

ORDINANCE NO. 204

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, ADOPTING POLICIES AND PROCEDURES UNDER THE STATE ENVIRONMENTAL POLICY ACT (SEPA) (RCW 43.21C.120) AND THE SEPA RULES (WAC 197-11-904); REPEALING ORDINANCES NOS. 53 AND 118 AND CHAPTER 14.04 OF THE WOODINVILLE MUNICIPAL CODE AND ADOPTING A NEW CHAPTER 14.04; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Woodinville is authorized/required to adopt policies and procedures under the State Environmental Policy Act (RCW 43.21C.120);

WHEREAS, numerous amendments to the State Environmental Policy Act (SEPA) rules under ESHB 1724 and ESB 6094 have been adopted by the State, thereby necessitating amendments to the City's policies and procedures; and

WHEREAS, adoption of SEPA policies and procedures is exempt from environmental review under WAC 197-11-800(20);

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

**SECTION 1. Ordinances Nos. 53 and 118 Repealed.** Ordinance No. 53, which adopted SEPA Regulations, and Ordinance No. 118, which amended Ordinance No. 53, are hereby repealed.

**SECTION 2. SEPA Provisions Adopted.** Chapter 14.04 is hereby adopted as follows:

**14.04.010. Authority.** 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 107-11-904). This chapter contains the City's SEPA procedures and policies. The SEPA rules contained in WAC Chapter 197-11 must be used in conjunction with this chapter.

**14.04.020. General Requirements - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

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| 197-11-040 Definitions.                                | 197-11-080 Incomplete or unavailable information.                       |
| 197-11-050 Lead agency.                                | 197-11-090 Supporting documents.  |
| 197-11-055 Timing of the SEPA process.                 | 197-11-100 Information required of applicants.                          |
| 197-11-060 Content of environmental review.            | 197-11-158 GMA project review-reliance on existing plans and relations. |
| 197-11-070 Limitations on actions during SEPA process. |   |

197-11-164 Planned actions--Definition and criteria.  
197-11-168 Ordinances or resolutions designating planned actions--Procedures for adoption.  
197-11-172 Planned actions--Project review.  
197-11-210 SEPA/GMA integration.  
197-11-220 SEPA/GMA definitions.  
197-11-228 Overall SEPA/GMA integration procedures.  
197-11-230 Timing of an integrated GMA/SEPA process.  
197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.

197-11-235 Documents.  
197-11-238 Monitoring.  
197-11-250 SEPA/Model Toxics Control Act (MTCA) integration.  
197-11-253 SEPA lead agency for MTCA actions.  
197-11-256 Preliminary evaluation.  
197-11-259 Determination of nonsignificance for MTCA remedial actions.  
197-11-262 Determination of significance and Environmental Impact Statement (EIS) for MTCA remedial actions.  
197-11-265 Early scoping for MTCA remedial actions.  
197-11-268 MTCA interim actions.

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

- A) "Department" means any division, subdivision or organizational unit of the City established by ordinance, rule, or order.
- B) "SEPA rules" means chapter 197-11 WAC adopted by the department of ecology.
- C) "Ordinance" means the ordinance, resolution, or other procedure used by the City to adopt regulatory requirements.
- D) "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).

**14.04.040. Designation of responsible official.**

- A) For those proposals for which the City is the lead agency, the responsible official shall be the Planning Director, or such other person as the City Manager may designate in writing.
- 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 WMC 14.04.020.
- 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 (Revised Code of Washington).

**14.04.050. Lead agency determination and responsibilities.**

- A) When the City receives an application for or initiating a proposal that involves a nonexempt action, the responsible official 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 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 the City determines that a supplemental environmental review is necessary under WAC 197-11-600.
- C) 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 14 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 14-day time period. Any such petition on behalf of the City may be initiated by the responsible official.
- D) The responsible official is 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.
- E) The responsible official shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

**14.04.060. 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 197-11-936 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.

