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07/26/05

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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5618

AN ORDINANCE amending the Bellevue City Code to amend the City's Environmental Procedures to include a new land use permitting process; amending Sections 22.02.031, 22.02.034, 22.02.065, 22.02.080 and 22.02.150 of the Bellevue City Code; and establishing an effective date.

WHEREAS, the State Environmental Policy Act (SEPA) encourages consolidating appeals of SEPA decisions with appeals on the underlying action; and

WHEREAS, the City has created a new permitting process in its Land Use Code, Process V, which creates an administrative decision with an appeal of the land use permit directly to Superior Court; and

WHEREAS, to encourage efficient use of resources, and to ensure that a single decision-maker hears and considers all issues related to a particular permitting action, any appeal of a SEPA decisions associated with Process V land use actions should be consolidated with the appeal of that action to Superior Court; now, therefore,

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

Section 1. Section 22.02.031 of the Bellevue City Code is hereby amended as follows:

22.02.031 Timing of the environmental review process.

A. The timing of the environmental review process shall be determined based on the criteria in RCW 36.70B.050 and 36.70B.060, the SEPA rules and this section.

B. In accordance with RCW 36.70B.050 and 36.70B.060 and WAC 197-11-055(4), the environmental coordinator shall adopt procedures for environmental review of private proposals prior to the final detailed design stage. Such procedures shall specify the amount of detail needed from proponents for such early environmental review.

C. For city-initiated proposals, the initiating department should contact the environmental coordinator at initial proposal formulation to integrate environmental concerns into the early stage of the decision-making process.

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D. For proposals subject to SEPA, the procedural requirements of SEPA and this code shall be undertaken in conjunction with decision making on the underlying proposal and prior to the city's issuance of a permit, committing to a particular course of action, or taking action that would either have an adverse environmental impact, or limit the choice of reasonable alternatives.

E. No threshold determination is final until expiration of any applicable administrative appeal period following publication of the threshold determination, if not appealed, or, if appealed, until the decision on the administrative appeal becomes final. Where no administrative appeal for a threshold determination exists, the threshold determination is final upon issuance of the threshold determination.

Section 2. Section 22.02.034 of the Bellevue City Code is hereby amended as follows:

22.02.034 Threshold determination.

A. The environmental coordinator shall make the threshold determination and issue a determination of nonsignificance (DNS) or significance (DS). The environmental coordinator shall make such threshold determination in accordance with applicable sections of the SEPA rules, as adopted by this code. A threshold determination is a Process II decision governed by the procedures set out at LUC 20.35.200 et seq, except that the threshold determination associated with a Process IV or Process V action shall be merged with the Process IV and Process V action, and processed according to the notice, decision, appeal and other procedures set forth in LUC Sections 20.35.400 to 20.35.450 (Process IV) or LUC Sections 20.35.460 to 20.35.490 (Process V).

B. Except where the threshold determination is merged with a Process IV or Process V action, the environmental coordinator shall provide notice according to the rules set forth for Process II land use applications, decisions, and public hearings or meetings (LUC 20.35.200 et seq.). The timing of SEPA actions shall be coordinated to coincide with the underlying or related decision making processes as specified in BCC 22.02.160.

C. Time Limitation.

1. A threshold determination on a non-project action does not expire and is not subject to a time limitation. New or additional environmental review may be required, however, if the environmental coordinator determines that substantial changes to a proposal are being considered.

2. A threshold determination on a project action shall have a life of two years, but shall be automatically extended if a building permit is applied for or the use is established within that two-year period; provided, however, the environmental coordinator may also extend a threshold determination for a project action if no substantial changes to the project are proposed and environmental conditions

considered in issuance of the original threshold determination have not changed substantially.

Section 3. Section 22.02.065 of the Bellevue City Code is hereby amended as follows:

22.02.065 Public notice of environmental review, determinations and availability of environmental documents.

A. The environmental coordinator shall give notice of the commencement of environmental review on new applications or proposals, of threshold determinations, of the availability of environmental documents, of the proposed adoption of environmental documents, and of public hearings or meetings in the same manner as set forth for Process II land use applications, decisions and hearings or meetings (see LUC 20.35.200 et seq.), except that notice of the commencement of environmental review, of threshold determinations, of the availability of environmental documents, of the proposed adoption of environmental documents, and of public hearing or meetings associated with Process IV or Process V actions shall be given as required for those processes.

B. The environmental coordinator may also elect to give notice by any other method designed to increase meaningful public and agency involvement without adding unnecessary cost or delay to the environmental review process.

Section 4. Section 22.02.080 of the Bellevue City Code is hereby amended as follows:

22.02.080 Appeal of threshold determination.

A. General. Except as provided in this section, the decision of the environmental coordinator in making a threshold determination may be appealed to the hearing examiner using the appeal provisions for Process II decisions (see LUC 20.35.200 et seq.); provided, however, when the threshold determination is a determination of significance which has been agreed to by the proponent, it shall not be appealable. The appeal of a threshold determination issued on a Process IV or Process V action shall be appealable only in the manner set forth for Process IV decisions (LUC 20.35.400 et seq.) or Process V decisions (LUC 20.35.460 et seq.). Any provisions of this section which conflict with LUC Part 20.35 control over those sections.

B. Who May Appeal. Any person adversely affected by a threshold determination may appeal the decision; provided, however, only those persons who submit comments prior to issuance of the threshold determination may appeal the determination unless a showing is made to demonstrate that environmental issues raised in the appeal were not known to the appellants and could not reasonably have been known to the appellants in time to submit comments before the decision was made.

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C. Issues on Appeal. Appeals are limited to those issues raised through the comment period; provided, that new issues may be raised if the appellant shows that the project has changed substantially from what was identified in the public notice or information on expected environmental impacts was not reasonably available prior to issuance of the threshold determination.

D. Time to Appeal. A written statement appealing the threshold determination of the environmental coordinator as allowed under this section must be filed with the city clerk within 14 days of the date of publication of the threshold determination or, if there is a comment period under WAC 197-11-340 or 197-11-350, within 21 days of the date of publication of the threshold determination.

E. 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 in RCW 36.70C.040.

Section 5. Section 22.02.150 of the Bellevue City Code is hereby amended as follows:

22.02.150 Administrative appeal of decision approving a proposal, with or without conditions, or denying a proposal.

A. General. A decision of the director approving a Process V permit with or without SEPA conditions or denying a Process V proposal under the authority of BCC 22.02.140 may not be administratively appealed. A Process II or other administrative decision of the applicable department director approving a proposal with or without SEPA conditions or denying a proposal under the authority of BCC 22.02.140 may be administratively appealed. The appeal will be processed in conjunction with the administrative appeal for the underlying action. In cases where no administrative appeal is provided for the underlying action, the appeal will be provided as a Process II appeal (LUC 20.35.200 et seq.), except that there is no administrative appeal of SEPA associated with a Process V proposal. A Process I decision of the hearing examiner approving a proposal with or without SEPA conditions or denying a proposal under the authority of BCC 22.02.140 may be appealed to the city council in conjunction with the underlying Process I decision. Only one SEPA appeal may be conducted for a proposal. The SEPA appeal must consolidate consideration of procedural and substantive issues and must be held in conjunction with any appeal of the underlying action; provided, that an appeal of a determination of significance shall be conducted prior to any appeal on the underlying action and an appeal of a determination of nonsignificance for a Process I decision shall be conducted and decided by the hearing examiner in conjunction with the public hearing for the proposal.

B. Issues relating to the adequacy of an EIS may not be appealed under this section; provided, however, the hearing examiner may consider issues related to an

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EIS that were specifically raised earlier in the public process and may rely on credible environmental information presented at a hearing to modify conditions or to justify new conditions or a decision to approve or deny a proposal. New evidence presented at a hearing and relied on by the hearing examiner shall be adequately documented, referenced, and incorporated into the environmental record as an addendum through the examiner's decision or recommendation. If new significant impacts are documented, the examiner's report shall be remanded to the environmental coordinator for circulation as a supplemental EIS.

C. Who May Appeal. Any person adversely affected by a substantive SEPA decision may appeal; however, only those persons who submitted comments prior to issuance of the decision may appeal unless a showing is made to demonstrate that environmental issues raised in the appeal were not known to the appellants and could not reasonably have been known to the appellants in time to submit comments.

D. Issues on Appeal. Appeals are limited to those issues raised through the comment period; provided, that new issues may be raised if the appellant shows that the project has changed substantially from what was identified in the public notice or information on expected environmental impacts was not reasonably available prior to issuance of the threshold determination.

E. Time to Appeal Administrative Decision. A written statement appealing the substantive decision of the applicable department director must be filed with the city clerk within 14 days of the date the decision was mailed or otherwise became effective, or, if the decision is issued concurrently with a determination of nonsignificance for which a comment period is required by state or local rules, within 21 days of the decision. An appeal of a Process I decision by the hearing examiner shall be filed with the city clerk within 14 days of the date of the decision.

F. Time to Appeal Substantive SEPA Decision to Superior Court. A decision on an administrative appeal of substantive SEPA issues must be appealed to superior court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and within the time limits specified in RCW 36.70C.040.

G. Exemption. This section does not apply to decisions made pursuant to Chapter 90.58 RCW, the Shorelines Management Act.

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Section 6. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this 25th day of July, 2005, and signed in authentication of its passage this 26th day of July, 2005.

(SEAL)

Connie B. Marshall
Connie B. Marshall, Mayor

Approved as to form:

Lori M. Riordan
Lori M. Riordan, City Attorney

Attest:

Myrna L. Basich
Myrna L. Basich, City Clerk

Published July 29, 2005