

ORDINANCE NO. 192

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING CHAPTER 17, ENVIRONMENTAL REGULATIONS, OF THE UNIVERSITY PLACE MUNICIPAL CODE BY MAKING IT CONSISTENT WITH RULE CHANGES BY THE STATE DEPARTMENT OF ECOLOGY.

WHEREAS, the City Council has expressed a desire to process project permit applications in a timely and professional manner; to best serve the citizens of University Place and attract quality business and development; and,

WHEREAS, the Regulatory Reform Act ESHB 1724 (chapter 36.70B RCW) requires that the City establish a permit review process which among other things combines the environmental review process, both procedural and substantive, with the procedure for the review of project permits; and,

WHEREAS, in 1997 the State Legislature enacted ESHB 6094 the Land Use Study Commission's recommendations concerning Growth Management; and,

WHEREAS, on November 10, 1997 in accordance with ESHB 1724 and ESHB 6094 the State Department of Ecology enacted rule changes to the State Environmental Policy Act (WAC 197-11) and required the City to amend its regulations consistent with the rule changes within 180 days; and,

WHEREAS, the adoption of procedural actions including rules and regulations relating solely to government procedures and containing no substantive standards are exempt from review under SEPA in accordance with WAC 197-11-800(24); and,

WHEREAS, the City Council held a public hearing to consider proposed amendments to the City Environmental Regulations and after said public hearing considered the testimony provided. **NOW THEREFORE**,

THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amending Section 17.50.050, Substantive Authority. Section 17.50.050, Substantive Authority is amended to read as follows:

17.50.050 Substantive authority.

A. The City of University Place adopts by reference WAC 197-11-010 through 197-11-990 as now or hereafter amended. The policies and goals set forth in this chapter supplement existing state and city laws.

B. The city may attach conditions to a permit or approval for a proposal; provided, that:

1. Such conditions mitigate specific adverse environmental impacts clearly identified in environmental documents prepared pursuant to this chapter; 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) 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; provided, that:

1. A finding is made that approval of the proposal would likely result in 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 adopts 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. Endeavor to achieve for the people of University Place safe, healthful, and aesthetically 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; and
- g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. Policies and procedures included in the following documents, as adopted or hereafter amended by the city, shall supplement this chapter:

- a. The comprehensive plan;
- b. The zoning code and zoning map;
- c. The subdivision regulations;
- d. Chapter 12.10 UPMC, Water Quality Standards;
- e. The King County Surface Water Design Manual;
- f. UPMC Title 17, Critical Areas;

- g. The shorelines ordinance management use regulations and master program plan;
- h. The wetland management regulations;
- i. Public works standards;
- j. The interim policies for the Bridgeport Way corridor;
- k. The flood damage prevention regulations ordinance;
- l. Interim HUD flood insurance study for Pierce County;
- m. PCC Title 8, Health and Welfare;
- n. State Environmental Policy Act.
- o. Chapter 22, Administration of Development Regulations

Section 2. Amending Section 17.50.060, Designation of responsible official.
 Section 17.50.060, Designation of responsible official is amended as follows:

17.50.060 Designation of responsible official.

For those proposals for which the City of University Place is the lead agency, the responsible official shall be the director of planning and community development or his/her designee.

Section 3. Amending Section 17.50.080, Time limits applicable to SEPA review process. Section 17.50.080, Time limits applicable to SEPA review process, is amended to read as follows:

17.50.080 Time limits applicable to SEPA review process.

The SEPA review process shall be integrated with the non-exempt action review process in accordance with University Place Municipal Code 22.01.009. SEPA decisions shall be made as early in the process as possible. The following time limits (expressed in working days) shall apply when the city processes licenses for all private projects and those governmental proposals submitted to the County- city by other agencies:

