A. The State Environmental Policy Act (SEPA) applies to many of the decisions that will be made using this title. Each application shall be evaluated and, where applicable, comply with SEPA, with state regulations, federal regulations and city regulations and ordinances. The minimum requirements set forth in the zoning code may be increased based upon the SEPA review process or requirements contained in other city regulations.
- B. Project permit applications must be processed in accordance with Chapter 36.70B RCW, Local Project Review, which is implemented by Title 15, Local Project Review Procedures. Each project permit application will be processed in accordance with the permit application classification (type of land use application) and the procedures for processing permits established in Title 15, Local Project Review Procedures.

19.41.050 Promulgation of rules, procedures and interpretations.

The planning director is authorized to promulgate administrative rules, procedures and interpretations consistent with the terms of this title. Appeals of any such rule, procedure, interpretation or other administrative determination made by the planning director shall be made in accordance with the appeal procedures as set forth in Title 15, Local Project Review Procedures.

19.41.060 Maintenance.

A. Overview

Various chapters of this title establish specific development, performance and maintenance standards for uses and developments on individual properties.

- 1. All properties or parts thereof shall be maintained in a safe and sanitary condition to reduce blight and sustain the highest quality of life standard within the city.
- 2. All exterior property and premises, and the interior of every structure shall be free from any accumulation of rubbish or garbage.
- 3. All premises and exterior property shall be maintained as further set forth in subsection B below.
- 4. All properties or parts thereof shall be maintained to meet the requirements of this title and any conditions or restrictions imposed on the property by federal, state or city requirements.

B. Maintenance Requirements

- 1. Fences. All fences, whether or not required by this title, shall be maintained in a condition of repair so as not to be dangerous to human life or a danger to the property. For fences visible from the public right-of-way, damaged sections, missing boards, or leaning fences shall be repaired, replaced or removed so as to not create a visual or attractive nuisance.

2. Corner Building Sites. All corner building sites located in use districts that require a front and a side yard shall maintain a clear triangle at the intersection of the street and/or alley rights-of-way for the purpose of traffic safety. No building, structure, object or growth over thirty-six inches in height, measured from the mean grade of the intersecting streets, shall be allowed within this triangle. One angle of this triangle shall be formed by the intersecting street rights-of-way and the sides of the triangle measured along the property lines from said angle shall be fifteen feet in length; the third side of such triangle shall be a straight line connecting the ends of the two aforementioned lines.
3. Vision Clearance. All corner building sites located in use districts that require a front and a side setback shall maintain a clear triangle at the intersection of the street and/or alley rights-of-way for the purpose of traffic safety. No building, structure, fence, object or growth over thirty-six inches in height, measured from the mean grade of the intersecting streets, shall be allowed within this triangle. One angle of this triangle shall be formed by the intersecting street pavement edge or curb and the sides of the triangle measured along the street pavement edge or curb from said angle shall be fifteen feet in length; the third side of such triangle shall be a straight line connecting the ends of the two aforementioned street pavement edge or curb lines. See EMC 19.40 for additional fence standards.
4. Landscaping. All landscape areas required by this title shall be maintained in accordance with the following standards:
 - a. All landscaping shall be maintained with respect to pruning, trimming, mowing, watering, insect control, fertilizing, or other requirements to create a healthy growing condition, attractive appearance, and to maintain the purpose of the landscape type.
 - i. Pruning of trees must be consistent with ANSI A300 (Part 1) American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Management—Standard Practices (Pruning) and companion publication Best Management Practices Tree Pruning. Required trees shall not be pruned to maintain a height below twenty feet, except as required under power lines or as approved through the landscape modification process in EMC 19.35.190.
 - ii. The topping, shearing or pollarding of required trees is prohibited.
 - iii. Portions of trees that extend over areas used by pedestrians or vehicle maneuvering or parking areas, or that abut driveways, shall be limbed up to a height of seven feet to maintain pedestrian and vehicle clearance and clear lines of sight.
 - b. Topped, sheared, pollarded, dead, diseased, stolen, vandalized, improperly pruned, missing or damaged plants shall be replaced within three months, with the plants indicated on the approved landscape plan or as required by this chapter.
 - c. All landscaped areas shall be maintained reasonably free of weeds and trash.
 - d. All required landscaping which is located within public right-of-way shall be maintained by the abutting property owner.
 - e. All LID stormwater management facilities shall also be maintained in accordance with the city of Everett stormwater management manual.
 - f. When the city takes enforcement action under Section 19.41.020 to ensure that dead, diseased, stolen, vandalized, improperly pruned, or damaged plants are replaced, a two-year maintenance assurance device, as described in Section 19.41.070, shall be required for the replaced landscaping.
5. Maintenance of Private Common Areas. All common open space and recreation areas and all private utility infrastructure shall be maintained by the property owner or an owners' association, as applicable, including but not limited to:
 - a. Private access drives;
 - b. Vehicle and pedestrian access easements;
 - c. Joint use and maintenance agreements;
 - d. Common off-street parking;
 - e. Common open space (including, but not limited to, landscape areas, gardens, woodlands, walkways, courtyards or lawns, and outdoor recreation areas);

