

ORDINANCE NO. 37-22

ROLL CALL

VOTING	YES	NO	ABSENT	ABSTAIN
MIKE MENDENHALL <i>Mayor (votes only in case of tie)</i>				
CHAD ARGYLE <i>Councilmember</i>	X			
STACY BECK <i>Councilmember</i>	X			
BRANDON B. GORDON <i>Councilmember</i>	X			
SHANE MARSHALL <i>Councilmember</i>			X	
KEVIN OYLER <i>Councilmember</i>	X			

I MOVE this ordinance be adopted: Councilmember Argyle

I SECOND the foregoing motion: Councilmember Beck

ORDINANCE No. 37-22

ORDINANCE AMENDING TITLE 15 OF THE SPANISH FORK MUNICIPAL CODE
PERTAINING TO DEVELOPMENT APPLICATIONS, ANNEXATIONS,
ENVIRONMENTAL REVIEWS AND MASTER PLANNED DEVELOPMENTS.

WHEREAS Spanish Fork City recognizes the importance of effectively
regulating land uses as well as processing development applications;

WHEREAS a public hearing was held before the Planning Commission on November 2 2022, after which the Planning Commission made a recommendation on the proposed ordinance to the City Council;

WHEREAS the City Council considered the Planning Commission's recommendation and held a public hearing on November 15, 2022; and

WHEREAS the City Council finds that the proposed ordinance will further the public health, safety, and general welfare of Spanish Fork residents by creating clear and concise language regarding development applications, annexations, environmental reviews and Master Planned Developments;

NOW, THEREFORE, be it ordained by the Spanish Fork City Council as follows:

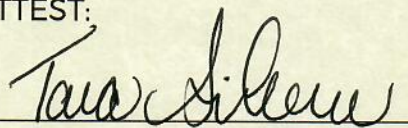
Section 1. Amendment of Municipal Code. The Spanish Fork Municipal Code is hereby amended as shown in Exhibit "A", attached hereto and incorporated herein, to amend Title 15.

Section 2. Effective Date. This ordinance shall be effective twenty days after passage and publication.

DATED: November 15, 2022.


MIKE MENDENHALL, Mayor

ATTEST:


Tara Silver, City Recorder



AMENDMENT OF THE MUNICIPAL CODE

15.1.04.020 Definitions

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"Adjoining Properties": as defined by ASTM 1527-21 or current; specifically, any real property or properties the border of which is contiguous or partially contiguous with that of the subject property, or that would be contiguous or partially contiguous with that of the subject property but for a street, road, or other public thoroughfare separating them.

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"Constituents of Concern": Specific chemicals that are identified for evaluation in the site assessment process.

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"Environmental Professional": A person who meets the criteria and qualifications as set forth pursuant to 40 CFR 312.00, and as reprinted in Appendix X2 of the ASTM Standard E1527-21. Also, a person who meets the criteria and qualifications for conducting environmental work beyond the Phase I Environmental Site Assessments as set forth by DEQ and the United States Environmental Protection Agency.

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"Hazardous Waste or Hazardous Substance": a constituent of concern, chemical, waste or contaminant in any form such as gas, vapor, liquid, fluid, solid, water or soil which is regulated or listed by the Utah County Health Department, the DEQ, or the United States Environmental Protection Agency. A hazardous waste includes petroleum, petroleum by-products and other chemicals and biological hazards by definition.

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~~**"Master Planned Development (MPD or Planned Unit Development)"**: A residential development which typically contains common design elements, some variation in dwelling types, and common open space or parks.~~

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"Phase I Environmental Site Assessment or Phase I ESA": a Phase I Environmental Site Assessment is a comprehensive non-invasive inquiry of on-site and off-site environmental factors and land use encumbrances which may impact a target property or which has impacted a target property. A Phase I Environmental Site Assessment is

an inquiry which seeks to identify recognized environmental conditions according to ASTM E1527-21. A Phase I Environmental Site Assessment is further defined by ASTM E1527-21 or current, up-to-date ASTM International Standards. A Phase I Environmental Site Assessment is an inquiry which also meets the standards of the federal All Appropriate Inquiry (AAI) standards, pursuant to the Final Rule at 40 CFR Part 312. A Phase I successfully provides for the defense of innocent landowners, contiguous property owners and Bona Fide Prospective Purchasers (BFPP) against the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

"Phase II Environmental Site Assessment or Investigation": an invasive study or inquiry of the target property and/or surrounding properties which is conducted after the Phase I Environmental Site Assessment has been completed or when environmental issues are suspected. A Phase II Investigation usually includes but is not limited to the collection and analysis of vapor, soil, water and solids samples. Sampling may include but is not limited to vapors, subsurface soil, groundwater, surface waters and impoundments, landfills, above ground materials and soils, and hazardous wastes. A Phase II may include studies necessary to further characterize issues at a property including but not limited to wetlands, potential archaeological and historical sites, endangered species or hazardous materials inventory.