**14.04.070. Integration with permit and land use decisions.** Under state law, the procedure for review of development permits shall be combined with the environmental review process, both procedural and substantive. The process under SEPA and this chapter shall integrate the following procedures, insofar as possible, with any applicable process for decision-making on permit and land use applications:

- A) Staff review of the application under City codes and regulations and the environmental review and determination thereon;
- B) The staff report on the application and the report or documentation concerning environmental review;
- C) Hearings and other public process, including required public notices, required by City code or regulation, and hearings and other public processes, including public notices, required or conducted under SEPA. This section shall include appeals, except as otherwise expressly provided by this Code;
- D) Such other review processes as the Planning Director shall determine.

**14.04.080. Additional timing considerations.**

- A) For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the City's staff recommendation to any appropriate advisory body, such as the Planning Commission.
- B) If the City's only action on a proposal is a decision on a building permit or other permit 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. In addition to the environmental documents, the applicant shall submit such additional information as required by the responsible official.

**14.04.090. Categorical Exemptions and Threshold Determinations - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

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| 197-11-300 Purpose of this part.                   | 197-11-355 Optional DNS process.                                     |
| 197-11-305 Categorical exemptions.                 | 197-11-360 Determination of significance (DS)/Initiation of scoping. |
| 197-11-310 Threshold determination required.       | 197-11-390 Effect of threshold determination.                        |
| 197-11-315 Environmental checklist.                | 197-11-800 Categorical exemptions.                                   |
| 197-11-330 Threshold determination process.        | 197-11-880 Emergencies.  |
| 197-11-335 Additional information.                 | 197-11-890 Petitioning DOE to change exemptions.                     |
| 197-11-340 Determination of nonsignificance (DNS). |  |
| 197-11-350 Mitigated DNS.                          |  |

**14.04.100. Thresholds for categorical exemptions.** The City hereby adopts the following thresholds for minor new construction under WAC 197-11-800(1)(b) based on local conditions:

- A) For residential dwelling units in WAC 197-11-800(1)(b)(i): Up to 4 dwelling units;
- B) For agricultural structures in WAC 197-11-800(1)(b)(ii): Up to 10,000 square feet;
- C) For office, school, commercial, recreational, services or storage buildings in WAC 197-11-800(b)(iii): Up to 4,000 square feet and 20 parking spaces;
- D) For parking lots in WAC 197-11-800(1)(b)(iv): Up to 20 parking spaces; and
- E) For landfills and excavations in WAC 197-11-800(1)(b)(v): Up to 100 cubic yards.

**14.04.110. Use of exemptions.**

- A) When the City receives an application for a license or, in the case of governmental proposals, a department initiates a proposal, the responsible official shall determine whether the license and/or the proposal is exempt. The responsible official'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 ordinance apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.
- B) In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency, even if the license application that triggers the responsible official's consideration is exempt.
- C) Planned Actions.

- (1) A planned action does not require a threshold determination or the preparation of an environmental impact statement under SEPA, but is subject to environmental review and mitigation under SEPA.
- (2) A "planned action" means one or more types of project action that:
  - (a) Are designated planned actions by an ordinance or resolution adopted by the City;
  - (b) Have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:
    - (i) A comprehensive plan or subarea plan adopted under Chapter 36.70A RCW; or
    - (ii) A fully contained community, a master planned resort, a master planned development or a phased project;
  - (c) Are subsequent or implementing projects for the proposals listed in Subsection (3)(b)(ii) of this section;
  - (d) Are located within an urban growth area, as defined in RCW 36.70A.030;
  - (e) Are not essential public facilities, as defined in RCW 36.70A.200; and
  - (f) Are consistent with the City's Comprehensive Plan adopted under Chapter 36.70A RCW.
- (3) Limitations on Planned Actions: The City shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the City, and may limit a planned action to a time period identified in the environmental impact statement or the adoption of this Code.
- D) If a proposal includes both exempt and nonexempt actions, the responsible official may authorize exempt actions prior to compliance with the procedural requirements of this ordinance, 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; and
  - (3) A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures serve no purpose if nonexempt action(s) were not approved.

