

Chapter 20.98

STATE ENVIRONMENTAL POLICY ACT (SEPA)

Sections:

- 20.98.010 Authority.
- 20.98.020 General Requirements—Adoption by Reference.
- 20.98.030 Definitions.
- 20.98.040 Designation of Responsible Official.
- 20.98.050 Lead Agency Determination and Responsibilities.
- 20.98.060 Transfer of Lead Agency Status to a State Agency.
- 20.98.070 Additional Timing Considerations.
- 20.98.080 Categorical Exemptions and Threshold Determinations—Adoption by Reference.
- 20.98.090 Flexible Thresholds for Categorical Exemptions.
- 20.98.100 Use of Exemptions
- 20.98.110 Environmental Checklist
- 20.98.120 Mitigated DNS
- 20.98.130 Preparation of EIS—Adoption by Reference.
- 20.98.140 Preparation of EIS—Additional Considerations
- 20.98.150 Response on Environmental Documents Under SEPA—Adoption by Reference.
- 20.98.160 Public Notice.
- 20.98.170 Designation of Official to Perform Consulted Agency Responsibilities for the City.
- 20.98.180 Using Existing Environmental Documents—Adoption by Reference.
- 20.98.190 SEPA and Agency Decisions—Adoption by Reference.
- 20.98.200 Substantive Authority.
- 20.98.210 Appeals
- 20.98.220 Notice/Statute of Limitations.
- 20.98.230 SEPA Uniform Usage and Definitions—Adoption by Reference.
- 20.98.240 Categorical Exemptions—Adoption by Reference.
- 20.98.250 Agency Compliance with SEPA—Adoption by Reference.
- 20.98.260 Environmentally critical areas.
- 20.98.270 Fees.
- 20.98.280 Forms—Adoption by Reference.
- [20.98.290 State Environmental Policy Act \(Chapter 43.21C RCW\) – Adoption by Reference.](#)

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.

This section contains the basic requirements that apply to the SEPA process. The City adopts the following sections of Chapter 197-11 of the Washington Administrative Code by reference:

[010 Authority](#)

[020 Purpose](#)

[030 Policy](#)

040 Definitions.

- 050 Lead Agency.
- 055 Timing of the SEPA Process.
- 060 Content of Environmental Review.
- 070 Limitations on Actions During SEPA Process.
- 080 Incomplete or Unavailable Information.
- 090 Supporting Documents.
- 100 Information Required of Applicants.
- 158 GMA project review—Reliance on existing plans, laws, and regulations.
- 164 Planned actions – Definition and criteria.
- 168 Ordinances or resolutions designating planned actions – Procedures for adoption.
- 172 Planned actions – Project review.
- ~~265~~—210 SEPA/GMA integration
- 220 SEPA/GMA definitions.
- 228 Overall SEPA/GMA integration procedures.
- ~~266~~—230 Timing of an integrated GMA/SEPA process.
- ~~267~~—232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- ~~268~~—235 SEPA/GMA integration Documents~~documents.~~
- ~~269~~—238 SEPA/GMA integration Monitoring.
- ~~270~~—250 SEPA/Model Toxics Control Act integration.
- 253 SEPA lead agency for MTCA actions.
- 256 Preliminary evaluation.
- 259 Determination of nonsignificance for MTCA remedial actions.
- ~~271~~—262 Determination of significance and EIS for MTCA remedial actions.
- ~~272~~—265 Early scoping for MTCA remedial actions.
- ~~278~~—268 MTCA interim actions.

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.

Formatted: Indent: Left: 0.1", Hanging: 0.47"

Formatted: Right: 0.01", Tab stops: Not at 0.13"

Formatted: Right: 0.01"

- (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.

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 of WAC 197-11, as may be amended, by reference, as supplemented in this part:

- 300 Purpose of this Part.
- 305 Categorical exemptions.
- 310 Threshold Determination Required.
- 315 Environmental Checklist.
- 330 Threshold Determination Process.
- 335 Additional Information.
- 340 Determination of Nonsignificance (DNS).
- 350 Mitigated DNS.
- 355 Optional DNS process.
- 360 Determination of Significance (DS/ Initiation of Scoping).
- 390 Effect of Threshold Determination

~~The City also adopts the following sections of the RCW: 43.21C.410 Battery charging and exchange station installation.~~

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 ~~dwelling~~ units in WAC 197-11-800 (1)(b)(i): Up to 9 dwelling units.
- ~~(+)(2)~~ For multifamily residential units in WAC 197-11-800(1)(b)(ii): Up to 49 dwelling units.
- ~~(2)(3)~~ For agricultural structures in WAC 197-11-800 (1)(b)(iii): Up to 10,000 square feet.
- ~~(3)(4)~~ 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.
- ~~(4)(5)~~ For parking lots in WAC 197-11-800 (1)(b)(iv): Up to 20 parking spaces not associated with a structure.
- ~~(6)~~ 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.

