

ORDINANCE NO. 004/2009

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON ADOPTING A NEW CHAPTER 20.08 LAND CLEARING AND FOREST PRACTICES AND AMENDMENTS TO CHAPTERS 21.20 AND 21.50 MMC. THE PROPOSED ADDITIONS AND AMENDMENTS WILL REGULATE FOREST PRACTICES PERMITS AND LAND CLEARING WITHIN THE CITY OF MONROE PURSUANT TO RCW 76.09.240 (FOREST PRACTICES) AND RCW 36.70A.570 (GROWTH MANAGEMENT); AND PROVIDING FOR SEVERABILITY AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE

WHEREAS, the City Council has determined that it is in the community interest to administer Forest Practices to be in compliance with RCW 76.09.240 (Forest Practices) and RCW 36.70A.570 (Growth Management) through Chapter 20.08 Land Clearing and Forest Practices; and

WHEREAS, the City Council has determined that it is in the community interest to amend the administrative requirements found in Chapters 21.20 and 21.50 MMC for consistency with the adoption of Chapter 20.08; and

WHEREAS, the Monroe Planning Commission held duly advertised public hearings on July 10, 2006 and February 12, 2007, to consider the proposed addition of Chapter 20.08 and proposed amendments to Chapters 21.20 and 21.50 MMC, and recommended adoption of such additions and amendments to the City Council; and

WHEREAS, the Monroe City Council held a duly advertised public hearing on March, 03, 2009, to consider the proposed addition of Chapter 20.08 and proposed amendments to Chapters 21.20 and 21.50 MMC; and

WHEREAS, all persons desiring to comment on the proposal were given a full and complete opportunity to be heard; and

WHEREAS, the City Council has reviewed the Planning Commission recommendations; and

WHEREAS, the City Council finds that the proposed additions and amendments to the Monroe Municipal Code are in the public interest and are further consistent with the Comprehensive Plan;

THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 20.08 Land Clearing is repealed in its entirety.

Section 2. A new Chapter 20.08, entitled "Land Clearing and Forest Practices" is hereby added to the Monroe Municipal Code as depicted in Exhibit A, attached hereto and incorporated by this reference as if set forth in full.

Section 3. Chapters 21.20 and 21.50 MMC are amended as depicted in Exhibit B, attached hereto and incorporated by this reference as if set forth in full.

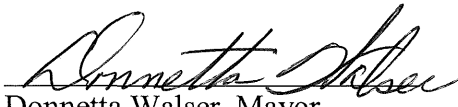
Section 4. Severability. If any section, sentence, clause or phrase of this ordinance or any section of the Monroe Municipal Code adopted or amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance or code section.

Section 5. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum and shall take effect April 30, 2009 after passage and publication of an approved summary thereof consisting of the title.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 17th day of March 2009.

1st Reading: 3/17/09
Published: 3/24/09
Effective: 4/30/09

CITY OF MONROE, WASHINGTON


Donnetta Walser, Mayor

ATTEST/AUTHENTICATED:


Eadye Martinson, Deputy City Clerk

APPROVED AS TO FORM:

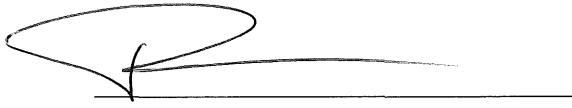

Phil Olbrechts, City Attorney

Exhibit A

Chapter 20.08 LAND CLEARING and FOREST PRACTICES

20.08.010 Applicability

This chapter regulates land clearing activities and forest practices within the city of Monroe. All forest practices and land clearing activities shall be subject to this chapter and require a forest practices or land clearing permit, unless exempted under MMC 20.08.050 or by state law.

- A. Land clearing permits relate to the removal of vegetation including maintenance, trimming and clearing from non-forested lands.
- B. Forest practices are regulated by this chapter in order to satisfy the city's responsibility to regulate forest practices as mandated by RCW 76.09.240."

20.08.020 Purpose.

This chapter regulates land clearing/ forest practices activities to:

- A. Promote the public health, safety and general welfare of the citizens of Monroe;
- B. Implement the policies of the State Environment Policy Act;
- C. Implement the policies of state Forest Practices Act pursuant to Chapter 76.09 RCW and Chapter 222-20 WAC;
- D. Implement the goals and policies of the city's comprehensive plan; and
- E. Comply with all municipal code requirements and public works standards including, but not limited to erosion control, stormwater, and critical areas protection.

