CHELAN BASIN CONSERVANCY

P.O. Box 1073, Chelan, WA 98816
www.chelanbasinconservancy.org
(a 501(c)(3) nonprofit organization)

November 16, 2025

Chelan City Council
PO Box 1669
135 E Johnson Avenue
Chelan, WA 98816

Re: Chelan Sewer Connection Requirements

Dear Councilpersons Chitty, Dietrich, Ericks, Goedde, Higgons, Hollingsworth, and Sanders:

As you may be aware, a developer (Raja Venugopal) submitted three building permit applications in February of this year to construct short-term rentals on Chelan Butte properties owned by Golden Gate Ventures LP. While these applications had numerous deficiencies and eventually expired, it is anticipated that they will be resubmitted in the near future with what we have determined to be one significant remaining problem. Thus far, city staff have indicated that they will not require these three short-term rentals to comply with city code associated with the mandatory requirement for new discharge points to connect with the municipal sewer system, instead allowing for interim on-site septic systems.

Although city council is not a code enforcement body, we feel that it is important for the council to be aware of this situation and the impact it could have on city business, legal liability, and credibility with the public. In addition, city council is granted very broad and powerful authority under RCW 35A.11.020 to address "operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns."

This issue has been described in great detail in an August 6, 2025, letter from our attorney (Attachment A), which garnered an incomplete response from the City's attorney (Attachment B). Our attorney then reiterated our position, pointing out the fallacy of the City attorney's response, in a September 5, 2025, letter (Attachment C). You are welcome to review these documents in detail, but we also wanted to summarize the code requirements in the brief explanation below, because the argument is actually very simple at its core.

There are two parts of the Chelan Municipal Code (CMC) that are applicable, as described below.

Section 13.06 (Sewer Systems)

CMC 13.06.010 states very simply (bold underline font for emphasis):

*… All **new** points of discharge of sewage and polluted waters in the city **shall** be connected to the city's sewage treatment plant, and all **existing** points of discharge of sewage and polluted waters not connected to the city's sewage treatment plant shall be **terminated, and connected** to the city's sewage treatment plant at such times as is **reasonably practicable**. …*

We would note that the code language above was added to CMC 13.06 in 2008 via Ordinance 2008-1358, many years after the rest of this section of the code was promulgated, specifically to "clarify" the intent of when sources must connect to the city sewer system. This language cannot be ignored by City staff when assessing the requirements for building permits on Chelan Butte.

Furthermore, the Definitions section of CMC 13.06 defines "shall" as follows:

Shall *is mandatory*

It would seem that the mandatory requirement for all new sewage discharges to immediately connect to the city's sewer system is extraordinarily clear. Existing sources, however, may not have to immediately connect to the city sewer system. CMC 13.06.030(D) notes that sewage discharge points must connect to the city sewer system if the sewer system is (bold and underline font added for emphasis):

*Within 200 feet of any part of the property **and** upon failure of an existing private on-site sewage system; …*

How do we know that this section of the code only applies to existing sources? It is because A) a new discharge source could never also have an "existing private on-site sewage system" and B) it would otherwise be in direct conflict with section 13.06.010. If section 13.06.030(D) were to be applied to new sources, they would not have to connect to the city sewer system even if they were within 200 feet, because they would not have an existing on-site sewage (septic) system to fail. This language is clearly defining when it is "reasonably practicable" (from CMC 13.06.010 provided above) for existing sources to connect to the sewer system.

However, city staff have been arguing in the case of the three building permit applications for short-term rentals on Chelan Butte that the 200-foot distance requirement applies for these new sources. This makes zero sense as laid out above.

Even so, there are additional concrete arguments against staff's potential allowance of on-site septic systems for these three building permit applications.

Development Standards, Section 3 (Sewer Standards)

The City's development standards are incorporated into the CMC through CMC 25.05 and apply to the three building permit applications on Chelan Butte. In Section 3, subpart P, the development standards provide an exception for the use of on-site interim septic systems for new construction.

