

ORDINANCE 3690

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 24.02 OF THE KIRKLAND MUNICIPAL CODE RELATING TO THE STATE ENVIRONMENTAL POLICY ACT.

WHEREAS, the State Department of Ecology revised the state regulations regarding the State Environmental Policy Act (WAC 197-11); and

WHEREAS, the City of Kirkland desires to bring the Kirkland Municipal Code provisions into conformance with the Department of Ecology revisions;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Section 24.02.035 of the Kirkland Municipal Code is hereby amended to read as follows:

24.02.035 SEPA timing.

(a) If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of detailed plans and specifications. A decision as to whether or not to do early environmental review, prior to receiving a complete application, shall be at the discretion of the responsible official.

(b) The responsible official may elect to do early environmental review if adequate information is available to determine the size and scope of the proposed action, including dimensions and use of all proposed improvements, project timing, and the extent of clearing and grading.

(c) The city may initiate preliminary environmental review and have informal conferences with applicants prior to receipt of a complete application. However, this review shall not be binding on the city or the applicant.

(d) Any request for early notice of whether or not a DS is likely under WAC 197-11-350 shall be in writing.

(e) The City may, pursuant to WAC 197-11-355, use a single, integrated comment period to obtain comments on a notice of application and the likely threshold determination for the proposal if the responsible official has a reasonable basis for determining that significant environmental impacts are unlikely.

Section 2. Section 24.02.105 of the Kirkland Municipal Code is hereby amended to read as follows:

24.02.040 General—Categorical exemptions and threshold determinations.

This article, Section 24.02.040 through Section 24.02.060, contains information for deciding whether or not a proposal has a “probable significant, adverse, environmental impact,” and for evaluating the impact of proposals not requiring an EIS. The city adopts by reference the following sections of the WAC which contain related information:

197-11-300	Purpose of this part;
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 (DNS);
197-11-350	Mitigated DNS;
<u>197-11-355</u>	<u>Optional DNS process;</u>
197-11-360	Determination of significance (DS)/initiation of
scoping;	
197-11-390	Effect of threshold determination.

Section 3. Section 24.02.105 of the Kirkland Municipal Code is hereby amended to read as follows:

24.02.105 Administrative appeals.

(a) Appealable Decisions. Only the following decisions of the city are appealable under this section:

(1) The issuance of a determination of nonsignificance, including mitigation measures and conditions that are required as part of that determination of nonsignificance;

(2) The issuance of a determination of significance.

(b) Who May Appeal. Only the following may appeal:

(1) The applicant or proponent;

(2) Any agency with jurisdiction;

(3) Any individual or other entity who is specifically and directly affected by the proposed action.

(c) Time to Appeal.

(1) An appeal of a DNS must be filed with the environmental coordinator within fourteen ~~fifteen~~ days of the date the determination is issued by the responsible official.

(2) An appeal of a DS must be filed within seven days of the date it is published under Section 24.02.085 of this chapter.

(d) How to Appeal. The appeal must be in the form of a written notice of appeal, and must contain a brief and concise statement of the matter being appealed, the specific components or aspects that are being appealed, the appellant's basic rationale or contentions on appeal, and a statement

demonstrating standing to appeal. The appeal may also contain whatever supplemental information the appellant wishes to include.

~~(e) — Notice of Appeal. Any person filing an appeal shall, prior to delivery of the letter of appeal to the planning department, mail or personally deliver a copy of such appeal letter to each person or agency who received a copy of the threshold determination. Proof of service by mail or personal delivery shall be, by affidavit, attached to the copy of the appeal letter delivered to the planning department pursuant to subsection (d) of this section.~~

~~(e) (f) Fees. The person filing the appeal shall include with the letter of appeal the fee as established by ordinance.~~

~~(g) — Who Will Hear and Decide Upon the Appeal.~~

~~(1) — Determinations of Nonsignificance. Appeals of DNSs will be heard at the open record hearing for the underlying project permit and decided upon by the hearing body hearing the underlying project permit, using the provisions of subsections (h), (i) and (j) of this section, except for:~~

~~(A) — Project permits which do not include an open record public hearing, in which case the SEPA appeal will be heard and decided upon by the hearing examiner using the provisions of subsections (h), (i) and (j) of this section.~~

~~(2) — Determinations of Significance. Appeals of DSs will be heard and decided upon by the hearing examiner using the provisions of subsections (h), (i) and (j) of this section.~~

(f) — Who Will Hear and Decide Upon the Appeal. Appeals of DNS's and DS's will be heard at the open record hearing for the underlying project permit and decided upon by the hearing body hearing the underlying project permit using the provisions of subsections (g), (h) and (i) of this section. In the event that a project permit does not include an open record public hearing, the SEPA appeal will be heard and decided upon by the hearing examiner using the provisions of subsections (g), (h) and (i) of this section unless the underlying project permit is a short subdivision that has been appealed to the City Council pursuant to section 22.20.245 of the Kirkland Municipal Code, in which case, the City Council shall hear both the SEPA appeal and the appeal of the underlying project permit.

~~(g) (h) Procedures for the Appeal.~~

~~(1) Notice of the Appeal Hearing.~~

~~(A) Content. The planning official shall prepare a notice of the appeal containing the following:~~

~~(i) The file number and a brief written description of the matter being appealed.~~

~~(ii) A statement of the scope of the appeal including a summary of the specific factual findings and conclusions disputed in the letter of appeal.~~

~~(iii) The time and place of the public hearing on the appeal.~~

~~(iv) A statement of who may participate in the appeal.~~

~~(v) A statement of how to participate in the appeal.~~

~~(B) Distribution. At least fourteen calendar days before the hearing on the appeal, the planning official shall send a copy of this notice to each person~~

who received a copy of the threshold determination and any person who submitted written comments on, or an appeal of, the threshold determination.

