

Chapter 20.98

STATE ENVIRONMENTAL POLICY ACT (SEPA)

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20.98.010 Authority.

- (a) The City adopts these regulations pursuant to the State Environmental Policy Act (SEPA), RCW 43.21C, and the SEPA rules, WAC 197-11.
- (b) This Chapter contains this City’s SEPA procedures and policies.
- (c) The SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this Chapter. Where these rules differ from the State Rules due to updates to the RCWs or WACs, the most current RCWs or WACs supersede.

20.98.020 General Requirements—Adoption by Reference.

The City adopts by reference the provisions of “PART TWO – GENERAL REQUIREMENTS”, WAC 197-11-040 through 197-11-290.

20.98.030 Definitions.

In addition to those definitions contained within WAC 197-111-700 through 197-11-799, hereby adopted by reference, when used in this section the following terms shall have the following meanings, unless the context indicates otherwise:

Department means any division, subdivision, or organizational unit of the City established by ordinance, rule, or order.

SEPA rules means WAC Chapter 197-11 adopted by the department of ecology.

Ordinance means the ordinance, resolution, or other procedure used by the City to adopt regulatory requirements.

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).

20.98.040 Designation of Responsible Official.

- (a) For those proposals for which the City is the lead agency, the Responsible Official shall be the Community and Economic Development Director.
- (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 functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference above.
- (c) The City shall retain all documents required by the SEPA rules (WAC Chapter 197-11) and make them available in accordance with RCW Chapter 42.17.

20.98.050 Lead Agency Determination and Responsibilities.

- (a) The department within the City receiving an application for or initiating a proposal that involves a non-exempt action shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the department 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 department receiving the application shall determine the responsible official who 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 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 197-11-922 through 197-11-940, it may object to that 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. The City's Responsible Official may initiate any such petition on behalf of the City.
- (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) Any department 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.

20.98.060 Transfer of Lead Agency Status to a State Agency.

For any proposal for a private project where the City would be the lead agency and for which one or more state agencies have jurisdiction, the City's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the priority listing in WAC-11-936 shall be the lead agency and the City shall be an agency with jurisdiction. To transfer lead agency duties, the City's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the City shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

20.98.070 Additional Timing Considerations.

- (a) For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the City's staff recommendation to the permit-issuing authority.
- (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.

20.98.080 Categorical Exemptions and Threshold Determinations—Adoption by Reference.

The City adopts by reference the provisions of "PART THREE – CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATION", WAC 197-11-300 through 197-11-390, subject to the provisions of sections 20.98.090 through 20.98.120.

20.98.090 Flexible Thresholds for Categorical Exemptions.

- (a) The City establishes the following maximum exempt levels for minor new construction under WAC 197-11-800 (1)(b) based on local conditions:
 - (1) For single family residential detached units in WAC 197-11-800 (1)(b)(i): Up to 9 dwelling units.
 - (2) For single family residential attached with the total square footage of less than 1,500 square feet per unit in WAC 197-11-800 (1)(b)(i): Up to 49 dwelling units
 - (3) For multifamily residential units in WAC 197-11-800(1)(b)(ii): Up to 49 dwelling units.
 - (4) For agricultural structures in WAC 197-11-800 (1)(b)(iii): Up to 10,000 square feet.
 - (5) For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800 (1)(b)(iv): Up to 4,000 square feet and with associated parking facilities designed for up to 20 parking spaces.
 - (6) For parking lots in WAC 197-11-800 (1)(b)(iv): Up to 20 parking spaces not associated with a structure.
 - (7) For landfills and excavations in WAC 197-11-800 (1)(b)(v): Up to 250 cubic yards throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

Single Family Residential - Detached	Up to 9 units
Single Family Residential – Attached with the total square footage of less than 1,500 square feet per unit	Up to 49 units
Multi-Family Residential or Mixed-Use Development	Up to 49 units
Barn, Loafing Shed, Farm Equipment Storage, Produce Storage or Packing Structure	Up to 10,000 square feet
Office, School, Commercial, Recreational, Service, Storage Building, Parking Facilities	Up to 4,000 square feet of gross floor area and up to 20 associated parking spaces
Parking Facilities not associated with a structure	Up to 20 parking spaces
Fill or Excavation	Up to 250 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).

