

TITLE 21
ENVIRONMENTAL
REGULATIONS

CHAPTER 21.04
STATE ENVIRONMENTAL POLICY ACT

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21.04.010 Adopted - Authority

A. The City adopts the ordinance codified in this chapter under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA rules WAC 197-11-904. This chapter contains the City's SEPA procedures and policies.

B. The SEPA rules contained in WAC Chapter 197-11 must be used in conjunction with this chapter.

(Ord. 1331 §1, 1984)

21.04.020 General provisions - Adoption by reference

The City adopts the following sections of WAC Chapter 197-11, as now existing or as may be amended hereafter, 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 actions during SEPA process
- 197-11-080 Incomplete or unavailable information
- 197-11-090 Supporting documents
- 197-11-100 Information required of applicants

(Ord. 1331 §2, 1984)

21.04.030 Definitions - Adoption by reference

The City adopts the following sections of WAC Chapter 197-11, as now existing or as may be amended hereafter, by reference, as supplemented in 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
- 197-11-722 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 Non-Significance (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 Non-project
- 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

(Ord. 1331 §27, 1984)

21.04.040 Definitions - Additional

In addition to those definitions contained within WAC 197-11-700 through 799, when used in this chapter the following terms shall have the following meanings, unless the content indicates otherwise:

1. *"Department"* means any division, subdivision or organizational unit of the City established by ordinance, rule or order.
2. *"Early notice"* means the City's response to an applicant stating whether it considers issuance of the Determination of Significance likely for the applicant's proposal.
3. *"Environmentally sensitive area"*: see TMC 21.04.300.
4. *"Notice of action"* means the notice (as specified in RCW 43.21C.080) of the time for commencing an appeal of a SEPA determination that the City or the applicant may give following final City action upon an application for a permit or approval when the permit or approval does not have a time period set by statute or ordinance for commencing an appeal.
5. *"SEPA Rules"* means WAC Chapter 197-11 adopted by the Department of Ecology.

(Ord. 1770 §81, 1996; Ord. 1599 §7(1), 1991; Ord. 1344 §1, 1985; Ord. 1331 §3, 1984)

21.04.050 Designation of responsible official

A. For those proposals for which the City is a lead agency, the responsible official shall be the Planning Director or such other person as the Mayor may designate in writing.

B. For all proposals for which the City is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required Environmental Impact Statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA Rules that have been adopted by reference.

(Ord. 1344 §2, 1985; Ord. 1331 §4, 1984)

21.04.060 Lead agency - Determination - Responsibilities

A. The responsible official shall determine the lead agency for that proposal under WAC 197-11-050 and WAC 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the responsible official is aware that another department or agency is in the process of determining the lead agency.

B. When the City is not the lead agency for a proposal, all departments of the City shall use and consider as appropriate either the Determination of Non-Significance (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 the City determines a supplemental environmental review is necessary under WAC 197-11-600.

C. 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 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 15-day time period. Any such petition on behalf of the City may be initiated by the responsible official or Mayor.

D. The responsible official is authorized to make agreement as to lead agency status or shared lead agency's duties for a proposal under WAC 197-11-942 and 197-11-944.

E. The responsible official shall require sufficient information from the applicant to identify other agencies with jurisdiction.

(Ord. 1344 §3, 1985; Ord. 1331 §5, 1984)

21.04.070 Lead agency - Transfer of status to State agency

For any proposal for a private project where the City would be the lead agency and for which one or more State agencies have jurisdiction, the City may elect to transfer the lead agency duties to the State agency. The State agency with jurisdiction appearing first on the priority list in WAC 197-11-936 shall be the lead agency. To transfer lead agency duties, the responsible official must transmit a notice of the transfer, together with any relevant information available on the proposal, to the appropriate State agency with jurisdiction. The responsible official shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

(Ord. 1344 §4, 1985; Ord. 1331 §6, 1984)

21.04.080 Categorical exemptions and threshold determinations - Adoption by reference

The City adopts the following sections of WAC Chapter 197-11 and RCW 43.21C.410, as now existing or as may be amended hereafter, by reference as supplemented in this chapter:

- 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 Non-Significance (DNS)
- 197-11-350 Mitigated DNS
- 197-11-355 Optional DNS process
- 197-11-360 Determination of Significance (DS)/initiation of scoping
- 197-11-390 Effect of threshold determination
- 43.21C.410 Battery Charging and exchange station installation

(Ord. 2324 §14, 2011; Ord. 2173 §1, 2007; Ord. 1331 §10, 1984)

