

ORDINANCE NO. 2473

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 AS CHAPTER 197-10 WASHINGTON ADMINISTRATIVE CODE, ALL BY REFERENCE AND ESTABLISHING LOCAL REGULATIONS AND PROCEDURES TO IMPLEMENT SAID ENVIRONMENTAL POLICY AND REPEALING ORDINANCE NO. 2319

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 of the City actions as defined in this Ordinance, 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 as amended on January 21, 1978):

- 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 checklist.

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

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

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

WAC 197-10-345: Assumption of lead agency status by another agency with jurisdiction - pre-requisites, 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 checklist.

WAC 197-10-365: Environmental checklist.

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 content 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 197-10-381: Responsibilities of agencies - SEPA Public Information.
- 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 have the following meanings, unless the context indicates otherwise:

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

(2) "SEPA Guidelines" means Chapter 197-10 of the Washington Administrative Code. (Reference WAC 197-10-040).

Section 4. Environmental Coordinator: The City Manager shall designate an employee of the City to act as Environmental Coordinator. It shall be the responsibility of the Environmental Coordinator to:

(1) Assure that all SEPA related City regulations and policies are in compliance with corresponding regulations and policies at the State level;

(2) Assist all City Departments in the interpretation and implementation of this Ordinance;

(3) Coordinate the processing of reconsiderations and appeals pursuant to Section 9 of this Ordinance;

(4) Assist the public with inquiries concerning environmental policy and other SEPA-related information.

(5) Coordinate the review of and response to impact statements submitted to the City by other governmental agencies;

(6) Assist Departments in coordinating the preparation and distribution of environmental impact statements undertaken by the City or its consultants;

(7) Perform other duties as directed.

Section 5. Responsible Official:

(1) For those proposals for which the City is the lead agency, the Responsible Official is the head of the Department with jurisdiction over the proposed action. The City Manager may act as the Responsible Official for any action initiated by the City.

(2) The Responsible Official shall review the environmental checklist, 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 Section 2 hereof, for all proposals for which the City is the lead agency.
(Reference WAC 197-10-820)

(3) The Responsible Official for a proposal shall not prepare or sign the environmental checklist for that proposal.

Section 6. Exemptions:

(1) General. If it is determined that a proposal is exempt, none of the procedural requirements of these guidelines apply to the proposal. An environmental checklist is not required for an exempt proposal.

(2) When Determined. The Department receiving or initiating a proposal shall identify categorically exempt actions within seven (7) days of submission of a complete application.

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

(4) Authorization of Work. 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

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 if later approval of a major action is not secured;

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

(5) Limitation

a. 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.

b. 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. 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.

c. For any such proposal in b. above, the lead agency shall be determined, even if the license application which triggers the Department's consideration is otherwise exempt.

d. 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; and hereby adopted by reference and shall have full force and effect of law as of the date of adoption of this Ordinance. For each sensitive area, exemptions with WAC 197-10-170 as limited by WAC 197-10-177(2), of the SEPA Guidelines are identified on the maps as being inapplicable to that area.

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.

e. Certain exemptions do not apply on lands covered by water whether or not these lands covered by water are mapped. (Reference WAC 197-10-170)

Section 7. Environmental Checklist:

(1) Except as provided in WAC 197-10-300(2), a complete environmental checklist, or a copy thereof in the form provided in WAC 197-10-365 shall be filed at the same time as an application for any proposal for a major action.

Section 8. Lead Agency Determination and Responsibilities:

(1) Determination.

a. Any Department 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. The lead agency must be an agency with jurisdiction.

b. Any Department making a lead agency determination for a project shall require sufficient information from the applicant to ascertain which other agencies have jurisdiction over the proposal (Reference WAC 197-10-203). Departments 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.

(2) Limitation. In those instances in which the City is not the lead agency under the criteria of WAC 197-10-205 through 270, Departments subject to the limitation of WAC 197-10-390, 660, and 690 shall not prepare or require preparation of a declaration of nonsignificance or EIS in addition to that prepared by the lead agency.

(3) Objection. In the event that the City or any Department 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 the Department of Ecology 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.

Section 9. Threshold Determinations

(1) General and Timing

a. Threshold determinations which can be made based upon review of the environmental checklist submitted by applicant shall be completed within fifteen (15) days of submission of a complete application and the completed checklist.

b. If after review of the checklist the Responsible Official determines that more information is necessary for the threshold determination, the City may conduct further studies,

including field investigations, and may request further information from the applicant or other agencies with jurisdiction. Such a request shall be made within fifteen (15) days of the submission of a complete application and completed checklist. When a request 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 shall be completed within fifteen (15) days of completion by the City of any further studies or receipt by the City of requested information.

d. Where it is determined through written agreement by an applicant and the Responsible Official that an EIS is required, a declaration of significance shall be issued following such written agreement, but within fifteen (15) days after the submittal of a complete application.

e. When the Responsible Official expects a threshold determination will require more than fifteen (15) days to complete, the lead agency shall transmit to the applicant a written statement as to the expected date of decision, if the applicant requests notification of the date when a threshold determination will be made. (Reference WAC 197-10-300 through 330).

f. 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 9.(3) of this Ordinance.

(2) Publication and Effect.

a. Each week the Environmental Corrdinator shall publish notice in the official City newspaper of all threshold determinations including new threshold determinations issued by the City in the previous week, together with a statement of the right of any person or agency listed in Section 9(5)(b) of this Ordinance to request a reconsideration and to appeal any reconsideration.

(b) No permit shall be issued which would allow construction, demolition, grading, or other direct modification of the physical environment until expiration of the period for filing a request for reconsideration and notice of appeal, and until termination of any reconsideration or appeal.

3. Withdrawal of Threshold Determination

(a) General. The Responsible Official may at any time withdraw a threshold determination in accordance with WAC 197-10-370 and WAC 197-10-375.

(b) Effect. The withdrawal of a threshold determination will have the following effects:

i. If an affirmative threshold determination is withdrawn in accordance with WAC 197-10-370, a declaration of non-significance will be issued.

ii. If a negative threshold determination is withdrawn in accordance with WAC 197-10-375, the Responsible Official shall re-evaluate the proposal and make a new threshold determination.

4. Request for Reconsideration of the Threshold Determination

(a) General. Any person who has a right to appeal under Paragraph 5.b. of this Section may request the Responsible Official to reconsider his/her determination by delivering a written request for reconsideration to the Responsible Official within 7 days of the date of publication of a threshold determination. The request for reconsideration shall include a statement of claimed facts and alleged errors supporting the request for reconsideration.

(b) Decision to Reconsider. Within 7 days after receiving a request for reconsideration, the Responsible Official shall notify the person requesting the reconsideration whether or not he/she will reconsider the decision. If the Responsible Official takes no action on the request within 7 days the request is denied.

(c) Decision on the Reconsideration. After making a decision on the request for reconsideration, the Responsible Official shall--

i. Notify the person who requested the reconsideration of his/her decision by registered mail. Whenever a request for reconsideration is initiated by someone other than the proponent, the proponent shall also be so notified.

ii. Cause any new threshold determination to be published in accordance with Paragraph 7 of this Section.

5. Appeals

(a) Jurisdiction

i. The Development Review Committee shall hear appeals of a threshold determination for an action involving the issuance of a permit by the following hearing bodies or persons.

1. The Houghton Community Council
2. The Board of Adjustment
3. The Planning Commission
4. The City Council
5. The Building Official

Neither the Responsible Official nor any member of his department shall hear or decide upon an appeal to a threshold determination.

ii. Appeals of any other threshold determination will be heard by City Council.

(b) Who May Appeal. The threshold determination of the Responsible Official may be appealed by--

- i. The proponent of the action.
- ii. Any agency with jurisdiction
- iii. Any person living, or owning land, within 300 feet of the boundaries of the proposed action.
- iv. Any other person directly affected by the proposed action.

(c) Time to Appeal/How to Appeal

i. The appeal, in the form of a Notice of Appeal must be delivered to the City Clerk within 7 days of the publication of the Responsible Official's new threshold determination under Paragraph 4.c.ii; or within 7 days of the date notice of the decision on that request under Paragraph 4.c.i. is mailed to the person who requested reconsideration.

ii. The Notice of Appeal must contain a statement of alleged errors in the determination of the Responsible Official. If the person filing the appeal is the person who requested reconsideration, the alleged errors are limited to those raised in the request for reconsideration.

(d) Fees. The fee for appeals shall be subject to such fees as established by the City.

(e) Notice of Appeal Hearing.

i. Content. The Environmental Coordinator shall prepare a notice of the Appeal Hearing containing--

1. A description of the matter being appealed.
2. A summary of the alleged errors and scope of the appeal.
3. The time and place of the Appeal Hearing.
4. A statement of who may participate in the Appeal.

ii. Distribution. At least 7 days before the Appeal Hearing, the Environmental Coordinator shall send a copy of the notice of the Hearing to--

1. The person who filed the Notice of Appeal.
2. The action proponent.
3. Each agency with jurisdiction.
4. The Responsible Official
5. Each member of the appropriate review body as specified in Paragraph 5.a. of this Section.
6. The official newspaper of the City.

(f) Participation in the Appeal. Only those persons entitled to appeal the threshold determination under Paragraph 5.b. of this Section may participate in the appeal.

(g) Scope of the Appeal. The scope of the appeal is limited to the specific errors alleged in the Notice of Appeal, and the hearing body may only consider matters directly related to those allegations. New material may be presented only if it is relevant to a specific allegation contained in the Notice of Appeal.

(h) Public Hearing

i. General. The hearing body shall hold a public hearing on the appeal.

ii. Hearing Declared Open. The hearing is open to the public.

(i) Burden of Proof. The determination of the Responsible Official shall be accorded substantial weight, and the burden of establishing the contrary is on the person who filed the appeal.

(j) Decision on the Appeal. After considering all presentations and materials within the scope of the appeal received from persons entitled to participate in the appeal, the hearing body shall, by motion, take one of the following actions:

i. If the body concludes that the determination of the Responsible Official is correct, the body shall by majority vote of the members present affirm that determination.

ii. If the body concludes that the determination of the

Responsible Official is not correct, the body shall, by majority vote of the entire membership, vote to reverse that determination.

iii. In all other cases, the body may, by majority vote of the members present, direct the Responsible Official to reconsider the determination.

(k) Findings and Conclusions. The hearing body shall issue written findings of fact and conclusions of law upon which the decision was based, and an explanation of the action taken.

(1) Effect. The decision of the hearing body is the final decision of the City unless the Responsible Official is directed to reconsider the Threshold Determination under Section 9(5)(i)iii.

Section 10. Preparation of EIS

(1) The Responsible Official shall determine whether the draft and final EIS will be prepared by the Responsible Official or his/her designee, or by a private consultant. If the action for which the EIS is being prepared is one proposed by an applicant, and if the Responsible Official determines the draft and final EIS will be prepared by a private consultant, that consultant shall be selected in the manner prescribed by paragraph (3) of this section.

(2) The Responsible Official shall assure that the EIS is prepared in accordance with all applicable ordinances. The Responsible Official shall direct the areas of research and examination to be undertaken, as well as the organization of the resulting document.

(3) If the Responsible Official determines that the EIS is to be prepared by a consultant, the City shall enter into any necessary agreements with the applicant and consultant to assure compliance with this ordinance. If the EIS is being prepared for a project, the Responsible Official shall review consultants recommended by the applicant and, if the Responsible Official finds one of the consultants suitable to prepare the EIS, shall select that consultant for the preparation of the EIS. In the event the Responsible Official does not find one of the consultants suitable to prepare the EIS, he/she shall request the applicant to provide the names of additional consultants and/or interview additional consultants of the City's choosing. The preparation and publication of all EIS-related documents shall be supervised and coordinated by the Responsible Official.

(4) The selected consultant shall have no involvement in the proposed project other than the preparation of the EIS.

(5) In the event that the Responsible Official or his/her designee is preparing an EIS, the Responsible Official may require the applicant to provide data and information relevant to any or all areas to be covered by the EIS which is not in the possession of the City.

(6) Any draft EIS must be approved by the Responsible Official prior to distribution. (Reference WAC 197-10-420)

(7) Additional Elements to be covered in an EIS:
The following additional elements may be part of the environment for the purpose of EIS content, but are not criteria for threshold determinations and do not perform any other function or purpose under these rules:

- (a) Economic Factors
- (b) Cultural factors
- (c) 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. (Reference WAC 197-10-446)

Section 11. Fees

Fees are required for actions by the City in accordance with the provisions of this Ordinance and in the amounts provided for by Ordinance No. 2311.

(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 from the applicant the actual costs incurred by the City in the preparation of an EIS. If it is determined that an EIS is required, the applicant 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) In the event an EIS is prepared pursuant to Section 10(3) of this Ordinance, the legal agreement establishing the terms of the work to be performed shall provide the manner in which the consultant is to be paid for his/her work related to the preparation of the EIS, and shall assure that monies will be available for release at the time periods specified in the agreement. The cost of all work to be performed by the consultant under this paragraph shall be borne by the project applicant.

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(c) In the event that an EIS for a project is to be prepared by a consultant, the applicant shall deposit with the City at least \$500 to cover expenses incurred by the City in their review and supervision of the EIS and other costs associated with the preparation or distribution of an EIS. In the event the deposited amount exceeds the actual cost incurred by the City, the excess shall be refunded to the applicant. In the event the actual cost exceeds the deposit, the deficit shall be paid to the City by the applicant, prior to the application going before the review body or department involved in the process of reaching the first substantive decision on the application.

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

(2) 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. (Reference WAC 197-10-860)

Section 12. Notice/Statute of Limitations

(1) The City, applicant for, or proponent of an action may publish notice of action pursuant to RCW 43.21C.080 for any action.

(2) 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

(3) Publication of this notice will affect the time limitation within which any action to set aside, enjoin, review, or otherwise challenge the governmental action may be initiated (Reference RCW 43.21C.080(2))

Section 13 Savings Clause

If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 14. The City through the Environmental Coordinator, 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").

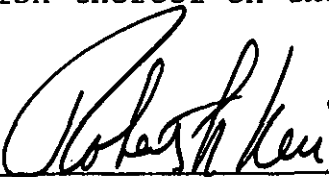
Section 15. Repealer:

This Ordinance supersedes and replaces Ordinance 2319 and the regulations adopted pursuant to that ordinance, all of which are hereby repealed.

Section 16. 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.

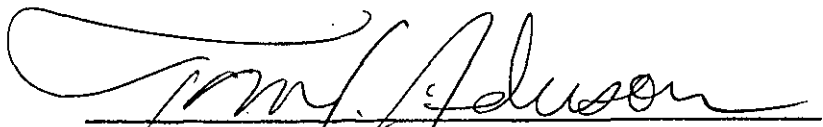
PASSED by the Kirkland City Council in regular meeting on the 16th day of July, 1979.

SIGNED in authentication thereof on the 16th day of July, 1979.



Mayor

ATTEST:



Director of Administration and Finance
(ex officio City Clerk)

Approved as to form:



City Attorney