

ORDINANCE 701

CITY OF LACEY

AN ORDINANCE ADOPTING NEW REGULATIONS AND PROCEDURES WITHIN THE CITY REGARDING ENVIRONMENTAL POLICY, REPEALING CHAPTER 14.24 AND ENACTING A NEW CHAPTER 14.24 OF THE LACEY MUNICIPAL CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Chapter 14.24 of the Lacey Municipal Code is hereby repealed.

Section 2. There is hereby added to the Lacey Municipal Code a new chapter, 14.24, to read as follows:

14.24.010 Authority. The City of Lacey adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, WAC 197-11-904.

14.24.020 Adoption by Reference. The City of Lacey adopts the followings sections or subsections of Chapter 197-11 WAC of the Washington Administrative Code by reference.

197-11-040	Definitions
197-11-050	Lead Agency
197-11-055	Timing of the SEPA Process
197-11-060	Content of Environmental Review
197-11-070	Limitations on Action During SEPA Process
197-11-080	Incomplete or Unavailable Information
197-11-090	Supporting Documents
197-11-100	Information Required of Applicants
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
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197-11-350	Mitigated DNS
197-11-360	Determination of Significance (DS)/Initiation of Scoping
197-11-390	Effect of Threshold Determination
197-11-400	Purpose of EIS
197-11-402	General Requirements
197-11-405	EIS Types
197-11-406	EIS Timing
197-11-408	Scoping
197-11-410	Expanded Scoping
197-11-420	EIS Preparation
197-11-425	Style and Size
197-11-430	Format

197-11-435	Cover Letter or Memo
197-11-440	EIS Contents
197-11-442	Contents of EIS on Nonproject Proposals
197-11-443	EIS Contents When Prior Nonproject EIS
197-11-444	Elements of the Environment
197-11-448	Relationship of EIS to Other Considerations
197-11-450	Cost-Benefit Analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS
197-11-500	Purpose of this Part
197-11-502	Inviting Comment
197-11-504	Availability and Cost of Environmental Documents
197-11-508	SEPA Register
197-11-535	Public Hearings and Meetings
197-11-545	Effect of No Comment
197-11-550	Specificity of Comments
197-11-560	FEIS Response to Comments
197-11-570	Consulted Agency Costs to Assist Lead Agency
197-11-600	When to Use Existing Environmental Documents
197-11-610	Use of NEPA Documents
197-11-620	Supplemental Environmental Impact Statement--Procedures
197-11-625	Addenda--Procedures
197-11-630	Adoption--Procedures
197-11-635	Incorporation by Reference--Procedures
197-11-640	Combining Documents
197-11-650	Purpose of this Part
197-11-655	Implementation
197-11-660	Substantive authority and mitigation
197-11-680	Appeals
197-11-700	Definitions
197-11-702	Act
197-11-704	Action
197-11-706	Addendum
197-11-708	Adoption
197-11-710	Affected Tribe
197-11-712	Affecting
197-11-714	Agency
197-11-716	Applicant
197-11-718	Built Environment
197-11-720	Categorical Exemption
197-11-722	Consolidated Appeal
197-11-724	Consulted Agency
197-11-726	Cost-Benefit Analysis
197-11-728	County/City
197-11-730	Decisionmaker
197-11-732	Department
197-11-734	Determination of Nonsignificance (DNS)
197-11-736	Determination of Significance (DS)
197-11-738	EIS
197-11-740	Environment
197-11-742	Environmental Checklist
197-11-744	Environmental Document
197-11-746	Environmental Review
197-11-748	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
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197-11-788	Responsible Official
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197-11-938	
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197-11-970	Determination of Nonsignificance (DNS)
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197-11-985	Notice of Assumption of Lead Agency Status
197-11-990	Notice of Action

14.24.030 Additional Definitions. In addition to those definitions contained within WAC 197-11-700 through 799, when used in this ordinance, the following terms shall have the following meanings, unless the context indicates otherwise:

- A. "Department" means any division, subdivision or organizational unit of the City established by ordinance, rule or order.
- B. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.
- C. "Ordinance" means the ordinance, resolution, or other procedure used by the City to adopt regulatory requirements.
- D. "Early notice" means the City's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated DNS procedures).
- E. "Environmental Assessment" means a detailed technical report on one or more elements of the environment as listed in the environmental checklist where that report is prepared by person(s) with expertise in that particular field. Environmental assessments may include, but are not limited to, geotechnical reports, hydrological reports, and traffic studies.
- F. "Environmental Impact Review or EIR Committee" means a committee composed of the following:
  - 1. The City manager or his/her designee
  - 2. The Department of Public Works Director or his/her designee
  - 3. The staff planner hired by or assigned to the City who shall be the chairperson on the EIR Committee.