**14.04.120. Environmental checklist.**

- A) A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this ordinance; except, a checklist is not needed if the City and applicant agree that 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 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.

**14.04.130. Mitigated DNS (MDNS).**

- A) As provided in this section and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.
- B) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:
- (1) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
  - (2) Precede the City's actual threshold determination for the proposal.
- C) The responsible official should respond to the request for early notice within 14 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 if the City determines that no additional information or mitigation measures are required.
  - (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 decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate.
  - (4) Mitigation measures that justify issuance of a mitigated DNS (MDNS) may be incorporated in the DNS by reference to agency staff reports, studies, or other documents.
- F) The City shall not act upon a proposal for which a mitigated DNS has been issued for 14 days after the date of issuance.
- G) A MDNS is issued under either WAC 197-11-340 (2), requiring a 14-day comment period and public notice, or WAC 197-11-355(5), which may require no additional comment period beyond the comment period on the notice of application.
- H) Mitigation measures incorporated in the MDNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any terms or conditions of the permit, or

enforced in any manner specifically prescribed by the City. Failure to comply with the designated mitigation measures shall be grounds for suspension and/or revocation of any permit issued.

- I) 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).
- J) The City's written response under subsection (C) 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.

**14.04.140. Optional DNS and MDNS Process.**

- A) If the responsible official has a reasonable basis for determining that significant adverse environmental impacts are unlikely, the responsible official may elect to use the single integrated comment period set forth in this section. If this process is used, a second comment period is not required when the DNS is issued.
- B) If the optional process set forth in this section is used, the responsible official shall:
  - (1) State on the first page of the notice of application that it expects to issue a DNS (MDNS) for the proposal, and that:
    - (a) The optional DNS process is being used;
    - (b) This may be the only opportunity to comment on the environmental impacts of the proposal;
    - (c) The proposal may include mitigation measures under applicable codes, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and
    - (d) A copy of the subsequent threshold determination for the specific proposal may be obtained upon request (in addition, the City may choose to maintain a general mailing list for threshold determination distribution.)
  - (2) List in the notice of application the conditions being considered to mitigate environmental impacts, if a MDNS is expected;
  - (3) Comply with the requirements for a notice of application and public notice in RCW 36.70B.110: and
  - (4) Send the notice of application and environmental checklist to
    - (a) Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and
    - (b) Anyone requesting a copy of the environmental checklist for the specific proposal (in addition, the City may choose to maintain a general mailing list for checklist distribution).
- C) If the responsible official indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application in accordance with WMC 14.04.040 and WAC 197-11-948.
- D) The responsible official shall consider timely comments on the notice of application and either:
  - (1) Issue a DNS or MDNS with no comment period using the procedures in Subsection E of this section;
  - (2) Issue a DNS or MDNS with a comment period using the procedures in Subsection E of this section;
  - (3) Issue a DS; or
  - (4) Require additional information or studies prior to making a threshold determination.

E) If a DNS or MDNS is issued under Subsection D(1) or D(2) above, the responsible official shall send a copy of the DNS or MDNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be circulated.

**14.04.150. Environmental Impact Statement (EIS) - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

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

**14.04.160. 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 Planning Department under the direction of the responsible official. Before the City issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and chapter 197-11 WAC.
- B) The draft and final EIS or SEIS shall be prepared, at the City's option, by City staff, the applicant, or a consultant approved by the City. 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.)

**14.04.170 - Commenting - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

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| 197-11-500 Purpose of this part.                             | 197-11-535 Public hearings and meetings. |
| 197-11-502 Inviting comment.                                 | 197-11-545 Effect of no comment.         |
| 197-11-504 Availability and cost of environmental documents. | 197-11-550 Specificity of comments.      |
| 197-11-508 SEPA register.                                    |  |

