

## Chapter 18.12

### SHORELINE MASTER PROGRAM

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#### **18.12.005 Adoption.**

The city of Milton shoreline master program, adopted by Section 2 of Ordinance No. 1803, is adopted by reference as though set forth herein in full. (Ord. 1803 § 3, 2012; Ord. 1290 § 3, 1996).

#### **18.12.010 Purpose.**

There is hereby established an administrative system designed to assign responsibilities for implementation of the master program and shoreline permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by this master program are treated in a fair and equitable manner. "Master program" as used in this chapter refers to the shoreline master program adopted at MMC 18.12.005. "Act" as used herein refers to the Shoreline Management Act, Chapter 90.58 RCW. The administrative provisions of this chapter are intended to integrate the requirements of Chapter 173-27 WAC, as now or hereafter amended. Chapter 173-27 WAC, as now or hereafter amended, shall supersede any conflicting provisions in this chapter. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

#### **18.12.020 Program administrator.**

A. The land use administrator or designee, hereinafter known as the administrator, is vested with:

1. Overall administrative responsibility of this master program;
2. Authority to approve, approve with conditions or deny shoreline substantial development permits and permit revisions in accordance with the policies and provisions of this master program;
3. Authority to grant letters of exemption from shoreline substantial development permit.

B. The duties and responsibilities of the administrator shall include:

1. Establishing the procedures and preparing forms deemed essential for the administration of this program;
2. Making administrative decisions and interpretations of the policies and regulations of this program and the Shoreline Management Act;
3. Collecting applicable fees;
4. Determining that all applicable applications and necessary information and materials are provided;
5. Making site inspections;
6. Determining if a shoreline substantial development permit is required;
7. Conducting a thorough review and analysis of shoreline substantial development applications, and approving, approving with conditions, or denying such permit applications;
8. Submitting reports and/or testimony to the hearing examiner in response to an application submission, a variance or conditional use permit for their consideration and official action;
9. Assuring that proper notice is given to appropriate persons and the public for all procedures before the administrator;
10. Posting the notice of permit applications in a conspicuous manner on the project site, pursuant to MMC Title 17;
11. Proposing amendments to this program as deemed necessary to more effectively and equitably achieve its goals and policies;
12. Coordination of information as appropriate with affected agencies;
13. Representing the city's position in proceedings before the hearing examiner. (Ord. 1803 § 3, 2012; Ord. 1663 § 32, 2006; Ord. 1484 § 9, 2001; Ord. 1290 § 4, 1996).

**18.12.030 Hearing examiner.**

A. The hearing examiner, hereinafter known as the examiner, is vested with authority to:

1. Approve, approve with conditions, or deny shoreline variance and shoreline conditional use permits; provided, that any decisions on this matter made by the examiner may be further appealed to the State Shoreline Hearings Board as provided for in the Act;
2. Decide local administrative appeals of decisions of the administrator.

B. The duties and responsibilities of the examiner shall include:

1. As authorized in MMC Title 17, the examiner shall review and consider shoreline variance and shoreline conditional use permits, and administrative appeals of the administrator's actions;
2. Approval, approval with conditions, or denial of shoreline variance and conditional use permits;
3. Conducting hearings on appeals of the administrator's decisions, including appeals of decisions on shoreline substantial development permits;
4. Basing all decisions on shoreline permits or administrative appeals on the criteria established in this master program;

5. At the discretion of the examiner, requiring any applicant granted a shoreline permit to post a bond or other acceptable security with the city conditioned to assure that the applicant and/or his successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 150 percent of the estimated development cost including attached conditions. Such bonds or securities shall be approved as to form by the city attorney. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.040 City council.**

The city council shall have the authority in its discretion to approve any revisions or amendments to the master program in accordance with the requirements of the Act and related WACs. Proposed revisions or amendments may be submitted by any interested party. To become effective any amendments to the program must be reviewed and approved by the Department of Ecology, pursuant to RCW 90.58.190 and Chapter 173-26 WAC. The city council will approve any revisions or amendments to the master program in accordance with the requirements of the Act and related WACs. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.060 Applicability to shoreline substantial development permit.**

Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the administrator for a shoreline substantial development permit (SSDP) or a letter of exemption.

Whenever a development falls within the exemption criteria outlined below and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 permit, the administrator shall prepare a letter of exemption and transmit a copy to the applicant and the Washington State Department of Ecology. Exempt development as defined herein shall not require a substantial development permit, but may require a conditional use permit, variance, and/or a letter of exemption (WAC 173-27-050).