14.24.040 Additional Considerations in Time Limits Applicable to the SEPA Process. The following time limits (expressed in calendar days) shall apply when the City processes licenses for all private projects and those governmental proposals submitted to the City by other agencies:

- A. Categorical Exemptions. The City shall identify whether an action is categorically exempt within seven (7) days of receiving a completed application.
- B. Threshold Determinations
  - 1. Further Clarification of 15-Day Period for Threshold Determination. The City should complete threshold determinations that can be based solely upon review of the environmental checklist for the proposal within fifteen (15) working days of the date an applicant's adequate application and completed checklist are submitted.

2. When the responsible official requires further information from the application or consultation with other agencies with jurisdiction:
  - (a) The City should request such further information within fifteen (15) days of receiving an adequate application and completed environmental checklist.
  - (b) The City should wait no longer than thirty (30) days for a consulted agency to provide additional information.
  - (c) The responsible official should complete the threshold determination within fifteen (15) days of receiving the requested information from the applicant or the consulted agency.
3. The City shall complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impact(s) described in the application, within fifteen (15) days of receiving an adequate application and completed checklist.

14.24.050 Additional Timing Considerations.

- A. The DNS or Final EIS for the proposal shall accompany the City's staff recommendation to any appropriate advisory body, such as the Planning Commission.
- B. 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 the detailed plans and specifications. Applicants are advised that submission of the detailed plans and specifications may trigger application of WAC 197-11-340(3) pertaining to the withdrawal of determinations of nonsignificance.

14.24.060 Flexible Thresholds for Categorical Exemptions. The City establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions:

- A. For residential dwelling units in WAC 197-11-800(1)(b)(i) the following exempt levels shall apply:
  1. Moderate-Density Residential District: up to eight (8) dwelling units.
  2. High-Density Residential District: up to twenty (20) dwelling units.
- B. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): up to forty (40) parking spaces.

14.24.070 Use of Exemptions.

- A. If a proposal is exempt, none of the procedural requirements of this ordinance apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.
- B. In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

14.24.080 Lead Agency Determination and Responsibilities.

- A. When the City is not the lead agency for a proposal, all departments of the City shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. No City department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the City may conduct supplemental environmental review under WAC 197-11-600.
- B. If the City or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination 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 under WAC 197-11-946 within the fifteen (15) day time period. Any such petition on behalf of the City may be initiated by the responsible official.
- C. Departments of the City are authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944: PROVIDED, That the responsible official and any department that will incur responsibilities as the result of such agreement must approve the agreement.
- D. The department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (that is: which agencies require nonexempt licenses).

14.24.090 Environmental Checklist.

- A. A completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this ordinance; except, a checklist is not needed if the City and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The City shall use the environmental checklist to determine the lead agency.

- B. For private proposals, the City will require the applicant to complete the environmental checklist, providing assistance as necessary. For City proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