This exception allows the use of on-site interim septic systems only when certain conditions are met, including that the new discharge point is constructed on land zoned Special Use District (SUD). In addition to not meeting some of the other conditions, the parcels on Chelan Butte where the three recent building permit applications propose to construct short-term rentals are not zoned SUD.

This makes it clear that, in this case, the exception criteria allowing for interim on-site septic systems are not met, and these dwelling units must instead connect to the city sewer system. In fact, city staff do not appear to disagree with this interpretation of the Development Standards.

We would further note that even if there was a disagreement between the requirements of CMC 13.06 and the Development Standards, CMC 25.05.030 (pertaining specifically to potential conflicts between the Development Standards and other sections of code) reads:

> *Unless otherwise specified by federal or state regulations, in the event provisions of any ordinances or other titles of the Chelan Municipal Code conflict with provisions of this title, this title shall supersede and control.*

This language is reiterated at the beginning of the Development Standards document. So, the Development Standards requirements supersede CMC 13.06 requirements.

Summary

In regard to the three building permit applications for short-term rentals on Chelan Butte, both CMC 13.06 and the city Development Standards clearly require all new sewer discharge points to connect to the city sewer system prior to occupancy. On-site septic systems are not allowed. As such, city staff's potential allowance of on-site septic system use for the three building permit applications on Chelan Butte would violate city code.

It is hoped that by making city council aware of this situation, council members will endeavor to ensure that all actions taken by the city in this case fully comply with city code. It is important that city code be properly enforced in all circumstances in order to maintain credibility with the public.

Thank you for your time and service to our community.

Sincerely,

The Chelan Basin Conservancy Board

Brian Patterson - President
Lisa Garvich - Vice President
Tony Crosetto - Treasurer
Debra Patterson - Secretary
Mike Cochran

Attachment A

August 6, 2025, Letter from Claudia Newman (Bricklan & Newman LLP) to Jake Youngren (City of Chelan Public Works Director)

BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

August 6, 2025

VIA E-MAIL TO: jyoungren@cityofchelan.us

Mr. Jake Youngren
Public Works Director
P.O. Box 1669
135 E. Johnson Avenue
Chelan, WA 98816

Re: Chelan Meadows LLC Building Permit Applications

Dear Mr. Youngren:

I am writing again on behalf of the Chelan Basin Conservancy (CBC) to address concerns regarding the proposed construction of three 1,100-square-foot homes on parcels owned by Golden Gate Ventures, LLC, via the Chelan Meadows building permit applications.

CBC informed me that the City plans to approve the use of on-site septic systems for these three homes. As outlined in my previous correspondence and as is detailed in CBC's prior letters, this decision lacks legal justification. The Chelan Municipal Code (CMC), particularly Chapter 13.06.010, clearly prohibits the use of on-site septic systems for new developments within city limits.

In its most recent letter dated June 23, 2025, (see attached), CBC effectively demonstrated that Chapters 13.06 and 25.05 of the CMC prohibit the use of septic systems for new developments. I have reviewed that letter and concur with CBC's legal analysis and conclusions. CBC has provided an accurate assessment of the relevant code requirements.

Approving permits in violation of the city code would constitute an overreach of official authority. *See Eastlake Community Council v. Roanoke Associates, Inc.*, 82 Wn.2d 475, 513 P.2d 36 (1973)(*en banc*). The City of Chelan's public works and planning departments simply do not have authority to approve building permits that violate city code provisions. *Id.*

Moreover, such actions cannot be justified or excused by prior administrative practices. A city is not precluded from enforcing regulations if its officers have issued building permits allowing construction contrary to such regulations, have given general approval to violations of the regulations, or have remained inactive in the face of such violations. *See City of Mercer Island v.*

Steinmann, 9 Wn. App. 479, 483, 513 P.2d 80 (1973). City officials must follow the law regardless of past actions.

While I acknowledge that this situation may present challenges for single-lot owners located far from existing municipal sewer systems who wish to build individual homes, addressing such policy issues falls within the purview of the City Council through legislative action, not through the issuance of permits that violate code requirements. As the Washington Supreme Court has held:

> The acts of administering an ordinance do not go back to the questions of policy and discretion which were settled at the time of the adoption of the ordinance. Administrative authorities are properly concerned with questions of compliance with the ordinance, not its wisdom.

