

ORDINANCE NO. 2319

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO ENVIRONMENTAL POLICY, ADOPTING THE POLICIES OF THE STATE ENVIRONMENTAL POLICY ACT RCW 43.21C.010 and RCW 43.21C.020 AND THE "SEPA GUIDELINES" ADOPTED BY THE STATE OF WASHINGTON COUNCIL ON ENVIRONMENTAL POLICY AS CHAPTER 197-10 WASHINGTON ADMINISTRATIVE CODE, ALL BY REFERENCE AND ESTABLISHING LOCAL REGULATIONS AND PROCESS PROCEDURES TO IMPLEMENT SAID ENVIRONMENTAL POLICY AND REPEALING RESOLUTION NO. 2181.

BE IT ORDAINED by the City Council of the City of Kirkland as follows:

Section 1. Policies and Authority:

(1) The City of Kirkland hereby adopts by reference the policies of the State Environmental Policy Act as expressed in RCW 43.21C.010 and RCW 43.21C.020.

(2) The City possesses the authority to deny or condition actions so as to mitigate or prevent adverse environmental impacts. This authority applies to all city activities including actions as defined in this Ordinance, as well as activities which are categorically exempted or excluded from the definition of action, whether or not such activities are considered to be ministerial in nature.

Section 2. Adoption of SEPA Guidelines by reference: The City hereby adopts by reference the following sections or subsections of Chapter 197-10 of the Washington Administrative Code (The "SEPA Guidelines" adopted by the State of Washington, council on environmental policy):

- WAC 197-10-040: Definitions
- WAC 197-10-060: Scope of a proposal and its impacts.
- WAC 197-10-160: No presumption of significance for non-exempt actions.
- WAC 197-10-170: Categorical exemptions.
- WAC 197-10-175: Exemptions and non-exemptions applicable to specific state agencies.
- WAC 197-10-180: Exemptions for emergency actions.
- WAC 197-10-200: Lead Agency - responsibilities.
- WAC 197-10-203: Determination of lead agency - procedures.
- WAC 197-10-205: Lead agency designation - Governmental proposals.

WAC 197-10-210: Lead agency designation - proposals involving both private and public construction.

WAC 197-10-215: Lead agency designation - private projects for which there is only one agency.

WAC 197-10-220: Lead agency designation - private projects, licenses from more than one Agency when one is City.

WAC 197-10-225: Lead agency designation - private projects, license from more than one State Agency.

WAC 197-10-230: Lead agency designation - specific proposals.

WAC 197-10-235: Local agency transfer of lead agency status to a State Agency.

WAC 197-10-240: Agreements as to lead agency status.

WAC 197-10-245: Agreements between agencies as to division of lead agency duties.

WAC 197-10-260: Dispute as to lead agency determination - resolution by CEP.

WAC 197-10-270: Assumption of lead agency by another agency with jurisdiction.

WAC 197-10-300: Threshold determination requirement.

WAC 197-10-305: Recommended timing for threshold determination.

WAC 197-10-310: Threshold determination procedures - environmental check list.

WAC 197-10-320: Threshold determination procedures - initial review of environmental check list.

WAC 197-10-330: Threshold determination procedures - information in addition to check list.

WAC 197-10-340: Threshold determination procedures - negative declarations.

WAC 197-10-345: Assumption of lead agency status by another agency with jurisdiction - prerequisites, effect and form of notice.

WAC 197-10-350: Affirmative threshold determinations.

WAC 197-10-355: Form of declaration of significance/non-significance.

WAC 197-10-360: Threshold determination criteria - Application of Environmental check list.

WAC 197-10-365: Environmental check list.

WAC 197-10-370: Withdrawal of affirmative threshold determination.

WAC 197-10-375: Withdrawal of negative threshold determination.

WAC 197-10-390: Effect of threshold determination by Lead Agency.