- f. Private utility infrastructure (including, but not limited to, underground utilities and utility easements); and
 - g. Any other common buildings or improvements.
6. Maintenance of Lot, Buildings and Facilities. Buildings, utilities and facilities on lots shall be maintained by the property owner in accordance with city codes and the requirements applicable to the development.
 7. Land Division Covenants, Declarations and Restrictions. Prior to the recording of a land division, the applicant shall provide covenants, declarations and restrictions required by the city for review and approval. The common areas and infrastructure identified in subsection B.3 above must be maintained by an owners' association in accordance with all applicable provisions of the city code. Said covenants, declarations and restrictions shall provide authority for the city, after providing reasonable written notice to the association and opportunity to perform required maintenance, to recover any costs incurred by the city to maintain private infrastructure or common areas due to a failure of the association to adequately maintain privately owned improvements, including a lien on the property or other appropriate assurance device, as determined by the city.
 8. Wetland, Shoreline, and Critical Area Buffers and Mitigation Plans.
 - a. Buffers that are required to be protected with signs or fences shall be maintained as required by this title or the Everett Shoreline Master Program.
 - b. Buffer impacts which are approved with mitigation shall ensure that work is completed in accordance with the mitigation plan, that maintenance and monitoring occur on a regular basis, and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.
 - i. The construction performance guarantees shall not be released until the applicant's qualified professional and the planning director sign off to indicate that construction has been completed as planned.
 - ii. A separate performance assurance device shall be required for maintenance, monitoring, and contingency. This guarantee shall not be released until the applicant's qualified professional and the planning director sign off that maintenance and monitoring have been completed per the plan, and the mitigation meets performance goals.

C. Enforcement

Failure to comply with this title will be enforced through the procedures set forth in EMC 1.20.

19.41.070 Assurance Devices.

A. User guide.

Various chapters of this title establish specific development, performance and maintenance standards for uses and developments on individual properties. This chapter establishes the mechanism by which the city ensures that the requirements of this chapter are met through the posting of an assurance device to guarantee completion of required improvements or continued maintenance of improvements required by this title.

B. General.

The planning director may allow or require performance and maintenance assurance devices in conformance with the provisions of this chapter.

C. When applicable.

1. The planning director shall require a performance assurance device if:
 - a. The applicant is unable to complete the work or improvements to be covered by the assurance device because of unavoidable circumstances that in no way resulted from the actions or inaction of the applicant;
 - b. It is reasonably certain that the applicant will be able to complete the work or improvements to be covered by the assurance device within a reasonable amount of time;

- c. Granting a certificate of occupancy prior to completion of the work or improvements will not be materially detrimental to the city or the properties in the vicinity of the subject property; and
 - d. The proposal is part of a phased development and work required as part of a current phase will be completed within a time frame established by the planning director, based upon the specific circumstances related to the site.
2. Maintenance Assurance Device. The planning director may require a maintenance assurance device when necessary to ensure that improvements required by this title are properly maintained. The planning director shall establish a time frame for which the maintenance assurance device shall be effective.
 3. Work to be performed by any state agency or unit of local government shall be exempt from providing guarantees based on RCW 35A.21.250.

D. Form of assurance device.

In each case where the city requires or allows an applicant to provide an assurance device, the planning director, with the approval of the city attorney, shall determine the type of assurance device that will be used.

