

Title 16

ENVIRONMENT

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16.04 Environmental Policy

Chapter 16.04

ENVIRONMENTAL POLICY

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Article I. Authority

16.04.010 Authority.

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

B. This chapter contains the city’s SEPA procedures and policies.

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

D. This chapter has been adopted pursuant to public review and comment. (Ord. 458 § 1, 1984)

Article II. General Requirements

16.04.020 Purpose and adoption by reference.

This article 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.
- 197-11-055 Timing of the SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.

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- 197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.
(Ord. 458 § 2, 1984)

16.04.030 Additional definitions.

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

A. "Department" means any division, sub-division 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. (Ord. 458 § 3, 1984)

16.04.040 Designation of responsible official.

A. For public and private proposals, the head of the city planning department (the city planner) or his or her designee, which designation may be either oral or written, shall be the responsible official.

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 in WAC 173-806-020.

C. The city shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.17 RCW. (Ord. 595 § 2, 1991; Ord. 458 § 4, 1984)

16.04.050 Lead agency determination and responsibilities.

A. The department within the city receiving an application for or initiating a proposal that involves a nonexempt 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 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 197-11-922 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 15 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 15-day time period. Any such petition on behalf of the city may be initiated by the city clerk.

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 depart-

ment 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 (that is: which agencies require nonexempt licenses?). (Ord. 458 § 5, 1984)

16.04.060 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, or similar advisory body.

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. (Ord. 458 § 6, 1984)

Article III. Categorical Exemptions and Threshold Determinations

16.04.070 Purpose and adoption by reference.

This article 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 article also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following WAC sections by reference, as supplemented in this article:

- 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.
 - 197-11-360 Determination of significance (DS)/initiation of scoping.
 - 197-11-390 Effect of threshold determination.
- (Ord. 458 § 7, 1984)

16.04.080 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 is 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 or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the government licenses required (WAC197-11-060). 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 reasonable 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; and
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

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purpose if nonexempt action(s) were not approved. (Ord. 458 § 8, 1984)

16.04.090 Environmental checklist.

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 a threshold determination. (Ord. 458 § 9, 1984)

16.04.100 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 non-exempt 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 15 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 15 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 (clarification, 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 200-foot storm water retention pond at Y location" are adequate.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

F. Mitigated DNSs issued under WAC 197-11-340(2) require a 15-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. (Ord. 458 § 10, 1984)

Article IV. Environmental Impact Statement (EIS)

16.04.110 Purpose and adoption by reference.

This article contains the rules for preparing environmental impact statements. The city adopts the following sections by reference:

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 (optional).
 - 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.
- (Ord. 458 § 11, 1984)

16.04.120 Preparation of EIS – Additional considerations.

A. Preparation of draft and final EIS's (DEIS and FEIS) and draft and final supplemental EIS's (SEIS) is the responsibility of the department under the direction or 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 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 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.) (Ord. 458 § 12, 1984)

Article V. Commenting

16.04.130 Adoption by reference.

This article contains the 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 article:

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.
 - 197-11-535 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.
- (Ord. 458 § 13, 1984)

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16.04.140 Public notice.

A. Whenever the city issues a DNS under WAC 197-11-340(2), or a DS under WAC 197-11-360(3), or a DEIS under WAC 197-11-455(5), or a SEIS under WAC 197-11-620, the city shall give public notice as follows:

1. If public notice is required for a non-exempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

2. 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;

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 which have expressed interest in a certain proposal or in the type of proposal being considered;

d. Notifying the news media;

e. Placing notices in appropriate regional, neighborhood, ethnic or trade journals;

f. Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas);

g. Announcing the availability pursuant to a meeting of the city council and placing notice and availability in the minutes of the meeting.

3. 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.

B. 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.

C. The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense. (Ord. 458 § 14, 1984)

16.04.150 Designation of official to perform consulted agency responsibilities.

A. The city council or its 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. This person 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. (Ord. 458 § 15, 1984)

Article VI. Using Existing Environmental Documents

16.04.160 Purpose and adoption by reference.

This article 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.

(Ord. 458 § 16, 1984)

Article VII. SEPA and Agency Decisions

16.04.170 Purpose and adoption by reference.

This article contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This article 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.
(Ord. 458 § 17, 1984)

16.04.180 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, or deny a permit or approval for a proposal on the basis of SEPA so long as the city has complied with the provisions contained in WAC 197-11-660, which section is adopted by reference and incorporated as if set forth fully in this chapter.

C. 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 ordinances and resolutions:

- a. The city’s comprehensive plan;
- b. The city’s subdivision ordinance;
- c. The city’s zoning code;
- d. The city’s building code and/or mechanical and fire codes. (Ord. 458 § 18, 1984)

16.04.190 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 notice shall be published by the city clerk, applicant or proponent pursuant to RCW 43.21C.080. (Ord. 458 § 19, 1984)

Article VIII. Definitions

16.04.200 Purpose and adoption by reference.

This article 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 exemption.

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- 197-11-722 Consolidated agency.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- Days: Days shall be defined as calendar days.
If any day under which an action must be taken falls upon a legal holiday, the action must be taken upon the next calendar day which is not a holiday.
- 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.
- 197-11-748 Environmentally sensitive area.
- 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.
- 197-11-776 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.
(Ord. 458 § 20, 1984)

Article IX. Categorical Exemptions

16.04.210 Adoption by reference.

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

WAC

- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.
(Ord. 458 § 21, 1984)

Article X. Agency Compliance

16.04.220 Purpose and adoption by reference.

This article contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally sensitive 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, as supplemented by WAC 173-806-043 through 173-806-045:

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 purposes.
 - 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 disputes.
 - 197-11-946 DOE resolution of lead agency disputes.
 - 197-11-948 Assumption of lead agency status.
- (Ord. 458 § 22, 1984)

16.04.230 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 of \$250.00 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 and the responsible official has determined that the environmental checklist is complete.

B. **Environmental Impact Statement.**

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in processing the EIS.

2. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a 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 to post bond or otherwise ensure payment of such costs. Such consultants shall be selected by mutual agreement of the city and the applicant after a call for proposals.

3. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subdivisions 1 and 2 of this subsection which remain after incurred costs are paid.

C. 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.

D. 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. (Ord. 93-013 § 2; Ord. 458 § 23, 1984)

Article XI. Forms

16.04.240 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.
- (Ord. 458 § 27, 1984)