A. Threshold Determinations.

1. If it is possible to make a threshold determination based solely upon review of the environmental checklist for the proposal, said determination shall be completed no less than 14 days and no later than 30 days from the date of submittal of the applicant's complete application and checklist.
2. If the responsible official determines that it is necessary to obtain information in addition to that contained on the environmental checklist:
 - a. Such further information shall be requested within 30 days of receiving a complete ~~environmental checklist~~ application.
 - b. If neither the requested information nor a response asking for additional time is received within 30 days of the date of request, the responsible official shall find that said information is unavailable and proceed to make a determination without said information unless the applicant requests that the time for response be extended.
 - c. The threshold determination shall be completed within 30 days of receipt of the requested additional information from the applicant or the consulted agency; or within 30 days of finding that said information is unavailable.
3. If the city must initiate further studies, including, but not limited to, field investigations, to obtain the information necessary to make the threshold determination, such studies and the threshold determination shall be completed within 30 days of receipt of a complete ~~checklist application~~.

B. Other.

1. For nonexempt proposals, the DNS or Final EIS for the proposal shall accompany the city's staff recommendation to any appropriate advisory body, such as the planning commission.

2. If the city's only action on a proposal is a decision on a building permit or other administrative license that requires detailed project plans and specifications, the applicant may request in writing or the city may require that an environmental review be conducted prior to submission of the detailed plans and specifications. If the applicant requests, the city shall conduct environmental review at that time, providing that the responsible official determines that adequate information about the proposal has been submitted.

Section 4. Amending Section 17.50.090 Categorical Exemptions. Section 17.50.090 Categorical Exemptions is amended to read as follows:

17.50.090 Categorical exemptions

The City of University Place adopts by reference WAC 197-11-300 ~~through~~ and 197-11-800. In addition thereto, University Place establishes the following exempt levels for minor new construction under WAC 197-11-800(1):

- A. For residential dwelling units in WAC 197- 11-800(1)(b)(i): 10 dwelling units or less if within one structure;
- B. For parking lots in WAC 197-11- 800(1)(b)(iv): 30 or fewer automobile parking spaces;
- C. For landfills and excavations in WAC 197- 11-800(1)(b)(v): 250 cubic yards or less.

Section 5. Amending Section 17.50.110, Environmentally Sensitive Areas. Section 17.50.110, Environmentally Sensitive Areas is amended to change the Section Title to Critical Areas, as follows:

17.50.110 Environmentally Sensitive Areas Critical Areas.

Section 6. Amending Section 17.50.140 Determination of Nonsignificance (DNS). Section 17.50.140 Determination of Nonsignificance (DNS) is amended to read as follows:

17.50.140 Determination of nonsignificance (DNS)

- A. If the responsible official determines there will be no probable significant adverse environmental impacts from a proposal, the responsible official shall prepare and issue a determination of nonsignificance (DNS) substantially in the form provided in WAC 197-11-970. If the responsible official adopts another environmental document in support of a threshold determination, the notice of adoption in WAC 197-11-965 and the DNS shall be combined or attached to each other.
- B. A DNS issued under the provisions of this section is final and effective as set forth in WAC 197-11-390. The filing of an appeal of a DNS pursuant to this chapter shall stay the effect of such DNS and no major action in regard to a proposal may be taken during the pendency of an appeal and until the appeal is finally disposed of by the city. A decision to reverse the determination of

the responsible official and uphold the appeal shall further stay any decision, proceedings, or actions in regard to the proposal.

C. When a DNS is issued for any of the proposals listed in subsection C (1) of this section, the requirements in this subsection shall be met.

1. An agency shall not act upon a proposal for ~~45-~~ 14 days after the date of issuance of a DNS 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 UPMC 17.50.090;
 - c. Issuance of clearing or grading permits not exempted in Part Nine of the SEPA rules;
 - d. A DNS under WAC 197-11-350(2), 197-11-350(3) or 197-11-360(4).
2. The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the Department of Ecology, and affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice under WAC 197-11- 510.
3. Any person, affected tribe, or agency may submit comments to the lead agency within ~~45~~ 14 days of the date of issuance of the DNS.
4. The date of issuance for the DNS is the date the DNS is sent to the Department of Ecology and agencies with jurisdiction and is made publicly available.
5. An agency with jurisdiction may assume lead agency status only within this ~~45~~ 14 -day period (WAC 197-11-948).
6. The responsible official shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS. When a DNS is modified, the responsible official shall send the modified DNS to agencies with jurisdiction.