E. Amount of assurance device.

1. General. The planning director shall determine the amount of the assurance device as follows:
 - a. For a performance assurance device the amount shall be one hundred fifty percent (150%) of the cost of the work or improvements covered by the assurance device based on estimated costs immediately following the expiration of the device, except that the amount of an assurance device for any improvement regulated by Chapter 19.37 (Critical Areas) shall be three hundred percent (300%) of the cost of the work or improvements based on estimated costs immediately following the expiration of the device.
 - b. For a maintenance assurance device, the amount will not be less than ten percent (10%) of the cost of replacing the materials covered by the assurance device based on estimated costs on the last day covered by the device.
 - c. In determining the amount of the assurance device, the planning director may require that the applicant provide a detailed estimate of the cost of the improvements for which the assurance device is required. The planning director may use the estimate to determine the amount of the assurance device but is not bound by the information submitted by the applicant in determining the appropriate amount.
2. Responsibility. The assurance device shall specify the following information:
 - a. The work or improvements covered by the assurance device;
 - b. Either the period of time covered by the maintenance assurance device or the date after which the city will use the proceeds of the performance assurance device to complete the required work or improvements.
3. The city may require the assurance device to be provided before any permits for which the assurance device is required are issued.

F. License signed by owner of subject property.

In each case where the city requires or allows an applicant to provide an assurance device, the applicant shall provide in a form acceptable to the city attorney, a license to run with the property which allows the city, its employees, agents or contractors to go on the subject property for the purpose of inspecting, making or maintaining the improvements covered by the assurance device. The license shall be valid for the length of time required for the assurance device.

G. Release of assurance device.

After the work or improvements covered by a performance assurance device have been completed to the satisfaction of the city, or at the end of the time covered by the maintenance assurance device, the applicant may request the planning director to release the assurance device. Prior to the release of the assurance device, the city shall verify that the conditions of the assurance device have been satisfactorily complied with.

H. Use of proceeds—Notice to applicant.

If during the period of time covered by a maintenance assurance device or after the date by which the required work or improvements are to be completed under a performance assurance device, the planning director determines that the work or improvements have not been satisfactorily maintained or completed, he/she shall notify the applicant. The notice should contain substantially the following information:

1. A statement that the work must be done or the improvement must be made to comply with the requirements of the assurance device;
2. A statement setting forth the amount of time that the applicant has to commence and complete the required work or improvements; and
3. A statement that, if the work or improvements are not commenced and completed within the time specified, the city will use the proceeds of the assurance device to have the required work or improvements completed.

I. Use of proceeds—Work by the city.

If the work or improvements covered by the assurance device are not completed within the time specified in the notice given under subsection H, the city shall obtain the proceeds of the device and do the work or make the improvements covered by the device. The city may either have employees of the city do the work or make the improvements or, have a contractor do the work or make the improvements.

J. Use of proceeds—Emergency work by city.

If at any time the planning director determines that an action or inaction associated with any assurance device has created an emergency situation endangering the public health, safety or welfare, creating a potential liability for the city, or endangering city streets, utilities or property; and, if the nature or timing of such an emergency precludes the notification of applicants as provided in subsection H of this section while still minimizing or avoiding the effects of the emergency, the city may use the assurance device to correct the emergency situation. The city may either have employees of the city do the work or make the improvements or may have a contractor do the work or make the improvements. If the city uses the assurance device as provided by this section, the applicant shall be notified by certified mail, return receipt requested, with four working days of the commencement of emergency work. The notice must state the work that was completed and the nature or timing of the emergency that necessitated the use of the assurance device without prior notification.

K. Use of proceeds—Refund of excess, charge for all costs.

The applicant is responsible for all costs incurred by the city in doing the work and making the improvements covered by the assurance device. The city shall release or refund any proceeds of an assurance device remaining after subtracting all costs related to doing the work covered by the device. The applicant shall reimburse the city for any amount expended by the city that exceeds the proceeds of the device. The city is entitled to file a lien against the subject property for which the assurance device was issued for the amount of any excess which the city expends in doing the work or making the improvements.

L. Itemized statement.

In each case where the city uses any of the proceeds of the device, it shall give the applicant an itemized statement of all proceeds and funds used.

19.41.080 Validity.

Should any section, subsection, paragraph, sentence, clause or phrase of this title or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this title or its application to any other person or situation. The city council of the city declares that it would have adopted this title and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.