21.04.100 Categorical exemptions - Adoption by reference

The City adopts the following rules for categorical exemption of WAC Chapter 197-11, as now existing or as may be amended hereafter, by reference, as supplemented in this chapter:

- 197-11-800 Categorical exemptions
- 197-11-880 Emergencies
- 197-11-890 Petitioning DOE to change exemptions

(Ord. 1331 §28, 1984)

21.04.110 Categorical exemptions- Flexible thresholds

A. The City establishes the following exempt levels for minor new construction based on local conditions:

1. For residential dwelling units in WAC 197-11-800 (1)(b)(i) up to nine dwelling units.
2. For agricultural structures in WAC 197-11-800 (1)(b)(ii) up to 10,000 square feet.
3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800 (1)(b)(iii), up to 12,000 square feet, and up to 40 parking spaces.
4. For parking lots in WAC 197-11-800 (1)(b)(iv), up to 40 parking spaces.
5. For landfills and excavations in WAC 197-11-800 (1)(b)(v), up to 500 cubic yards.

B. The responsible official shall send copies of all adopted flexible thresholds to the Department of Ecology, headquarters office, Olympia, Washington.

(Ord. 2173 §1, 2007; Ord. 1344 §6, 1985; Ord. 1331 §11, 1984)

21.04.120 Categorical exemptions - Determination

A. When the City receives an application for a license or, in the case of governmental proposals, a department initiates a proposal, the responsible official shall determine whether the license and/or the proposal is exempt. The determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal.

B. In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental license required. If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency, even if the license application that triggers the consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the City may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The City shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of reasonable alternatives.
2. The responsible official may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt actions were not approved; and
3. The responsible official may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if the nonexempt actions were not approved.

(Ord. 1331 §12, 1984)

21.04.130 Threshold determination - Review at conceptual stage

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 the detailed plans and specifications.

B. In addition to the environmental documents, an applicant may be required to submit the following information:

1. Conceptual site plans and building plans;
2. Other information as the responsible official may determine;
3. Environmentally sensitive areas studies as described in TMC 21.04.140 for sensitive areas.

(Ord. 1599 §7(2), 1991; Ord. 1344 §5, 1985; Ord. 1331 §9, 1984)

21.04.140 Threshold determinations - Environmental checklist

A. A completed environmental checklist shall be filed at the same time as an application for a permit, license, certificate or other approval not exempted by this chapter. The checklist shall be in the form of WAC 197-11-960, with the following additions:

1. If the site is an environmentally sensitive area, a sensitive area study that meets the requirements of the SEPA official may be required. The SEPA official may waive any study requirements determined to be unnecessary for review of a particular use or application. Environmentally sensitive area studies shall have three components: a site analysis, an impact analysis, and proposed mitigation measures. More or less detail may be required for each component depending on the size of the project, severity of potential impacts and availability of information. Funding for a qualified professional, selected and retained by the City shall be paid for by the applicant to review the geotechnical reports on Class 2 and Class 3 landslide, seismic and coal mine hazard areas if the geotechnical report indicates Class 3 or Class 4 characteristics, and will be required in all Class 4 landslide hazard areas;

2. Identification of conflicts with the policies of the Comprehensive Land Use Policy Plan and proposed measures to reduce the conflicts;

3. Description of the objectives of the proposal, the alternative means of accomplishing these objectives, comparison of the alternatives, and indication of the preferred course of action.

B. A checklist is not needed if the City and the applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency.

C. The City shall use the environmental checklist to determine the lead agency and, if the City is the lead agency, for making the threshold determination.

D. For private proposals, the applicant is required to complete the environmental checklist. The City may provide information as necessary. For City proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

E. The City may decide to complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. The City has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

(Ord. 1599 §7(3), 1991; Ord. 1344 §7, 1985; Ord. 1331 §13, 1984)

21.04.150 Threshold determinations - Mitigated DNS

A. The responsible official may issue a Determination of Non-Significance (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 Determination of Significance (DS) is likely. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and
2. Precede the City's actual threshold determination for the proposal.

C. The responsible official's written response to the request for early notice shall:

1. State whether the City currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the City to consider a DS; and
2. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, and may revise the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. 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.

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 circulate a Determination of Non-Significance if the City determines that no additional information or mitigation measures are required.

2. If the City indicated areas of concern, but did not indicate 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 proposed mitigation measures, clarifications, changes or conditions must be in writing and must be specific.

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.

E. The City shall not act upon a proposal for which a mitigated DNS has been issued for 15 days after the date of issuance.

F. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the licensing 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. Failure to comply with the designated mitigation measures shall be grounds for suspension and/or revocation of any license issued.

G. If the City's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigation DNS for the proposal, the City should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) relating to the withdrawal of a DNS.

H. The City's written response under 21.04.150C shall not be construed as a determination of significance. In addition, preliminary discussion of clarification 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.

(Ord. 1599 §7(4), 1991; Ord. 1344 §8, 1985; Ord. 1331 §14, 1984)

21.04.152 Planned actions identified

Planned actions are specifically identified as developments which satisfy all of the following characteristics:

1. is a "permitted use" located within the MIC/L (TMC 18.36.020) and MIC/H (TMC 18.38.020) zones and/or is an accessory use (TMC 18.36.030 and 18.38.030 respectively) ("conditional" and "unclassified" uses are not planned actions); and
2. satisfies the consistency checklist which demonstrates that all impacts have been mitigated; and
3. is consistent with the Tukwila Comprehensive Plan per RCW 43.21C.031(2); and
4. is not any of the following:
 - a. an "essential public facility" as defined in RCW 36.70a.200, per RCW 43.21C.031(2);
 - b. an action which is not consistent with the Tukwila Comprehensive Plan as adopted per RCW 36.70A (consistency required per RCW 43.21C.031(2));
 - c. a conditional or unclassified use, in the respective MIC/L or MIC/H zones;
 - d. a development related to the Regional Transit Authority light rail or commuter rail system;
 - e. any decisions about the 16th Avenue Bridge improvement or disposition which would normally require a SEPA threshold determination; or

f. a development in which any portion includes shoreline modifications waterward of the ordinary high water mark.

(Ord. 1853 §6, 1998)

21.04.154 Consistency check

A. Having identified the developments which are a potential "planned action", the development must demonstrate that it has mitigated all of its impacts pursuant to the environmental impact statement and planned action ordinance, and is consistent with the Comprehensive Plan (RCW 43.21C.030(2)).

B. A consistency checklist will be provided by the Director of the Department of Community Development. The criteria for Comprehensive Plan consistency are as presented in the "Integrated GMA Implementation Plan and Environmental Impact Statement for the Tukwila Manufacturing/Industrial Center."

(Ord. 1853 §7, 1998)

21.04.156 Designating a development as a planned action

A. The Director of the Department of Community Development shall be authorized to designate a specific development proposal which is eligible to be a planned action, has mitigated all of its significant adverse impacts, and is consistent with the Comprehensive Plan, as a planned action.

B. This designation shall be final, with no administrative appeals.

(Ord. 1853 §8, 1998)

21.04.158 Planned action development review process

Designation of a planned action would relieve the application from any SEPA review including a threshold determination, any final threshold determination, public notice of SEPA action, and any administrative appeals. A notice of complete application would NOT be sent for Type 1 applications which choose the planned action option.

(Ord. 1853 §9, 1998)

21.04.160 Documents required - SEPA decisions

For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the City staff's recommendation to any appropriate advisory body such as the Planning Commission.

(Ord. 1331 §8, 1984)

21.04.170 EIS - Adoption by reference

The City adopts the following sections of WAC Chapter 197-11, as now existing or as may be amended hereafter, by reference as supplemented by this chapter:

- 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 non-project proposals
- 197-11-443 EIS contents when prior non-project 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

(Ord. 1331 §15, 1984)

21.04.180 EIS - Preparation

A. Preparation of draft EIS's (DEIS) and final EIS's (FEIS) and supplemental EIS's(SEIS) shall be under the direction of the responsible official. Before the City issues an EIS, the responsible official shall be satisfied that it complies with this chapter and WAC Chapter 197-11.

B. The DEIS and FEIS or SEIS shall be prepared at the City's option by the City staff, the applicant, or by a consultant approved by the City. 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 chapter or that is being requested from another agency; provided, however, this does not apply to information the City may request under another ordinance or statute.

(Ord. 1344 §9, 1985; Ord. 1331 §16, 1984)

21.04.185 Time for preparation

Unless a different time limit is agreed to by the Department and the applicant, the time limit for completion of environmental impact statements for purposes of TMC 18.104.130 shall be 365 calendar days from the date of issuance of a Declaration of Significance. The following periods shall be excluded from this 365-day period:

1. Any period of time during which the applicant has been requested by any City department, agency or hearing body with jurisdiction over some aspect of the EIS to correct plans, perform required studies, or provide additional information. The period shall be calculated from the date the applicant is notified of the need for additional information until the earlier of (a) the date the department, agency or hearing body determines whether the additional information satisfies the request, or (b) 14 days after the date the information has been provided to the department, agency or hearing body. If the department, agency or hearing body determines that the action by the applicant is insufficient, it shall notify the applicant of the deficiencies and the procedures of this section shall apply as if a new request for information had been made.