20.08.030 Definitions

"Conversion" means a forest practice involving the removal of trees to convert forestland to permanent non-forestry urban uses that results in residential, commercial, or industrial activities.

"Commercial agriculture" means those activities conducted on lands defined in RCW 84.34.020(2), and activities involved in the production of crops or livestock for wholesale trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five 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.

"Development moratorium" means the denial by the city of Monroe of all applications for permits or approvals for a period of six-years as established in RCW 76.09, including but not limited to building permits, right-of-way permits, subdivisions, rezones, and variances on the subject property.

"Forest Practices" means activities conducted on or directly pertaining to forestlands, regulated in Chapter 222-16 WAC or Chapter 76.09 RCW, relating to growing, harvesting, or processing timber. This includes but is not limited: Road and trail construction; Harvesting, final and intermediate; Pre-commercial thinning; Reforestation; Fertilization; Prevention and suppression of diseases and insects; Salvage of trees; and Brush control.

"Ground cover" means small plants such as salal, ivy, ferns, mosses, grasses, or other types of vegetation which normally cover the ground and includes trees and shrubs less than six inches in diameter.

"Ground cover management" means the mowing or cutting of ground cover when such activities do not disturb the root structures of plants.

"Land clearing" means the act of removing or destroying trees, ground cover, and other vegetation by manual, mechanical, or chemical methods.

"Land development permit" means any land use or environmental permit or license including but not limited to preliminary or final plat for a single-family residential project, a building permit, site plan, or preliminary or final planned residential development plan.

"Person" means any person, individual, public, or private corporation, firm, association, joint venture, partnership, owner, lessee, tenant, or any other entity whatsoever or any combination of such, jointly or severally.

"Qualified professional forester" means an individual with academic and field experience in forestry or urban forestry, with a minimum of two years experience in tree evaluation. This may include Society of American Foresters (SAF) Certified Forester, Registered American Society of Consulting Arborists (ASCA) Consulting Arborist, Washington State Licensed Landscape Architect, or an International Society of Arborists (ISA) Certified Arborist.

"Removal" means the actual removal or causing the effective removal through damaging, poisoning, root destruction or other direct or indirect actions resulting in the death of vegetation.

"Routine vegetation management" means tree trimming or pruning and ground cover management undertaken by a person in connection with the normal maintenance and repair of property.

"Tree" means any perennial woody plant with one main stem or multiple stems that supports secondary branches, that has a distinct and elevated crown, that will commonly reach a height of fifteen feet or greater, and where the main stem or one stem of a multi-stemmed tree has a DBH (diameter at breast height) measurement of six inches or greater four and one-half feet above the ground.

"Tree cutting" means the actual removal of the above-ground plant material of a tree through manual or mechanical methods.

"Tree topping" means the severing of the main stem of the tree in order to reduce the overall height of the tree, provided that no more than 40 percent of the live crown is removed during any topping. If more than 40 percent of the top is removed, it is considered removal.

"Tree trimming" means the pruning or removal of limbs, provided that the main stem is not severed and no more than 40 percent of the live crown is removed. If more than 40 percent of the limbs or crown is removed, it is considered removal.

20.08.040 Administration.

The Community Development Director or designee is authorized and directed to enforce all of the provisions of this chapter, except as otherwise noted.

- A. The requirements of this chapter shall be met either concurrently or before the city of Monroe approves any land development permit.
- B. Notice and Approval.
 - 1. Forest practices and land clearing permits require administrative review, without public notice, in accordance with MMC 21.50.010, prior to the start of any work.
 - 2. Forest practices and land clearing permits are subject to environmental review in accordance with MMC 20.04.090 and WAC 197-11-800 when the proposed development meets or exceeds specified thresholds.
- C. Time Limits. Land clearing /forest practices permits shall be valid for two consecutive years, following the date of issuance, unless a different time limit has been established through an associated development permit, in which case the expiration shall be the same as that of the approved development permit. The applicant may submit a written request for an extension to the director of community development, at least thirty days prior to the expiration of the original application. The director may grant a one-time extension for up to 180 days.
- D. Appeals. Parties of record may appeal decisions in accordance with Chapter 21.60 MMC.