D. 1. The responsible official shall withdraw a DNS if:

- a. There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;
- b. There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
- c. The DNS was procured by misrepresentation or lack of material disclosure; if the DNS resulted from such actions by an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the responsible official or his or her consultants at the expense of the applicant.

2. Subsection (D)(1)(b) of this section shall not apply when a nonexempt license has been issued on a private project.

3. If the responsible official withdraws a DNS, a new threshold determination shall be made and other agencies with jurisdiction shall be notified of the withdrawal and new threshold determination. If a DS is issued, each agency with jurisdiction shall commence action to suspend, modify, or revoke any approvals until the necessary environmental review has occurred.

Section 7. Amending Section 17.50.150 Mitigated DNS. Section 17.50.150 Mitigated DNS, is amended to read as follows:

17.50.150 Mitigated DNS

- A. As provided in this section, the responsible official may issue a determination of nonsignificance (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. If an applicant requests early notice of whether a DS is likely, the request must:
1. Be written;
 2. Follow submission of an environmental checklist for a nonexempt proposal for which the department is lead agency; and
 3. Precede the department's actual threshold determination for the proposal.
- C. The responsible official shall respond to the request in writing; the response shall:
1. State whether the responsible official is considering issuance of a determination of significance (DS) and, if so, indicate the general or specific area(s) of concern that are leading to consideration of DS; and
 2. State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.
- D. As much as possible, the responsible official should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the responsible official will make a threshold determination based on the changed or clarified proposal:
1. If the responsible official indicated specific mitigation measures in a response to the request for early notice that would allow him or her to issue a DNS, and the applicant changed or clarified the proposal to include those specific mitigation measures, the responsible official shall issue a determination of nonsignificance.
 2. If the responsible official indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow a DNS to be issued, the responsible official 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.
 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. A mitigated DNS requires a ~~45~~ 14-day comment period.
- G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit, unless revised or changed by the decisionmaker. The conditions shall 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. The responsible official's written response under subsection C of this section shall not be construed as a determination of significance. In addition, preliminary discussions of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the responsible official to a mitigated DNS.

Section 8. Amending Section 17.50.220 Administrative Appeals of SEPA Determination. Section 17.50.220 Administrative Appeals of SEPA Determination is amended to read as follows:

17.50.220 Administrative appeals of SEPA determination

The city establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680. These administrative appeal procedures supercede procedures for administrative appeals described in The University Place Municipal Code, Section 22.01.012:

A. An aggrieved person, as defined by UPMC 17.50.040(A), may appeal the following determinations under SEPA:

1. Determination of nonsignificance;
2. Mitigated determination of nonsignificance;
3. Determination of significance;
4. Issuance of an FEIS.

B. The appeal of a determination under SEPA shall be consolidated with the decision on the underlying governmental action in the following manner:

1. If the initial decision on the underlying governmental action is made by the hearings examiner, the SEPA appeal shall be heard by the examiner at the same time as the hearing on the underlying action. The examiner shall render a decision on both the SEPA appeal and the underlying action.
2. If the initial decision on the underlying governmental action is made by a city employee or official with a right of appeal to the hearings examiner, the SEPA appeal shall be heard by the examiner at the same time as the hearing on the appeal of the underlying action. The examiner shall render a decision on both appeals.
3. If the initial decision on the underlying governmental action is a recommendation by an advisory body such as the planning commission, the SEPA appeal shall be heard and decided by the city council or other body to which the recommendation is made at the same time as the hearing on the underlying action.
4. If the initial decision on the underlying governmental action is made by the city council after a public hearing, the SEPA appeal shall be heard and decided by the city council at the same time.
5. In all other cases, the SEPA appeal shall be heard and decided by the official or body holding the initial public hearing on the underlying governmental action. If no hearing on the underlying action is otherwise afforded by law and a SEPA determination accompanying such determination is appealed, the hearings examiner shall hold a consolidated hearing on both the underlying action and the SEPA appeal and render a decision.