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"Remediation or Mitigation": cleanup or other methods used to remove or contain a toxic spill or hazardous materials from a property or site. Any actions taken to clean up or mitigate a property after contaminants or hazardous wastes have been identified on the property.

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"Responsible Party": a person or business that is responsible for a hazardous site; whenever possible, EPA requires Responsible Parties, through administrative and legal actions, to clean up the sites they have contaminated. The party, parties, entities and/or individuals who are responsible for the environmental issues associated with the land to be developed.

15.3.08.030 Annexations

- A. **Application**: A party seeking Annexation to the City shall submit an Annexation ~~petition application~~. **Petition Application** is made by following the instructions on the electronic form provided by the Community Development Department, which meets the criteria established by state law. **The City may**

require applications to be signed and notarized by each property owner within the annexation, a plat of the annexation, a legal description of the annexation, and a copy of the annexation application filed with the Utah County Clerk/Auditor's Office. The application petition will be placed on the Council agenda for rejection or acceptance for further review, the City Recorder shall publish the notices, and provide the written notices as required by state law and follow the requirements of state law. During the publication period, the application petition will be forwarded to the Community Development Director for presentation to the DRC and Commission, for their recommendations. An application petition for Annexation expires if it is not approved by the City within 36 months from the time its application is submitted and accepted.

The City may also initiate an Annexation as outlined in Utah Code Ann. §10-2-418 where islands or peninsulas exist within its boundaries.

- B. **Development Review Committee:** The DRC shall address the following items in its review of the Annexation petition application:
1. Whether the proposed property is within the Growth Management Boundary of the General Plan.
 2. Present and proposed land use and zoning.
 3. Present and potential demand for various municipal services.
 4. Distances from existing utility lines, public schools, parks, and shopping areas.
 5. Specific time tables for extension of services to the area and how these services would be financed.
 6. Potential impact on existing and proposed streets.
 7. The effect that the Annexation will have upon City boundaries and whether the Annexation will create potential for islands, or difficult service areas.
 8. An estimate of potential revenue versus potential service costs.
 9. Requirements imposed by State law.
- C. **Planning Commission Review:** The Commission shall consider the DRC recommendation, together with testimony from the petitioner and other interested parties, and make a recommendation on the Annexation and zoning districts to the Council.
- D. **City Council Review:** If no protest is filed, a public hearing shall be scheduled before the Council to act upon the petition application. If a protest is filed, the

Council shall schedule a public hearing to act upon the ~~petition application~~ after the Boundary Commission has rendered its decision. The petitioners shall be responsible for the costs of any feasibility studies, which payment shall be made in advance of the study. The Council may schedule the matter at any time to deny the ~~petition application~~.

- E. **Granting of ~~Petition Application~~:** If an Annexation ~~petition application~~ is granted, an ordinance accepting the Annexation and designating the zoning shall be prepared for the territory shown on the plat map. A certified copy of the Annexation Ordinance and the Plat shall be filed in the office of the County Recorder.
- F. **Address Change:** The address of annexed properties shall be changed to a Spanish Fork address within one month from the date the annexation becomes final. The Engineering Division shall file the appropriate documents to formally change the address and street coordinates. Property owners shall change the address marker on the property and mailbox. **An exception may be allowed in the interest of public safety with the consent of both the Police Chief and Fire & EMS Director.**

15.3.20.060 Development Enhancement Overlay

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- D. Application: In order to have the Development Enhancement Overlay Zone approved, a developer must submit an application, on **a the electronic** form provided by the City, spelling out the requirements which cannot be met in the particular zone, why the requirements cannot be met, why the developer believes the requirements do not need to be met in this specific instance, how the deficiency will not adversely impact neighboring properties, and proposing conditions which will provide a solution.