20.08.050 Exemptions.

This section exempts the following activities from the provisions of this chapter when located outside of critical areas as defined in Chapter 20.05 MMC:

- A. Emergency removal of ground cover or hazardous trees by any person, the public works department, parks department, fire department and/or public or private utility necessary to protect public safety or private or public property from imminent danger;
- B. Maintenance activities including routine vegetation management and essential tree removal for public and private utilities, road rights-of-way, easements, and parks;
- C. Forest practices on forestlands where a landowner has previously submitted a 10-year statement of non-conversion to the Department of Natural Resources, together with an acceptable 10-year forest management plan or proof that the land is currently enrolled in current use assessment-timber lands or a conversion option harvest plan (COHP), under Chapter 84.33 RCW, prior to the effective date of this ordinance; and
- D. Contiguous forested lands 20 acres or greater in size, where the forest landowner provides a written and signed statement of intent not to convert to a use other than growing commercial timber for 10 years. Non-conversion applications will continue to be processed by the Washington State Department of Natural Resources.
- E. Existing agricultural activities in conformance with soil conservation district guidelines.
- F. Permit thresholds
 - 1. Land clearing of less than a half an acre, over a six-year period, unless an associated land development permit has been issued; and
 - 2. Any forest practice resulting in the cutting and/or removal of less than 5,000 board feet of timber or less than a half an acre, whichever is greater, over a six-year period ; and

- G. Repair, structural modification of, addition to, or replacement of an existing non-conforming residential structure lawfully established prior to the effective date of this ordinance may be approved if the modification is consistent with Chapter 18.72 MMC.

20.08.060 Application requirements.

- A. A completed land clearing/forest practices application, as provided by the Community Development Department, that includes the name, address and telephone numbers of the applicant; and name and telephone number of the contact person, if any.
- B. A completed environmental checklist, as necessary.
- C. A written narrative that identifies and describes:
 - 1. Specific work to be accomplished;
 - 2. A time schedule for land clearing activities;
 - 3. Type of equipment to be used; and
 - 4. Measures proposed to protect the site and adjacent properties from potential adverse impacts.
- D. A title report as proof that the parcel is not currently subject to a six-year development moratorium. If the property is subject to a six-year development moratorium, the application will not be accepted, until the end of the moratorium or until the moratorium has been lifted.
- E. A site map, with topographic contours, drawn to a standard engineering scale that delineates:
 - 1. Property boundaries;
 - 2. Critical areas and buffers;
 - 3. Clearing limits with area(s) of land conversion and future development identified;
 - 4. Existing and proposed roads on and adjacent to the property; and
 - 5. Existing and proposed utility lines and easements.
- F. A written critical areas report, prepared by a qualified professional in accordance with MMC 20.05.060 that identifies and delineates critical areas, including but not limited to wetlands, streams, cultural resources, geologically hazardous areas, flood hazard areas, and fish and wildlife habitat conservation areas.
- G. An application fee in an amount set by resolution by the city council.

20.08.070 Performance standards.

- A. All land-modification activities shall conform to applicable regulations and standards as adopted by the city of Monroe.
- B. No land clearing, ground cover management, or tree cutting shall be conducted in a critical area or critical area buffer, except as allowed in Chapter 20.05 MMC.
- C. The applicant shall ensure that all land clearing/conversion activities:
 - 1. Will not create or contribute to landslides, accelerated soil creep, settlement and subsidence or hazards associated with strong ground motion and soil liquefaction;
 - 2. Will not create or significantly contribute to flooding, erosion, or increased turbidity, siltation or other form of pollution in a watercourse; and
 - 3. Will retain existing vegetation on the property to the maximum extent feasible.

20.08.080 Fee Reporting

To improve the administration of the forest excise tax created in Chapter 84.33 RCW, the city will report permit information to the Department of Revenue for all approved forest practices permits no later than 60 days after the date the permit was approved.

20.08.090 Violation – Penalties.

Compliance with the requirements of this code shall be mandatory. The general penalties and remedies established in Chapter 1.04 MMC for violations shall apply to any violation of this code. The enforcement actions authorized under this code shall be supplemental to the general penalties and remedies of Chapter 1.04 MMC.