2. Any additional time period for preparation of the EIS agreed upon by the Department and the applicant.

(Ord. 1770 §83, 1996)

21.04.190 EIS - Additional elements

The following additional elements may be part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function of purpose under this chapter:

1. Economy;
2. Social policy analysis;
3. Cost-benefit analysis;
4. Such other elements as may be required by the responsible official.

(Ord. 1331 §17, 1984)

21.04.200 EIS - Commenting - Adoption by reference

The City adopts the following sections of WAC Chapter 197-11, as now existing or as may be amended hereafter, by reference as supplemented in this chapter:

- 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

(Ord. 1331 §18, 1984)

21.04.210 Public notice - Procedure

A. Whenever public notice is required, the City shall follow the procedures set forth in this section.

B. Public notice will be given in the following situations:

1. When the City issues the following Determinations of Non-Significance (DNS):

a. DNS involving another agency with jurisdiction,

b. DNS involving the demolition of any structure or facility not exempted by WAC 197-11-800(2) (f) or 197-11-880,

c. DNS involving the issuance of a clearing or grading permit not exempted by WAC 197-11-800 through 197-11-890,

d. DNS issued following a request for early notice pursuant to WAC 197-11-350(2),

e. Mitigated DNS issued pursuant to WAC 197-11-350(3),

f. DNS issued following the withdrawal of a DS pursuant to WAC 197-11-360(4);

2. When the City issues a Determination of Significance to commence scoping;

3. When a draft EIS (DEIS) is available for public comment;

4. Whenever the City holds a public hearing pursuant to WAC 197-11-535, provided that if the project requires a Type 3, 4 or 5 decision, such hearing shall be consolidated with the public hearing on the merits of the project;

5. Whenever the responsible official determines that public notice is required.

C. The City shall give public notice by using the public notice procedures set forth in TMC 18.104.110 and .120.

D. Notice of public hearings on non-project proposals shall be published in a newspaper of general circulation in the City.

E. The City may require an applicant to compensate the City for the costs of compliance with the public notice requirements for the applicant's proposal and/or provide services and materials to assist.

(Ord. 1770 §84, 1996; Ord. 1344 §10, 1985; Ord. 1331 §19, 1984)

21.04.220 Consulted agency responsibilities - Official designated

A. The responsible official 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 and reviewing of a draft EIS.

B. The responsible official 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.

(Ord. 1331 §20, 1984)

21.04.230 Using existing environmental documents - Adoption by reference

The City adopts the following sections of WAC Chapter 197-11, as now existing or as may be amended hereafter, by reference:

- 197-11-600 When to use existing environmental documents
- 197-11-610 Use of NEPA documents
- 197-11-620 Supplemental environmental impact statements
- 197-11-625 Addenda - Procedures
- 197-11-630 Adoption - Procedures
- 197-11-635 Incorporation by reference - Procedures
- 197-11-640 Combining documents

(Ord. 1331 §21, 1984)

21.04.240 SEPA - Decisions - Adoption by reference

The City adopts the following sections of WAC Chapter 197-11, as now existing or as may be amended hereafter, by reference:

- 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

(Ord. 1331 §22, 1984)

21.04.250 SEPA - Decisions - Substantive authority

A. The City may attach conditions to a license or approval for a proposal so long as:

1. Such conditions are necessary to mitigate specific adverse environmental impacts clearly identified in an environmental document prepared pursuant to this chapter; and
2. Such conditions are in writing; and
3. Such conditions are reasonable and capable of being accomplished; and
4. The City has considered whether other local, State or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in TMC 21.04.270 and cited in the permit, approval, license or other decision document.

B. 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 probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS; and
2. A finding is made that there are no reasonable mitigation measures that are insufficient to mitigate the identified impact; and
3. The denial is based on one or more policies identified in TMC 21.04.270 and identified in writing in the decision document.