14.24.100 Mitigated DNS.

- A. As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.
- B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:
  - a. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency.
  - b. Precede the City's actual threshold determination for the proposal.
- C. The responsible official should respond to the request for early notice within fifteen (15) working days. The response shall:
  - 1. Be written.
  - 2. State whether the City currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that are leading the City to consider a DS.
  - 3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.
- D. As much as possible, the City should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.
- E. When an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the City shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen (15) days of receiving the changed or clarified proposal:
  - 1. If the City indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the City shall issue and circulation a determination of nonsignificance under WAC 197-11-340(2).
  - 2. If the City indicated areas of concern, but did not indicated specific mitigation measures that would allow it to issue a DNS, the City shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposal mitigation measures (clarifications, changes or conditions) must be in writing and must be specific. For example, proposals to "control noise" or "prevent stormwater runoff" are inadequate, whereas proposals to "muffle machinery to X decibel" or "construct 200-foot stormwater retention pond at Y location" are adequate.
  4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.
- F. A mitigated DNS is issued under WAC 197-11-340(2), requires a fifteen (15) day comment period and public notice. However, a mitigated DNS may be issued under WAC 197-11-340(1) if intended only to minimize adverse impacts and not to eliminate the requirements for an EIS.
  - G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the City.
  - H. If the City's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the City should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).
  - I. The City's written response under "2" of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the City to consider the clarifications or changes in its threshold determination.

#### 14.24.110 Preparation of EIS--Additional Considerations.

- A. Draft and final EIS and SEIS's shall be prepared under the direction of the responsible official. Before the City issues an EIS, the responsible official shall be satisfied that it complies with this ordinance and Chapter 197-11 WAC.
- B. The draft and final EIS or SEIS shall be prepared by City staff, the applicant, or by a consultant selected by the City or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the City will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the City's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution.
- C. The City may require an applicant to provide information the City does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this ordinance or that is being requested from another agency. (This does not apply to information the City may request under another ordinance or statute.)



14.24.120 Additional Elements to be Covered in an EIS. When an EIS is otherwise to be prepared, the responsible official may determine that the EIS should address the following element as it pertains to the effect of the action upon the community:

A. Cost-benefit analysis.

The determination must be based upon the responsible official's judgment that there exists a reasonable probability that more than a moderate adverse impact (of the additional element) will result if the action is approved. The additional element does not add to the criteria for threshold determination or perform any other function or purpose under this ordinance.

14.24.130 Public Notice.

- A. Whenever the City issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the City shall give public notice as follows:
1. If public notice is required for a nonexempt license, and the public notice will be issued prior to the expiration of the comment deadline for a DS or DNS, the notice shall state whether a DS or DNS has been issued and when comments are due.
  2. If no public notice is required for the permit or approval, or if the notice otherwise required for a nonexempt license will not be issued prior to the expiration of the comment deadline for a DS or DNS, the City shall give notice of the DNS or DS by:
    - a. Posting the property, for site-specific proposals.
    - b. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered and are listed on agency mailing lists.
    - c. Notifying the news media.
    - d. Publish a legal notice in the City paper of record.
  3. Whenever the City issues a DS under WAC 197-11-360(3), the City shall state the scoping procedure for the proposal in the DS and required in WAC 197-11-408.
- B. Whenever the City issues a draft EIS under WAC 197-11-455(5) or a supplemental EIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license.
- C. Whenever possible, the City shall integrate the public notice required under this section with existing notice procedures for City's nonexempt permit(s) or approval(s) required for the proposal.
- D. The City may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

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

- A. The EIR Committee shall be responsible for preparation of written comments for the City in response to a consultation request prior to a threshold determination, participation in scoping, or reviewing a draft EIS.
- B. This Committee shall be responsible for the City's compliance with WAC 197-11-550 whenever the City is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the City.
- C. The EIR Committee shall meet at least once a week at a designated time in City Hall. The determinations of the EIR Committee shall be made by not less than a majority thereof. No determination shall be made without notification to the applicant made not less than forty-eight (48) hours prior to the meeting time. An adequate application and the completed checklist must be filed with the appropriate department no later than 5:00 p.m. on the date that is at least five (5) calendar days in advance of the weekly meeting of the EIR Committee in order for the EIR Committee to act.

14.24.150 Designation of Responsible Official.

- A. For those proposals for which the City is the lead agency, the responsible official shall be the EIR Committee.
- B. For all proposals for which the City is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required EIS, and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in WAC 173-806-020.

14.24.160 Substantive Authority.

- A. The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the City of Lacey.
- B. The City may attach conditions to a permit or approval for a proposal so long as:
  - 1. Such conditions are necessary to mitigate specific probably significant adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance.
  - 2. Such conditions are in writing.
  - 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished.
  - 4. The City has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts.

5. Such conditions are based on one or more policies in subsection "D" below and cited in the license or other decision document.
- C. The City may deny a permit or approval for a proposal on the basis of SEPA so long as:
1. A finding is made that approving the proposal would result in probably significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS prepared pursuant to this ordinance.
  2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact.
  3. The denial is based on one or more policies identified in subsection "D" below and identified in writing in the decision document.
- D. The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:
1. The City shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
    - a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
    - b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
    - c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.
    - d. Preserve important historic, cultural, and natural aspects of our national heritage.
    - e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice.
    - f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.
    - g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
  2. The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The City adopts by reference the policies in the following City codes, ordinances and plans:

- a. Lacey Zoning Ordinance
- b. Lacey Comprehensive Plan and Associated Elements
- c. Lacey Platting and Subdivision Ordinance
- d. Six-Year Street Plan
- e. Shoreline Master Program for the Thurston Region
- f. Transportation System Plan for the Thurston Metropolitan Area
- g. Uniform Building Code (as adopted by the City)
- h. Lacey Bikeway Plan
- i. Comprehensive Plan for Outdoor Recreation
- j. Land Clearing Code (Section 14.32 of Lacey Municipal Code).

E. The legislative appeals authorized by RCW 43.21C.060 are eliminated from this ordinance.

#### 14.24.170 Appeals.

1. The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-11-680:

1. Any agency or person who may be aggrieved by an action may appeal the City's procedural compliance with Chapter 197-11 WAC for conditioning or denial of an action. All such appeals shall be made after the decision on the underlying governmental action, and shall be made in accordance with the procedures for appeal of the applicable underlying governmental action. If no such appeal is provided, or does not provide the right of appeal to the City Council, a written appeal of the decision to condition or deny a proposal may be filed with the City Council within ten (10) days of the issuance of the written decision.

2. For any appeal under this subsection, the City shall provide a record of the appeal proceeding which consists of:

- a. Findings and conclusions
- b. Testimony under oath
- c. A taped or written transcript.

3. The procedural determination by the City's responsible official shall carry substantial weight in any appeal proceeding.

B. The City shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

#### 14.24.180 Environmentally Sensitive Areas.

A. If the City designates environmentally sensitive areas under the standards of WAC 197-11-908, it shall file maps designating such areas, together with the exemptions from the list in WAC 197-11-908 that are

inapplicable in such areas, with the responsible official and the Department of Ecology, Headquarters Office, Olympia, Washington. The environmentally sensitive area designations shall have full force and effect of law as of the date of filing.

- B. The City shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this ordinance, making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.
- C. 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.

14.24.190 Responsibility of Agencies--SEPA Public Information. The City shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.17 RCW.

14.24.200 Fees.

- A. The fees required to be paid by the proponent of a proposal for actions by the City in accordance with the provisions of this chapter for the filing of an environmental checklist or environmental assessment and the processing of an environmental impact statement shall be established by resolution of the City Council. The time periods provided by this ordinance for making a threshold determination shall not begin to run until payment of the fee has been made.
- B. Environmental Impact Statement. The City shall require the applicant to post a cash deposit for the amount of the estimated total cost of the review prior to initiation of review. However, this is not necessary until after the scoping process is completed. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected for review of the EIS which remain after incurred costs are paid.
- C. No fee shall be collected by the City for performing its duties as a consulted agency.
- D. The SEPA public information center of the City is 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.
- E. The City may charge any person for copies of any documents prepared pursuant to the requirements of this chapter and for mailing thereof, in a manner provided by RCW Chapter 42.17.
- F. The City may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this ordinance relating to the applicant's proposal.

14.24.210 Notice/Statute of Limitations.

- A. The City, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.
- B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk, applicant or proponent pursuant to RCW 43.21C.080.

14.24.220 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 not be affected.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,  
WASHINGTON, this 27th day of September, 1984.

CITY COUNCIL

By Richard J. Bener  
Deputy Mayor

ATTEST:

Timothy McGuire  
City Clerk

APPROVED AS TO FORM:

[Signature]  
City Attorney

PASSED: 9-27-84

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