

ORDINANCE NO. 018/2011

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON UPDATING CHAPTER 20.04 STATE ENVIRONMENTAL POLICY ACT (SEPA) OF THE MONROE MUNICIPAL CODE TO ENSURE CONSISTENCY WITH THE SEPA MODEL ORDINANCE, INCREASING THE THRESHOLDS FOR MINOR NEW CONSTRUCTION PROJECTS, PROVIDING FOR SEVERABILITY AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, the Monroe City Council would like to update Monroe Municipal Code Chapter 20.04 State Environmental Policy Act to ensure consistency with the SEPA model ordinance;

WHEREAS, the Monroe City Council would like to increase the thresholds for minor new construction projects, as allowed under WAC 197-11-800(1)(c), to help streamline smaller infill development projects;

WHEREAS, the City issued a Determination of Non-significance for the proposed SEPA revisions on March 29, 2011; and

WHEREAS, the City submitted the proposed SEPA revisions to the Washington State Department of Commerce and other state agencies, for a 60-day review, on March 29, 2011 as required by RCW 36.70A.106; and

WHEREAS, the Planning Commission held a duly advertised public hearing to consider the proposed SEPA revisions on May 9, 2011;

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

WHEREAS, the City Council reviewed the Planning Commission recommendation at the July 26, 2011 City Council meeting; and

WHEREAS, the City Council finds that the proposed SEPA revisions, are in the public interest and are further consistent with the Comprehensive Plan.

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

Section 1. Findings and Conclusions. The Monroe City Council adopts the findings and conclusions recommended by City Staff and reviewed by the Monroe Planning Commission dated April 15, 2011 in support of the proposed SEPA revisions to Chapter 20.04 MMC.

Section 2. Chapter as Amended. The amendments to Chapter 20.04 of the Monroe Municipal Code affected by this ordinance are set forth in legislative format in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full.

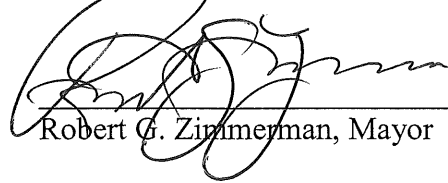
Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall take effect thirty (30) days after final passage by the City Council.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 9th day of August 2011.

1st Reading: 08/09/2011
2nd & Final Reading: 08/16/2011
Published: 08/23/2011
Effective: 09/15/2011

CITY OF MONROE, WASHINGTON



Robert G. Zimmerman, Mayor

ATTEST/AUTHENTICATED:



Eadye Martinson, Deputy City Clerk

APPROVED AS TO FORM:



J. Zachary Lell, City Attorney

Exhibit A

Chapter 20.04 STATE ENVIRONMENTAL POLICY ACT

20.04.010 Authority.

The city adopts this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

This chapter contains this city's SEPA procedures and policies.

These SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this chapter

20.04.020 Purpose of this section and adoption by reference.

This chapter contains the basic requirements that apply to the SEPA process. The city adopts the following sections of Chapter 197-11 WAC by reference:

WAC

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 GMA project review -Reliance on existing plans, laws, and regulations.
- 197-11-210 SEPA/GMA integration. (WAC 197-11-210 through 197-11-235 optional; does not apply for non-GMA jurisdictions.)
- 197-11-220 SEPA/GMA definitions.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 Documents.
- 197-11-238 Monitoring. (optional)
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of nonsignificance for MTCA remedial actions.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.

20.04.030 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, and 197-11-220 when used in this chapter, the following terms shall have the following meanings, unless the context indicates otherwise:

- A. "Department" means any division, subdivision or organizational unit of the city established by ordinance, rule, or order.
- B. "Early notice" means the city's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (DNS) procedures).

- C. "Ordinance" means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.
- D. "SEPA rules" means Chapter 197-11 WAC, adopted by the Department of Ecology.

20.04.040 Designation of responsible official.

- A. For those proposals for which the city is the lead agency, the responsible official shall be the city administrator or designee.
- B. For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other task assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020.
- C. The city shall retain all documents required by SEPA rules Chapter 197-11 WAC, and make them available in accordance with Chapter 42.17 RCW.

20.04.050 Lead Agency determination and responsibilities

- A. When the city receives an application initiating a nonexempt action, the responsible official shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the responsible official is aware that another department or agency is in the process of determining the lead agency.
- B. When the city is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.
- C. When the city is not the lead agency for a proposal, all departments of the city shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review under WAC 197-11-600.
- D. If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period.
- E. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944: provided, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.
- F. The responsible official when making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

G. When the city is lead agency for a MTCA remedial action, the department of ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the city shall decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

20.04.060 Additional timing considerations.

- A. For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory body, such as the planning commission.
- B. If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications.