20.08.100 Request for removal of development moratoria.

The hearing examiner may consider the removal of a six-year development moratorium established pursuant to Chapter 76.09 RCW when the applicant strictly meets the following requirements:

- A. Any property owner subject to a moratorium may request a release from the six-year moratorium by filing such request with the Community Development Department.
- B. Following such request, the Community Development Department shall set a date for an open record public hearing, per the noticing requirements of MMC 21.40.020, before the hearing examiner.
- C. The hearing examiner shall consider the removal of a development moratorium established pursuant to this chapter when the following criteria are strictly met:
 1. The proponent makes application for a land clearing/ forest practices permit;
 2. The proponent proposes corrective actions to bring the violation into compliance with this chapter and mitigate any existing damage through the submittal of a reforestation plan or mitigation plan, prepared by a qualified professional consistent with Chapter 20.05 MMC;
 3. The person requesting the release did not attempt to avoid the review or restrictions of a land clearing/ forest practices application.
- D. Hearing Examiner Authority.
 1. The hearing examiner shall review requests for removal of a development moratorium, any comments received, and applicable city regulations or policies, and may inspect the property before rendering a decision.
 2. The hearing examiner may approve the request to remove a development moratorium, approve the request with conditions, require modification of the proposal to strictly comply with specified requirements or local conditions, or deny the request if it fails to comply with requirements of this chapter.
- E. Required Written Findings and Determinations. The hearing examiner will address the following items as written findings and determinations before issuing a decision:
 1. The removal of the six-year development moratorium will not be detrimental to public health, safety, and general welfare.
 2. The removal of the six-year development moratorium will not be injurious to the property or improvements adjacent to the proposal.

3. The removal of the six-year development moratorium will not result in significant adverse environmental impacts.
4. The removal of the six-year development moratorium is consistent and compatible with the goals, objectives, and policies of the Comprehensive Plan and the provisions of this chapter and other applicable municipal codes.

20.08.110 Request for single-family dwelling exception on lots subject to development moratoria.

The Community Development Director may administratively grant an exception to the mandatory six-year development moratorium with public notice, per the noticing requirements of MMC 21.40.010, to allow the construction of one single-family dwelling unit and associated accessory structures, when the following requirements are met.

A. General Requirements

1. The area that is permitted to be developed shall not exceed the minimum lot size for the underlying zoning district, in addition to the minimum area necessary to provide safe vehicular access;
2. The construction of the single-family dwelling, permitted accessory structures, landscaped area, and access road are in compliance with all applicable city regulations;
3. Corrective actions are proposed to mitigate damage caused by the non-permitted action, through the submittal of a reforestation or mitigation plan prepared by a qualified professional;
4. Upon approval of a single-family dwelling unit exception, the landowner will record the approved site plan with Snohomish County Auditor depicting the area of the parcel to be dedicated for the single-family dwelling, yard area, permitted accessory structures, and access road; and
5. The development moratorium shall remain in effect for all other non-forestry uses of the site.

- B. Required Written Findings and Determinations.** The Community Development Director will address the items listed in MMC 20.08.110(E) as written findings and determinations before issuing a decision.

Exhibit B

21.20.050 Hearing examiner

The hearing examiner shall have the authority and responsibility to review and act on the following subjects:

L. To hear and decide all request for the removal of a six-year development moratorium, per MMC 20.08.100

(NOTE: RE-NUMBER EXISTING L TO M)

21.50.010 Administrative approvals without notice.

A. The director of community development may approve, approve with conditions, or deny the following without notice:

Land clearing/ Forest practices permits, per MMC 20.08.040.

(NOTE: ADD NUMBERING FOR ITEM IN ALPHABETICAL ORDER)

21.50.020 Administrative approvals subject to notice.

A. The director of community development may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice and appeal requirements of this section:

Single-family dwelling exception to development moratoria, per MMC 20.08.110.