**14.04.180. Public comment.**

- A) A period of public comment shall be provided after threshold determinations under WAC 197-11-070, -259, -340, -355, -390, and -502.
- B) Public comment periods shall be as follows:
  - (1) DNS: Except as provided by the optional DNS process, none. However, a 14-day comment period is required if the proposal involves:
    - (a) Another agency with jurisdiction;
    - (b) Demolition of any structure or facility not exempted by WAC 197-11-800(2)(f) or 197-11-880;
    - (c) Issuance of clearing or grading permits not exempted in WAC 197-11-800(1)(v);
    - (d) A DNS under WAC 197-11-305(2)(3), or 197-11-360(4); or
    - (e) A GMA action.
  - (2) Optional DNS: Combined with notice of application. See WMC Section 14.04.130 and WAC 197-11-355;
  - (3) MDNS: Except as provided by the optional DNS process, 14 days;
  - (4) Scoping: 21 days; 14 days if combined with notice of application; longer if expanded scoping is used (see WAC 197-11-410).

**14.04.190. 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 a SEPA document is issued concurrently with the notice of application, the public notice requirements for the notice of application will suffice to meet the SEPA public notice requirements.
  - (2) If no public notice is otherwise required for the permit or approval, the City shall give notice of the DNS or DS by at least one of the following:
    - (a) Publishing notice in the City's official newspaper;
    - (b) Mailing notice to property owners per WMC 17.11.040(C); or
    - (c) Noticing as otherwise required or allowed by WMC 17.11.
  - (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.
- C) If a DNS is issued using the optional DNS process, the public notice requirements for the notice of application as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements.
- 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 permit; and
  - (2) One or more of the following:
    - (a) Posting the property for site-specific proposal;

- (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; and/or
  - (f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposals or subject areas).
- E) The City may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

**14.04.200. Designation of official to perform consulted agency responsibilities for the City.**

- A) The responsible official shall be responsible for preparation of written comments for the City in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.
- B) This 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.

**14.04.210. Using Existing Environmental Documents - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

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| 197-11-600 When to use existing environmental documents.            | 197-11-625 Addenda--Procedures.                    |
| 197-11-610 Use of NEPA documents.                                   | 197-11-630 Adoption--Procedures.                   |
| 197-11-620 Supplemental environmental impact statement--Procedures. | 197-11-635 Incorporation by reference--Procedures. |
|   | 197-11-640 Combining documents.                    |

**14.04.230. SEPA and Agency Decisions - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

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

**14.04.240. Substantive authority.**

- (A) The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the City of Woodinville.
- (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 ordinance;
  - (2) Such conditions are in writing;

- (3) The mitigation measures included in such conditions are reasonable and capable of being accomplished;
  - (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) of this section and cited in the license or other decision document.
- (C) The City may deny a permit or approval for a proposal on the basis of SEPA so long as:
- (1) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or 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) of this section and identified in writing in the decision document.
- (D) The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:
- (1) The City shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
    - (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
    - (b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
    - (c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
    - (d) Preserve important historic, cultural, and natural aspects of our national heritage;
    - (e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
    - (f) Achieve a balance between population and resource use that 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 adopts by reference the policies in the following City codes, ordinances, resolutions, and plans, as now exist or amended, and as may hereafter be amended:
    - (a) RCW 43.21 - State Environmental Policy Act
    - (b) Ord. No. 24 - Water Quality Standards
    - (c) Ord. No. 25 - Surface Water Runoff Policy
    - (d) Ord. No. 27 - Land Use and Health Enforcement
    - (e) Ord. No. 30 - Mitigation of Impacts
    - (f) Ord. No. 33 - Official Street Plan
    - (g) Ord. No. 35 - Hazardous Waste
    - (h) Res. No. 93-20 - Surface Water Management
    - (i) Ord. No. 35 - Washington State Energy Code
    - (j) Res. No. 93-11 - Solid Waste Management
    - (k) Ord. No. 40 - Emergency Management

- (l) Ord. No. 34 - Capital Improvement Plan
- (m) Ord. No. 37 - Establishing a Permit System for Moving Buildings
- (n) Ord. No. 39 - Establishing Regulations for Sidewalks
- (o) Ord. No. 49 - Adopting Street and Construction Standards
- (p) Ord. No. 50 - Designating Street Classifications
- (q) Ord. No. 59 - Establishing Street Vacations, Notice, Fees, and Conditions
- (r) Ord. No. 69 - Adopting State Highway Access Management Class System
- (s) Ord. No. 73 - Adopting a Commute Trip Reduction Plan (CTR)
- (t) Ord. No. 84 - Adopting 1993 Comprehensive Sewer Plan of Woodinville Water District
- (u) Ord. No. 93 - Adopting Washington Model Traffic Ordinance
- (v) Ord. No. 99 - Regulating S.O.B.
- (x) Ord. No. 101 - Amending Zoning Code S.O.B. Overlay
- (y) Ord. No. 103 - Regulations for planting of public trees
- (z) Ord. No. 112 - Adopting Interim Design Principles
- (aa) Ord. No. 121 - Building, Mechanical, Plumbing, Electrical Codes
- (bb) Ord. No. 134 - Fire Code
- (cc) Ord. No. 143 - Regulatory Reform
- (dd) Ord. No. 157 - GMA Comprehensive Plan
- (ee) Ord. No. 173 - Shoreline Master Program
- (ff) Ord. No. 175 - GMA Development Regulations

E) Except for permits and variances issued pursuant to Title 24 of the Woodinville Municipal Code (Shoreline Master Program), when any proposal or action not requiring a decision of the City's Hearing Examiner is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the City's Hearing Examiner. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within ten days of the decision being appealed. Review by the Hearing Examiner shall be on a de novo basis.

**14.04.260. Appeals.**

- A) Unless otherwise provided by this section:
  - (1) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations and shall be heard by the Hearing Examiner as the decision-maker of the highest level of review;
  - (2) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review.
- B) The City shall not allow more than one City appeal proceeding on a procedural determination (the adequacy of a determination of significance/nonsignificance or of a final EIS).
- C) The City shall consolidate an appeal of procedural issues and of substantive determinations made under this chapter (such as a decision to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before the Hearing Examiner to consider the City's decision on a proposal and any environmental determinations made under this chapter.
- D) The City establishes the following administrative appeal procedures:

(1) Appeals to SEPA decisions are heard by the Hearing Examiner. For SEPA decision appeals made prior to project decision, only one open record public hearing before the Hearing Examiner will be held for both the SEPA appeal and the project permit. The Hearing Examiner shall be the responsible authority for both the SEPA appeal decision and the project permit decision. This includes project permits that would otherwise be heard by another decision-maker, such as the Planning Director or City Council. Any agency or person may appeal the City's procedural compliance with Chapter 197-11 WAC for issuance of the following determinations:

- (a) A final DNS or Mitigated DNS (MDNS) Made Prior to Project Permit Decision: An appeal of the DNS or MDNS made prior to the final permit decision must be made to the Hearing Examiner within 14 days of the date the DNS or MDNS becomes final. The appeal period shall be extended an additional 7 days if state or local rules adopted pursuant to 43.21C RCW (SEPA) allow public comment on a DNS issued as part of the appealable decision.
- (b) A final DNS or Mitigated DNS (MDNS) Made with Project Permit Decision: An appeal of the DNS or MDNS must be made to the Hearing Examiner within 14 days of the date the DNS or MDNS becomes final. The appeal period shall be extended an additional 7 days if state or local rules adopted pursuant to 43.21C RCW (SEPA) allow public comment on a DNS issued as part of the appealable decision. The appeal is heard as an open record hearing by the Hearing Examiner, together with an appeal on the underlying governmental action; provided that, if an open record pre-decision hearing as already been held, the Hearing Examiner shall hear the appeal as a closed record appeal.
- (c) A final Determination of Significance (DS): An appeal of the DS must be made to the Hearing Examiner within 14 days of the date the DS becomes final. The appeal is heard as an open record hearing by the Hearing Examiner. A subsequent open record hearing may be held on the underlying action and accompanying SEPA documents (including an EIS, if one is prepared), and SEPA substantive determinations.