20.04.070 Purpose of this section and adoption by reference.

This section contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This section also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.

20.04.080 Flexible thresholds for categorical exemptions.

- A. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based upon local conditions:
 - 1. For residential dwelling units in WAC 197-11-800(1)(b)(i): Up to nine dwelling units;
 - 2. For agricultural structures in WAC 197-11-800(1)(b)(ii): Up to ten thousand square feet;
 - 3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): up to 12,000 square feet and 40 parking spaces;
 - 4. For parking lots in WAC 197-11-800(1)(b)(iv): Up to 40 parking spaces;
 - 5. For landfills and excavations in WAC 197-11-800(1)(b)(v): Up to five hundred cubic yards.

- B. Whenever the city establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504 under WAC 197-11-800(1)(c).

20.04.090 Use of exemptions.

- A. When the city receives an application for a license, permit, or governmental proposal, the responsible official shall determine whether the license, permit, and/or the proposal is exempt. The determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The city shall not require completion of an environmental checklist for an exempt proposal.
- B. In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency even if the license application that triggers the department's consideration is exempt.
- C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:
 - 1. The city shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of alternatives;
 - 2. The city may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and
 - 3. The city may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

20.04.100 Environmental checklist.

- A. A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter, except, a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency, for determining the responsible official and for making threshold determination.
- B. For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.
- C. The city may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. The city has technical information of a question or questions that is unavailable to the private applicant; or
 2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.
- D. For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the department of ecology to allow at least a thirty-day review prior to use.

20.04.110 Mitigated DNS.

- A. As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.
- B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:
1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
 2. Precede the city's actual threshold determination for the proposal.
- C. The responsible official should respond to the request for early notice within fifteen working days. The response shall:
1. Be written;
 2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the city to consider a DS; and
 3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- D. As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of receiving the changed or clarified proposal:
1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a DNS, under WAC 197-11-340(2);
 2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issuing a DNS or DS as appropriate;

3. The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct two-hundred-foot storm water retention pond at Y location" are adequate;
 4. Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- F. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fifteen-day comment period and public notice.
- G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any manner specifically prescribed by the city.
- H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).
- I. The city's written response under subsection (B) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination.

20.04.120 Purpose of this section and adoption by reference.

This section contains the rules for preparing environmental impact statements. The city adopts the following sections by reference, as supplemented by this part:

WAC

- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping.
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.
- 197-11-448 Relationship of EIS to other considerations.
- 197-11-450 Cost-benefit analysis.
- 197-11-455 Issuance of DEIS.
- 197-11-460 Issuance of FEIS.

20.04.130 Preparation of EIS – Additional considerations.

- A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) are the responsibility of the planning department under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.
- B. The DEIS and FEIS or draft and final SEIS shall be prepared by city staff, the applicant, or by a consultant selected by mutual agreement by the city and the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.
- C. The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the city may request under another ordinance or statute.)

20.04.140 Adoption by reference.

This section contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-500 Purpose of this part.
- 197-11-502 Inviting comment.
- 197-11-504 Availability and cost of environmental documents.
- 197-11-508 SEPA register.
- 197-11-510 Public notice.
- 197-11-535 Public hearings and meetings.
- 197-11-545 Effect of no comment.
- 197-11-550 Specificity of comments.
- 197-11-560 FEIS response to comments.
- 197-11-570 Consulted agency costs to assist lead agency.

20.04.150 Public notice.

- A. Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the nonexempt permit(s) or approval(s) required for the proposal pursuant to Chapter 21.40 MMC.
- B. Whenever the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city shall give public notice as follows:
 - 1. If public notice is required for a nonexempt license, the notice shall state whether the city has issued a DS or DNS and when comments are due.
 - 2. If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

3. If no public notice is otherwise required for the permit or approval, the city shall give notice of the DNS or DS by:
 - a. Posting the property, for site-specific proposals;
 - b. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
 - c. Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered; and
 - d. Post on the City Hall bulletin board.
 4. Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.
- C. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510 (1)(b).
- D. Whenever the city issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 187-11-620, notice of the availability of those documents shall be given by:
1. Indicating the availability of the DEIS in any public notice required for a nonexempt license;
 2. Posting the property, for site-specific proposals;
 3. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located
 4. Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered; and
 5. Post on the City Hall bulletin board.
- D. Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).
- E. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

20.04.160 Designation of official to perform consulted agency responsibilities for the city.

- A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.
- B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

20.04.170 Purpose of this section and adoption by reference.

This section contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's own environmental compliance. The city adopts the following sections by reference:

WAC

- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement – Procedures.
- 197-11-625 Addenda – Procedures.
- 197-11-630 Adoption – Procedures.
- 197-11-635 Incorporation by reference – Procedures.
- 197-11-640 Combining documents.
- 197-11-164 Planned actions -Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions -Procedures for adoption.
- 197-11-172 Planned actions -Project review.