Eastlake Community Council, 82 Wn.2d at 482 *quoting State ex rel. Ogden v. Bellevue*, 45 Wash.2d 492, 495, 275 P.2d 899, 902 (1954).

For these reasons, I urge you to apply the code requirements and deny the use of on-site septic systems for this development to maintain the City's legal integrity.

Very truly yours,

BRICKLIN & NEWMAN, LLP

s/Claudia M. Newman
Claudia M. Newman

cc: Quentin Batjer – City Attorney (*quentin@dadkp.com*)
John Ajax – City Community Development Director (*jajax@cityofchelan.us*)

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Assessment of Sewer Requirements of the Chelan Municipal Code for New Development

This regulatory assessment pertains to allowances within the Chelan Municipal Code (CMC) for the use of septic systems for new development as an alternative to connecting to the City's municipal sewer system. Although this is a general assessment, Chelan Basin Conservancy is primarily interested in how the CMC might be applied to potential development on properties on Chelan Butte and, in particular, how it will be applied to current building permit applications BRES2025-0006, BRES2025-0007, and BRES2025-0008.

This assessment focuses on two key chapters of the CMC that pertain to when the use of septic systems are allowed and examines the regulatory connection between these chapters.

- Chapter 13.06 - Sewer System
- Chapter 25.10 – Adequacy of Public Facilities

A comprehensive analysis of each of these two chapters relative to the potential use of septic systems for new development is provided below.

Chapter 13.06 - Sewer System

In this chapter, it is very clear that septic systems cannot be used for new development in Chelan.

Much of this chapter was originally created in 1987, with minor modifications in 1995 and 1997. The plain reading of the code during this time period was potentially open to interpretation in terms of whether new development was required to connect into the existing municipal sewer system when built or if it was required to do so only if the property being developed was within 200 feet of the existing municipal sewer system when built or at some time in the future.

In 2008, Ordinance 2008-1358 clarified this issue. New language (which is still in the CMC) was added under 13.06.010 that plainly states that (underline added for emphasis):

> *"All new points of discharge of sewage and polluted waters in the city shall be connected to the city's sewage treatment plant, and all existing points of discharge of sewage and polluted waters not connected to the city's sewage treatment plant shall be terminated, and connected to the city's sewage treatment plant at such times as is reasonably practicable"*

It could not be clearer – all new sources of sewage "shall be" connected to the municipal sewer system. There are no alternatives provided for new sources in this chapter.

Existing sources of sewage, on the other hand, only need to be connected to the municipal sewer system at such time as it is "reasonably practicable". Section 13.06.030, and particularly 13.06.030(D), define when the City considers such a connection to be "reasonably practicable", i.e., when the existing municipal sewer system is "*Within 200 feet of any part of the property and upon failure of an existing private on-site sewage system*" (underline added for emphasis).

The language in 13.06.030(D) further confirms the fact that 13.06.030 only applies to existing sources of sewage. A new source of sewage, even if within 200 feet of the existing municipal sewer system, would otherwise not have to tie into that system because it would not also meet the condition of a "*failure of an existing private on-site sewage system*". Therefore, a new source of sewage within 200 feet of the municipal sewer system would have to be allowed to utilize an on-site septic system until such time as that septic system failed. This would not make sense and would be inconsistent with the City's principal philosophy that all wastewater shall be discharged to the City's domestic wastewater facility as stated in Ordinance 2008-1358.

Given the above analysis of CMC 13.06, it seems clear that all new sources of sewage within the Chelan urban growth area must be connected to the municipal sewer system prior to occupancy. The use of on-site septic systems for new development is not allowed in any circumstance under the existing code in CMC Chapter 13.06.