15.3.24.30 Master Planned Development (~~PUD~~)

- A. Purpose: The purpose of the Master Planned Development concept is to:
 - 1. Allow for **efficient** designs that provide ~~for more efficient utilization of public infrastructure than what is achieved in a standard subdivision needed public infrastructure~~.
 - 2. Allow for deviations from typical zoning standards in order to permit uniquely configured or situated properties to be developed in a functional manner that enhances the City.

3. Allow developments to include a total number of units up to the maximum density found in the underlying zone as identified in Table 1 - Residential Development Standards of Title 15.
4. Establish residential neighborhoods with a distinct character and convey a sense of unity.
5. Allow for the development of neighborhoods with multi-family homes and a mixture of housing types.

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- F. Application. Applications to establish a Master Planned Development shall be processed as a subdivision if any new lots are to be created. If no new lots are proposed, such as for an apartment project, an application will be processed according to the Site Plan procedures. All applications must include the following information in addition to normal filing requirements for a subdivision or Site Plan project:
1. Complete description of the intended nature and character of the development.
 2. Description of all proposed private or public open space areas, including improvements, ownership, and maintenance provisions.
 3. Proposed project phasing.
 4. Plans representing proposed landscaping, fences, walls, entry treatments, signage and lighting.
 5. Preliminary conditions, covenants, and restrictions (CC&R's).
 6. Any variations from the non-Master Planned Development standards.
 7. Any proposed amended development standards, including such things as variations in setbacks, heights, and lot sizes.
 - ~~8. Proposed street cross sections, and proposed ownership and maintenance provisions, if the streets are proposed to be private.~~
 9. A data table which includes total acreage, acreage of sensitive lands, total number of homes and units by type, dwelling units per acre, acreage of open space, percent of acreage in open space.
- G. Phases. All residential subdivisions shall include a phasing plan that specifies the timing of public improvements and residential construction. This plan must be submitted at the submission of the Preliminary Plat. If the sequence of construction of various portions of the development is to occur in stages, then the **bonus density** amenities shall be developed, or committed thereto, in proportion to the number of homes intended to be developed during any given stage of construction.

~~H. Findings. Prior to granting approval of a Master Planned Development, the applicable reviewing body shall make findings identifying why the applicant's proposal justifies approval. Those findings should include the following:~~

- ~~1. The proposed development will provide a more pleasant and attractive living environment than a conventional residential development established under the strict application of the provisions of the underlying zone.~~
- ~~2. The proposed development will not be materially detrimental to the health, safety, or general welfare of persons residing or working within the neighborhood.~~
- ~~3. Any variation allowed from the development standards of the underlying district will not create increased hazards to the health, safety, or general welfare of the residents of the development of adjacent areas.~~

H. Approval. Applicants are not entitled by right to have a project approved as a Master Planned Development. The City Council has sole discretion to approve a Master Planned Development or not. Prior to granting approval of a Master Planned Development, the City Council shall make findings identifying why the applicant's proposal justifies approval. Those findings should include the following:

1. The proposed development will provide a more pleasant and attractive living environment than a conventional residential development established under the application of the provisions of the underlying zone.
2. The proposed development will not be materially detrimental to the health, safety, or general welfare of persons residing or working within the neighborhood.
3. Any variation allowed from the development standards of the underlying district will not create increased hazards to the health, safety, or general welfare of the residents of the development of adjacent areas.

15.4.04.060 Filing of Preliminary Plats

- A. Prior to filing a Preliminary Plat, the developer may submit an application for Concept Review with the Community Development Department. To apply for a

Preliminary Plat approval, applicants must follow instructions on the electronic form provided by the Community Development Department and submit all required materials. Plans submitted for Preliminary Plat approval shall be provided in this format:

1. A pdf and computer aided design (CAD) file of the plat in a dwg or dxf format. The CAD file of the subdivision must be in the 1927 North American Datum (NAD27) or 1983 North American Datum (NAD83) State Plane.

