

ORDINANCE NO. 2538

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LOCAL REGULATIONS AND PROCEDURES TO IMPLEMENT THE STATE ENVIRONMENTAL POLICY ACT; ADOPTING A NEW MAP DESIGNATING ENVIRONMENTALLY SENSITIVE AREAS; AND AMENDING ORDINANCE 2473.

WHEREAS, it is necessary that local regulations and procedures implement, and be consistent with the State Environmental Policy Act and associated Guidelines, therefore,

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

Section 1. Section 1 of Ordinance 2473 is amended to read as follows:

Section 1. Policies and Authority:

(1) Adoption by Reference. 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.~~

(2) Authority to Condition or Deny.

a. Criteria for Actions Requiring a Legislative Decision. The City may, under the authority of RCW 43.21C and this Ordinance, condition or deny any proposed action requiring a legislative decision if the conditioning or denial is consistent with policies adopted by the City of Kirkland.

b. Criteria for Actions Not Involving a Legislative Decision. The City may under the authority of RCW 43.21C and this Ordinance, condition or deny any proposed action not requiring a legislative decision if--

i. The conditioning or denial is based on policies adopted by the City of Kirkland.

ii. The conditioning or denial is based on specific adverse environmental impacts that are identified in an Environmental Checklist, Environmental Impact Statement, or other environmental document prepared pursuant to RCW 43.21C; and

iii. The Responsible Official issues a written statement specifying the specific adverse environmental impacts identified in the Environmental Checklist, Environmental Impact Statement, or other environmental documents that form the basis of the conditioning or denial.

c. Appeal Procedure in Certain Circumstances. If a non-elected official or employee of the City of Kirkland conditions or denies a proposed action under this Section, that decision may be appealed by, the proponent of the action; any agency with jurisdiction, any person living, or owning land, within 300 feet of the boundaries of the proposed action; or any other person directly affected by the proposed action to City Council by filing a written Notice of Appeal with the SEPA Coordinator within ten (10) days of the date the non-elected official issues his/her written statement identifying the basis for the conditioning or denial. The appeal will be processed using the applicable procedures of Paragraphs e, h, i, j, k, and l of Section 9, Paragraph (5) of this Ordinance.

Section 2. Section 5 of Ordinance 2473 is amended to read as follows:

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. If there is more than one department that will have jurisdiction over the proposal, the City Manager shall determine which department head will be the Responsible Official. 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 3. Section 6 of Ordinance 2473 is amended to read as follows:

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. A complete application shall include all requirements for filing as specified on the application form, and in all relevant ordinances.

(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 non-exempt 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 (non-exempt 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.(6) Environmentally sensitive areas:

-1. a. The maps-filed with the City Clerk as Exhibit A to this Ordinance, dated \_\_\_\_\_, and captioned: "Maps designating environmentally sensitive areas within the City of Kirkland," and is 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. Activities listed in WAC 197-10-170 entitled Categorical Exemptions, are exempt from compliance with the State Environmental Policy Act and this Ordinance unless these activities are proposed in areas that are mapped on the Map designating environmentally sensitive areas within the City of Kirkland (Exhibit A), and are listed in the map key. If the activity is proposed in an area that is mapped, and if the proposed activity is listed in the map key, the activity is no longer exempt and must comply with the requirements of the State Environmental Policy Act and this Ordinance.

-2. b. 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. (7) 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 4. Section 9 of Ordinance 2473 is amended to read as follows:

Section 9. Threshold Determinations

(1) General Timing

a. Threshold determinations which can be made based upon review of the environmental checklist submitted by the applicant shall be completed within fifteen (15) days of submission of a complete application and the completed checklist. All threshold determinations are subject to the required fees as specified in Section 11 of this Ordinance, and Section 3 of Ordinance 2311, as amended.

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 Coordinator~~ notice shall be published 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~~ all rights established in this Ordinance to request 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. the eight (8th) day from the date of publication of the threshold determination, or if a request for reconsideration is filed, until there is a final resolution of the request for reconsideration and any appeal of that reconsideration.

(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 reevaluate 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 the 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.

i. Within 7 days after receiving a request for reconsideration, the Responsible Official shall notify the person requesting the reconsideration whether or not the Responsible Official will reconsider--~~the decision, change the original threshold determination. A change in a threshold determination that results from a request for reconsideration can only be appealed and is not subject to a new request for reconsideration.~~ 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.

ii. After making a decision on the request for reconsideration, the Responsible Official shall notify the person who requested the reconsideration of the Responsible Official's decision by registered mail. Whenever a request for reconsideration is initiated by someone other than the proponent, the Responsible Official shall also notify the proponent by registered mail.

iii. After making a decision on the request for reconsideration, the Responsible Official shall cause any new threshold determination to be published in accordance with Paragraph (2) of this Section.

(5.) Appeals

(a). Jurisdiction

i. The Development Review Committee shall hear appeals of a threshold determination for an action involving the subsequent 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 the Responsible Official's 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.e.ii~~ (4)b.iii.; or within 7 days of the date notice of the decision on ~~that~~ the request for reconsideration under Paragraph ~~4.e.ii~~ (4)b.ii. 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. No appeals will be considered unless there has been a prior 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 Hearing to --

1. The person who filed the Notice of Appeal.
2. The ~~action~~ proponent of the action.
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 factual 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~~ entire membership affirm that determination. and this decision is the final decision of the City.

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; and the new threshold determination shall be published in the official City newspaper. This decision is the final decision of the City.

iii. In all other cases, the body may, by majority vote of the entire membership, direct the Responsible Official to reconsider the determination. If the Responsible Official reverses the original threshold determination, the rights established under Paragraphs (4) and (5) of Section 9 of this Ordinance are applicable, otherwise the decision is the final decision of the City.

~~(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.

~~(l).~~ 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.~~ 9.(5)j.iii.

Section 5. Section 11 of Ordinance 2473 is amended to read as follows:

Section 11. Fees and Other Charges.

~~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.

(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.

(1) Checklist Review and Processing.

a. The City shall charge an applicant for review and processing of an environmental checklist as provided for in Ordinance 2311, as amended.

b. The Responsible Official will not sign the declaration until the total amount due to the City for review and processing of an environmental checklist has been paid.

(2) Environmental Impact Statement.

a. Cost of Preparation.

i. The applicant shall deposit with the City the entire estimated cost of preparation of a draft and final environmental impact statement within 10 days of signing the agreement for preparation of those documents with the City and the consultant as provided for in Paragraph (3) of Section 10 of this Ordinance.

ii. If the City requires additional work under the terms of the agreement in order to complete the draft or final environmental impact statement, the applicant shall deposit with the City the entire estimated cost of the additional work within 10 days of signing the addendum to the agreement.

iii. The City will not authorize work on the draft or final environmental impact statement until the applicant has made the required deposits.

b. City Review and Processing.

i. The applicant shall deposit with the City an amount for review and processing of the environmental impact statement as required by Ordinance 2311, as amended.

ii. The City will not begin to review and process an environmental impact statement until this deposit is received by the City.

iii. The City will send the applicant a monthly itemized billing for costs incurred in review and processing of an environmental impact statement.

iv. If the amount deposited exceeds the cost of review and processing, the City will refund the excess to the applicant upon issuance of the final environmental impact statement.

v. If the cost of review and processing exceeds the amount deposited, the applicant shall pay the full amount due within 30 days of receipt of an itemized billing by the City.

vi. The City will cease all work on the proposal, including review and processing of the environmental impact statement, if the amounts due to the City have not been paid in full in the manner specified in this Section.

(2)(3) Copies. 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 6. Section 12 of Ordinance 2473 is amended to read as follows:

Section 12. Notice/Statue 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.

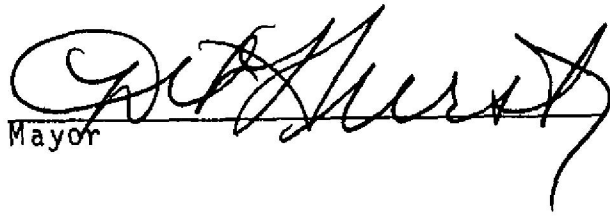
(2) The form of the notice shall be as prescribed by the Department of Ecology and/or substantially in the form and manner set forth in RCW 43.21C.080. The notice shall be published by the Responsible Official, applicant or proponent pursuant to RCW 43.21C.080.

~~(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)~~ If a Notice of Action is published in accordance with RCW 43.21C.080, time limitations are thereby established within which any action to set aside, enjoin, review or otherwise challenge a governmental action may be initiated on grounds of non-compliance with the State Environmental Policy Act, RCW 43.21C.


Section 7. 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 4th day of August, 1980.

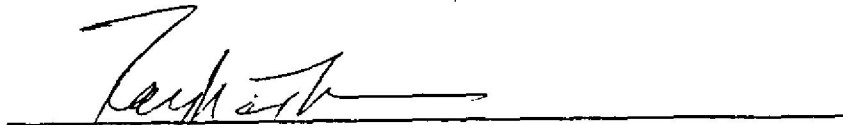
SIGNED in authentication thereof on the 4th day of August, 1980.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

2074A