- E) For any appeal under this section, the City shall provide for a record that shall consist of the following:
  - (1) Findings and conclusions;
  - (2) Testimony under oath; and
  - (3) A taped or written transcript.
- F) The City may require the applicant to provide an electronic transcript.
- G) The procedural determination by the City's responsible official shall carry substantial weight in any appeal proceeding.
- H) No permit shall be issued which would allow construction, demolition, grading, or other direct modification of the physical environment until expiration of the period for filing a notice of appeal, and until any appeal shall have been finalized at the Hearing Examiner level.
- I) The City shall give official notice whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. The following permits or approvals require official notice: All actions of the City Council, a City official, the Hearing Examiner, or any board or commission for which no further administrative appeal is provided.

**14.04.270. Notice/statute of limitations.**

- A) The City, applicant, 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.

**14.04.280. Definitions - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

197-11-700 Definitions.	197-11-752 Impacts.
197-11-702 Act.	197-11-754 Incorporation by reference.
197-11-704 Action.	197-11-756 Lands covered by water.
197-11-706 Addendum.	197-11-758 Lead agency.
197-11-708 Adoption.	197-11-760 License.
197-11-710 Affected tribe.	197-11-762 Local agency.
197-11-712 Affecting.	197-11-764 Major action.
197-11-714 Agency.	197-11-766 Mitigated DNS.
197-11-716 Applicant.	197-11-768 Mitigation.
197-11-718 Built environment.	197-11-770 Natural environment.
197-11-720 Categorical exemption.	197-11-772 NEPA.
197-11-721 Closed record appeal.	197-11-774 Nonproject.
197-11-722 Consolidated appeal.	197-11-775 Open record hearing.
197-11-724 Consulted agency.	197-11-776 Phased review.
197-11-726 Cost-benefit analysis.	197-11-778 Preparation.
197-11-728 County/city.	197-11-780 Private project.
197-11-730 Decision maker.	197-11-782 Probable.
197-11-732 Department.	197-11-784 Proposal.
197-11-734 Determination of nonsignificance (DNS).	197-11-786 Reasonable alternative.
197-11-736 Determination of significance (DS).	197-11-788 Responsible official.
197-11-738 EIS.	197-11-790 SEPA.
197-11-740 Environment.	197-11-792 Scope.
197-11-742 Environmental checklist.	197-11-793 Scoping.
197-11-744 Environmental document.	197-11-794 Significant.
197-11-746 Environmental review.	197-11-796 State agency.
197-11-750 Expanded scoping.	197-11-797 Threshold determination.
	197-11-799 Underlying governmental action.

**14.04.310. Agency Compliance - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

197-11-900 Purpose of this part.	197-11-926 Lead agency for governmental proposals.
197-11-902 Agency SEPA policies.	197-11-928 Lead agency for public and private proposals.
197-11-916 Application to ongoing actions.	197-11-930 Lead agency for private projects with one agency with Jurisdiction.
197-11-920 Agencies with environmental expertise.	
197-11-922 Lead agency rules.	
197-11-924 Determining the lead agency.	

197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.  
197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.  
197-11-936 Lead agency for private projects requiring licenses from more than one state agency.

197-11-938 Lead agencies for specific proposals.  
197-11-940 Transfer of lead agency status to a state agency.  
197-11-942 Agreements on lead agency status.  
197-11-944 Agreements on division of lead agency duties.  
197-11-946 DOE resolution of lead agency disputes.  
197-11-948 Assumption of lead agency status.

**14.04.320. Critical areas.**

- A) The City has selected certain categorical exemptions that will not apply in critical areas identified in the critical areas development regulations required under RCW 36.70A.060 (see WMC 21.24 for critical areas regulations). For any critical area, the exemptions within WAC 197-11-800 that are inapplicable for that area are 197-11-800(1), (2)(a)-(h), (3), (5), (6)(a), (14)(c), (24)(a)-(g), (25)(d), (25)(f), (25)(h), and (25)(i).
- B) The scope of environmental review of actions within these areas shall be limited to:
- (1) Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and
  - (2) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws.