Formatted: Indent: Left: 0.1", Space Before: 2.95 pt, Line spacing: single

Formatted: Indent: Left: 0.38", Space After: 6 pt, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.6" + Indent at: 0.85"

Formatted Table

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

- (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).

Formatted: Indent: Left: 0"

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.

Formatted: Indent: Hanging: 0.25", Right: 0.05", Space Before: 0.1 pt, Line spacing: Exactly 12.7 pt

(4) All permit applications that are 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.

Formatted: Indent: Left: 0.38", Hanging: 0.25"

20.98.110 Environmental Checklist

Formatted: Indent: Left: 0"

- (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.

Formatted: Font: Times New Roman, 12 pt

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

Formatted: Indent: Left: 0.6"

Formatted: Indent: Left: 0.6"

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.

This section contains the rules for preparing environmental impact statements. The City adopts the following sections of WAC 197-11, as may be amended, by reference, as supplemented by subsequent Sections:

- 400 Purpose of EIS.
- 402 General Requirements.
- 405 EIS Types.
- 406 EIS Timing.
- 408 Scoping.
- 410 Expanded scoping- ~~(Optional)~~.
- 420 EIS Preparation.
- 425 Style and Size.
- 430 Format.
- 435 Cover Letter or Memo.
- 440 EIS Contents.
- 442 Contents of EIS on Non-project Proposals.
- 443 EIS Contents When Prior Non-project EIS.
- 444 Elements of the Environment.
- 448 Relationship of EIS to Other Considerations.
- 450 Cost-Benefit Analysis.
- 455 Issuance of DEIS.
- 460 Issuance of FEIS.

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.

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 of WAC 197-11, as may be amended, by reference, as supplemented in subsequent sections:

- 500 Purpose of this Part.
- 502 Inviting Comment.
- 504 Availability and Cost of Environmental Documents.
- 508 SEPA Register.
- 510 Public Notice.
- 535 Public Hearings and Meetings.
- 545 Effect of No Comment.
- 550 Specificity of Comments.
- 560 FEIS Response to Comments.
- 570 Consulted Agency Costs to Assist Lead Agency

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.

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 of WAC 197-11, as may be amended, by reference:

~~164 — Planned actions — Definitions and criteria.~~

~~168 — Ordinances or resolutions designated planned actions — Procedures for adoption.~~

~~172 — Planned actions — Project review.~~

600 When to use Existing Environmental Documents.

610 Use of NEPA Documents.

620 Supplemental Environmental Impact Statement - Procedures.

625 Addenda - Procedures.

630 Adoption - Procedures.

635 Incorporation by Reference - Procedures.

640 Combining Documents

20.98.190 SEPA and Agency Decisions—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 of WAC 197-11, as may be amended, by reference:

650 Purpose of this Part.

655 Implementation.

660 Substantive Authority and Mitigation.

680 Appeals.

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.

This section contains uniform usage and definitions of terms under SEPA. The City adopts the following sections of WAC 197-11, as may be amended, by reference:

700	Definitions.
702	Act.
704	Action.
706	Addendum.
708	Adoption.
710	Affected Tribe.
712	Affecting.
714	Agency.
716	Applicant.
718	Built Environment.
720	Categorical Exemption.
<u>721</u>	<u>Closed Record Appeal.</u>
722	Consolidated Appeal.
724	Consulted Agency.
726	Cost-Benefit Analysis.
728	County/City.
730	Decision-Maker.

- 732 Department.
- 734 Determination of Nonsignificance (DNS).
- 736 Determination of Significance (DS).
- 738 EIS.
- 740 Environment.
- 742 Environmental Checklist.
- 744 Environmental Document.
- 746 Environmental Review.
- ~~748 Environmentally Critical Area.~~
- 750 Expanded Scoping.
- 752 Impacts.
- 754 Incorporation by Reference.
- 756 Lands Covered by Water.
- 758 Lead Agency.
- 760 License.
- 762 Local Agency.
- 764 Major Action.
- 766 Mitigated DNS.
- 768 Mitigation.
- 770 Natural Environment.
- 772 NEPA.
- 774 Non-project.
- 775 Open Record Hearing
- 776 Phased Review.
- 778 Preparation.
- 780 Private Project.
- 782 Probable.
- 784 Proposal.
- 786 Reasonable Alternative.
- 788 Responsible Official.
- 790 SEPA.
- 792 Scope.
- 793 Scoping.
- 794 Significant.
- 796 State Agency.
- 797 Threshold Determination.
- 799 Underlying Governmental Action

20.98.240 Categorical Exemptions—Adoption by Reference.

The City adopts by reference the following rules for categorical exemptions (WAC 197-11, as may be amended), as supplemented in this chapter, including WAC 173-806-70 (Flexible Thresholds) and Sections WAC 173-806-080 (Use of Exemptions) and WAC 173-806-190 (Environmentally Critical Areas).

