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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 3477

AN ORDINANCE regarding the Environmental Procedures Code; amending Ordinance Nos. 2340, 3305 and 3404, and Bellevue City Code Sections 22.02.036, 22.02.045 and 22.02.080.

WHEREAS, it is the purpose of this ordinance to eliminate unnecessary SEPA review, to eliminate an unnecessary appeal procedure, and to treat notice of EIS scoping meetings consistent with the notice requirements for public hearings as set forth by the SEPA rules; now, therefore,

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

Section 1. Section 14 (part) of Ordinance No. 3404 and Bellevue City Code 22.02.036.D. are hereby amended to read as follows:

22.02.036 Environmental Impact Statements

. . . .

D. Procedures for Scoping:

1. The Environmental Coordinator shall consult with agencies, affected tribes, and the public when determining 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 by the Environmental Coordinator, but at a minimum shall include subsection (a) below:
 - a. The Environmental Coordinator shall give notice that an EIS is to be prepared, which notice shall provide that agencies, affected tribes and the public may submit written comments on probable significant adverse impacts, reasonable alternatives, mitigation measures, and licenses or other approvals that may be required; comments must be submitted to the Environmental Coordinator not later than 21 days from the date of issuance of the Determination of Significance. Such notice shall be given as specified in Section 22.02.065. Additionally, notice may be sent to any individuals or community groups known by the responsible official to have a possible interest in the

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- proposal. 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.
- b. The Environmental Coordinator 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 ten days prior to the date of the meeting. The scoping meeting may be combined with other meetings or hearings concerning the proposal.
 - c. The Environmental Coordinator may prepare or direct the EIS consultant to prepare a scoping questionnaire or information for distribution to interested parties, affected tribes and responsible public agencies for their response.
2. The appendix to the EIS shall include a summary 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 Environmental Coordinator's official file on the proposal, except that a tape or transcript is not required if an informal workshop is held. If an informal workshop is held, a written summary of the workshop shall be prepared. All written comments regarding the scope of the EIS shall be included in the proposal file.
 3. The public and agency consultation process regarding the scope of the EIS shall normally occur within 30 days after the Determination of Significance is issued, unless the Environmental Coordinator and the proponent agree on a later date.

Section 2. Section 2 (part) of Ordinance No. 2340, as amended by Section 5 of Ordinance No. 3305 and Section 21 of Ordinance No. 3404, and Bellevue City Code 22.02.045 are hereby further amended to read as follows:

22.02.045 - Environmentally Sensitive Areas

The maps filed under Clerk's Receiving No. 3828, and adopted by reference in this Chapter, designate the location of

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environmentally sensitive areas within the City. For each sensitive area, exemptions within WAC 197-11-800 (1), (2)(d), (2)(g), (2)(h), (6)(a), (14)(c), (24)(a) through (d), and (g) and (25)(d), (f), and (h) of the SEPA Rules are inapplicable to that area. Other exemptions identified in WAC 197-11-800 shall continue to apply within environmentally sensitive areas of the City.

Section 3. Section 6 of Ordinance No. 2539, as amended by Section 27 (part) of Ordinance No. 3404, and Bellevue City Code 22.02.080 are hereby further amended to read as follows:

22.02.080 - Appeal of Threshold Determination

- A. Right to Appeal: Any person aggrieved by a threshold determination made by the Environmental Coordinator may appeal said determination to the City of Bellevue Hearing Examiner, except, however, when the threshold determination is a determination of significance and has been agreed to by the proponent, it shall not be appealable.
- B. Time limitation on appeals: A written notice of appeal of a threshold determination identifying the grounds for appeal must be filed within ten days of the date of publication of the threshold determination.
- C. Fee to Accompany Notice of Appeal: A fee of \$100.00 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 a filing fee. The fee shall be utilized to cover publication costs, mailing and other costs directly associated with the appeal.
- D. Notice of Hearing: Notice of appeal, timely filed shall be transmitted by the City Clerk to the Hearing Examiner and the Environmental Coordinator. The Hearing Examiner shall determine the date, time and place of a public hearing to consider the appeal, and shall notify the parties thereof.
- E. Public Hearing: A public hearing of an appeal of a threshold determination shall be conducted in accordance with rules of procedure established by the Hearing Examiner.
- F. Presentation and Recording of Evidence: All testimony taken at the public hearing shall be taken under oath. All parties to the appeal shall be entitled to submit relevant evidence. The hearing shall be recorded electronically or by other suitable method.

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- G. Substantial Weight - Burden of Proof: A threshold determination by the Environmental Coordinator is entitled to substantial weight. The burden is on the appellant to establish that the determination is in error, and the threshold determination shall be upheld unless the Hearing Examiner determines that it is arbitrary and capricious or clearly erroneous.
- H. Decision of the Hearing Examiner: On the basis of all of the information received in public hearing and all information relied upon by the Environmental Coordinator, the Hearing Examiner shall prepare a written decision, including findings and conclusions.

The Hearing Examiner may sustain, sustain with conditions or reverse the threshold determination.
- I. Dismissal of appeal: The Hearing Examiner may summarily dismiss an appeal without hearing when such appeal is determined by the Hearing Examiner to be without merit on its face, frivolous, or brought merely to secure a delay.
- J. Court review: The decision of the Hearing Examiner on a threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action, in accordance with RCW 43.21C.075, the State Environmental Policy Act. Any such appeal must be brought within the time limits specified therein.

Section 4. This ordinance shall take effect and be in force thirty

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days after final passage by the City Council.

PASSED by the City Council this 11th day of March, 1985,
and signed in authentication of its passage this 11th day
of March, 1985.

(SEAL)



Cary E. Bozeman, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Richard L. Andrews, City Attorney

Attest:



Marie K. O'Connell, City Clerk

Published March 16, 1985