

ORDINANCE NO. 32

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, ESTABLISHING STATE ENVIRONMENTAL POLICY
ACT REGULATIONS FOR THE CITY OF UNIVERSITY PLACE.

WHEREAS, the City Council has determined that it is in the City's best interests to establish regulations for the City under the State Environmental Policy Act; therefore,

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

Section 1. SEPA Provisions Adopted. The City adopts the State Environmental Policy Act regulations attached hereto as Exhibit "A" and incorporated herein by this reference, as the SEPA regulations for the City.

Section 2. Copy to be Available. One copy of the State Environmental Policy Act regulations attached hereto as Exhibit "A" shall be available in the office of the City Clerk for use and examination by the public.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance 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 ordinance.

Section 4. Effective Date. This ordinance shall take effect five days after publication by the City Clerk.

PASSED BY THE CITY COUNCIL ON JULY 17, 1995.


Stanley L. K. Flemming, Mayor

ATTEST:


Susan Matthew, Interim City Clerk

APPROVED AS TO FORM:


Robert J. Backstein, Interim City Attorney

Date of Publication: July 20, 1995

Effective Date: July 25, 1995

EXHIBIT A TO ORDINANCE NO. 32

Title _____

Chapter _____ .08. _____

ENVIRONMENTAL REGULATIONS

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Cross-reference: Chapter 43.21C RCW

.08.010 Authority.

The following regulations concerning environmental policies and procedures are established and adopted pursuant to Chapter 43.21C RCW, as amended, entitled, "The Environmental Policy Act of 1971" (SEPA), and the Washington State Administrative Code, Chapter 197-11, entitled, "State Environmental Policy Act

.08.020 Purpose, Applicability and Intent.

- A. The purpose of this Chapter is to provide the City of University Place regulations implementing the State Environmental Policy Act of 1971 (SEPA) which are consistent with the SEPA Rules.
- B. This Chapter is applicable to all City departments/divisions, commissions, boards, committees, the City Council.
- C. This Chapter is not intended to require City compliance with the National Environmental Policy Act of 1969 (NEPA). When the City of University Place is required by federal law or regulations to be in compliance with NEPA, such compliance shall be governed by the applicable federal statute and/or regulations and not by this Chapter.

.08.030 Abbreviations

The abbreviations used in this Chapter are defined as follows:

- A. DEIS - Draft Environmental Impact Statement;
- B. DNS - Declaration of Nonsignificance;
- C. DS - Declaration of Significance;
- D. EIS - Environmental Impact Statement;
- E. FEIS - Final Environmental Impact Statement;
- F. NEPA - National Environmental Policy Act;
- G. SEIS - Supplemental Impact Statement;
- H. SEPA - State Environmental Policy Act;
- I. WAC - Washington Administrative Code.

.08.040 Definitions.

The City of University Place adopts by reference the definitions stated in WAC 197-11-700 through 197-11-799 as now or hereafter amended. In addition to those definitions, the following terms shall have the following meanings unless the context indicates otherwise:

- A. "Aggrieved person" means an applicant, a sponsor of a proposal, or any person alleging that it will sustain a specific injury in fact from the proposed action which will affect interests protected by SEPA. The alleged injury must be a perceptible present or future harm and may not be merely conjectural or hypothetical. The interest affected must be more than just the abstract interest of the general public in having others comply with the law.
- B. "Council" means the University Place City Council.
- C. "Early Notice" means any division, subdivision, or organizational unit of the City established by ordinance, rule or order.

- D. "Department" means any division, subdivision, or organizational unit of University Place, established by regulations, resolution or order.
- E. "Hearing Examiner" means the University Place City Hearing Examiner, as appointed by the City Council.
- F. "Ordinance" means the ordinance, resolution or other procedure used by the City of University Place to adopt regulatory requirements.
- G. "SEPA Rules" means WAC Chapter 197-11 adopted by Washington State Department of Ecology as now or here after amended.

.08.050 Substantive Authority.