20.04.180 Purpose of this section and adoption by reference.

This section contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This section also contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts the following sections by reference:

WAC

- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.

Administrative appeals under RCW 43.21C.075 and WAC 197-11-680 shall be governed by Chapter 21.60 MMC.

20.04.190 Substantive authority.

- A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city.
- B. The city may attach conditions to a permit or approval for a proposal so long as:
 - 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
 - 2. Such conditions are in writing; and
 - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
 - 4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
 - 5. Such conditions are based on one or more policies in subsection (A) of this section and cited in the license or other decision document.
- C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or SEIS prepared pursuant to this chapter; and
 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
 3. The denial is based on one or more policies identified in subsection (D) of this section and identified in writing in the decision document.
- D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:
1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - d. Preserve important historic, cultural, and natural aspects of our national heritage;
 - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
 2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.
 3. The city adopts by reference the policies in the following city documents as now or hereafter amended:
 - a. The current city of Monroe Comprehensive Plan, including without limitation all individual elements, sub-area plans, capital plans, supporting documents, and any standards, plans, policies, and other materials incorporated by reference into the comprehensive plan.
 - b. The current Monroe Municipal code and supporting documents including without limitation all supporting documents, standards, plans, policies, and other materials incorporated by reference into the municipal code.
 - c. The current Public Works Design and Construction Standards

20.04.200 SEPA administrative appeals.

The city establishes the following SEPA administrative appeal procedure under RCW 43.21C.075 and WAC 197-11-680:

A. Threshold Determinations.

1. Any agency or person may appeal a determination of significance (DS), a mitigated determination of nonsignificance (MDNS), or a determination of nonsignificance (DNS) by filing an appeal, in conformance with Chapter 21.60 MMC, prior to the lapse of any comment period of a threshold determination under WAC 197-11-340(2).
 - a. The appeal shall be filed on forms provided by the SEPA administrator and must be filed in original form.
 - b. The appeal shall set forth the specific reason, rationale, and/or basis for the appeal.
 - c. Payment of the appeal fee, as specified in the city's fee resolution, shall occur at the time the appeal is filed.
2. If the appeal has been timely filed and complies with the requirements of subsection (A)(1) of this section, the hearing examiner shall conduct a public hearing into the merits of the appeal. The hearing examiner shall hear and receive testimony, documentary evidence, and arguments from the appellant(s) solely on the issues raised or identified by the appeal. Appeals of threshold determination shall be consolidated in all cases with any public hearing on the merits of the proposal held by the hearing examiner, except for appeals of a DS, which shall be heard separately from the underlying project proposal.
 - a. The person(s) filing the appeal shall have the burden of going forward with the evidence and the ultimate burden of persuasion.
 - b. Notice of any public hearing held pursuant to this section shall be provided as specified in this code, or the rules of the hearing examiner.
 - c. The hearing examiner may continue the hearing from time to time without further mailed or delivered notice.
 - d. The city shall maintain an electronic record of the testimony and arguments presented and a record of any physical evidence/documents presented.
 - e. The hearing examiner's decision shall be rendered within ten working days of the conclusion of an appeal hearing unless a longer period is agreed to in writing, or orally on the record, by the appellant.
 - f. The hearing examiner's decision shall include findings of fact and conclusions in support of the decision.
 - g. The hearing examiner's decision under this section may be to grant or deny the appeal in whole or in part, or remand the threshold determination to the responsible official for reconsideration.
 - h. The hearing examiner's decision shall become final at the expiration of the appeal period, from the date of issuance.
 - i. The decision of the hearing examiner shall be final and may not be appealed to the city council, as required by WAC 197-11-680(3)(iv), as now or hereafter amended.