Before determining that a proposal is exempt, the administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the master program and the Shoreline Management Act. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.070 Exemptions.**

Exemptions to the shoreline master program are found in Chapter 7 of the shoreline master program. Said exemptions are an exemption from the requirements for a shoreline substantial development permit, but may still require letter of exemption as discussed in MMC 18.12.080. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.080 Letter of exemption.**

Applicants for all nonshoreline permits or approvals within the shoreline area may be required (pursuant to WAC 173-27-050) to obtain a written "letter of exemption." Said exemption is an exemption from the requirement for a shoreline substantial development permit, and not from the policies and regulations of the master program. This process verifies that the action is exempt and offers the applicant an itemization of master program policies and regulations along with other requirements applicable to the proposed project. In the case of development subject to the policies and regulations of this master program but exempt from the shoreline substantial development permit process, the city may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and the master program. For example, the approval of a building permit for a single-family residence can be conditioned with provisions from the master program. Other permit approvals may be conditioned on the basis of the master program policy and use regulations as well. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.090 Fees.**

A filing fee or fees in an amount established at MMC 3.48.010 shall be paid to the city at the time of application. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.100 Permit application.**

The administrator shall provide the necessary application forms for shoreline substantial development, conditional use and variance permits. Pursuant to WAC 173-27-180, the applicant shall provide, at a minimum, the following information:

- A. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
- B. The name, address and phone number of the applicant's representative if other than the applicant. The name, address and phone number of the property owner, if other than the applicant.
- C. Location of the Property. This shall, at a minimum, include the property address, parcel number, and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
- D. Identification of the name of the shoreline (water body) that the site of the proposal is associated with.
- E. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
- F. A general description of the property as it now exists including its current use, physical characteristics, improvements and structures.
- G. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
- H. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:
  - 1. The boundary of the parcel(s) of land upon which the development is proposed.
  - 2. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location; provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.
  - 3. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
  - 4. A delineation of all wetland areas that will be altered or used as a part of the development.
  - 5. A general indication of the character of vegetation found on the site.
  - 6. The dimensions and locations of all existing and proposed structures and improvements including but not limited to buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
  - 7. Where applicable, a landscaping plan for the project.

8. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.
9. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
10. Quantity, composition and destination of any excavated or dredged material.
11. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
12. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
13. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.110 Permit process.**

A. Notices and Scheduling of Hearings. When a complete application and associated information have been received by the administrator, the administrator shall cause a notice to be posted in a conspicuous manner on the property upon which the project is to be constructed in accordance with Chapter 17.71 MMC. The administrator shall also be responsible for delivering legal notice to the public within the area in which the development is proposed. Advertising costs will be the responsibility of the applicant, and will be included in the permit fee. Further, the burden of proving that a proposed development is consistent with the approval criteria and master program policies and regulations shall be the applicant's.

The applicant shall be responsible for applying for a variance or conditional use permit. The examiner shall schedule a public hearing in the case of a conditional use or variance permit. No public hearing is required for shoreline substantial development permits. Any interested person may submit his/her written views upon the application to the city within 30 days of notice of application or notify the city of his/her desire to receive a copy of the action taken upon the application. All persons who so submit their views shall be notified in a timely manner of the action taken upon the application.

B. Application Review – Administrator Action. The administrator shall make recommendation in the case of variance and conditional use permits and decisions in the case of substantial development permits, based upon whether or not the proposed development and/or use is consistent with the laws, policies and procedures of the Act, related WACs as amended, and this master program as amended. Pursuant to RCW 47.01.485, the permit review time for projects on a state highway shall be ninety days.

C. Public Hearings. One public hearing shall be held by the examiner regarding application for shoreline conditional use permits and shoreline variances.

The examiner or administrator shall review an application for a permit based upon the application, applicable SEPA documents (if required), evidence presented at the public hearing, written or oral comments from interested persons, and the findings, conclusions and recommendations of the administrator. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.120 Action by the hearing examiner.**

The examiner shall either approve, conditionally approve, or deny the application. Scheduling of the required hearing shall be in accordance with the timing considerations identified in MMC Title 17.

The examiner shall review the application and make decisions regarding permits based upon whether the proposed development and/or use is consistent with the master program, policies and procedures of Chapter

90.58 RCW, the Shoreline Management Act and its supporting WACs, written and oral comments from interested persons, and the comments and findings of the administrator.