- A. 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 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. The Water Quality Ordinance.
 - e. The Surface Water Design Manual.
 - f. The Critical Areas and Natural Resource Lands Ordinance.
 - g. The Shorelines Ordinance and Master Plan;
 - h. The Wetland Management Regulations;
 - i. Site Development Regulations;
 - j. The Interim Policies for the Bridgeport Way Corridor;
 - k. The Flood Damage Prevention Regulations;
 - l. Interim HUD Flood Insurance Study for Pierce County
 - m. The Road Standards;
 - n. The Private Roads Standards.
 - o. Title 8, Pierce County Code, Health and Welfare;
 - p. State Environmental Policy Act.

.08.060 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 or his/her designee.

.08.070 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 97-11-944; 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 required under WAC 197-11-600. In some cases, the city may conduct supplemental environmental review 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 197-11-944, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the city may be initiated by the Planning Director.

- D. Departments of the city are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under 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. 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
- F. For all proposals for which the City of University Place 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 the SEPA rules.
- G. In addition, 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/or reviewing a DEIS.
- H. This person shall be responsible for the City's compliance with WAC 197-11-550, 197-11-502, and 197-11-545 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.
- I. The City of University Place shall retain all documents required by the SEPA rules (WAC Chapter 197-11) and make them available in accordance with applicable

.08.080 Time Limits Applicable to SEPA Review Process.

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 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 later than thirty 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 thirty days of receiving a complete environmental checklist.
 - b. If neither the requested information nor a response asking for additional time is received within thirty 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 thirty days of receipt of the requested additional information from the applicant or the consulted agency; or within thirty 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 thirty days of receipt of a complete checklist.

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.

.08.090 Categorical Exemptions.

The City of University Place adopts by reference WAC 197-11-300 through WAC 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): ten dwelling units or less if within one structure;
- B. For parking lots in WAC 197-11-800(1)(b)(iv): thirty or fewer automobile parking spaces;
- C. For landfills and excavations in WAC 197-11-800(1)(b)(v): two hundred fifty cubic yards or less.

.08.100 Use of Exemptions.

- A. When receiving an application for a license, or when receiving a City initiated 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 Chapter apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.
- B. In assessing whether or not a proposal is exempt, the Responsible Official shall determine that 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 official shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.
- C. If a proposal includes both exempt and nonexempt actions, the City may authorize exempt actions prior to compliance with the procedural requirements of this Chapter, except that:
 1. The City shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of responsible alternatives;

2. The City, may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if later approval of a related major action is not secured; and
3. The City may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures which would serve no purpose if later approval of a major related action is secured.

.08.110 Environmentally Sensitive Areas.

- A. In accordance with WAC 197-11-908, the City of University Place designates environmentally sensitive areas:
 1. Areas designated Natural by the City's Shoreline Management Master Program environment maps.
 2. Fish and wildlife habitat conservation areas, erosion hazard areas, landslide hazard areas, steep slopes, wetlands and streams, as described in the City's critical areas and wetlands ordinance.
 3. The following categorical exemptions set forth in WAC 197-11-800 shall not apply when a project proposal is located in or partially within sensitive areas: WAC 197-11-800(1), (2c), (2e), (2f), (2g), (6a), (25h).
- B. The City shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this Chapter, making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.
- C. Certain exemptions do not apply to lands covered by water, regardless of whether such lands covered by water are mapped.

.08.120 Emergency Action Exemption.

- A. The following actions which must be undertaken immediately or for which there is insufficient time for full compliance with this Chapter, are exempt from the procedural requirements of this Chapter.
 1. Actions necessary to prevent an imminent threat to public health or safety;
 2. Actions necessary to prevent an imminent danger to public or private property; or
 3. Actions necessary to prevent an imminent threat of serious environmental degradation.
- B. The Responsible Official shall determine on a case-by-case basis emergency action which satisfies the general requirements of this Section.
- C. Adoption of interim zoning or moratorium.

.08.130 Environmental Checklist.

- A. A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed for any 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 review 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 for making the threshold determination.

- B. All private applicants shall complete their own environmental checklist, with assistance from the City as necessary. City departments initiating a proposal shall complete the environmental checklist for that proposal.
- C. The City may require that it, rather than the private applicant, complete all or part of the environmental checklist for a private proposal, if either of the following occurs:
 - 1. The City has access to technical information not available to the private applicant; or
 - 2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

.08.140 Determination of nonsignificance (DNS).

- (1) 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.
- (2) 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.
- (3) When a DNS is issued for any of the proposals listed in subsection (3)(a) of this section, the requirements in this subsection shall be met.
 - (a) An agency shall not act upon a proposal for 15 days after the date of issuance of a DNS if the proposal involves:
 - (i) Another agency with jurisdiction;
 - (ii) Demolition of any structure or facility not exempted by WAC 197-11-800(2)(f) or Section ___ of this chapter;
 - (iii) Issuance of clearing or grading permits not exempted in Part Nine of the SEPA rules;
 - (iv) A DNS under WAC 197-11-350(2), 197-11-350(3) or 197-11-360(4).
 - (b) 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.
 - (c) Any person, affected tribe, or agency may submit comments to the lead agency within 15 days of the date of issuance of the DNS.

- (d) 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.
 - (e) An agency with jurisdiction may assume lead agency status only within this 15-day period (WAC 197-11-948).
 - (f) 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.
- (4) (a) The responsible official shall withdraw a DNS if:
- (i) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;
 - (ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
 - (iii) 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.
- (b) Subsection (4)(a)(ii) of this section shall not apply when a nonexempt license has been issued on a private project.
- (c) 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.

.08.150 Mitigated DNS.

- (1) 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.
- (2) If an applicant requests early notice of whether a DS is likely, the request must:
 - (a) Be written;
 - (b) Follow submission of an environmental checklist for a nonexempt proposal for which the department is lead agency; and
 - (c) Precede the department's actual threshold determination for the proposal.
- (3) The responsible official shall respond to the request in writing; the response shall:
 - (a) State whether the responsible official is considering issuance of a Declaration of Significance (DS) and, if so, indicate the general or specific area(s) of concern that are leading to consideration of DS; and
 - (b) 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.

- (4) As much as possible, the responsible official should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- (5) 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:
 - (a) 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.
 - (b) 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.
 - (c) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.
 - (d) 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.
- (6) A mitigated DNS requires a 15-day comment period.
- (7) 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.
- (8) The responsible official's written response under subsection (3) 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. (Ord.23262 Section 8; passed Sept. 25,1984.

.08.160 Scoping.

- (1) The responsible official shall narrow the scope of every EIS to the probable significant adverse impacts and reasonable alternatives, including mitigation measures. For example, if there are only two or three significant impacts or reasonable alternatives, the EIS shall be focused on those.
- (2) To ensure that every EIS is concise and addresses the significant environmental issues, the responsible official shall:
 - (a) Invite agencies with jurisdiction, if any, affected tribes, and the public to comment on the DS (WAC 197-11-360). The responsible official shall require comments in writing. Agencies with jurisdiction, affected tribes, and the public shall be allowed 21 days from the date of issuance of the DS in which to comment, unless expanded scoping is used. The date of issuance for a DS is the date it is sent to the Department of Ecology and other agencies with jurisdiction, and is publicly available;
 - (b) Identify reasonable alternatives and probable significant adverse environmental impacts;

- (c) Eliminate from detailed study those impacts that are not significant;
 - (d) Work with other agencies to identify and integrate environmental studies required for other government approvals with the EIS, where feasible.
- (3) Meetings or scoping documents, including notices that the scope has been revised, may be used but are not required. The responsible official shall integrate the scoping process with the existing planning and decisionmaking process in order to avoid duplication and delay.
 - (4) The responsible official shall revise the scope of an EIS if substantial changes are made later in the proposal, or if significant new circumstances or information arise that bear on the proposal and its significant impacts.
 - (5) DEISs shall be prepared according to the scope decided upon by the responsible official in the scoping process.
 - (6) EIS preparation may begin during scoping.

.08.170 Expanded scoping (Optional).

The responsible official may expand the scoping process to include any or all of the provisions found in WAC 197-11-410, which may be applied on a proposal-by-proposal basis. (Ord.23262 Section 8; passed Sept. 25, 1984)

.08.180 Determination of Significance.

In the event the Responsible Official determines that a proposal is likely to have a significant adverse effect on the quality of the environment, the Responsible Official shall prepare a determination of significance using the form in WAC 197-11-980. The Responsible Official shall also list the proposal in the "EIS in Preparation Register" maintained in the Planning Department. Thereafter, the EIS and scoping and preparation procedures specified by WAC 197-11-408 through and including 197-11-460 shall be followed.

.08.190 Withdrawal of Threshold Determination.

In some cases, as specified by WAC 197-11-340, 197-11-360 and 197-11-600, the City may withdraw its threshold determination.

.08.200 Environmental Impact Statement.

- A. The City adopts by reference WAC 197-11-400 through 197-11-460, as now or hereafter amended. The contents and preparation procedures for draft environmental impact statements shall be governed by the SEPA rules herein or as hereafter amended.
- B. Preparation of the draft and final EIS (DEIS and FEIS) and draft and final supplementation EIS's (SEIS) shall be under the direction of the Responsible Official. Before the City issues an EIS, the Responsible Official shall be satisfied that it complies with this Chapter and WAC Chapter 197-11.
 - 1. 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, as determined by the Responsible Official. 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 within five calendar days 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.

2. 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 not required under this Chapter or information requested from another agency pursuant to this Chapter.

.08.210 Public Notice.

- A. Whenever the City of University Place issues a DNS under WAC 197-11-340(2), a DS under WAC 197-11-360(3), a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice shall be given as follows:
 1. The project applicant shall insure notice is given by publishing notice in a newspaper of general circulation in the City or general area where the proposal is located as determined by the Responsible Official.
 2. The Responsible Official may require notice by alternative methods or additional notice such as posting the property if deemed necessary to provide adequate public notice of a pending action;
 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. The applicant is required to complete the public notice requirements for his/her proposal and provide affidavits of publishing to the City Planning Department. The applicant will be required to pay the cost of any notice required pursuant to Subsections A.2 and A.3 of this Section.

.08.220 Administrative Appeals of SEPA Determination

The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

- A. An aggrieved person, as defined by Section .08.040 A. of this code, 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 hearing 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 hearing 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 hearing 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 Department. The Notice of Appeal must be accompanied by any fee established by separate Resolution. The Notice of Appeal shall be filed and the fee paid within 15 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 Hearing 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.

.08.230 Public Notice of Appeal.

Whenever the City receives a timely notice of appeal under this Chapter, properly perfected, the City shall give public notice by:

- A. Publishing notice in a newspaper of general circulation in the County or general area where the proposal is located; and
- B. Mailing notice to the appellant, project sponsor, and any individuals requesting notice.

.08.240 Dismissal of Appeal.

The Hearing Examiner, or other hearing body, may summarily dismiss an appeal without hearing when such appeal is determined to be without merit on its face, frivolous, or brought merely to secure a delay, or that the appellant lacks standing to appeal.

.08.250 Public Hearing on Appeal.

- A. All public hearings on SEPA appeals shall be 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. Findings and conclusions,
 - 2. Exhibits and other documentary evidence admitted at the hearing,
 - 3. A taped or written transcript including all testimony under oath.

.08.260 Judicial Appeals

- A. If there is a time period for appealing the underlying governmental action, any judicial action appealing or otherwise challenging such governmental action on grounds of noncompliance with SEPA or the SEPA rules shall be commenced within such time period.
- B. If there is no time period for appealing the underlying governmental action, a notice of action under RCW 43.21C.080 may be used to fix a time period within which judicial appeals or challenges based on noncompliance with SEPA or the SEPA rules must be brought.

.08.270 Hearing Examiner - Decision.

Within forty-five days of the conclusion of the hearing, the Examiner should render a decision or recommendation, together with findings of fact and conclusions, and shall transmit a copy thereof to all parties of record.

.08.280 Reconsideration.

- A. An aggrieved party of record may, within seven working days of the date of the written decision, file with the City Planning Department a written request for reconsideration. This request shall set forth alleged errors or misinterpretations of fact by the hearing body or official, which may, after review of the record, take such further action as deemed proper and may render a revised decision. Only one request for reconsideration may be filed by any one person or party, in any proceeding.
- B. "Parties of record" are those persons who have:
 - 1. Testified before the Examiner; or
 - 2. Listed their names on a sign-up sheet which is available during the Examiner's hearings; or
 - 3. Advised the Planning Department, in writing, of their desire to be a party of record;
 - 4. At the discretion of the Examiner are determined to be affected by or have an interest in the proceeding.

.08.290 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 Hearing Examiner issued pursuant to this Chapter constitutes a Class 1 civil infraction as defined in the City enforcement code.

UNOFFICIAL DOCUMENT