B. Adequacy of Environmental Impact Statements.

1. Any agency or person may appeal the adequacy of a final environmental impact statement (FEIS) by filing an appeal in conformance with Chapter 21.60 MMC.
 - a. The appeal shall be filed on forms provided by the SEPA responsible official and must be filed in original form.
 - b. The appeal shall set forth the specific reason, rationale, and/or basis for the appeal.
 - c. Payment of the appeal fee, as specified in the city's fee resolution, shall occur at the time the appeal is filed.
 2. If the appeal has been timely filed and complies with requirements of subsection (B)(1) of this section, the hearing examiner shall conduct a public hearing into the merits of the appeal. The hearing examiner shall hear and receive testimony, documentary evidence, and arguments from the appellant(s) solely on the issues raised or identified by the appeal. Appeals relating to the adequacy of an FEIS shall be consolidated in all cases with any public hearing on the merits of the proposal held by the hearing examiner.
 3. The decision of the hearing examiner shall be final and may not be appealed to the city council, as required by WAC 197-11-680(3)(iv), as now or hereafter amended and pursuant to MMC 21.50.120.
- C. Substantial Weight Accorded Responsible Official. The procedural determinations by the city's responsible official shall carry substantial weight in any appeal proceeding under this code.
- D. Record. For any appeal under this subsection, the city shall provide for a record that shall consist of the following:
1. Findings and conclusions;
 2. Testimony under oath; and
 3. A taped or written transcript, the cost of which shall be borne by the appellant.
- E. Exhaustion of Remedies. SEPA appeal procedures, as provided herein, must be utilized prior to judicial review of that SEPA decision.
- F. The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

20.04.210 Purpose of this section and adoption by reference.

This section contains uniform usage and definitions of terms under SEPA. The city adopts the following sections by reference, as supplemented by WAC 173-806-040:

WAC

- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected tribe.
- 197-11-712 Affecting.

197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemptions.
197-11-721 Closed record appeal.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 County/city.
197-11-730 Decision maker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-775 Open record hearing.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.
197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.

20.04.220 Adoption by reference.

The city adopts by reference the following rules for categorical exemptions, as supplemented in this chapter, including WAC 173-806-070 (Flexible thresholds), WAC 173-806-080 (Use of exemptions), and WAC 173-806-190 (critical areas):

WAC

- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

20.04.230 Purpose of this section and adoption by reference.

This section contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The city adopts the following sections by reference:

WAC

- 197-11-900 Purpose of this part.
- 197-11-902 Agency SEPA policies.
- 197-11-916 Application to ongoing actions.
- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determining the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency status.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

20.04.240 Critical areas.

All categorical exemptions listed in WAC 197-11-800 apply whether or not a proposal is located wholly or partially within a critical area. The city shall treat proposals located wholly or partially within critical areas no differently than other proposals under this chapter. The city shall not automatically require a threshold determination or EIS for a proposal merely because it is located wholly or partially

20.04.250 Fees.

The city shall require the following fees for its activities in accordance with the provisions of this chapter.

- A. **Threshold Determination.** For every environmental checklist the city will review when it is lead agency, the city shall collect a fee, as set by the city council by periodic resolution, from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee. When the city completes the environmental checklist at the applicants request, or under WAC 173-806-090(3), a sum based upon city costs shall be collected.
- B. **Environmental Impact Statement.**
 - 1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that employees of the city shall prepare the EIS, the city may charge and collect a reasonable fee from any applicant to cover the costs incurred by the city in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.
 - 2. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. The city may require the applicant to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city and applicant.
 - 3. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subsection (B)(1) or (B)(2) of this section which remain after incurred costs are paid.
- C. **Professional Service Costs.** Whenever it is determined that the services of an engineer, biologist, attorney, land use planner or other professional consultant are reasonably necessary to assist city staff in performing activities required by this chapter, the applicant shall be charged a fee in an amount sufficient to reimburse the city for cost of such professional services. This fee shall be in addition to all other fees and charges provided for in this section. No permit for the proposed section shall be issued until professional services fees have been paid in full or a written agreement for payment in a form approved by the city attorney has been signed by the applicant and the city.
- D. **Public Notice Costs.** The city may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.
- E. **Consulted Agency Duties.** The city shall not collect a fee for performing its duties as a consulted agency.
- F. **Copy Costs.** The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by Chapter 42.17 RCW.

20.04.260 Effective date.

The effective date of the ordinance codified in this chapter is September 26, 1984.

20.04.270 Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

20.04.280 Adoption by reference.

The city adopts the following forms and sections by reference:

WAC

197-11-960 Environmental checklist.

197-11-965 Adoption notice.

197-11-970 Determination of nonsignificance (DNS).

197-11-980 Determination of significance and scoping notice (DS).

197-11-985 Notice of assumption of lead agency status.

197-11-990 Notice of action.