(Ord. 1331 §23, 1984)

21.04.260 SEPA- Compliance - Adoption by reference

The City adopts the following sections of WAC Chapter 197-11, as now existing or as may be amended hereafter, by reference, as supplemented in this chapter:

- 197-11-900 Purpose of this part
- 197-11-902 Agency SEPA policies
- 197-11-916 Application to ongoing actions
- 197-11-920 Agencies with environmental expertise
- 197-11-922 Lead agency rules
- 197-11-924 Determining the lead agency
- 197-11-926 Lead agency for governmental proposals
- 197-11-928 Lead agency for public and private proposals
- 197-11-930 Lead agency for private projects with one agency with jurisdiction
- 197-11-932 Lead agency for private projects requiring licenses for more than one agency, when one of the agencies is a county/city
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/ city, and one or more State agencies
- 197-11-936 Lead agency for private projects requiring licenses from more than one State agency
- 197-11-938 Lead agencies for specific proposals
- 197-11-940 Transfer of lead agency status to a State agency
- 197-11-942 Agreements on lead agency status
- 197-11-944 Agreements on division of lead agency duties
- 197-11-946 DOE resolution of lead agency disputes
- 197-11-948 Assumption of lead agency status

(Ord. 1331 §29, 1984)

21.04.270 SEPA - Policies

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the City.

B. The City adopts by reference the policies in the following City codes, ordinances, resolutions and plans as now existing or as may be amended hereafter:

1. Zoning Code - TMC Title 18;
2. Shoreline Master Plan - Ordinance 898;
3. 1995 Comprehensive Land Use Policy Plan;
4. Long Range Parks and Open Space Plan Ordinance 1315;
5. Subdivision Ordinance - TMC Section 17.04;
6. Comprehensive Sewer Plan - Resolution 904;
7. Comprehensive Water Plan - Resolution 873;
8. Uniform Building Code - 1982 Edition Ordinance 1287;
9. Transportation Improvement Plan Resolution 917;

- 10. Annexation Policy Plan - Resolution 626;
- 11. Sidewalk Ordinance - Ordinance 1233;
- 12. Standard Specifications for Municipal Construction - Ordinance 1250.

(Ord. 1757 §2, 1995; Ord. 1599 §7(5), 1991; Ord. 1344 §14, 1985; Ord. 1331 §24, 1984)

21.04.280 Appeals

A. In the event that the Department issues a Mitigated Determination of Non-Significance (MDNS), any party of record may file an appeal challenging either the conditions, which were imposed, or the failure of the Department to impose additional conditions. No other administrative SEPA appeal shall be allowed.

B. At the time the appeal is filed, the appealing party shall pay an appeal fee pursuant to the fee schedule.

C. All appeals filed pursuant to this section must be filed in writing with the Department within 14 calendar days of the date of the decision appealed from.

D. All appeals pursuant to this section shall be consolidated with the public hearing on the merits of a Type 3, 4 or 5 decision. In the event that an appeal related to a Type 2 decision is filed pursuant to this section, such appeal shall be consolidated with an appeal on the merits of the application. No appeals pursuant to this section shall be permitted for proposals which involve only Type 1 decisions.

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

(Ord. 2120 §5, 2006; Ord. 1770 §85, 1996; Ord. 1344 §11, 1985; Ord. 1331 §25, 1984)

21.04.290 Notice - Statute of limitations

A. The City shall give official notice whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

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

1. The form of the notice of action shall be substantially in the form provided in WAC 197-11-990.

2. The notice of action shall be published by the City Clerk, applicant or proponent pursuant to RCW 43.21C.080.

(Ord. 1344 §12, 1985; Ord. 1331 §26, 1984)

21.04.300 Environmentally sensitive areas

A. Environmentally sensitive areas designated on the zoning maps, and/or as defined in TMC 18.45.020 as of the effective date of the ordinance from which this section derives and as thereafter amended, designate the locations of environmentally sensitive areas within the City and are adopted by reference. In addition to those areas identified in WAC 197-11-908 and for purposes of this chapter, environmentally sensitive areas shall also include wooded hillsides, and the Green/Duwamish River and its shoreline zone as defined by the Tukwila Master Program. For each environmentally sensitive area, all categorical exemptions within WAC 197-11-800 are applicable.

B. The City shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals under this chapter, 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.

(Ord. 1608 §2, 1991; Ord. 1599 §7(6), 1991; Ord. 1344 §13, 1985; Ord. 1331 §30, 1984)

21.04.310 Fees

The City shall require the following fees for its activities in accordance with the provisions of this chapter:

1. **Threshold Determination.** For every environmental checklist the City will review when it is lead agency, the City shall collect a fee of \$325.00 from the proponent of the proposal prior to undertaking the threshold determination; provided that no fee shall be charged to or collected from the proponents of any proposal for annexation to the City, and the City shall review such checklists without charge. Where payment of a fee is required, the time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee is received by the City.