~~2. All fees for the Preliminary Plat are due upon filing the application.~~

B. The City will review the submission and notify the developer of any changes that must be made. The developer shall have a written response to all redlines corrected. Once these changes are made, a Portable Document Format (PDF) file of the plat must be submitted to the Community Development Department. ~~Ten bound subdivision packets must also be submitted for master planned developments.~~

15.4.24 Environmental Protection

15.4.24.010 Inspections and Enforcement

15.4.24.020 Phase I Environmental Site Assessments

15.4.24.030 National Environmental Policy Act (NEPA)

15.4.24.040 Phase I ESA Oversight

15.4.24.050 Phase II Environmental Site Investigation

15.4.24.060 Constituents of Concern

15.4.24.070 Phase II ESI Oversight

15.4.24.080 Contaminant Release Reporting

15.4.24.090 Remediation and Mitigation

15.4.24.100 Remediation and Mitigation Oversight

15.4.24.110 Fees, Costs, Financial Assurance, Responsible Party

The purpose of Title 15 Part 4 of the Spanish Fork City Municipal Code is to protect life, human health and the environment of Spanish Fork City. For the matters not governed by Spanish Fork City or Utah County, then the rules and regulations of the Utah Department of Environmental Quality and the United States Environmental Protection Agency shall be the environmental ordinances of Spanish Fork City or whichever rule is the more stringent, as allowed by federal and state law.

15.4.24.010 Inspections and Enforcement

- A. Inspections and Enforcement.
 - 1. Spanish Fork City or an environmental professional appointed by the City may inspect all work products pursuant to the provisions of Part 4 for adequate compliance.
- B. Asbestos and Lead.
 - 1. Spanish Fork City adheres to the Utah County and Utah Division of Air Quality standards and rules for asbestos and lead inspections and abatement. An asbestos and lead inspection or survey is required prior to the demolition of any infrastructure.
 - 2. An excavation permit, a Certificate of Occupancy or other construction and demolition authorizations shall not be issued until such time that all of the requirements of Title 15 Part 4 have been met.
- C. Diverting or Discharging of Groundwater.
 - 1. Contaminated groundwater or groundwater suspected of contamination may not be dewatered, diverted or discharged without proper testing, permitting, and treatment. The groundwater contaminant plume must be properly characterized prior to dewatering, pumping, diverting or discharging groundwater as determined by the appropriate DEQ and US EPA Guidelines.
 - a. This section does not supersede routine environmental investigations.

15.4.24.020 Phase I Environmental Site Assessments

- A. A Phase I Environmental Site Assessment is an inquiry conducted by an environmental professional pursuant to the federal AAI standards and American Society for Standards and Materials (ASTM) International Standard E1527-21 or the most current, ASTM International and AAI standards.
- B. A Phase I Environmental Site Assessment is required by the City:
 - 1. Prior to any new developments or expansions of an existing development.
 - 2. At the request of the City.
 - 3. At the request of another government agency.
 - 4. Prior to the acquisition or annexation of any land and/or infrastructure by the City.
- C. The City requires the assessment of non-ASTM issues as defined by ASTM E1527-21, including but not limited to;

1. Business Environmental Risk (BERs) as defined in ASTM E1527-21.
 2. Wetlands
 3. Asbestos
 4. Lead
 5. Wells and groundwater
 6. Paleontology and archaeology
 7. Historic structures
 8. Threatened and Endangered species
 9. Ecological resources
 10. Indoor air quality or industrial hygiene
 11. Drinking water
 12. Mold
 13. Radon
 14. Emerging contaminants or controlled substances
 15. Waste vehicle tires
- D. The City requires additional inquiries into agricultural, ranch and farm land environmental issues. In addition to the routine ASTM questionnaire, the City requires additional interrogatories regarding agricultural environmental issues and may include but are not limited to:
1. Pesticide mixing stations
 2. Banned or outdated pesticides
 3. Inventory of agrichemicals
 4. Veterinarian supplies
 5. Improper storage of agrichemicals
 6. Feedlots
 7. Effluent ponds
 8. Methane issues
 9. Livestock Dipping Vats, and pesticides particularly toxaphene
 10. Suspected or Lost wells
 11. Locate current and former buildings both at FARM HQ and outbuildings
 12. Historical Building issues
 13. Old or abandoned cemeteries
 14. Asbestos and lead in old buildings
 15. Wetland acreages
 16. Well inventory and water rights.
 17. Well water quality data
 18. Nitrate in groundwater
 19. Heating oil tanks