**14.04.330. Fees.** The City shall require the following fees for its activities in accordance with the provisions of this ordinance:

- A) Threshold determination. For every environmental checklist the City will review when it is lead agency, the city/county shall collect a fee of \$275.00 from the proponent of the proposal prior to undertaking the threshold determination. The time periods provided by this ordinance for making a threshold determination shall not begin to run until payment of the fee. When the City completes the environmental checklist at the applicant's request or under Section 14.04.130(C), an additional \$300 shall be collected. For any complex review requiring staff time in excess of 10 hours, the City shall charge an hourly rate of \$65 for the additional time or as established pursuant to a contract with an environmental consultant hired by the City to complete the review.
- 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 by employees of the City, the City may charge and collect a reasonable fee from any applicant to cover costs incurred by the City in preparing the EIS. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.
  - (2) The responsible official may determine that the City will contract directly with a consultant for preparation of an EIS, or 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. Such consultant shall be selected by the City.

- (3) The applicant shall pay the projected amount to the City prior to commencing work. The City will refund the excess, if any, at the completion of the EIS. If the City's costs exceed the projected costs, the applicant shall immediately pay the excess. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under Subsections (1) or (2) of this subsection, which remain after incurred costs, including overhead, are paid.
  - (4) For all proposals in which the City is the lead agency and the responsible official determines that an EIS is required, the applicant shall be charged \$500 or a fee equal to 5 percent of the costs of the draft and final EISs, whichever is greater, to cover the City's administrative costs of supervision and preparation. For the purpose of this subsection, cost of an EIS shall include the cost of preparation and publication, including printing, collating, binding, and circulation of the draft and final EIS. Applicants may be required to post a bond or otherwise ensure payment of such costs. In the event the actual cost of the draft and final EIS exceed the estimated cost of the EIS agreed upon by the City and the applicant, such excess shall be paid to the City by the applicant prior to final action by the City.
- C) The City may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this ordinance relating to the applicant's proposal.
- D) The City shall not collect a fee for performing its duties as a consulted agency.
- E) The City may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.17 RCW.

**14.04.340. Forms - Adoption by Reference.** The City adopts the following sections of chapter 197-11 of the Washington Administrative Code, as now existing or hereinafter amended, by reference:

197-11-960 Environmental checklist.	197-11-980 Determination of significance and scoping notice (DS).
197-11-965 Adoption notice.	197-11-985 Notice of assumption of lead agency status.
197-11-970 Determination of nonsignificance (DNS).	197-11-990 Notice of action.

**14.04.350. WACs on file.** The City Clerk shall maintain on file for public use and examination one copy of the WAC sections referred to in this chapter.

**SECTION 3. Codes adopted by reference.** Pursuant to RCW 35A.12.140, once copy of the WAC section adopted by reference herein have been and are now on file with the City Clerk and available for examination by the public.

**SECTION 4. Savings.** The adoption of these SEPA regulations, and the repeal of the ordinances listed in Section 2 above shall not affect the regulation and enforcement of those ordinances, prior to the effective date of this ordinance.

**SECTION 5. Severability.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances, shall not be affected.

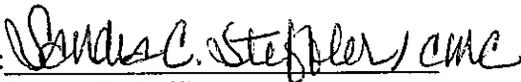
**SECTION 6. Effective date.** This ordinance shall be effective five (5) days after publication of an approved summary consisting of the title of this ordinance.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 27TH DAY OF APRIL, 1998.

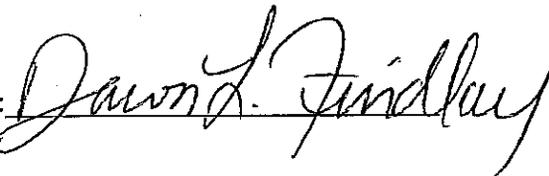
APPROVED:

  
\_\_\_\_\_  
Donald J. Brocha, Mayor

ATTEST/AUTHENTICATED:

By:   
\_\_\_\_\_  
Sandra C. Steffler  
City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By:   
\_\_\_\_\_

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO. 204