2. **Environmental Impact Statement.**

a. When the City is the lead agency for a proposal requiring an EIS and the responsible official determines the EIS shall be prepared by employees of the City, the City may charge and collect a reasonable fee from any applicant to cover costs incurred, including overhead, by the City in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation.

b. The responsible official may determine that the City will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the City, and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by the City. Also, the City will charge an administrative fee of \$1,000 in addition to the consultant fees.

c. The applicant shall pay the projected amount to the City prior to commencing work. The City will refund the excess, if any, at the completion of the EIS. If the City's costs exceed the projected costs, the applicant shall immediately pay the excess. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under a. or b. of this subsection which remain after incurred costs, including overhead, are paid.

3. The City may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.

4. The City may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW 42.17.

(Ord. 1650 §1, 1992; Ord. 1576 §6, 1990; Ord. 1425 §1, 1987; Ord. 1331 §31, 1984)

21.04.320 Forms - Adoption by reference

The City adopts the following forms and sections of WAC Chapter 197-11, as now existing or as may be amended hereafter, by reference:

197-11-960 Environmental checklist

197-11-965 Adoption notice

197-11-970 Determination of Non-Significance (DNS)

197-11-980 Determination of Significance and scoping notice (DS)

197-11-985 Notice of assumption of lead agency status

197-11-990 Notice of action

(Ord. 1331 §32, 1984)

21.04.330 Copies on file

The City Clerk shall maintain on file for public use and examination three copies of the Washington Administrative Code sections referred to herein.

(Ord. 1331 §33, 1984)

21.04.340 Severability

If any section, sentence, clause or phrase of this chapter, including any section adopted by reference, should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this chapter or any other section adopted by reference.

(Ord. 1331 §35, 1984)

CHAPTER 21.08
SITING CRITERIA FOR
HAZARDOUS WASTE TREATMENT
AND STORAGE FACILITIES

TABLE 1
TUKWILA SITING CRITERIA FOR
HAZARDOUS WASTE TREATMENT
AND STORAGE FACILITIES

Sections:

- 21.08.010 State criteria adopted
- 21.08.020 Specific siting criteria

21.08.010 State criteria adopted

Siting criteria for on-site and off-site hazardous waste treatment and storage facilities set forth in RCW 70.105 are adopted.

(Ord. 1489 §4, 1988)

21.08.020 Specific siting criteria

Siting criteria for on-site and off-site hazardous waste treatment and storage facilities in the City shall be as set forth in Table 1.

CRITERIA	ON-SITE As defined in TMC 18.06.420	OFF-SITE As defined in TMC 18.06.415
<i>Structural Stability</i>		
Unstable slopes/soils	200 feet	X
Coastal flooding	X	X
<i>Surface Water Quality Protection</i>		
Proximity to nearest surface water	M	1/4 mile
FEMA 100-year flood zone	X	X
Shorelines of statewide significance	M	1/2 mile
<i>Protection of Domestic Water</i>		
Watersheds	1/2 mile	1/2 mile
Distance to ground water intake	1/4 mile	1/2 mile
<i>Air Quality Protection</i>		
Ambient air quality	M	M
<i>Sensitive Area Protection</i>		
Threatened and endangered species	X	X
Wetlands	X	1/4 mile
State shorelines	M	X
Parks and recreational areas	X	1/4 mile
Archaeological and historic areas and national monuments	X	1/4 mile
<i>Transportation Routes</i>		
Traffic flow and capacity*	M	M
Safety standards for transport routes	M	M
<i>Adjacent Land Use Considerations</i>		
Buffer zone	M	200 feet
Minimum distance from residential zones/ residences	750 ft/	1/2 mile/
Motels and hotels	100 feet	500 feet
Minimum distance from occupied structures	100 feet	1/2 mile
Agricultural lands/ agricultural zone	500 feet	500 feet
Public gathering place	750 feet	750 feet
<i>Host Community Considerations</i>		
Utilities and public services	M	M
Costs for emergency services	M	M

X - A proposed facility is prohibited from siting under this criterion.

M - Mitigation measures required to site in this area.

* - Hazardous substance land uses shall be prohibited from using traffic routes which pass through residential zones.

In the event that Tukwila's hazardous waste siting criteria conflict with development criteria of specific zoning districts or siting criteria to be developed and adopted by the State of Washington, the more restrictive standard shall apply.

(Ord. 1489 §4, 1988)