C. An appeal of a determination under SEPA is commenced by filing a notice of appeal with the planning division department. The notice of appeal must be accompanied by any fee established by separate resolution. The notice of appeal and appeal fee shall be jointly filed and the fee paid within 14 days from the date of the environmental determination computed according to Civil Rule 6(a).

D. The notice of appeal shall contain:

1. Name and mailing address of the appellant and his/her agent or representative, if any;
2. A copy of the environmental determination which is appealed;
3. A concise statement of the factual and legal basis for the appeal citing specifically the alleged errors in the determination on appeal; and
4. The specific relief sought.

E. As provided in RCW 43.21C.075(3)(d), the environmental determination of the responsible official shall be entitled to substantial weight.

F. The appellant shall have the burden of going forward with evidence necessary to prove to the hearings examiner that the environmental determination is erroneous.

G. Only one appeal of an environmental determination made by the responsible official shall be allowed on a proposal. If more than one person files an appeal of an environmental determination on a proposal, such appeals shall be consolidated.

Section 9. Amending Section 17.50.260 Public Hearing on Appeal. Section 17.50.260 Public Hearing on Appeal is amended to read as follows:

17.50.260 Public hearing on appeal

A. All public hearings on SEPA appeals shall be conducted in accordance with University Place Municipal Code Section 22.02. ~~tape recorded and all testimony shall be taken under oath. Testimony and other evidence shall be allowed subject to the rules of admissibility governing the hearing on the underlying governmental action.~~

B. ~~The official or body holding the hearing shall enter findings and conclusions and may affirm, modify, or reverse and remand the SEPA determination on appeal.~~

C. ~~The decision of the official or body holding the hearing is final and conclusive, appealable only to a court of competent jurisdiction. Appeals to a court of competent jurisdiction shall be taken in accordance with the procedures and timeframes set forth in RCW 43.21C.080.~~

D. ~~The city shall provide for a record of the hearing consisting, at a minimum, of:~~

- ~~1. Finding and conclusions~~
- ~~2. Exhibits and other documentary evidence admitted at the hearing;~~
- ~~3. A taped or written transcript including all testimony under oath.~~

Section 10. Amending Section 17.50.280 Violation – Civil infraction. Section 17.50.280 Violation – Civil infraction is amended to read as follows:

Section 17.50.280 Violation – Civil infraction

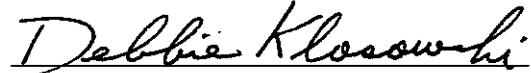
In addition to any other sanction or penalty, or any remedial, judicial or administrative procedure available under separate city codes or state law, violation of any provision of this chapter or failure to comply with a decision of the responsible official or hearings examiner issued pursuant to this chapter constitutes a Class I civil infraction civil violation as defined in the city enforcement code Chapter 1.20 of the University Place Municipal Code.

Section 11. Severability

If any section, sentence, clause or phrase of this Title shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Title.

Section 12. Publication and Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the city. This ordinance shall be effective five days after such publication.

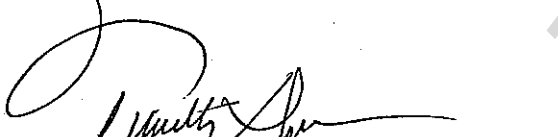
PASSED BY THE CITY COUNCIL ON MAY 4, 1998


Debbie Klosowski, Mayor

ATTEST:


Susan Matthew, City Clerk

APPROVED AS TO FORM:


Timothy X. Sullivan, City Attorney

Date of Publication: 5/6/98
Effective Date: 5/11/98