A written notice of the public hearing at which the examiner considers the application shall be mailed or delivered to the applicant and all interested parties of record a minimum of 15 days prior to hearing.

The decision of the examiner shall be the final decision of the city on all applications and the city shall render a written decision including findings, conclusions, and a final order, and transmit copies of the decision within five days of the examiner's final decision to the applicant, State Department of Ecology, Attorney General, and interested parties of record. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.130 Commencement of construction.**

Development pursuant to a shoreline substantial development permit shall not begin and is not authorized until 21 days from the date the administrator files the approved permit with the Department of Ecology and the Attorney General or the conclusion of all review and appeal proceedings, whichever is later, unless otherwise authorized by RCW 90.58.140 as now or hereafter amended. Development pursuant to a shoreline variance or shoreline conditional use permit shall not commence and is not authorized until 21 days from the date the final decision is transmitted to the city or the conclusion of all review and appeal proceedings, whichever is later, unless otherwise authorized by RCW 98.58.140, as now or hereafter amended. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.140 Duration of permits.**

The city may issue permits with termination dates of up to five years. If a permit does not specify a termination date, the following requirements apply, consistent with WAC 173-27-090:

A. Time Limit for Substantial Progress. Construction, or substantial progress toward completion, must begin within two years after approval of the permits.

B. Extension for Substantial Progress. The city may at its discretion, with prior notice to parties of record and the Department, extend the two-year time period for the substantial progress for a reasonable time up to one year based on factors including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

C. Five-Year Permit Authorization. If construction has not been completed within five years of approval, the city will review the permit and, upon showing of good cause, will either extend the permit for one year or terminate the permit. Only one single-year extension is permitted. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.150 Revision of permits.**

When an applicant desires to revise a permit, the applicant must submit detailed plans and text describing the proposed changes. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the original permit approval. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of Chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision. If the city determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the master program and the Shoreline Management Act, the city may approve a revision. "Within scope and intent of the original permit" means all of the following:

A. No additional over-water construction is involved, except that pier, dock or float construction may be increased by 500 square feet or 10 percent, whichever is less;

B. Ground area coverage and height is not increased more than 10 percent;

C. Additional structures do not exceed a total of 250 square feet;

D. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of this master program;

E. Additional landscaping is consistent with conditions (if any) attached to the original permit;

F. The use authorized pursuant to the original permit is not changed; and

G. No substantial adverse environmental impact will be caused by the project revision.

If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new shoreline permit must be submitted. If the revision involves a conditional use or variance which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by the Department of Ecology (see WAC 173-27-100).

A city or department decision on revision to the permit may be appealed to the Shorelines Hearings Board within 21 days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100.

Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's own risk until the expiration of the appeals deadline. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.160 Local appeals.**

Any decision made by the administrator on a substantial development permit, master program policy or regulation interpretation, permit revision, or other action within the purview and responsibility of the administrator may be appealed to the examiner under the procedures prescribed in Chapter 17.71 MMC. The examiner, using the applicable decision making criteria established in the master program, shall affirm, modify, or reverse the decision subject to appeal. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.170 Appeal to State Shorelines Hearings Board.**

Any person aggrieved by the granting, denying, rescission or modification of a shoreline permit may seek review from the State Shorelines Hearings Board within 21 days of receipt of the final decision by the final decision maker of the city. Said request shall be in the form required by the rules for practice and procedure before the Shorelines Hearings Board, and the person seeking review shall file a copy of the request for review with the State Department of Ecology and the Attorney General. Shorelines Hearings Board regulations are contained in WAC Title 461. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.180 Shoreline variances and conditional use permits.**

Provisions for shoreline conditional use permits and variances are found in Chapter 7 of the shoreline master program. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.190 Unclassified uses.**

Other uses, categorized as "unclassified uses," which are not classified in Table 3 of the master program, may be authorized as conditional uses; provided the applicant can demonstrate, in addition to the criteria set forth above, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.195 Department of Ecology review.**

After the examiner's approval of a conditional use or variance permit, the administrator shall submit the permit to the Department of Ecology [by return receipt requested mail](#) for its approval, approval with conditions, or denial. Upon receipt of Ecology's decision, the administrator shall notify those interested persons having requested notification of such decision. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.210 Enforcement and penalties.**

The choice of enforcement action and the severity of any penalty will be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject

to the enforcement action, the benefits that accrue to the violator, and the cost of obtaining compliance may also be considered.

A. Civil Penalty.

1. Action. The city attorney, as authorized by the mayor with council approval, shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with the provisions of the Act and this master program and to otherwise enforce the provisions of the Act and the master program.