20. Waste oil tanks
21. Drums
22. Hidden landfills
23. Above ground petroleum storage tanks
24. Dairy
25. Septic Tank/leach field status
26. Underground tanks
27. Repair shops
28. Drains
29. Wash stations
30. Waste drums, tanks and other debris discarded on lands
31. Cisterns
32. Hazardous wastes
33. Waste vehicle tires

- E. Whereas the current ASTM Standard E1527-21 does not require recommendations in the Phase I ESA; however, generally, the City desires a recommendations section in the Phase I ESA report.
 1. If no additional work or investigations are necessary or recommended, then it should be so stated in the report.
- F. The City may from time-to-time request to be added as a User of the Phase I Environmental Site Assessment depending on the circumstances and shall be determined on a case-by-case basis by the City and the appointed environmental professional.
- G. A Phase I ESA may be used within one (1) year prior to the transaction associated with the property with the provision that certain components are updated within 180 days prior to the date of the transaction. Components requiring upgrading according to ASTM E1527-21 are:
 1. Interviews.
 2. Searches for land title encumbrances.
 3. Reviews of regulatory databases.
 4. Visual inspections of the subject property and adjoining properties.
 5. Declaration of the environmental professional responsible for the assessment or update.

15.4.24.030 National Environmental Policy Act (NEPA)

- A. The City and all contractors shall comply with NEPA. The usage of federal monies, lands or other assets of the federal government in any given transaction can potentially trigger regulations pursuant to NEPA.

15.4.24.040 Phase I ESA Oversight

- A. The City or it's consultant may review all Phase I ESA reports prior to final approval of the report by the City. Additional site work or revisions of the report may be required.

15.4.24.050 Phase II Environmental Site Investigations

- A. A Phase II Environmental Site Investigation is conducted upon the identification of potential environmental issues, potential recognized environmental conditions, or upon the identification of recognized environmental conditions.
 - 1. A Phase II Environmental Site Investigation may or may not necessarily be conducted subsequent to a Phase I ESA.
- B. A Phase II Environmental Site Investigation work plan must be submitted to the City for review and approval.
- C. The City adheres to industry best practices and standards and to the rules for site investigations pursuant to those set forth by the Utah Department of Environmental Quality (DEQ) and the US EPA.
- D. For sites regulated pursuant to the Utah Division of Environmental Response and Remediation (DERR) petroleum underground storage tank (PST) and above ground petroleum storage tank (APST) programs, the City adheres to the standards and rules of DERR.
 - 1. The Environmental Professional shall be a certified Groundwater and Soil Sampler.
 - 2. Sample results shall be compared to DERR Initial Screening Levels for residential usage or Tier 1 criteria where approved by DERR and the appointed environmental professional.
 - 3. Samples will be collected according to the June 1, 2021 Utah Petroleum Storage Tank Environmental Media Sampling Handbook or current.
- E. For sites unrelated pursuant to the DERR tank programs, then Phase II investigations will be conducted pursuant to the standards, rules and practices of DEQ and the US EPA. Screening level standards are as follows;

1. Groundwater results will be compared to US EPA Maximum Contaminant Levels (MCLs).
 2. Soil samples shall be compared to US EPA Regional Screening Levels (RSLs).
 3. For those chemicals for which groundwater MCLs are not provided, then groundwater results are compared to the tap water screening levels under the US EPA RSLs for the residential usage exposure scenario.
 4. US EPA RSL guidelines for cumulative risk exposure to multiple contaminants when each individual contaminant may be under the RSLs.
 5. Vapors shall be compared to the US EPA Vapor Intrusion Screening Level guidance and standards.
 6. Releases from heating oil tanks, agricultural tanks, small tanks and other unregulated tanks will be regulated by the Division of Water Quality or the DERR by virtue of the written Memorandum of Understanding between the two agencies.
- F. Collect samples for analysis of semi-volatile organic compounds and total petroleum hydrocarbon fractionation at non-underground storage tank (UST) sites. Include polycyclic aromatic hydrocarbons (PAHs) in the analyses at non-UST sites.
- G. Address vapor intrusion.
- H. Collect samples for additional analyses appropriate to the location and history of location.
- I. Collect sufficient samples to demonstrate land usage is safe for residential or industrial usage.
- J. A Health and Safety Plan (HASP) shall be written and posted on site at all times during the investigation.
- K. All Occupational Safety and Health Administration (OSHA) regulations shall be followed during Phase II Investigations.

