

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5865

AN ORDINANCE amending the Bellevue City Code to update the Environmental Procedures Code consistent with the City's critical areas regulations; amending Sections 22.02.030, 22.02.032, 22.02.033, and 22.02.140; creating new Sections 22.02.032.C – E; repealing Section 22.02.045, of the Bellevue City Code; and establishing an effective date.

WHEREAS, the City updated its critical areas regulations in 2006, including changes in definitions and changes in permitting requirements related to development proposals within and near critical areas; and

WHEREAS, the Environmental Procedures Code, Bellevue City Code Chapter 22.02 uses terminology and references to the City's regulations of these critical areas that are now out of date; and

WHEREAS, the City of Bellevue has complied with the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, and the City's Environmental Procedures Code, BCC 22.02; now, therefore,

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

Section 1. Section 22.02.030 of the Bellevue City Code is hereby amended as follows:

22.02.030 Environmental coordinator – Duties.

The environmental coordinator shall:

- A. Perform all duties of the responsible official under SEPA and the SEPA rules, and this code;
- B. Perform all duties required to be performed by the city under NEPA, including the provision of coordination with the appropriate federal agencies;
- C. Establish procedures to guide city departments in determining whether proposals are categorically exempt under SEPA;
- D. Make the threshold determination on all proposals that are subject to SEPA;
- E. Supervise the preparation of all draft and final environmental impact statements and supplemental environmental impact statements;
- F. Establish procedures as needed for the preparation of environmental documents, including environmental impact statements;
- G. Develop procedures to ensure that environmental factors are considered by city decision-makers;

H. Supervise the response of the city when the city is a consulted agency, and establish procedures to ensure that city responses to consultation requests are prepared in a timely manner and include data from all appropriate city departments;

I. Determine the lead agency as mandated by the SEPA rules;

J. Recommend procedures and criteria to the city council for determining fees to be charged for compliance with SEPA requirements;

K. Maintain an inventory of significant environmental data and maps of critical areas;

L. Provide information to citizens, proponents and others concerning SEPA and this code;

M. Monitor and report on legislation and issues involving environmental matters to the city council and affected departments;

N. Conduct other duties as may be assigned by the city manager or designee thereof.

Section 2. Section 22.02.032 of the Bellevue City Code is hereby amended as follows:

22.02.032 Determination of categorical exemption.

A. Upon the receipt of an application for a proposal, the receiving department shall, and for city proposals, the initiating department shall, determine whether the proposal is an action potentially subject to SEPA and, if so, whether it is categorically exempt. This determination shall be made based on the definition of action (WAC 197-11-704), the process for determining categorical exemption (WAC 197-11-305) and the designation of critical areas under subsection C of this section. Departments shall ensure that the proposal is properly defined per WAC 197-11-060(3). If there is any question whether or not a proposal is exempt, the environmental coordinator shall be consulted and shall make the determination. If the proposal is not categorically exempt, the department making this determination (if different from the proponent) shall notify the proponent of the proposal that he/she must submit an environmental checklist per BCC 22.02.033.

B. Pursuant to the authority provided by WAC 197-11-800(1)(c), the following categorical exemption thresholds apply to exemptions determined under WAC 197-11-800(1) for minor new construction in Bellevue, replacing those provided under WAC 197-11-800(1)(b)(i), (ii) and (v):

1. The construction or location of residential structure(s) containing 10 or less dwelling units;
2. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 30,000 square feet, and to be used by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;
3. Any landfill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

C. To determine the exemptions allowed under WAC 197-11-908, critical areas shall mean those areas designated as critical areas pursuant to the City's Land Use Code, Section 20.25H.025, and associated stream buffers as described in LUC 20.25H.075.C, now or as hereafter amended.

D. The following categorical exemptions do not apply within any critical area described in subsection C of this section:

1. WAC 197-11-800(1), except that the construction or location of a single-family residence within a critical area, if otherwise allowed by applicable development regulations, is exempt;
2. WAC 197-11-800(2)(d), except when necessary for construction or location of a single-family residence exempt under WAC 197-11-800(1) and subsection 1 above;
3. WAC 197-11-800(2)(f), except for single-family residences, the construction of which would be categorically exempt under WAC 197-11-800(1) and subsection 1 above;
4. WAC 197-11-800(2)(g);
5. WAC 197-11-800(6)(a);
6. WAC 197-11-800(13)(c);
7. WAC 197-11-800(23)(c); and
8. WAC 197-11-800(23)(e).