Chapter 25.10 – Adequacy of Public Facilities

Requirements for sewage disposal are also addressed in Section 25.10.030, titled *Adequate sewage disposal* (underline added for emphasis):

> *All new development shall be served by an adequate public or private sewage disposal system, including both collection and treatment facilities consistent with chapter 13.06, Sewer System, and chapter 25.05, Development Standards.*

For reference, "development" is defined in Section 25.10.120 as follows:

> *Definition of development. For purposes of this chapter, the term "development" shall include, but not be limited to, subdivisions, short subdivisions, binding site plans, building permits, infrastructure improvements, and any other development activity defined by title 17 or 19 or chapter 25.05, Appendix A.*

There are two clear takeaways from these sections:

1) Building permits are considered to be "development" and, therefore, new building permits are considered new development. This would be true even for a single house.

2) Building permits for new houses (being considered new development) must comply with both Chapter 13.06 (Sewer System) and all Development Standards referenced in Chapter 25.05, including those incorporated by reference.

As has been discussed with the City Public Works department previously,[1] the City's Development Standards, incorporated by reference in CMC Chapter 25.05, provide the following allowances for Interim Septic Systems (underline added for emphasis):

1. On-site septic systems may be allowed within the City's Urban Growth Area, including within City limits, if a public, sanitary or combined sewer is not available within 750 feet, but only under the following circumstances:

a. The parcel to be divided is at least 10 acres in size;

b. The parcel is to be divided into no more than four lots in the SUD zone; and

c. Each resulting lot is at least five acres in size; or

d. Lots serving agricultural, agricultural tourism, cottage winery, winery and small-scale craft beverage production uses on parcels 10 acres of more.

Since the Development Standards apply to "new development", which includes the issuance of new building permits, the conditions listed above describe the only circumstances under which septic systems are allowed for new building permits.

Clearly, all required conditions above cannot be met for any new building permits issued for houses on parcels on Chelan Butte unless they are zoned SUD.

To be clear, if a new project met the conditions for the use of interim septic systems in the Development Standards code, the use would be allowed even though CMC Section 13.06 does not allow such use. This is because the Development Standards clearly state "*In the event of conflict between these standards and sections of the Chelan Municipal Code, these standards shall prevail.*"

Summary

Section 25.10.030 requires that building permits comply with both CMC Section 13.06 and with the City's Development Standards. The analysis above demonstrates that the CMC does not allow the use of septic systems in approved building permits for houses on Chelan Butte under either CMC Section 13.06 or the City's Development Standards, let alone both (again, the Development Standards would take precedence if there were a conflict between the two sets of code).

[1] CBC provided City of Chelan staff, including Public Works Director Jake Youngren, with a written assessment of the application of the Interim Septic System development standards dated August 22, 2023. In a subsequent meeting in August 2023 with Public Works staff, including Mr. Youngren, it was agreed that CBC's assessment correctly summarized the applicability of the Interim Septic System development standards.

We understand that this potentially puts the City in a bind in certain circumstances for single-lot owners who are well away from the existing municipal sewer system who simply want to build a single residential home. Such a property owner might argue that the strict requirement to connect to the municipal sewer system is not reasonably economically feasible and that enforcing this requirement constitutes an unconstitutional "taking" of their property.

We are not attorneys, but we would think that, to the extent that the City wanted to forgo the requirements of the CMC to avoid this issue, it would need to be well documented and justified. This would require a demonstration that no type of development of the property was economically feasible based on the highest and best use of the property, utilizing all other aspects of the CMC available to the property owner.

For example, an assessment of economic feasibility for multiple properties under common ownership on Chelan Butte that are zoned Tourist Accommodation should be based on a development at the maximum density allowed by the CMC. Under those conditions, it is unlikely that such a demonstration of economic infeasibility would be possible. If the property owner desires to develop to a lesser extent, it is not the responsibility of the City to make that more economically feasible.

One logical conclusion of this analysis is that it would be appropriate for the City to make some changes to the CMC and/or the City's Development Standards to address appropriate situations concerning single-lot owners looking for an economical way to build a residential home.

Meanwhile, we hope that the City will enforce the CMC with respect to development of properties on Chelan Butte. This includes requiring that new development connect to the City's municipal sewer system.

