MODEL SEPA CODE AND RELATED LAND PERMIT ADMINISTRATION ISSUES

The purpose of the special meeting is to update Council on the status of staff’s review of the City’s SEPA Code, Ellensburg Municipal Code 1.42, to make it more consistent with the State’s Model SEPA Code, and to discuss other related Land Permit Administration issues.

Community Development Director Smith outlined the agenda report. The City’s current SEPA code, Chapter 1.42 is outdated and in need of amendment. Also, the City’s current SEPA policy regarding the processing of SEPA checklists provides for a much longer review and comment period than is required by either State law or the City’s current SEPA Code.

Deficiencies with the City’s SEPA Code include:

• A significantly longer review and comment period than State law allows which slows down the entire permit review process;

• The City’s codified SEPA appeal process is internally inconsistent as to where the appeal is heard (court of jurisdiction, City Council, or Hearing Examiner), and

• The City’s land use permit – administration processes in Chapter 1.68 are not consistent with the City’s current SEPA Code.

• The City is using SEPA for its critical areas ordinance since the current critical areas ordinance is out of date. Once a new critical areas ordinance is adopted, SEPA will not be used.

Council asked questions of staff. In answer to Council inquiry, the only Board and Commission that reviews the SEPA checklist is the Environmental Commission. A flowchart, including timelines, for the State SEPA Process versus the City SEPA Process was reviewed.

Councilmember Tabb arrived at 7:25 p.m.

Director Smith reviewed the draft model ordinance in the agenda packet and highlighted specific
sections for Council’s review and consideration.

Pages two and three of the ordinance (section 1.42.020) “Purpose of this Part and Adoption by Reference” contains the basic requirements that apply to the SEPA process. WAC 197-11-158 – GMA project review is not in the City’s existing SEPA Code but should be included because it gives authority to require mitigation when current ordinances are deemed inadequate to address identified impacts. Staff suggests including WAC 197-11-238 – Monitoring because it encourages but does not mandate that jurisdictions monitor SEPA reviews to track the cumulative impacts of permit decisions and conditions. This reference is optional and does not currently exist in the City’s SEPA Code.

Page five of the ordinance (section 1.42.058) “Additional timing considerations” is significantly different than the City’s existing SEPA Code Section 1.42.240 which sets forth a series of timelines for making the Threshold Determination. Subsection B. allows an applicant to request SEPA review prior to permit application. Council asked questions of staff. After lengthy Council/staff discussion it was Council consensus to include this language.

Pages six through nine of the ordinance (section 1.42.065) deals with the timing process for DNS and MDNS. After discussion, Council consensus was to eliminate WAC 197.11.340 i., ii. and iii.

Council consensus was for two, 14-day comment periods under WAC 197-11-350. Council consensus was to include the optional DNS process for integrated project reviews under WAC 197-11-355.

Section 1.42.070 – “Flexible thresholds for categorical exemptions” is optional and includes the list of categories which are the only exemptions for which there are flexible thresholds that the City can choose for itself. These are categorically exempt from SEPA. The flexible thresholds are listed on page 10 of the ordinance. After lengthy Council discussion, consensus was to establish the following exempt levels for minor new construction:

1. For residential dwelling units in WAC 197-11-800(1)(b)(i): Up to 9 dwelling units.
2. For agricultural structures in WAC 197-11-800(1)(b)(ii): Up to 10,000 square feet.
3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): Up to 12,000 square feet and 20 parking spaces (staff will research).
5. For landfills and evacuations in WAC 197-11-800(1)(b)(v): Up to 200 cubic yards.

Page eleven of the ordinance (section 1.42.090 C.2.) – “Environmental Checklist” dealing with the applicant providing inaccurate information on previous proposals or on proposals currently under consideration is optional and not a requirement; however, staff recommends including this language. Council consensus was to go with staff’s recommendation.
On page twelve of the ordinance (section 1.42.100 C.) – “Mitigated DNS” - Council consensus is to insert 14 working days.

Council took a five minute break at 9:05 p.m.

Council returned to the meeting at 9:10 p.m.

On page 13 of the ordinance under section 1.42.100 G – “Mitigated DNS” - Council consensus was to choose Option 1.

On page 15 of the ordinance under section 1.42.120 – “Preparation of EIS – Additional Considerations” - Council consensus was to insert applicant under “A.” and with respect to “B.”, staff will look into the list.

On page 16 of the ordinance under section 1.42.125 – “Additional elements to be covered by EIS” – this language is optional. After Council discussion, staff will consult with Carol Morris, Land Use Attorney, as to whether language incorporating economic, social policy and cost benefit analysis language could be incorporated for a 50,000 square foot building.

Staff recommends keeping the City’s language for public notice as set out on page 17 of the agenda packet. Council consensus was to not adopt WAC 197-11-510 “Public notice” by reference.

Property posting was discussed. Council consensus was to not adopt by reference WAC 197-11-510. Information dispersal to the public via website, list serve, etc. was discussed.

Page 19 of the ordinance (section 1.42.142) designates the SEPA responsible official to review all Kittitas County SEPA determinations. This subsection is not in the model SEPA ordinance but gives specific direction regarding who at the City should review and respond to Kittitas County SEPA determinations.

On page 19 of the ordinance (section 1.42.150) “Purpose of this part and adoption by ordinance. WAC 197-11-172 – Planned actions – project review.” - The City’s current SEPA Code does not adopt Planned Actions by reference and has no specific section addressing Planned Actions. A five-year limit was suggested. Staff will check with Carol Morris.

Page 22 of the ordinance (section 1.42.160 D.3.) deals with substantive SEPA authority. Council consensus was for staff to add language “including but not limited to” to this paragraph to avoid the need for repeated amendments to the paragraph.

Section 1.42.170 “Appeals” on page 23 of the ordinance lists an appeal process from Gig Harbor, Washington that will need to be re-developed to be consistent with Ellensburg’s appeal processes and Code sections.

Page 24 of the ordinance (section 1.42.170 B.) – “Notice of Decision.” The City does not currently
have a Notice of Decision provision in City Code Chapter 1.68 Land Use Permit – Administration provisions. This needs to be addressed if this section’s language is to be used. Staff recommends a Notice of Decision provision be developed and adopted. Council consensus was to add this provision.

Page 26 of the ordinance (section 1.42.170 L.)- “Hearing Examiner Appeals” contains language from the Town of Gig Harbor. The City does not currently have a hearing examiner process and this section will need to be developed.

Page 31 of the ordinance (section 1.42.190) – “Critical Areas” language is optional. This language is not currently in the City’s code. Detailed analysis will be required to determine which exemptions to exclude in which critical areas.

Page 31 of the ordinance (section 1.42.200) – “Fees” is an optional section. Carol Morris recommends fees be covered in a fees section. This does not have to be part of the ordinance.

Page 32 of the ordinance (section 1.42.200 A.3.) deals with reasonable fees for public notice requirements. The City’s current practice is to include the notice costs for the checklist and subsequent threshold determination in the checklist fee of $800. The City does not charge for the notice requirements for an EIS; they are rarely required and that cost is currently absorbed in the initial checklist fee. Notice fees should be reviewed to be certain the city is collecting enough to cover its costs in performing SEPA.

Director Smith would like to see land use permit codes consistent, clear and easy to read. Application framework from other cities was briefly reviewed. Staff would like to have the new SEPA code in place in six to eight months and will work towards that goal. In answer to Council inquiry, the City will hire outside help for this project: the work will not be done in-house.

**ADJOURN** Motion to adjourn at 10:04 p.m. O’Brien

Affirmed

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Mayor

ATTEST: ________________________________

City Clerk