An exemption from the requirements of this chapter does not limit the requirements of or the application of the Land Use Code critical areas regulations (Chapter 20.25H LUC) or any other development regulation.

E. All categorical exemptions listed in WAC 197-11-800, as modified by Section 22.02.032.B and not listed in subsection D of this section, apply within a critical area. (Ord. 4817 § 7, 1995; Ord. 4257 § 2, 1991; Ord. 3779 § 1, 1987; Ord. 3477 § 2, 1985; Ord. 3404 § 21, 1984; Ord. 3305 § 5, 1983; Ord. 2340 § 2, 1976.)

Section 3. Section 22.02.033 of the Bellevue City Code is hereby amended as follows:

22.02.033 Environmental checklist.

An environmental checklist is required for every proposal determined not to be exempt, except in the case of proposals on which the city has decided to prepare its own EIS, or noncity proposals on which the city and the proponent agree an EIS will be prepared. In the case of a private proposal the proponent (or agent thereof) shall prepare the checklist except where WAC 197-11-340(3)(a)(iii) applies. The permit coordinator shall forward a copy of the checklist and plans to development services. For proposals involving a permit application, copies of the checklist and related plans shall be submitted to the permit coordinator as specified on the permit application instructions. For proposals not involving a permit application, a copy of the environmental checklist shall be submitted directly to development services, along with any other relevant materials describing the proposal and its impacts.

Section 4. Section 22.02.045 of the Bellevue City Code is hereby repealed.

Section 5. Section 22.02.140 of the Bellevue City Code is hereby amended as follows:

22.02.140 Authority to condition or deny proposals.

A. Any proposal may be conditioned or denied by the city pursuant to RCW 43.21C.060 and WAC 197-11-660 subject to the limitations and requirements contained therein.

B. Pursuant to RCW 43.21C.060, the following policies and plans as they now read or are hereafter amended are identified and designated by the city council as possible bases for the exercise of authority under SEPA:

1. The comprehensive plan of the city;
2. The comprehensive drainage plan;
3. Adopted capital investment program plan;
4. Six-year transportation improvement program;
5. The comprehensive sewer plan;
6. The water system comprehensive plan;
7. Resolution No. 4153, adopting water and sewer developer extension agreements;
8. Bellevue pedestrian corridor and major public open space guidelines;
9. Bellevue design guidelines: building/sidewalk relationships;
10. Information and data regarding critical areas gathered and maintained under 22.02.030 above;
11. Part 20.25H LUC, the critical areas overlay district;
12. The parks, open space and recreation plan; and
13. City parks master plans as adopted by the city council.

C. Substantive SEPA authority to condition or deny new development proposals or other actions shall be used only in cases where development regulations do not exist or do not apply, or where unanticipated impacts occur which are not mitigated by existing regulations. In cases where the city has adopted regulations to systematically avoid or mitigate adverse impacts, as in the areas of erosion control for water quality, critical areas protection, tree preservation, or city-regulated utilities, those standards and regulations, where applicable, will normally constitute adequate mitigation of the impacts of new development. Unusual circumstances related to a site or to a proposal, as well as environmental impacts not easily foreseeable or quantifiable in advance will be subject to site-specific or project-specific SEPA mitigation.

D. The responsibility for enforcing conditions under SEPA rests with the department or official responsible for enforcing the decision on the underlying action.

E. This section shall not be construed as a limitation on the authority of the city to approve, deny or condition a proposal for reasons based upon other statutes, ordinances, or regulations.

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

Passed by the City Council this 6th day of April, 2009
and signed in authentication of its passage this 6th day of April,
2009.

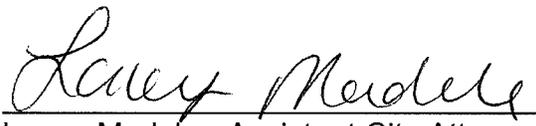
(SEAL)



Grant S. DeGinger, Mayor

Approved as to form:

Lori M. Riordan, City Attorney



Lacey Madche, Assistant City Attorney

Attest:



Myrna L. Basich, City Clerk

Published _____