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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 3305

AN ORDINANCE regarding the Bellevue Environmental Procedures Code, and amending Bellevue City Code 22.02.005, 22.02.040, 22.02.045, 22.02.070, 22.02.075, 22.02.100, 22.02.115, 22.02.140, 22.02.150; and adding new sections 22.02.041, 22.02.042, 22.02.101 and 22.02.102.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 2 (part) of Ordinance No. 2340, and Bellevue City Code 22.02.005 are amended to read as follows:

22.02.005 Policy.

A. The policies and objectives of the State Environmental Policy Act of 1971, as amended, herein referred to as SEPA, are hereby adopted as the policies and objectives of the City of Bellevue.

B. Any action by the City may be conditioned or denied pursuant to RCW 43.21.C., the State Environmental Policy Act, and in accordance with Section 22.02.140 of this chapter.

C. Furthermore, the City, recognizing that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment, declares to the fullest extent possible the City will utilize a systematic, interdisciplinary approach to ensure the integrated use of the natural, physical and social sciences to:

1. Take action necessary to provide the people of the City with clean air and water, freedom from unnecessary noise, and an opportunity to enjoy the aesthetic, natural, scenic and historic qualities of the environment;

2. Take all action necessary to protect, rehabilitate, and enhance the environment of the City;

3. Insure that the long term protection of the environment shall be one of the guiding criteria in public decision making;

ORIGINAL

4. Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

Section 2. Section 2 (part) of Ordinance No. 2340, and Bellevue City Code 22.02.040 are amended to read as follows:

22.02.040 Environmental Process

A. A department or the permit coordinator, upon receipt of an application or a request for governmental action, shall forward to the responsible official a copy of the application and a copy of the environmental checklist if the application is not categorically exempt.

B. Determination of whether the proposal is categorically exempt shall be made by the department receiving the request, the permit coordinator, or the responsible official. This determination should be noted on the application form. Proposals determined to be categorically exempt do not require environmental review or the preparation of an environmental impact statement under this Chapter.

C. If the proposal is determined not to be categorically exempt, the responsible official shall review the application and checklist to determine if the information is adequate to make a threshold determination. If the information is adequate, then the responsible official shall make the threshold determination and provide the department receiving the request or the permit coordinator with the necessary documents of that determination. If the information is inadequate, the responsible official shall inform the applicant of the inadequacy and indicate what additional information is needed. The responsible official may refuse to process and consider a private application further if the applicant at any time in the process refuses or fails to provide the required information.

D. An environmental impact statement shall be required on any proposal determined to be a major action having a probable significant, adverse environment impact. If it is determined that an environmental impact statement is required, the responsible official shall notify the applicant and the department receiving the request or the permit coordinator. The responsible official shall arrange for a meeting with the applicant to schedule necessary events and give any guidance necessary in the preparation of the EIS.

ORIGINAL

E. The responsible official shall notify the applicant of the threshold determination.

Section 3. A new section is added to Bellevue City Code Chapter 22.02, to be designated section 22.02.041, and to read as follows:

22.02.041 Scope of an Environmental Impact Statement

An environmental impact statement is required to analyze those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement, in accordance with the procedure set forth in section 22.02.042 hereof.

Section 4. A new section is added to Bellevue City Code Chapter 22.02, to be designated section 22.02.042, and to read as follows:

22.02.042 Procedures for Scoping.

A. The responsible official shall consult with agencies and the public to limit the scope of an environmental impact statement by any or all of the following means. The specific method to be followed shall be determined on a proposal by proposal basis:

1. The responsible official may publish a notice that an EIS is to be prepared, which notice shall provide for a 14 day period (or longer for very complex proposals) for persons to submit written comments to identify significant impacts and limit the scope of the EIS. Such notice shall be published in a newspaper of general circulation and sent to responsible public agencies and any community groups known by the responsible official to have a possible interest in the proposal. Such notice may also be posted on the site for site specific proposals. Notice of the intent to prepare an EIS and the opportunity for commenting on the scope thereof may be sent with other public notices concerning the project.

2. The responsible official may conduct a meeting to provide the opportunity for oral comment on the scope of the EIS. Notice of such meeting shall be published in a newspaper of general circulation at least five days prior to the date of the meeting. The scoping

ORIGINAL

meeting may be combined with other meetings or hearings concerning the proposal.

3. The responsible official may prepare a scoping questionnaire or information to be sent to interested cities and responsible public agencies for their response.

B. The appendix to the EIS shall include an identification of the issues raised during the scoping process and whether those issues have or have not been determined significant for analysis in the EIS. If a public meeting is held pursuant to this section, a tape of the meeting or a transcript thereof shall be included in the Office of Environmental Coordination official file on the proposal. All written comments regarding the scope of the EIS shall be included in the proposal file.

C. The public and agency consultation process regarding the scope of the EIS shall normally occur within 30 days after the declaration of significance is issued, unless the responsible official and the applicant agree on a later date.