(C) The notice of appeal may be combined with the hearing notice for the underlying project permit, if applicable.

(2) Participation in the Appeal. Only those persons entitled to appeal the threshold determination under subsection (b) of this section may participate in the appeal. These persons may participate in the appeal in either or both of the following ways:

(A) By submitting written testimony to the planning department within the timeline established by subsection (c) above.

(B) By appearing in person, or through a representative, at the hearing and submitting oral or written testimony directly to the hearing body. The hearing body may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

(3) Staff Report on the Appeal.

(A) Content. The planning official shall prepare a staff report containing the following:

(i) The SEPA threshold determination.

(ii) All written comments submitted to the responsible official.

(iii) The letter of appeal.

(iv) All written comments on the appeal received by the planning department from persons entitled to participate in the appeal and within the scope of the appeal.

(v) An analysis of the specific factual findings and conclusions disputed in the letter of appeal.

(B) This report may be combined with the staff report on the underlying project permit, if applicable.

(C) Distribution. At least seven calendar days before the hearing, the planning official shall distribute copies of the staff report as follows:

(i) A copy will be sent to the hearing body hearing the appeal as specified under subsection (g) above.

(ii) A copy will be sent to the applicant.

(iii) A copy will be sent to the person who filed the appeal.

(iv) A copy will be sent to any person or agency who received a copy of the threshold determination or submitted comments on the threshold determination.

(4) Public Hearing on the Appeal.

(A) Hearing in General. The hearing body shall hold a public hearing on the appeal.

(B) Hearing Declared Open. The hearings of the hearing body are open to the public.

(5) Electronic Sound Recordings. The hearing body shall make a complete electronic sound recording of each hearing.

(6) Continuation of the Hearing. The hearing body may continue the hearing if, for any reason, it is unable to hear all of the public comments on the

appeal or if it determines that it needs more information within the scope of the appeal. If, during the hearing, the hearing body announces the time and place of the next hearing on the matter, no further notice of that hearing need be given.

(h) (i) Decision on the Appeal.

(1) General. The hearing body shall consider all information and material within the scope of the appeal submitted by persons entitled to participate in the appeal. The hearing body shall either affirm or change the findings and conclusions of the responsible official that were appealed. Based on the hearing body's findings and conclusions, it shall either:

- (A) Affirm the decision being appealed; or
- (B) Reverse the decision being appealed; or
- (C) Modify the decision being appealed.

(2) Issuance of Written Decision. Within eight calendar days after the public hearing, the hearing body shall issue a written decision on the appeal. Within four calendar days after it is issued, the hearing body shall distribute the decision as follows:

- (A) A copy will be mailed to the applicant.
- (B) A copy will be mailed to the person who filed the appeal.
- (C) A copy will be mailed to all other persons or agencies who participated in the appeal.

(i) (j) Additional Appeal Procedures.

- (1) The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.
- (2) The decision of the responsible official shall be accorded substantial weight.
- (3) All testimony will be taken under oath.
- (4) The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of nonsignificance.

Section 4. Section 24.02.115 of the Kirkland Municipal Code is hereby amended to read as follows:

24.02.115 General definitions.

This article, Section 24.02.115, contains information on the usage and definition of terms under SEPA. The city adopts the following sections by reference as supplemented by Section 24.02.015 of this chapter:

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;
 197-11-721 Closed record appeal
 197-11-722 Consolidated appeal;
 197-11-724 Consulted agency;
 197-11-726 Cost-benefit analysis;
 197-11-728 County/city;
 197-11-730 Decision maker;
 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;
 197-11-748 Environmentally sensitive area;
 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;
 197-11-775 Open record hearing
 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.

Section 5. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

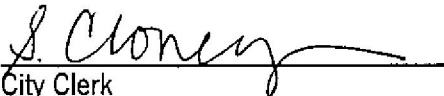
Section 6. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.107, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 18th day of May, 1999.

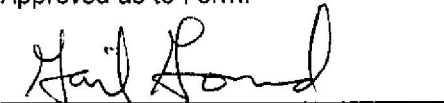
Signed in authentication thereof this 18th day of May, 1999.


MAYOR

Attest:


City Clerk

Approved as to Form:


City Attorney

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PUBLICATION SUMMARY
OF ORDINANCE NO. 3690

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 24.02 OF THE KIRKLAND MUNICIPAL CODE RELATING TO THE STATE ENVIRONMENTAL POLICY ACT.

SECTION 1. Amends Section 24.02.035 of the KMC relating to SEPA timing.

SECTION 2. Amends Section 24.02.040 of the KMC relating to categorical exemptions and threshold determinations.

SECTION 3. Amends Section 24.02.015 of the KMC relating to administrative appeals under SEPA.

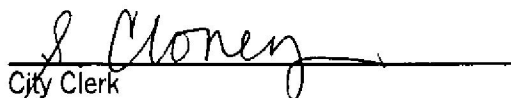
SECTION 4. Amends Section 24.02.115 of the KMC relating to general definitions for the SEPA process.

SECTION 5. Provides a severability clause for the ordinance.

SECTION 6. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its regular meeting on the 18th day of May, 1999.

I certify that the foregoing is a summary of Ordinance 3690 approved by the Kirkland City Council for summary publication.



City Clerk
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