WAC 197-10-400: Duty to begin preparation of a draft EIS.  
 WAC 197-10-410: Pre-draft consultation procedures.  
 WAC 197-10-425: Organization and style of a draft EIS.  
 WAC 197-10-440: Contents of a draft EIS.  
 WAC 197-10-442: Special considerations regarding contents of an EIS.  
 WAC 197-10-444: List of elements of the environment.  
 WAC 197-10-450: Public awareness of availability of draft EIS.  
 WAC 197-10-455: Circulation of the draft EIS - review period.  
 WAC 197-10-460: Specific agencies to which draft EIS shall be sent.  
 WAC 197-10-465: Agencies possessing environmental expertise.  
 WAC 197-10-470: Costs of the public for reproduction of environmental documents.  
 WAC 197-10-480: Public Hearing on a proposal - when required.  
 WAC 197-10-485: Notice of Public Hearing on Environmental Impact of the proposal.  
 WAC 197-10-490: Public hearing on the proposal - use of environmental document.  
 WAC 197-10-495: Preparation of amended or new draft EIS.  
 WAC 197-10-500: Responsibilities of consulted agencies - local agencies.  
 WAC 197-10-510: Responsibilities of consulted agencies - State agencies with jurisdiction.  
 WAC 197-10-520: Responsibilities of consulted agencies - State agencies with environmental expertise.  
 WAC 197-10-530: Responsibilities of consulted agencies - when pre-draft consultation has occurred.  
 WAC 197-10-535: Cost of performance of consulted agency responsibilities.  
 WAC 197-10-540: Limitations on responses to consultation.  
 WAC 197-10-545: Effect of no written comment.  
 WAC 197-10-550: Preparation of the final EIS - time period allowed.  
 WAC 197-10-570: Preparation of final EIS - When no critical comments received on the draft EIS.  
 WAC 197-10-580: Preparation of the final EIS - contents - when critical comments received on draft EIS.  
 WAC 197-10-600: Circulation of the final EIS.  
 WAC 197-10-650: Effect of an adequate final EIS prepared pursuant to NEPA.  
 WAC 197-10-652: Supplementation of a lead agency of an inadequate final NEPA EIS.

- WAC 197-10-660: Use of previously prepared EIS for a different proposed action.
- WAC 197-10-690: Use of a Lead Agency's EIS by other acting agencies for the same proposal.
- WAC 197-10-695: Draft and final supplements to a revised EIS.
- WAC 197-10-700: No action for seven days after publication of the final EIS.
- WAC 197-10-710: EIS combined with existing planning and review processes.
- WAC 197-10-830: Responsibilities of agencies - SEPA Public Information Center.
- WAC 197-10-835: Regional SEPA Public Information Centers.
- WAC 197-10-840: Applications of Agency Guidelines to on-going actions.

Section 3. Additional Definitions: In addition to those definitions contained within WAC 197-10-040, the following terms shall have the following meanings, unless the context indicates otherwise:

(1) "Department" means by division, subdivision or organizational unit of the city established by Ordinance, rule or order.

(2) "SEPA Guidelines" means Chapter 197-10 RCW adopted by the Council on Environmental Policy.

Section 4. Time Limits Applicable to the SEPA Process: The following time limits (expressed in calendar days) shall apply to the processing of all private projects and to those governmental proposals submitted to this city by other agencies:

(1) Categorical Exemptions. Identification of categorically exempt actions shall occur within seven (7) days of submission of an adequate application;

(2) Threshold Determinations.

(a) Threshold determinations which can be made based upon review of the environmental check list submitted by applicant should be completed within fifteen (15) days of submission of an adequate application and the completed check list.

(b) Threshold determinations requiring further information from the applicant or consultation with other agencies with jurisdiction should be completed within fifteen (15) days of receiving the requested information from the applicant or the consulted agency; requests by the

City for such further information should be made within fifteen (15) days of the submission of an adequate application and completed check list; when a request for further information is submitted to a consulted agency, the city shall wait a maximum of thirty (30) days for the consulted agency to respond.

(c) Threshold determinations which require that further studies, including field investigations, be initiated by the city should be completed within thirty (30) days of submission of an adequate application and the completed check list.

(d) Threshold determinations on actions where the applicant recommends in writing that an EIS be prepared because of the significant impact asserted and described in the application shall be completed within fifteen (15) days of submission of an adequate application and the completed check list.

(e) The time limits set forth in this subsection shall not apply to withdrawals of affirmative and negative threshold determinations where such withdrawals are made in accordance with Section WAC 197-10-370 and WAC 197-10-375.

(f) When a threshold determination is expected to require more than fifteen (15) days to complete and a private applicant requests notification of the date when a threshold determination will be made, the lead agency shall transmit to the private applicant a written statement as to the expected date of decision.

#### Section 5. Environmentally Sensitive Areas:

(1) The maps filed with the City Clerk as Exhibit A to this Ordinance, and captioned: "Maps designating environmentally sensitive areas within the City of Kirkland" are hereby adopted by reference and shall have full force and effect of law as of the date of such filing. For each sensitive area, exemptions within WAC 197-10-170 of the SEPA Guidelines are identified on the maps as being inapplicable to that area. Other exemptions not so identified shall continue to apply within environmentally sensitive areas of the City.

(2) Major actions which will be located wholly or partially within an environmentally sensitive area are to be treated no differently than other major actions under these guidelines. 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.

(3) Certain exemptions 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. Use of Exemptions:

(1) The applicability of the exemptions shall be determined by each department within the city which received an application for a license, or in the case of governmental proposals, by that department initiating the proposal. A determination by any such department that a proposal is exempt shall be final and not subject to administrative review.

