

**CITY OF BUCKLEY**

**ORDINANCE NO. 18- 19**

**AN ORDINANCE OF THE CITY OF BUCKLEY, WASHINGTON, REPEALING CHAPTERS 12.04 AND 12.06 BMC; ADDING A NEW CHAPTER 12.04 BMC CONCERNING THE STATE ENVIRONMENTAL POLICY ACT; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

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WHEREAS, the city desires to have internally consistent code that is easy to read; and

WHEREAS, environmental laws were passed in 1984 to protect the state's environment for future generations under Ordinance 18-84; and

WHEREAS, the State Environmental Policy Act specifically identifies fundamental elements for agencies to review to protect the state's environment; and

WHEREAS, the State Environmental Policy Act was updated in recent years; and

WHEREAS, the city's adoption of the State Environmental Policy Act predates the recent amendments; and

WHEREAS, environmental review was completed and a determination of non-significance (DNS) was issued May 30, 2019

WHEREAS, the request for expedited review was received by the Washington State Department of Commerce May 30, 2019, under Submittal ID Number 2019-S-229; and

WHEREAS, the request for expedited review was granted by the Washington State Department of Commerce June 13, 2019; and

WHEREAS, the planning commission conducted a public hearing on this proposal on July 15, 2019, with none in attendance; and

WHEREAS, at a regularly scheduled meeting of the planning commission on July 15, 2019, it recommended the city council adopt the proposed ordinance;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BUCKLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapters 12.04 and 12.06 are hereby repealed and replaced with the following:

**12.04 State Environmental Policy Act.**

**12.04.010 Authority.**

- (1) The city adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904. This ordinance contains this city's SEPA procedures and policies. The SEPA rules, chapter 197-11 WAC, must be used in conjunction with this ordinance.
- (2) Nothing in this chapter limits the authority of the city to approve, condition, or deny a project as provided in its comprehensive plan and/or development regulations adopted under Chapter 36.70A RCW and in its policies and criteria adopted under RCW 43.21C.060, including project review under Chapter 12.04 BMC, State Environmental Policy Act, and Chapter 12.08 BMC, Critical Areas – General Provisions, as amended.

**12.04.020 Adoption of Part Two by reference.**

Part Two of the SEPA rules contains the basic requirements that apply to the SEPA process. The city adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 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.
- 197-11-158 GMA project review--Reliance on existing plans, laws, and regulations.
- 197-11-164 Planned actions—Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions—Procedures for adoption.
- 197-11-172 Planned actions—Project review.
- 197-11-210 SEPA/GMA integration
- 197-11-220 SEPA/GMA definitions.
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
- 197-11-235 Documents.
- 197-11-238 Monitoring. (optional)
- 197-11-250 SEPA/Model Toxics Control Act integration.
- 197-11-253 SEPA lead agency for MTCA actions.
- 197-11-256 Preliminary evaluation.
- 197-11-259 Determination of Non-Significance for MTCA remedial actions.
- 197-11-262 Determination of significance and EIS for MTCA remedial actions.
- 197-11-265 Early scoping for MTCA remedial actions.
- 197-11-268 MTCA interim actions.

**12.04.030 Designation of responsible official.**

The responsible official for SEPA is the planning director or other person designated by the City Administrator.

**12.04.040 Lead agency determination and responsibilities.**

- (1) The SEPA responsible official shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the city is aware that another department or agency is in the process of determining the lead agency.
- (2) When the city is the lead agency for a proposal, the SEPA responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.
- (3) 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. The city shall not 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.
- (4) 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 197-11-253 or 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 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-day time period. Any such petition on behalf of the city may be initiated by the SEPA responsible official.
- (5) The SEPA responsible official is 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 any department that will incur responsibilities as the result of such agreement approve the agreement.
- (6) The SEPA responsible official when 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?).
- (7) When the city is lead agency for a MTCA remedial action, the Department of Ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the city shall decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

**12.04.050 Adoption of Part Three, categorical exemptions and threshold determination.**

Part Three contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The city adopts the following sections by reference:

**WAC**

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

**12.04.060 Notice.**

A SEPA Determination of Non-Significance shall be noticed as a Type A-2 action; a Determination of Significance shall be noticed as required in Part Three.

**12.04.070 Adoption of Part Four by reference, Environmental Impact Statement (EIS)**

Part Four contains the rules for preparing environmental impact statements. The city adopts the following sections by reference, as supplemented by this part:

WAC

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. (Optional)
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.

**12.04.080 EIS preparation.**

For draft and final EISs and SEISs:

- (1) Preparation of the EIS is the responsibility of the City, by or under the direction of the responsible official, as specified by the City's procedures. No matter who participates in the preparation of the EIS, it is the EIS of the City. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with these rules and the procedures of the City.
- (2) The EIS shall be prepared by the applicant or its agent. The City shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The

responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

- (3) The City shall:
  - (a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency or person;
  - (b) Assist in obtaining any information on file with another agency that is needed by the person preparing the EIS;
  - (c) Allow any party preparing an EIS access to all public records of the lead agency that relate to the subject of the EIS, under chapter 42.17 RCW (Public disclosure and public records law).
- (4) The City may not require more information of an applicant than allowed by WAC 197-11-100, but may authorize less participation. An applicant may volunteer to provide any information or effort desired, as long as the EIS is supervised and approved by the responsible official.

#### **12.04.090 Adoption of Part Five by reference, Commenting.**

Part Five contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The city adopts the following sections by reference, as supplemented in this part:

#### WAC

- 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.
- 197-11-510 Public notice.
- 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.

#### **12.04.100 Public notice.**

- (1) Whenever possible, the City shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permit(s) or approval(s) required for the proposal.
- (2) 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:
  - (a) If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.
  - (b) If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application required by Chapter 20.28 BMC will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).
  - (c) If no public notice is otherwise required for the permit or approval, the city/county shall give notice of the DNS or DS by: (Note: Select at least one of the following.)
    - (i) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

- (d) 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 as required in WAC 197-11-408 and in the public notice.
- (3) If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510 (1)(b).
- (4) Whenever the City issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:
- (a) Indicating the availability of the DEIS in any public notice required for a nonexempt license; in addition to one of the following options:
  - (b) Posting the property, for site-specific proposals;
  - (c) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
  - (d) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;
  - (e) Notifying the news media;
  - (f) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or
  - (g) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposals or subject areas);
  - (h) Posting notice on the City's website.
- (5) Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).
- (6) The Applicant shall complete the public notice requirements for its proposal at its expense.

**12.04.110 Adoption of Part Six by reference, using existing environmental documents.**

Part six contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the city's/county's own environmental compliance. The city adopts the following sections by reference:

WAC

- 197-11-164 Planned actions--Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions--Procedures for adoption.
- 197-11-172 Planned actions--Project review.
- 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.

**12.04. 120 Adoption of Part Seven, SEPA and agency decisions.**

Part Seven contains rules and policies for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The city adopts the following sections by reference:

WAC

- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

**12.04.130 SEPA decisions – Nonexempt proposals.**

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 board. If a final EIS is or becomes available, it shall be substituted for the draft.

**12.04.140 SEPA decisions – Substantive authority.**

- (1) The City may attach conditions to a permit or approval for a proposal so long as:
  - (a) Such conditions are necessary to mitigate specific probable adverse environmental impacts clearly identified in an environmental document prepared pursuant to this chapter; and
  - (b) Such conditions are in writing; and
  - (c) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
  - (d) The City has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and
  - (e) Such conditions are based on one or more policies in subsection (3) of this section or BMC 12.04.170 and cited in the permit, approval, license or other decision document.
- (2) The City may deny a permit or approval for a proposal on the basis of SEPA so long as:
  - (a) 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 prepared pursuant to this chapter; and
  - (b) A finding is made that there are no reasonable mitigation measures sufficient to mitigate the identified impact; and
  - (c) The denial is based on one or more policies identified in subsection (C) of this section or in BMC 12.04.170 and identified in writing in the decision document.
- (3) The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:
  - (a) 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:
    - (i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
    - (ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
    - (iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
    - (iv) Preserve important historic, cultural, and natural aspects of our national heritage;
    - (v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
    - (vi) Achieve a balance between population and resource use which will permit high standards of living and wide sharing of life's amenities; and
    - (vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
  - (b) 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.

**12.04.050 SEPA – Policies.**

- (1) The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the City.
- (2) The City adopts by reference the policies in the following city codes, ordinances, resolutions and plans, as now existing or hereinafter amended, as a possible basis for the exercise of substantive authority in the conditioning or denying of proposals.
  - (a) Chapter [43.21C](#) RCW, State Environmental Policy Act;
  - (b) Six-Year Transportation Improvement Program;
  - (c) BMC Title 8, Health and Sanitation;
  - (d) BMC Title 9 Animals
  - (e) BMC Title 11, Traffic Code;
  - (f) BMC Title 12, Environment
  - (g) BMC Title 13, Streets and Sidewalks;
  - (h) BMC Title 16, Buildings and Construction
  - (i) BMC Title 17, Design and Construction Standards
  - (j) BMC Title [18](#), Subdivisions;
  - (k) BMC Title [19](#), Zoning;
  - (l) BMC Title [20](#), Land Use and Development;
  - (m) City of Buckley Comprehensive Plan.

**12.04.160 Appeals.**

- (1) Any person who would qualify for standing under the Land Uses Petition Act may appeal a threshold determination, adequacy of a final EIS and the conditions or denials of a requested action made by a nonelected city official pursuant to the procedures set forth in this section. No other SEPA appeal shall be allowed.
- (2) On receipt of a timely written notice of appeal, the city administrator shall advise the hearing examiner of the pendency of the appeal and request that a date for considering the appeal be established. The decision of the hearing examiner shall be final and shall be appealable in accordance with the appeal procedures specified in Chapter 20.32 BMC and WAC 197-11-680.
- (3) All relevant evidence shall be received during the hearing of the appeal. The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding.
- (4) For any appeal under this section, the city shall provide for a record that shall consist of the following:
  - (a) 1. Findings and conclusions;
  - (b) 2. Testimony under oath; and
  - (c) 3. A taped or written transcript.
- (5) The City may require the applicant to provide an electronic transcript.
- (6) 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.

**12.04.170 Notice/statute of limitations.**

- (1) The City, applicant for, or proponent of an action may publish a notice of action pursuant to RCW [43.21C.080](#) for any action.
- (2) 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](#).

**12.04.180 Adoption of Part Eight, Definitions.**

Part Eight contains definitions of numerous key terms used in the SEPA rules. All definitions identified in Part Eight of Chapter 197-11 WAC are adopted by reference.

**12.04.190 Additional definitions.**

In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

- (1) "Department" means any division, subdivision or organizational unit of the city established by ordinance, rule or order.
- (2) "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.
- (3) "Ordinance" means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.
- (4) "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 determination of nonsignificance (DNS) procedures).

**12.04.200 Adoption of Part Nine, Categorical Exemptions.**

Part Nine addresses SEPA categorical exemptions. The City adopts the following sections by reference, as supplemented in this part:

- |                                   |                         |
|-----------------------------------|-------------------------|
| <a href="#"><u>197-11-800</u></a> | Categorical exemptions. |
| <a href="#"><u>197-11-880</u></a> | Emergencies.            |

**12.04.210 Adoption of Part Ten, agency compliance.**

Part Ten contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating categorical exemptions that do not apply within critical areas, listing agencies with environmental expertise, selecting the lead agency, applying these rules to current agency activities, and forms to be used in making determinations. The City adopts the following sections by reference:

WAC

- |            |   |
|------------|---|
| 197-11-900 | Purpose of this part.   |
| 197-11-902 | Agency SEPA policies.   |
| 197-11-906 | Content and Consistency of Agency Procedures  |
| 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 from 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.   |

WAC

- 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.

**12.04.220 Adoption of Part Eleven, Forms.**

Part 11 is composed of SEPA forms. The City adopts the following sections by reference:

WAC

- 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.

Section 2. Copy to the Department of Commerce. