

# ORIGINAL

WP0523C-ORD

11/22/95

## CITY OF BELLEVUE, WASHINGTON

### ORDINANCE NO. 4817

AN ORDINANCE amending Chapter 22.02 of the Bellevue City Code (Environmental Procedures Code) to implement the requirements of Chapter 347, Laws of 1995 and the recommendations of the City of Bellevue SEPA Task Force.

WHEREAS, the state legislature passed regulatory reform legislation in 1995 including Chapter 347, Laws of 1995; and

WHEREAS, the City of Bellevue SEPA Task Force made recommendations in July of 1994 to the City Council for certain changes in the City's's implementation of the State Environmental Policy Act (SEPA); and

WHEREAS, the City of Bellevue is concurrently reviewing and amending its land use and other regulatory processes to implement the requirements of Chapter 347, Laws of 1995, to provide for improved public participation, and to consolidate and integrate development applications and processes; now, therefore,

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

Section 1. Section 22.02.020 of the Bellevue City Code (Environmental Procedures Code) is hereby amended as follows:

22.02.020 Adoption by reference.

The city adopts by reference as though fully set forth in this chapter, the following sections and subsections of Chapter 197-11 WAC (the SEPA rules) as adopted by the Department of Ecology of the state of Washington on January 26, 1984, and as the same may be hereafter amended:

#### WAC

197-11-020(3)	Purpose;
197-11-030	Policy;
197-11-040	Definitions;
197-11-050	Lead agency;
197-11-055	Tirning of the SEPA process;
197-11-060	Content of environmental review;
197-11-070	Limitations on actions during the SEPA process;
197-11-080	Incomplete or unavailable information;

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197-11-090	Supporting documents;
197-11-100	Information required of applicants;
197-11-210	SEPA/GMA integration;
197-11-220	SEPA/GMA definitions;
197-11-228	Overall SEPA/GMA integration procedures;
197-11-230	Timing of an integrated GMA/SEPA process;
197-11-232	SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping;
197-11-235	Documents;
197-11-300	Purpose of this part (Categorical exemptions and threshold determinations);
197-11-305	Categorical exemptions;
197-11-310	Threshold determination required;
197-11-315	Environmental checklist;
197-11-330	Threshold determination process;
197-11-335	Additional information;
197-11-340	Determination of nonsignificance;
197-11-350	Mitigated DNS;
197-11-360	Determination of significance (DS)/initiation of scoping;
197-11-390	Effect of threshold determination;
197-11-400	Purpose of EIS;
197-11-402	General requirements;
197-11-405	EIS types;
197-11-406	EIS timing;
197-11-408	Scoping;
197-11-410	Expanded scoping;
197-11-420	EIS preparation;
197-11-425	Style and size;
197-11-430	Format;
197-11-435	Cover letter or memo;
197-11-440	EIS contents;
197-11-442	EIS contents on nonproject proposals;
197-11-443	EIS contents when prior nonproject EIS;
197-11-444	Elements of the environment;
197-11-448	Relationship of EIS to other considerations;
197-11-450	Cost-benefit analysis;
197-11-455	Issuance of DEIS;
197-11-460	Issuance of FEIS;
197-11-500	Purpose of this part (Commenting);
197-11-504	Inviting comment;
197-11-502	Availability and cost of environmental documents;
197-11-508(2)	SEPA register;

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197-11-535 Public hearings and meetings;  
197-11-545 Effect of no comment;  
197-11-550 Specificity of comments;  
197-11-560 FEIS response to comments;  
197-11-570 Consulted agency costs to assist lead agency;  
197-11-600 When to use existing environmental documents;  
197-11-610 Use of NEPA documents;  
197-11-620 Supplemental environmental impact statement - Procedures;  
197-11-625 Addenda - Procedures;  
197-11-630 Adoption - Procedures;  
197-11-635 Incorporation by reference - Procedures;  
197-11-640 Combining documents;  
197-11-650 Purpose of this part (SEPA and agency decisions);  
197-11-655 Implementation;  
197-11-660 Substantive authority and mitigation;  
197-11-680 Appeals;  
197-11-700 Definitions;  
197-11-702 Act;  
197-11-704 Action;  
197-11-706 Addendum;  
197-11-708 Adoption;  
197-11-710 Affected tribe;  
197-11-712 Affecting;  
197-11-714 Agency;  
197-11-716 Applicant;  
197-11-718 Built environment;  
197-11-720 Categorical exemption;  
197-11-722 Consolidated appeal;  
197-11-724 Consulted agency;  
197-11-726 Cost-benefit analysis;  
197-11-728 County/city;  
197-11-730 Decisionmaker;  
197-11-732 Department;  
197-11-734 Determination of nonsignificance (DNS);  
197-11-736 Determination of significance (DS);  
197-11-738 EIS;  
197-11-740 Environment;  
197-11-742 Environmental checklist;  
197-11-744 Environmental document;  
197-11-746 Environmental review;  
197-11-750 Expanded scoping;  
197-11-752 Impacts;