(2) If a proposal includes a series of actions, physically or functionally related to each other, some of which are exempt and some of which are not, the proposal is not exempt.

(3) If the proposal includes a series of exempt actions which are physically or functionally related to each other, but which together may have a significant environmental impact, the proposal is not exempt.

(4) If it is determined that a proposal is exempt, none of the procedural requirements of these guidelines apply to the proposal. No environmental check list shall be required for an exempt proposal.

(5) A department which is determining whether or not a proposal is exempt shall ascertain the total scope of the proposal and the governmental licenses required. If a proposal includes a series of actions, physically or functionally related to each other, some of which are exempt and some of which are not, the proposal is not exempt. For any such proposal, the lead agency shall be determined, even if the license application which triggers the department's consideration is otherwise exempt. If the lead agency is the city, then the responsible official shall be designated.

(6) If a proposal includes both exempt and nonexempt actions, exempt actions may be authorized with respect to the proposal prior to compliance with the procedural requirements of these guidelines subject to the following limitations:

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(a) No major action (nonexempt action) shall be authorized;

(b) No action shall be authorized which will irrevocably commit the city to approve or authorize a major action;

(c) A department may withhold approval of an exempt action which would lead to modification of the physical environment, when such modification would serve no purpose of later approval of a major action is not secured; and

(d) A department may withhold approval of exempt actions which would lead to substantial financial expenditures by a private applicant which would serve no purpose if later approval of a major action is not secured.

Section 7. Lead Agency Determination and Responsibilities:

(1) Any department within the city receiving or initiating a proposal any portion of which involves a major action, shall determine the lead agency for that proposal pursuant to the criteria set forth in Section WAC 197-10-205 through -270, using the procedures of WAC 197-10-203. This determination shall be made for each proposal involving a major action unless the lead agency has been previously determined, or the department is aware that another department or agency is in the process of determining the lead agency.  
NOTE: A lead agency must be an agency with jurisdiction.

(2) In those instances in which the city is the lead agency, the responsible official of the city shall supervise compliance with the threshold determination, and if an EIS is necessary, shall supervise preparation of the draft and final EIS.

(3) In those instances in which the city is not the lead agency under the criteria of WAC 197-10-205 through -270, all departments of the city subject to the limitations of WAC 197-10-390, -660, and -690 shall utilize and consider as appropriate either the declaration of nonsignificance or the final EIS of the lead agency in conjunction with the decisions of the city on the proposal. In such instances, no city department shall prepare or require preparation of a declaration of nonsignificance or EIS in addition to that prepared by the lead agency.

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(4) In the event that the city or any department thereof receives a lead agency determination made by another agency which does not appear to be in accord with the criteria of WAC 197-10-205 through -245 it may object thereto. Any such objection must be made and resolved within fifteen (15) days of receipt of the determination, or the city must petition CEP for a lead agency determination pursuant to WAC 197-10-260 within the fifteen (15) day time period. Any such petition on behalf of the city shall be initiated by the City Manager.

(5) Departments of the city are authorized to make agreements as to lead agency status pursuant to WAC 197-10-240 and WAC 197-10-245: PROVIDED, that any such agreement involving assumption of lead agency status by the city will first be approved by the responsible official for the city and that any department which will incur responsibilities as a result of any such agreement will approve the agreement.

(6) Any department making a lead agency determination for a private project shall require sufficient information from the applicant to ascertain which other agencies have jurisdiction over the proposal.

#### Section 8. Environmental Check List:

(1) Except as provided in WAC 197-10-300(2), a complete environmental check list, or a copy thereof, in the form provided in WAC 197-10-365 shall be filed at the same time as an application for a permit, license, certificate, or other entitlement for use not specifically exempted herein. This check list shall be the basis for a determination by the city as to lead agency status and if the city is determined to be the lead agency, then for the threshold determination.

(2) For all proposals for which the city is the lead agency, the responsible official of the city shall make the threshold determination pursuant to the criteria and procedures of WAC 197-10-300 through -365.

#### Section 9. Preparation of EIS:

(1) The draft and final EIS shall be prepared either by the responsible official or his designee, or by a private applicant or a consultant retained by the private applicant. In the event the responsible official determines that the applicant will be required to prepare an EIS, the applicant shall be so notified immediately after completion of the threshold determination.



(2) In the event that an EIS is to be prepared by a private applicant, the responsible official shall assure that the EIS is prepared in a responsible manner and with appropriate methodology. The responsible official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document.

(3) In the event that the responsible official or his designee is preparing an EIS, the responsible official may require a private applicant to provide data and information which is not in the possession of the city relevant to any or all areas to be covered by the EIS.