Section 5. Section 2 (part) of Ordinance 2340, and Bellevue City Code 22.02.045, are amended to read as follows:

22.02.045 Environmentally Sensitive Areas.

A. The maps filed under Clerk's Receiving No. 3828, and adopted by reference hereto, designate the location of environmentally sensitive areas within the City. For each sensitive area, exemptions within WAC 197-10-170(1)(a) through (f) and (i) through (n); (5)(c), (9)(a) through (c); (10)(a); (18)(a) through (d) and (i); and 19(d), (f) and (h) of the SEPA Guidelines are inapplicable to that area. Other exemptions identified in WAC 197-10-170 shall continue to apply within environmentally sensitive areas of the City.

B. Major actions which will be located within designated environmentally sensitive areas are to be treated no differently from other major actions under this chapter. A threshold determination shall be made for all such actions, and an EIS shall not be automatically required for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. Certain categorical exemptions for minor new construction (WAC 197-10-170(1)), approval of short plats or short

ORIGINAL

subdivisions (WAC 197-10-170(10a)) and utility related actions (WAC 197-10-170(18)) do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

Section 6. Section 2 (part) of Ordinance 2340, Section 5 of Ordinance 2539, and Bellevue City Code 22.02.070 are amended to read as follows:

22.02.070 Fees.

The following fees shall be required for actions by the City in accordance with the provisions of this Code:

A. Environmental Checklist. The City shall establish a fee for review of an environmental checklist performed by the City when the City is the lead agency. This fee shall be collected prior to undertaking the threshold determination.

B. Environmental Impact Statements. Preparation of the EIS is the responsibility of the lead agency by or under the direction of its responsible official.

1. For all proposals when the City is the lead agency and the responsible official determines that an EIS is required, the applicant shall be charged a fee equal to the administrative costs of supervision and preparation of the draft and final EIS's.

2. The amount of the fee shall be based on a fee schedule of actual costs for services and materials, plus reimbursement for out-of-pocket expenses borne by the City in complying with the provisions of this Code and the SEPA rules or guidelines.

3. The applicant shall make an initial payment to the City in an amount equal to projected costs estimated by the responsible official, but not less than $500. At the time of issuance of the final EIS, the applicant shall pay any costs in excess of the initial payment, or if costs are less than the initial payment, the City shall refund any excess to the applicant.

4. An EIS shall be prepared by a private applicant or agent thereof or by an outside consultant retained by the private applicant or by the City at the cost to the applicant. The method of preparation and the selection of the consultant shall be subject to the approval of the responsible official. The responsible official shall assure that the EIS is prepared in a responsible and professional manner and with appropriate

ORIGINAL

methodology. The responsible official shall also direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document. Services rendered by the responsible official and other City staff shall be subject to collection of fees as described in Subdivisions 2 and 3 of this Subsection.

5. The responsible official will coordinate any predraft consultation procedures so that the individual preparing the EIS immediately receives all substantive information submitted by consulted agencies. The responsible official shall also attempt to obtain any information needed by the person preparing the EIS which is on file with another agency or federal agency. The responsible official shall allow any private party preparing an EIS access to all public records of the lead agency which are relevant to the subject matter of the EIS, pursuant to RCW Chapter 42.17 (Public Disclosure and Public Records Law; Initiative 276, 1973).

6. In the event a proposal is modified so that less work is required of the responsible official or that an EIS is no longer required, the responsible official shall refund any monies collected in excess of costs incurred.

C. Consultant Agency Fees. No fees shall be collected by the City for performing its duty as a consultant agency.

D. Document Fees. The City may charge any person for copies of any documents prepared pursuant to the requirements of this Code and for mailing thereof, in a manner provided by RCW Chapter 42.17; provided, that no charge shall be levied for circulation of documents as required by this Code to other agencies.

Section 7. Section 2 (part) of Ordinance 2340, and Bellevue City Code 22.02.075 are amended to read as follows:

22.02.075 Notice - Statute of limitations.

A. The applicant for or proponent of an action or the City, when the action is one the City is proposing, may publish notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form and manner set forth in RCW 43.21C.080. The notice may be

ORIGINAL

published by the City for City projects or the applicant or proponent for private projects.

C. If there is a time period for appealing the underlying City action to court, the City shall give notice stating the date and place for commencing an appeal of the underlying action and an appeal under RCW Chapter 43.21C, the State Environmental Policy Act. Notice shall be given by publication in a newspaper of general circulation in the City and by mailing notice to parties of record to the underlying action.

Section 8. Section 10 of Ordinance 2539, and Bellevue City Code 22.02.100 are amended to read as follows:

22.02.100 Public hearing

A public hearing upon appeal of a threshold determination shall be conducted in accordance with rules of procedure established by the Hearing Examiner.

Section 9. A new Section 22.02.101 is added to Chapter 22.02 of the Bellevue City Code:

22.02.101 Testimony -- Recording.

All testimony taken at any public hearing held pursuant to Section 22.02.100 shall be taken under oath. The hearing shall be recorded electronically or by other suitable method.

Section 10. A new Section 22.02.102 is added to Chapter 22.02 of the Bellevue City Code.

22.02.102 Substantial weight -- Burden of proof.

A threshold determination by the responsible official is entitled to substantial weight. The burden shall be on the appellant to establish that the determination is in error.

Section 11. Section 13 of Ordinance 2539, and Bellevue City Code 22.02.115, are hereby amended to read as follows:

22.02.115 Court review -- Limitations period for appeals.

The decision of the Hearing Examiner on a threshold determination appeal may be appealed to superior court in accordance with the requirements and subject to the limitations of RCW 43.21C.075, the State Environmental Policy Act. Any such appeal must be brought

within the time limits specified therein.

Such superior court review shall be conducted on the record compiled by the Hearing Examiner, consistent with other applicable law.

Section 12 Section 1 of Ordinance 2603, Section 2 (part) of Ordinance 2766, and Bellevue City Code 22.02.140 are amended to read as follows:

22.02.140 Approval subject to conditions -- Denial -- Requirements.

Any proposal may be conditioned or denied by the City pursuant to RCW Chapter 43.21C or this chapter of the Bellevue City Code, provided that such conditions or denials shall be based upon policies identified by the City Council and incorporated into regulations, plans or codes which are formally designated by the City Council as possible bases for the exercise of authority under SEPA.

The policies which have been identified by the City Council and incorporated into regulations, plans or codes are hereby designated as possible basis for the exercise of authority under SEPA as follows:

1. The Comprehensive Plan of the City;

2. The Land Use code of the City, Bellevue City Code Title 20;

3. The Shoreline Master Program of the City;

4. The policies and objectives of the State Environmental Policy Act of 1971, as amended, as adopted as the objectives of the City under this chapter;

5. Any other policies of the City which have been incorporated in resolutions, regulations, ordinances, plans, or codes and which provide a reasonable basis for attaching conditions to the approval of a proposal or for denying a proposal in order to mitigate adverse environment impacts.

   A proposal may be conditioned only to mitigate specific adverse environmental impacts which are identified in environmental documents prepared hereunder. Such conditions shall be stated in writing by the decisionmaker. Mitigation measures shall be reasonable and capable of being accomplished.

In order to deny a proposal the City must find that: (1) the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and (2) reasonable mitigation measures are insufficient to mitigate the identified impacts.

Section 13. Section 2 of Ordinance No. 2603, Section 1 and 2 (part) of Ordinance No. 2766, and Bellevue City Code 22.02.150 are amended to read as follows:

22.02.150 Appeal of decision attaching conditions to the approval of a proposal or denying a proposal.

A. Any action of the City, which is taken by a non-elected official thereof, approving a proposal subject to conditions or denying a proposal, under the authority of Section 22.02.140 hereof, which action does not require approval of the City Council, may be appealed to the City Council by any person aggrieved by such action.

B. Any such appeal must be made by filing a written notice of appeal, identifying the grounds therefore, with the City Clerk within 10 days of the date of the action appealed.

C. The City Council designates the Hearing Examiner, established under Bellevue City Code (Land Use Code) Chapter 20.40, as the hearing body for such appeals. The hearing body shall conduct such hearings in accordance with such rules and regulations as the examiner has established under Bellevue City Code (Land Use Code) Section 20.40.250(c) and following such hearing, shall enter written findings and conclusions and a recommendation based thereon for transmittal to the City Council. The City Council shall consider the record of the hearing, the findings and conclusions and the recommendation of the Hearing Examiner at a public hearing and may either accept, accept with modifications, or reject the recommendation of the Hearing Examiner.

D. The decision of the City Council may be appealed to Superior Court in accordance with the requirements and subject to the limitations of RCW 43.21C.075, the State Environmental Policy Act. Any such appeal must be brought within the time limits specified therein.

Such superior court review shall be conducted on the record complied by the Hearing Examiner, consistent with other applicable law.

ORIGINAL

E. Where another appeals procedures is provided under this code for a decision of the City, the appeals procedures provided hereunder shall govern where the appeal is based on the imposition of conditions or the denial of a proposal under the authority of this chapter.

F. A fee of $100 shall accompany the written notice of appeal and be filed during the appeal period with the City Clerk. No notice of appeal shall be accepted unless accompanied by full payment of the filing fee. Said fee shall be utilized to cover publication costs, mailing and other costs directly associated with the appeal. Should the Council reverse the decision appealed or remand the decision to the official responsible for the decision, and further find that there was merit to the appeal, the $100 appeal fee shall be returned to the appellant.

G. This section does not apply to permits and variances issued pursuant to RCW 90.58, Shorelines Management Act.

Section 14. This ordinance shall take effect and be in force thirty days after enactment by the Council.

PASSED by the City Council this 17th day of Oct, 1983, and signed in authentication of its passage this 17th day of Oct., 1983.

(SEAL)

Roy A. Ferguson, Mayor

Approved as to form:

Linda M. Youngs, City Attorney

Richard Gidley, Assistant City Attorney

Attest:

Marie K. O'Connell, City Clerk

Published October 22, 1983