197-11-754 Incorporation by reference;  
197-11-756 Lands covered by water;  
197-11-758 Lead agency;  
197-11-760 License;  
197-11-762 Local agency;  
197-11-764 Major action;  
197-11-766 Mitigated DNS;  
197-11-768 Mitigation;  
197-11-770 Natural environment;  
197-11-772 NEPA;  
197-11-774 Nonproject;  
197-11-776 Phased review;  
197-11-778 Preparation;  
197-11-780 Private project;  
197-11-782 Probable;  
197-11-784 Proposal;  
197-11-786 Reasonable alternative;  
197-11-788 Responsible official;  
197-11-790 SEPA;  
197-11-792 Scope;  
197-11-793 Scoping;  
197-11-794 Significant;  
197-11-796 State agency;  
197-11-797 Threshold determination;  
197-11-799 Underlying governmental action;  
197-11-800 Categorical exemptions;  
197-11-880 Emergencies;  
197-11-900 Purpose of this part (agency compliance);  
197-11-902 Agency SEPA policies;  
197-11-904 Agency SEPA procedures;  
197-11-906 Content and consistency of agency procedures;  
197-11-908 Environmentally sensitive areas;  
197-11-910 Designation of responsible official;  
197-11-916 Application to ongoing actions;  
197-11-920 Agencies with environmental expertise;  
197-11-924 Determining the lead agency;  
197-11-926 Lead agency for governmental proposals;  
197-11-928 Lead agency for public and private proposals;  
197-11-930 Lead agency for private projects with one agency with jurisdiction;  
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city;

197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city and one or more state agencies;
197-11-936	Lead agency for private projects requiring licenses from more than one state agency;
197-11-938	Lead agencies for specific proposals;
197-11-942	Agreements on lead agency status;
197-11-944	Agreements on division of lead agency duties;
197-11-946	DOE resolution of lead agency disputes;
197-11-948	Assumption of lead agency status;
197-11-960	Environmental checklist;
197-11-965	Adoption notice;
197-11-970	Determination of nonsignificance (DNS);
197-11-980	Determination of significance and scoping notice (DS);
197-11-985	Notice of assumption of lead agency status;
197-11-990	Notice of action.

Section 2. Section 22.02.031 of the Bellevue City Code (Environmental Procedures 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.

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 the administrative appeal period following publication of the threshold determination, if not appealed, or, if appealed, until the decision on the administrative appeal becomes final.

Section 3. Section 22.02.034 of the Bellevue City Code (Environmental Procedures 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.

B. 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.) and shall coordinate the timing of SEPA actions to coincide with the underlying or related decision making processes as specified in section 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 4. Section 22.02.038 of the Bellevue City Code (Environmental Procedures Code) is hereby amended as follows:

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22.02.038 When a previously prepared EIS is adopted to meet the EIS requirement for a different proposal.

A. When a proposal is determined to have a probable significant adverse environmental impact, and the EIS requirement for that proposal is proposed to be met by adoption of a previously prepared EIS, then a proposed notice of adoption shall be issued and a minimum 15-day comment period provided. Notice of this comment period shall be provided by the notice method specified in BCC 22.02.065.

B. The environmental coordinator shall determine whether to have a scoping hearing to take public comment about the environmental impacts of the proposal and whether those impacts are adequately addressed in the documents proposed for adoption. In deciding whether to hold a scoping hearing, consideration shall be given to the following:

1. whether the proposal involves a rezone or changes to the Comprehensive Plan or Subarea Plan,
2. whether the project involves a significant change of use for a site,
3. how recently the EIS proposed to be adopted was prepared,
4. how similar the new project is to the project for which the EIS was originally prepared, and
5. how similar the expected impacts from the new project are to those previously analyzed, including an assessment of the type of impact and the geographic range of the expected impact.

C. A scoping hearing shall be held for any project or proposal determined to have probable significant adverse environmental impacts if such a hearing is requested by at least 30 people.

D. Based on the comments received and analysis thereof, the environmental coordinator may determine that the new proposal is substantially different from the previous proposal so that the previous EIS does not adequately analyze its significant adverse environmental impacts, or, there are changed conditions or new information indicating significant adverse environmental impacts not adequately analyzed in the EIS. In such case, a supplemental EIS shall be required. If no comments are received that change the

environmental coordinator's decision, the notice of adoption shall be issued; an addendum may be prepared if warranted.

Section 5. Section 22.02.039 of the Bellevue City Code (Environmental Procedures Code "Internal circulation of environmental documents") is hereby repealed.

Section 6. Section 22.02.040 of the Bellevue City Code (Environmental Procedures Code) is hereby amended as follows:

**22.02.040 Public hearings**

When a public hearing is held for any proposal undergoing concurrent environmental review, such hearing shall be open to consideration of environmental impacts associated with the proposal. Information relating to environmental concerns shall be forwarded to the environmental coordinator. The environmental coordinator or authorized representative may attend any such hearings.