2. Noncompliance. Any person who fails to conform to the terms of a permit issued under the master program or who undertakes a development or use on the shorelines of the state without first obtaining any permit under the master program or who fails to comply with a cease and desist order issued under regulations shall also be subject to a civil penalty not to exceed \$1,000 for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

3. Aiding and Abetting. Any person who, through an act of commission or omission procedures, aids, or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

4. Notice of Penalty. The penalty provided for in 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 include the "content of order" specified in subsection (A)(6) of this section, "Cease and Desist Order."

5. Remission and Order. Within 30 days after the notice is received, the person incurring the penalty may apply in writing 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. Any penalty imposed pursuant to this section solely by the city shall be subject to review by the city council pursuant to RCW 90.58.210(4). In accordance with RCW 90.58.050 and 90.58.210(4), any penalty jointly imposed by the city and the Department of Ecology shall be appealed to the Shorelines Hearings Board. When a penalty is imposed jointly by the city and the Department of Ecology, it may be remitted or mitigated only upon such terms as both the city and the Department agree.

6. Cease and Desist Order. Content of order shall set forth and contain:

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

b. 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 under this section may be issued with the order and same shall specify a date certain or schedule by which payment will be complete.

7. Effective Date. The cease and desist order issued under this subsection shall become effective immediately upon receipt by the person to whom the order is directed.

8. Compliance. 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.

B. Delinquent Permit Penalty. Permittees applying for a permit after commencement of a use or activity may at the discretion of the city be required, in addition, to pay a delinquent permit penalty not to exceed three times the appropriate permit fee paid by the permittee. A person who has caused, aided, or abetted a violation within two years after the issuance of a regulatory order, notice of violation, or penalty by the city or the Department against

said person may be subject to a delinquent permit penalty not to exceed 10 times the appropriate permit fee paid by the permittee. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.

C. Property Lien. Any person who fails to pay the prescribed penalty as authorized in this section shall be subject to a lien upon the affected property until such time as the penalty is paid in full. The city attorney shall, upon authorization by the mayor and city council, file said lien against the affected property at the office of the county assessor.

D. Mandatory Civil Penalties. Issuance of civil penalties is mandatory in the following instances:

1. The violator has ignored the issuance of an order or notice of violation.
2. The violation causes or contributes to significant environmental damage to shorelines of the state as determined by the city.
3. A person causes, aids, or abets in a violation within two years after issuance of a similar regulatory order, notice of violation, or penalty by the city against said person.

E. Minimum Penalty Levels.

1. Regarding all violations that are mandatory penalties, the minimum penalty is \$250.00.
2. For all other penalties, the minimum penalty is \$100.00.

F. General Criminal Penalty. In addition to incurring civil liability under the civil penalty section, any person found to have willfully engaged in activities on the shorelines of the state in violation of the provisions of the Act or master program shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$100.00 nor more than \$1,000 or by imprisonment in the county jail for not more than 90 days for each separate offense, or by both such fine and imprisonment; provided, that the fine for each separate offense for the third and all subsequent violations in any five-year period shall be not less than \$500.00 nor more than \$10,000.

G. Violator Liabilities – Damages, Attorney’s Fees/Costs. Any person subject to the regulatory program of the Act or the master program who violates any provision thereof or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected areas to their condition prior to violation. The city attorney shall, as authorized by the mayor and city council, bring suit for damages under this section on behalf of the city. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring any areas affected by a violation, the court shall make provisions to assure that restoration will be accomplished within reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney’s fees and costs of the suit to the prevailing party. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.220 Development and building permits.**

No building permit, or other development permit, shall be issued for any parcel of land developed or divided in violation of the master program. All purchasers or transferees of property shall comply with provisions of the Act and the master program. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.230 Master program review.**

The master program shall be periodically reviewed and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations. This review process shall be consistent with Chapter 173-26 WAC requirements and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).

**18.12.240 Amendments to master program.**

Any of the provisions of the master program may be amended as provided for in RCW 90.58.120 and 90.58.200 and Chapter 173-26 WAC. Amendments or revisions to the master program, as provided by law, do not become effective until approved by the Washington State Department of Ecology.

Proposals for shoreline environment redesignations (i.e., amendments to the shoreline maps and descriptions) must demonstrate consistency with the criteria set forth in shoreline environment designation criteria. (Ord. 1803 § 3, 2012; Ord. 1290 § 4, 1996).