(NOTE: ADD NUMBERING FOR ITEM IN ALPHABETICAL ORDER)

21.50.120 Development review and appeal matrix.

	Application Type	Decision Body	Decision/Action	Final Decision Body	Appeal Body4	Subsequent Appeal Body5
Administrative Approvals Without Notice	Adjustments to Yard Requirements	Director of Community Development	Final		Hearing Examiner	City Council
	Administrative Interpretations	Director of Community Development	Final		Hearing Examiner	City Council
	Boundary Line Adjustments	Director of Community Development	Final		Hearing Examiner	City Council
	Land clearing/ Forest practices	Director of Community Development	Final		Hearing Examiner	City Council
	Minor Amendments	Director of Community Development	Final		Hearing Examiner	City Council
	Minor Construction Permits	Director of Community Development	Final		Hearing Examiner	City Council
Administrative Approvals Subject to Notice	Accessory Dwelling Units	Director of Community Development	Final		Hearing Examiner	City Council
	Major Construction Permits	Director of Community Development	Final		Hearing Examiner	City Council

	Short Subdivisions ¹	Director of Community Development	Final		Hearing Examiner	City Council
	Single-family dwelling exception to development moratoria	Director of Community Development	Final		Hearing Examiner	City Council
	Threshold Determination/EIS Adequacy (SEPA) ²	Director of Community Development	Final		Hearing Examiner	Superior Court
Land Use (Quasi-judicial) Approvals Subject to Public Hearing	Administrative Approvals When a Conflict of Interest Exists	Hearing Examiner	Final		City Council	Superior Court
	Binding Site Plan/Contract Rezone	Planning Commission	Recommendation	City Council	Superior Court	
	Conditional Use	Hearing Examiner	Final		City Council	Superior Court
	Planned Residential Development ¹	Hearing Examiner	Recommendation	City Council	Superior Court	
	Reasonable Use Exception	Hearing Examiner	Final		City Council	Superior Court
	Removal of a six-year development moratorium	Hearing Examiner	Final		City Council	Superior Court
	Shoreline Conditional Use ³	Hearing Examiner	Recommendation	City Council	Shoreline Hearings Board	Superior Court
	Shoreline Substantial Development	Hearing Examiner	Final		City Council	Shoreline Hearings Board
	Shoreline Variance ³	Hearing Examiner	Recommendation	City Council	Shoreline Hearings Board	Superior Court
	Special Use	Hearing Examiner	Recommendation	City Council	Superior Court	
	Subdivision ¹	Hearing Examiner	Recommendation	City Council	Superior Court	
	Temporary Tent Encampments	Hearing Examiner	Final		Superior Court	

	Variance	Hearing Examiner	Final		City Council	Superior Court
	Variance from Flood Hazard Regulations	Hearing Examiner	Final		City Council	Superior Court
Legislative Actions Subject to Public Hearing	Comprehensive Plan Amendments	Planning Commission	Recommendation	City Council	Growth Hearing Board	
	Code Amendments	Planning Commission	Recommendation	City Council	Growth Hearing Board	
	Rezone Applications	Planning Commission	Recommendation	City Council	Superior Court	

1. Short subdivisions, planned residential developments, and subdivisions receive approval in two phases: a preliminary approval with conditions and final approval when preliminary conditions have been completed.

2. Appeals based on the substantive authority of SEPA for conditions imposed outside the threshold determination process are appealable to the city council, as required by RCW 43.21C.060. Otherwise, appeals of SEPA threshold determinations and EIS adequacy are considered procedural determinations and therefore appealable to the hearing examiner per WAC 197-11-680(3)(iv)

3. Shoreline conditional use permits and variances require final approval by the Department of Ecology per Chapter 19.01 MMC.

4. Administrative appeals for hearing examiner decisions are as described for actions of MMC Title 15 and 17 through 21. All appeals of hearing examiner decisions will be heard by the city council per Chapter 21.60 MMC, unless otherwise noted in the Monroe Municipal Code. Public hearings, including land use decision and pre-decision hearings and administrative appeal hearings, held before the hearing examiner are considered open record hearings. All appeal hearings held before the city council are considered closed record appeals, per MMC 21.50.070. Alternate processes may apply for actions found in other sections of the Monroe Municipal Code.

5. When all administrative avenues are exhausted, any subsequent appeals of final decisions by the hearing examiner or city council will go directly to superior court for judicial review per MMC 21.60.030.