Section 7. Section 22.02.045 of the Bellevue City Code (Environmental Procedures Code) is hereby amended as follows:

**22.02.045 Critical areas.**

A. The following areas are designated as critical areas pursuant to WAC 197-11-908:

1. Areas of Special Flood Hazard (See Land Use Code section 20.50.010);
2. Riparian Corridors excluding Type C and D (See Land Use Code 20.50.044);
3. Wetlands excluding Type C (See Land Use Code 20.50.054);
4. Areas of colluvial or landslide deposits on slopes of 15 percent or more;
5. Slopes of 40 percent or more; and

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6. Areas designated on the Coal Mine Areas maps or in the City's Coal Mine Area Regulations as potentially affected by abandoned coal mines.

B. The following exemptions do not apply within any critical area described in subsection A of this section: 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)(d, g), (6)(a), (24)(a - d, g), (25)(d and h). An exemption from the requirements of this chapter does not limit the requirements of or the application of the Land Use Code Sensitive Area Overlay District requirements (Chapter 20.25H of the Bellevue City Code) or any other development regulation.

C. All exemptions listed in WAC 197-11-800 and not listed in subsection B of this section continue to apply in a critical area designated pursuant to the environmental procedures code.

Section 8. Section 22.02.065 of the Bellevue City Code (Environmental Procedures 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.).

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 9. Section 22.02.075 of the Bellevue City Code (Environmental Procedures Code) is hereby amended as follows:

22.02.075 Notice - Statute of limitations.

A. The proponent of an action may publish notice of action pursuant to RCW 43.21C.080. The environmental coordinator is not responsible for publishing notice of action.

B. The form of the notice shall be substantially in the form and manner set forth in rules adopted under RCW 43.21C.110.

C. If there is a time period for appealing the underlying city action to court, the city shall give notice in accordance with state law stating the date and place for commencing an appeal of the underlying action and an appeal under Chapter 43.21C RCW, the State Environmental Policy Act.

Section 10. Section 22.02.080 of the Bellevue City Code (Environmental Procedures 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. Any provisions of this section which conflict with Sections 20.35.200 et seq., 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.

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 must be filed with the Department of Community Development 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 11. Section 22.02.140 of the Bellevue City Code (Environmental Procedures 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. Exhibit A of Resolution 3946, Bellevue pedestrian corridor guidelines;
9. Section 1 of Ordinance 3309, design guidelines: building/sidewalk relationships, as those documents now read or hereafter are amended;
10. The sensitive areas notebook;

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11 The parks, open space and recreation plan;

12. 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 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 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 12. Section 22.02.150 of the Bellevue City Code (Environmental Procedures 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 Process II or 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.). 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

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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 non-significance 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 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 Department of Community Development 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 non-significance 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 22.02.150 does not apply to decisions made pursuant to Chapter 90.58 RCW, the Shorelines Management Act.

Section 13. Section 22.02.160 of the Bellevue City Code (Environmental Procedures Code) is hereby amended as follows:

**22.02.160 Integration with permit and land use decision.**

A. The process under the State Environmental Policy Act (Chapter 43.21C RCW) and this chapter shall be integrated, insofar as possible, with any applicable process for decision-making on permit and land use applications, in accordance with the procedures in subsection B of this section.

B. For each application for a permit or land use decision which is subject to review under the State Environmental Policy Act, the environmental coordinator shall determine how environmental review best can be integrated with review of the permit or land use application. In making this determination, the environmental coordinator shall integrate the following procedures:

1. Staff review of the application under city codes and regulations and the environmental review and determination thereon;

2. The staff report on the application, and the report or documentation concerning environmental review;

3. Hearings and other public processes, including required public notices, required by city code or regulation, and hearings and other public processes, including public notices, required or conducted under the State Environmental Policy Act. This section shall include appeals, except as otherwise expressly provided by this code;

C. The threshold determination and the decision or recommendation on the underlying permit or action will be consolidated except when a determination of significance is issued or when the environmental coordinator makes a finding that unusual environmental issues or uncertainty linked to the underlying proposal are present. The environmental coordinator must find that

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separating environmental review from the underlying or related decision making processes would result in a more efficient process and would not result in conflict, overlap, or duplication of permit or review processes.

Section 14. This ordinance shall take effect and be in force thirty (30) days after passage by the City Council.

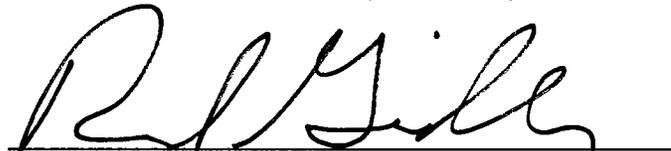
PASSED by the City Council this 27<sup>th</sup> day of November, 1995, and signed in authentication of its passage this 27<sup>th</sup> day of November, 1995.

(SEAL)

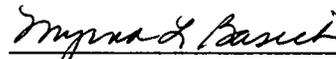
  
Donald S. Davidson, DDS, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

  
Richard L. Andrews, City Attorney

Attest:

  
Myrna L. Basich, City Clerk

Published December 1, 1995