Thank you for your consideration,

The Chelan Basin Conservancy Board of Directors

Attachment B

August 8, 2025, Letter from Quentin Batjer (Davis Arneil Law Firm) to Claudia Newman (Bricklin & Newman, LLP)

DAVIS ARNEIL LAW FIRM
EST. 1925

Danielle R. Marchant
Bryan J. Maroney
Quentin D. Batjer
David R. Law
Krystal N. Frost
Theresa Petrey
Simon I. Vickery

Of Counsel
Robert L. White
Phillip A. Johnson
Robin R. Gaukroger
Peg R. Callaway
Thomas F. O'Connell
Steve D. Smith

August 8, 2025

Via Email Only: cnewman@bricklinnewman.com

Claudia M. Newman
Bricklin & Newman, LLP
123 NW 36th Street, Suite 205
Seattle, WA 98107

Re Use of On-Site Septic Systems – Chelan Meadows Building Permits

Dear Ms. Newman:

Thank you for your August 6 letter on behalf of the Chelan Basin Conservancy. We've reviewed your concerns regarding the proposed use of on-site septic systems for three single-family homes and appreciate CBC's continued engagement on this issue.

We understand and respect your position that CMC 13.06.010 expresses a strong policy preference for connection to the public sewer system. That goal is shared by the City. However, the enforceable provisions of the Chelan Municipal Code—particularly CMC 13.06.030(D)(1) and 13.06.040(A)—establish a specific framework for when a sewer connection is required and when a private on-site system may be used. That framework requires a connection only when a public sewer is within 200 feet *and* there is a failure of an existing on-site system.

When no such failure exists, and sewer is not "available" under the code's definition, use of a septic system is expressly permitted, subject to health district approval. These are the circumstances applicable to the Chelan Meadows applications.

This is not an administrative departure or an exercise of discretion. It is a straightforward application of the code as written. The fact that some may disagree with the policy outcomes produced by the current language does not give the City license to apply the code in a manner inconsistent with its adopted terms.

We appreciate CBC's interest and are always open to continued dialogue. But as to the permits currently under review, the City is acting within its legal authority and applying the relevant provisions correctly.

Sincerely

Quentin D. Batjer
City Attorney
City of Chelan

cc: Jake Youngren, Public Works Director (jyoungren@cityofchelan.us)
John Ajax, Community Development Director (jajax@cityofchelan.us)
Wade Farris, City Administrator (wfarris@cityofchelan.us)

Attachment C

September 5, 2025, Letter from Claudia Newman (Bricklin & Newman, LLP) to Quentin Batjer (Davis Arneil Law Firm)

BRICKLIN & NEWMAN LLP
lawyers working for the environment

Reply to: Seattle Office

September 5, 2025

VIA E-MAIL TO: *quentin@dadkp.com*

Mr. Quentin Batjer
Davis Arneil Law Firm
617 Washington Street
Wenatchee, WA 98801

Re: Chelan Meadows Building Permit Applications

Dear Mr. Batjer:

I appreciate your taking the time to respond to my August 6, 2025 letter regarding the proposed use of on-site septic systems for the three homes as proposed in Chelan Meadows building permit applications. I'm grateful for the opportunity to engage in this kind of discussion, since it helps clarify the issues for everyone.

I don't necessarily want to start an endless back and forth of letters, but I do think it's important to respond to yours. I hope the City will consider my points below before making a final decision on the applications.

In your letter, you suggest that Chelan Municipal Code (CMC) 13.06.010 is merely a policy statement and does not create an enforceable obligation. That's not a safe assumption. While that provision is indeed labeled as an "intent" section, the drafters used the mandatory word "shall," which courts construe as binding. As the Washington Supreme Court has explained, "shall" in a statute is presumptively imperative and operates to create a duty. *Erection Co. v. Department of Labor & Indus*., 121 Wash.2d 513, 518, 852 P.2d 288 (1993). The word "shall" imposes a mandatory requirement unless the legislature clearly indicates otherwise. *Id.* Here, obviously, no such contrary legislative intent exists considering that this is the "intent" statement.