(4) No matter who participates in the preparation of an EIS, it must be approved by the responsible official prior to distribution.

Section 10. Additional Elements to be Covered in an EIS: The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under these rules:

- (1) Employment
- (2) Economy
- (3) Tax base
- (4) Cultural factors
- (5) Quality of life
- (6) Neighborhood cohesion
- (7) Sociological factors

The responsible official shall, at the time of making a declaration of significance, designate which of the foregoing additional elements shall be required to be included in the EIS content in order to fully carry out the policies of the State Environmental Policy Act and this Ordinance.

Section 11. Designation of Official to Perform Consulted Agency Responsibilities for the City.

(1) The following department shall be responsible for the preparation of the written comments for the city in response to a consultation request prior to a threshold determination, participation in predraft consultation, or reviewing a draft EIS: Department of Community Development.

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(2) The official designated in paragraph (1) hereof shall be responsible for compliance by the city with WAC 197-10-500 through -540 wherever the city is a consulted agency, and is hereby authorized to develop operating procedures which will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

Section 12. Designation of Responsible Official:

(1) For those proposals for which the city is the lead agency, the responsible official shall be the head of the department with jurisdiction over the proposed action.

(2) The responsible official shall make the threshold determination, supervise preparation of any required EIS, and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA Guidelines which were adopted by reference in WAC 173-805-020 hereof, for all proposals for which the city is the lead agency.

Section 13. SEPA Public Information Center:

(1) The following location constitutes the city's SEPA public information center:

The Department of Administration and Finance  
210 Main Street  
Kirkland, Washington 98033

Telephone: 206 - 822-9271

(2) All reasonable means will be used to make the existence and location of the city's SEPA public information center known to both the public generally and the employees of the city.

(3) The SEPA public information center shall contain the documents and provide the services required by WAC 197-10-830.

Section 14. Fees shall be required for actions by the city in accordance with the provisions of this Ordinance and in the amounts provided for by Ordinance No. 2311.

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(1) Environmental Impact Statements -

(a) For all proposals requiring an EIS for which the city is the lead agency and for which the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred by the city in the preparation of an EIS. If it is determined that an EIS is required, applicants shall be advised of projected costs of the statement prior to actual preparation and shall post bond or otherwise insure payment of such costs.

(b) The responsible official may determine that the city will contract directly with a consultant for preparation of environmental documents for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by the city after a call for bid and in consultation with the applicant. Applicants may be required to post bond or otherwise insure payment of such costs.

(c) In the event that a proposal is modified so that an EIS is no longer required, the responsible official shall refund any costs collected under (a) and (b) of this subsection which were collected for costs not incurred.

(3) No fee shall be collected by the city for performing its duties as a consulted agency.

(4) The SEPA public information center of the city is hereby authorized to charge periodic fees for the service of mailing registers and register updates. Such fees shall be reasonably related to the costs of reproduction and mailing of registers and updates.

(5) The city may charge any person for copies of any document prepared pursuant to the requirements of this Ordinance, and for mailing thereof, in a manner provided by Chapter 42.17 RCW.

Section 15. Notice - Statute of Limitations:  
The form of the notice shall be as prescribed by the Department of Ecology and/or substantially in the form and manner set forth in RCW 43.21C.080. The notice shall be published by the responsible official, applicant or proponent pursuant to RCW 43.21C.080.

Section 16. Severability: If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance, or the application of the provision to other persons or circumstances, shall be be affected.

Section 17. The City shall maintain at all times available for the use of the general public at the City Hall, 210 Main Street, Kirkland, Washington 98033, not less than three copies of the statutes and administrative code provisions herein adopted by reference, to-wit: Sections 43.21C.010 and 43.21C.020 Revised Code of Washington and Chapter 197-10 Washington Administrative Code ("SEPA Guidelines").

Section 18. This Ordinance supersedes and replaces Resolution No. 2181 and the regulations adopted pursuant to said Resolution, all of which are hereby repealed.

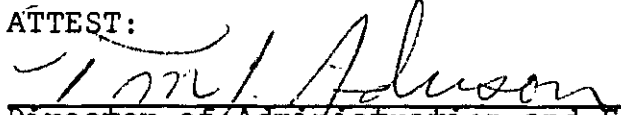
Section 19. This Ordinance shall be in force and take effect five days from and after its passage by the Kirkland City Council and publication as required by law.

PASSED by the Kirkland City Council in regular meeting on the 6th day of July, 1976.

SIGNED in authentication thereof on the 6th day of July, 1976.

  
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Mayor

ATTEST:

  
\_\_\_\_\_  
Director of Administration and Finance  
(ex officio City Clerk)

Approved as to form:

  
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City Attorney