- 800 Categorical Exemptions.
- 810 Exemptions and non-exemptions applicable to specific state agencies.
- 820 Department of licensing
- 825 Department of labor and industries.
- 830 Department of natural resources.
- 835 Department of fish and wildlife.
- 845 Department of social and health services and department of health.
- 850 Department of agriculture.

Formatted: Indent: Left: 0.1", Hanging: 0.53", Right: 0.01"

- 855 Department of ecology.
- 860 Department of transportation.
- 865 Utilities and transportation commission.
- 870 Department of commerce
- 875 Other agencies.
- 880 Emergencies.
- 890 Petitioning DOE to Change Exemptions.

Formatted: Indent: Left: 0.1", Hanging: 0.47", Right: 0.01"

20.98.250 Agency Compliance with SEPA—Adoption by Reference.

This section contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally critical areas, listing agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The City adopts by reference the following sections of WAC 197-11, as may be amended, and as supplemented by this Chapter:

- 900 Purpose of this part.
- 902 Agency SEPA policies.
- 904 Agency SEPA procedures.
- 906 Content and consistency of agency procedures.
- 908 Critical areas.
- 910 Designation of responsible official.
- 912 Procedures of consulted agencies.
- 914 SEPA fees and costs.
- 916 Application to ongoing actions.
- 917 Relationship of chapter 197-10 WAC.
- 918 Lack of agency procedures.
- 920 Agencies with Environmental Expertise.
- 922 Lead Agency Rules.
- 924 Determining the Lead Agency.
- 926 Lead Agency for Governmental Proposals.
- 928 Lead Agency for Public and Private Proposals.
- 930 Lead Agency for Private Projects with One Agency with Jurisdiction.
- 932 Lead Agency for Private Projects Requiring Licenses From More Than One Agency, When One of the Agencies is a County/City.
- 934 Lead Agency for Private Projects Requiring Licenses From a Local Agency, Not a County/City, and One or More State Agencies.
- 936 Lead Agency for Private Projects Requiring Licenses From More than one State Agency.
- 938 Lead Agencies for Specific Proposals.
- 940 Transfer of Lead Agency Status to a State Agency.
- 942 Agreements on Lead Agency Status ~~to a State Agency.~~
- 944 Agreements on Division of Lead Agency Duties.
- 946 DOE Resolution of Lead Agency Disputes.
- 948 Assumption of Lead Agency Status.
- 950 Severability
- 955 Effective date.

Formatted: Indent: Left: 0.1", Hanging: 0.47", Right: 0.01"

Formatted: Indent: Left: 0.1", Hanging: 0.47"

Formatted: Indent: Left: 0.1", Hanging: 0.47", Right: -0.05"

Formatted: Indent: Left: 0.1", Hanging: 0.47"

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 the following forms and sections of WAC 197-11, as may be amended, by reference:

- 960 Environmental Checklist.
 965 Adoption Notice.
 970 Determination of Nonsignificance (DNS).
 980 Determination of Significance and Scoping Notice (DS).
 985 Notice of Assumption of Lead Agency Status.
 990 Notice of Action.

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

This section contains the basic requirements that apply to the SEPA process. The City adopts the following sections of Chapter 43.21C of the Revised Code of Washington by reference:

- 010 Purposes.
020 Legislative recognitions – Declaration – Responsibility.
030 Guidelines for state agencies, local governments – Statements – Reports – Advice – Information.
0301 Decisions not subject to RCW 43.21C.030.
031 Significant impacts.
0311 Final environmental impact statements – Expeditious manner – Time limit – Reports.
033 Threshold determination to be made within ninety days after application is complete.
034 Use of existing documents.
035 Certain irrigation projects decisions exempt from RCW 43.21C.030(2)(c).
036 Hazardous substance remedial actions – Procedural requirements and documents to be integrated.
037 Application of RCW 43.21C.030(2)(c) to forest practices.
038 Application of RCW 43.21C.030(2)(c) to school closures.
0381 Application of RCW 43.21C.030(2)(c) to decisions pertaining to air operating permits.
0382 Application of RCW 43.21C.030(2)(c) to watershed restoration projects – Fish habitat enhancement projects.
0383 Application of RCW 43.21C.030(2)(c) to waste discharge permits.
0384 Application of RCW 43.21C.030(2)(c) to wireless services facilities – Reporting requirements – Definitions.
039 Metals mining and milling operations – Environmental impact statements required.
040 Examination of laws, regulations, policies by state agencies and local authorities – Report of deficiencies and corrective measures.
050 Specific statutory obligations not affected.
060 Chapter supplementary – Conditioning or denial of government action.

Formatted: Space After: 6 pt

Formatted: Space After: 6 pt

- [065 Impact fees and fees for system improvements.](#)
- [075 Appeals](#)
- [080 Notice of action by governmental agency – How publicized – Time limitation for commencing challenge to action.](#)
- [087 List of filings required by RCW 43.21C.080.](#)
- [090–Decision of governmental agency to be accorded substantial weight.](#)
- [095 State environmental policy act rules to be accorded substantial deference.](#)
- [110 Content of state environmental policy act rules.](#)
- [120 Rules, ordinances, resolutions and regulations – Adoption – Effective dates.](#)
- [130 Model ordinances.](#)
- [135 Authority of local governmental units to adopt rules, guidelines and model ordinances by reference.](#)
- [150 RCW 43.21C.030\(2\)\(c\) inapplicable when statement previously prepared pursuant to national environmental policy act.](#)
- [160 Utilization of statement prepared under RCW 43.21C.030 to implement chapter 90.62 RCW – Utilization of chapter 90.62 RCW procedures to satisfy RCW 43.21C.030\(2\)\(c\).](#)
- [170 Council on environmental policy.](#)
- [175 Council on environmental policy – Personnel.](#)
- [210 Certain actions during state of emergency exempt from chapter.](#)
- [220 Incorporation of city or town exempt from chapter.](#)
- [222 Annexation by city or town exempt from chapter.](#)
- [225 Consolidation and annexation of cities or towns exempt from chapter.](#)
- [227 Disincorporation of a city or town or reduction of city or town limits exempt from chapter.](#)
- [229 Infill development – Categorical exemptions from chapter.](#)
- [230 Development and adoption of plan under chapter 43.180 RCW exempt from chapter.](#)
- [240 Project review under the growth management act.](#)
- [250 Forest practices board – Emergency rules – Exempt from chapter.](#)
- [260 Certain actions not subject to RCW 43.21C.030\(2\)\(c\) – Threshold determination on a watershed analysis.](#)
- [300 Workshops – Handbook.](#)
- [400 Unfinished nuclear power projects – Council action exempt from this chapter.](#)
- [410 Battery charging and exchange station installation.](#)
- [420 Comprehensive plans and development regulations – Optional elements – Nonproject environmental impact statements – Subarea plans – Transfer of development rights program – Recovery of expenses.](#)
- [428 Recovery of expenses of nonproject environmental impact statements – Fees for subsequent development.](#)
- [430 Certain fish protection standards exempt from compliance with chapter.](#)
- [440 Planned action – Defined – Authority of county, city, or town – Community meetings.](#)
- [450 Nonproject actions exempt from requirements of chapter.](#)
- [460 Environmental checklist – Authority of lead agency – Limitations of section.](#)
- [470 Categorical exemptions for structurally deficient bridges – Definition.](#)
- [480 Repair or replacement of structurally deficient state bridges exempt from chapter.](#)
- [490 Formation of community facilities districts exempt from this chapter.](#)
- [495 Adoption of ordinances, development regulations, and other nonproject actions – certain actions not subject to administrative or judicial appeals.](#)
- [501 Certain project actions evaluated under this chapter by a city or town planning under RCW 36.70A.040 – When exempt from appeals under this chapter.](#)
- [503 Exempt projects – Environmental checklist not required.](#)

- 515 Projects permitted pursuant to RCW 77.55.480 – Not subject to RCW 43.21C.030(2).
- 520 Review of greenhouse gas emissions from a new or expanded facility.
- 525 Model ordinances created under RCW 70A.207.030 – Certain actions not subject to the requirements of this chapter.
- 900 Short title.
- 911 Section headings not part of law – 1983 c 117.
- 912 Applicability – 1983 c 117.
- 914 Effective dates – 1983 c 117.

Formatted: Indent: Left: 0.1", Hanging: 0.53"