In addition, CMC 13.06.010 is codified as part of the regulatory text, not as just a preamble or note, and it is placed alongside the operative provisions. Coupled with the use of the word "shall," this indicates the drafters meant it to direct conduct, not simply provide guidance for interpretation.

Nonetheless, even if CMC 13.06.010 is not technically an "enforceable" provision, it cannot be swept under the rug as merely "expressing a strong policy preference." CMC 13.06.010 plays a

very important role in the City's application of the other regulations in that chapter – it guides how the City must interpret and apply the other provisions in chapter 13.06.

Under the rules of statutory construction, courts interpret regulatory provisions to ascertain and give effect to its underlying policy and intent. *State, Dep't of Licensing v. Cannon*, 147 Wn. 2d 41, 57, 50 P.3d 627, 636 (2002). The underlying policy and intent of the regulations in chapter 13.06 is explicitly stated in CMC 13.06.010 as follows:

> All new points of discharge of sewage and polluted waters in the city shall be connected to the city's sewage treatment plant, and all existing points of discharge of sewage and polluted waters not connected to the city's sewage treatment plant shall be terminated, and connected to the city's sewage treatment plant at such times as is reasonably practicable.

This makes it clear that the legislative intent underlying all of the regulations in ch. 13.06 is that every new development "shall" connect to the sewer system, while existing development may not be required to do so immediately.

In your letter, you rely on CMC 13.06.030(D)(1) to justify approving on-site septic for the three proposed homes. That section provides:

> The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street or private road in which there is now located or may in the future be located a public, sanitary or combined sewer of the city, is required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public, sanitary or combined sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so; provided, that said public sewer is:
>
> 1. Within 200 feet of any part of the property and upon failure of an existing private on-site sewage system; or
>
> 2. When it is deemed necessary to protect public health as is certified by the local health officer pursuant to WAC 246-272-07001 as the same now exists or may be hereafter amended.

Section 13.06.010 makes it very clear that CMC 13.06.030(D)(1) does not apply to new development (all **new** development must connect to the sewer system and only **existing** development is potentially excused from connecting to the sewer system). However, in your August 8, 2025 letter, you apply the two conditions of CMC 13.06.030(D)(1) to the Chelan Meadows applications for new development and conclude that since neither condition applies, the development is not required to connect to the City's sewer system.

Proof that CMC 13.06.030(D)(1) does not apply to new development is evident when a practical situation is considered. According to your interpretation of CMC 13.06.030(D)(1), a new development project proposed within 200 feet of the City's sewer system would not have to connect because it would not also have the required failure of an existing septic system (new development never has an "existing" septic system to fail).

If CMC 13.06.030(D)(1) were interpreted to apply to new development as you propose, the City of Chelan would potentially be liable for the additional costs associated with every instance where it has required new development to connect to the City sewer system since CMC 13.06.030(D)(1) has been in effect. The City's power to require such a connection under ch.13 stems from CMC 13.06.010.

The debate over how to interpret CMC 13.06.030(D)(1) is not dispositive to the question presented, however, because CMC 25.10.030 requires compliance with both ch. 13.06 and the City's Development Standards. Even if CMC 13.06.030(D)(1) could be read to allow on-site septic systems in this case, those systems still fail to meet the Development Standards.

Under the Development Standards, Section 3 (Sewer Standards), Standards and Conditions, subpart P, interim on-site septic and water systems are allowed only in the Special Use District (SUD) zone. The Chelan Meadows parcels are zoned Tourist Accommodation (T-A), where interim systems are prohibited. Approving the proposed systems on these parcels would, therefore, violate the Development Standards. The Development Standards, in turn, explicitly state that if there is a conflict between the Development Standards and other parts of the City code, the Development Standards take precedence.

For these reasons, I urge you again to apply the code requirements and deny the use of on-site septic systems for this development.

Very truly yours,

BRICKLIN & NEWMAN, LLP

s/Claudia M. Newman
Claudia M. Newman