15.4.24.060 Constituents of Concern

- A. In addition to the sampling and analysis for the wide array of constituents of concern required for adequate characterization of any plume at any given parcel, a Phase II Environmental Site Investigation must also include the following additional analyses:
1. Hexavalent chromium when samples for hazardous metals are collected and analyzed.
 2. Semi-volatile compounds including polycyclic aromatic hydrocarbons when any petroleum contamination is suspected.

3. Total petroleum hydrocarbon fractionation when any petroleum contamination is suspected.

15.4.24.070 Phase II ESI Oversight

- A. The City may take such action as necessary to supervise, verify, or inspect any Phase II investigation work to confirm work is conducted adequately to protect human health and the environment. All work may be reviewed by a third-party environmental professional as appointed by the City. Any incurred City costs will be paid for by the developer.

15.4.24.080 Contaminant Release Reporting

- A. All contaminant release reporting to the appropriate agencies must follow county, state and federal laws.

15.4.24.090 Remediation and Mitigation

- A. Remediation and Mitigation is required:
 1. When requested by the City.
 2. Prior to development.
 3. Where appropriate as determined by the City, in some circumstances, remediation may occur concurrently with development work if pre-approved by the City.
 4. When residential screening levels have not been achieved in a residential exposure risk scenario.
 5. When commercial screening levels have not been achieved in a commercial exposure risk scenario.
 6. When residential screening levels have not been achieved on commercial sites where adjoining properties are residential in usage.
 7. When required pursuant to any jurisdictional government agency.
 8. Human health and the environment may be affected as determined by the City's appointed environmental professional.
- B. A remedial action plan (RAP) or corrective action plan (CAP) must be approved by the City.
- C. Vapor intrusion into existing and future structures must be addressed pursuant to DEQ and US EPA guidelines.

1. Excavation and removal of subsurface debris and contaminants does not necessarily eliminate vapor hazards.
 2. Systems which mitigate vapor intrusion are routinely incorporated into building construction plans.
 3. Groundwater can be a source of vapors for vapor intrusion into buildings.
- D. Sites regulated pursuant to DERR PST program shall be investigated and remediated pursuant to the DEQ PST corrective action program:
1. Remediation is typically conducted by a State Certified PST Consultant.
 2. Sampling is typically conducted by State Certified Groundwater and Soil Sampler.
- E. All other sites not regulated under the PST program shall be investigated and remediated pursuant to DEQ and US EPA rules and guidelines. Under such circumstances, screening levels are as follows:
1. US EPA MCLs for groundwater.
 2. US EPA RSLs for residential exposure risk scenarios.
 3. US EPA RSLs for industrial/commercial risk scenarios.
 4. US EPA RSL guidelines for cumulative risk exposure to multiple contaminants when each individual contaminant concentration may be below the RSLs.
- F. Remedial Actions are to be properly and legally conducted pursuant to all local, county, state and federal environmental laws.
- G. All final remedial and mitigation reports shall be legally defensible and are subject to review and approval by the City's appointed environmental professional.
- H. A Health and Safety Plan (HASP) shall be written and posted on site at all times during the investigation.
- I. All OSHA regulations shall be followed during remedial actions.

15.4.24.100 Remediation and Mitigation Oversight

- A. The City may take such action as necessary to supervise, verify, or inspect any remedial action and mitigation work to confirm work is conducted adequately to protect human health and the environment. All work may be reviewed by a third-party environmental professional as appointed by the City.

15.4.24.110 Fees, Costs, Financial Assurance, Responsible Party

- A. The responsible party to Municipal Code Title 15 Part 4 may be liable to the City for all costs incurred as a result of supervision or verification.
- B. For purposes of this section, costs incurred by the City shall include, but shall not necessarily be limited to, the following: actual labor costs of city personnel, including benefits and administrative overhead; costs of the equipment operation; costs of any contract labor and materials.
- C. The remedies provided for by this section shall be in addition to any other remedies provided by law.
- D. City requires financial assurance from the responsible party that sufficient funds are available for the completion of any investigation and/or remedial action plan in its entirety including but not limited to escrow holdings and bonds.
- E. Development or other work cannot proceed until the City has a written commitment from the responsible party for reimbursing the City for environmental costs and fees and for providing financial assurances such as a bond or escrow.