20.98.100 Use of Exemptions

- (a) Each department within the City that receives an application for a license or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal are exempt. The department's 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 a proposal is exempt, the department 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 department 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) A department 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.
 - (3) A department 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.
 - (4) Any permit application that is exempt from SEPA and requires a Notice of Application per AMC 20.16 – Permits and Land Division Approval shall be sent to all SEPA review agencies for project review. The Notice of Application has a fourteen day public comment period.
 - (5) The City shall require a standard inadvertent discovery plan to be submitted with all exempt land use project actions prior to issuance.

20.98.110 Environmental Checklist

- (a) Except as provided in Subsection (d) of this section, 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 ordinance; except, a checklist is not needed if the city/county 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/county is the lead agency, for determining the responsible official and for making the 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 on 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.

20.98.120 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 a 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 stormwater runoff” are inadequate, whereas proposals to “muffle machinery to X decibels” or “construct two-hundred-foot stormwater 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 either WAC 197-11-340(2), requiring a fourteen-day comment period and public notice, or WAC 197-11-355, which may require no additional comment period beyond the comment period on the notice of application.
 - (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 clarification or changes to a proposal, as opposed to a written request for early notice, shall not bind the City to consider the clarification or changes in its threshold determination.

20.98.130 Preparation of EIS—Adoption by Reference.

The City adopts by reference the provisions of “PART FOUR – ENVIRONMENTAL IMPACT STATEMENT (EIS)”, WAC 197-11-400 through 197-11-490, subject to the provisions of section 20.98.140.

20.98.140 Preparation of EIS—Additional Considerations

- (a) Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of the City staff 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 WAC Chapter 197-11.
- (b) The DEIS and FEIS or draft and final SEIS shall be prepared by City staff, the applicant, or by a consultant selected by the City or 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 requested from another agency. (This does not apply to information the City may request under another ordinance or statute.)

20.98.150 Response on Environmental Documents Under SEPA—Adoption by Reference.

The City adopts by reference the provisions of “PART FIVE – COMMENTING” , WAC 197-11-500 through 197-11-570, subject to the provisions of sections 20.98.160 and 20.98.170.

20.98.160 Public Notice.

- (a) Whenever possible, the City shall integrate the public notice required under this section with existing notice procedures for the City's nonexempt permit(s) or approval(s) required for the proposal.
- (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 action, the notice shall state whether a DS or DNS has been issued 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 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; and
 - (B) Publishing notice in a newspaper of general circulation in the county, City, or general area where the proposal is located.
 - (C) Additional public notice may also be given through the following methods:
 - (i) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
 - (ii) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas); or
 - (iii) Publishing on the City's official Web Site.
 - (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 197-11-620, 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; and
 - (2) Posting the property, for site-specific proposals; and
 - (3) Publishing notice in a newspaper of general circulation in the county, City, or general area where the proposal is located.
 - (4) Additional public notice may also be given through the following methods:
 - (A) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
 - (B) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas); or
 - (C) Publishing on the City's official Web Site.
- (e) Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).
- (f) The City may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

20.98.170 Designation of Official to Perform Consulted Agency Responsibilities for the City.

- (a) The City's Responsible Official or his/her designee 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 City’s 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.

20.98.180 Using Existing Environmental Documents—Adoption by Reference.

The City adopts by reference the provisions of “PART SIX – USING EXISTING ENVIRONMENTAL DOCUMENTS” , WAC 197-11-600 through 197-11-640.

20.98.190 SEPA and Agency Decisions—Adoption by Reference.

The City adopts by reference the provisions of “PART SEVEN – SEPA AND AGENCY DECISIONS” , WAC 197-11-650 through 197-11-680, subject to the provisions of sections 20.98.200 through 20.98.220.

20.98.200 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 section of the administration chapter of this Arlington Municipal Code; 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 (d) below 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 final 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) below 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 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 codes, ordinances, resolutions, and plans, as may be amended:
 - (A) AMC Title 20, the City’s Land Use Code;
 - (B) The City’s Comprehensive plan;
 - (C) Building and related codes;
 - (D) AMC Chapter 13.28, Stormwater Management;
 - (E) Park and recreation plan;
 - (F) Airport master plan and related regulations;
 - (G) County health district regulations;
 - (H) Public Works construction standards;
 - (I) Water, sewer and other utility ordinances and regulations;
 - (J) Uniform Fire Code;
 - (K) Any Interlocal Agreements regarding reciprocal mitigation/impact fees.
- (e) When any proposal or action not requiring a decision of the City council is conditioned or denied on the basis of SEPA by a non-elected official, the decisions shall be appealable to the City council. The proponent or any aggrieved party may perfect such an appeal by giving notice to the responsible official within ten days of the decision being appealed. Review by the City council shall be on a *de novo* basis.

20.98.210 Appeals

- (a) The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:
 - (1) An agency or person may appeal the City’s procedural compliance with WAC Chapter 197-11 for issuance of the following:
 - (A) A final DNS: Appeal of the DNS must be made to the Hearing Examiner within ten days of the date the DNS is final (see WAC 197-11-390 (2) (a)).
 - (B) A DS: The appeal must be made to the Hearing Examiner within ten days of the date the DS is issued.
 - (2) For any appeal under this subsection, the City shall provide for a record that shall consist of the following:
 - (A) Findings and conclusions;
 - (B) Testimony under oath; and
 - (C) A taped or written transcript.
 - (3) The procedural determination by the City’s responsible official shall carry substantial weight in any appeal proceeding.
- (b) 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.

20.98.220 Notice/Statute of Limitations.

- (a) The City, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.
- (b) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The City clerk, applicant, or proponent shall publish the notice pursuant to RCW 43.21C.080.

20.98.230 SEPA Uniform Usage and Definitions—Adoption by Reference.

The City adopts by reference the provisions of “PART EIGHT – DEFINITIONS” , WAC 197-11-700 through WAC 197-11-799.

20.98.240 Categorical Exemptions—Adoption by Reference.

The City adopts by reference the provisions of “PART NINE – CATEGORICAL EXEMPTIONS” , WAC 197-11-800 through 197-11-890 and “SEPA PROCEDURES” , WAC 173-802-010 through 173-802-190, subject to the provisions of sections 20.98.090 through 20.98.120.

20.98.250 Agency Compliance with SEPA—Adoption by Reference.

The City adopts by reference the provisions of “PART TEN – AGENCY COMPLIANCE” , WAC 197-11-900 through 197-11-955, subject to the provisions of sections 20.98.260 and 20.98.270.

20.98.260 Environmentally critical areas.

- (a) The City Council shall designate environmentally critical areas under the standards of WAC 197-11-908, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with the City Clerk and the department of Ecology, Headquarters Office, Olympia, Washington. The environmentally critical area designations shall have full force and effect of law as of the date of filing.
- (b) The City shall treat proposals located wholly or partially within an environmentally critical area no differently than other proposals under this ordinance, making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally critical area.
- (c) Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

20.98.270 Fees.

Fees for processing permits through the SEPA process shall be set by City Council by resolution.

20.98.280 Forms—Adoption by Reference.

The City adopts by reference the provisions of “PART ELEVEN – FORMS” , WAC 197-11-960 through 197-11-990.

- Environmental Checklist.
- Adoption Notice.
- Determination of Nonsignificance (DNS).
- Determination of Significance and Scoping Notice (DS).
- Notice of Assumption of Lead Agency Status.
- Notice of Action.

20.98.290 General Authority and Requirements of RCW 43.21C – Adoption by Reference.

The City adopts by reference the provisions of the “STATE ENVIRONMENTAL POLICY ACT” , RCW Chapter 43.21C, subject to the provisions of this chapter.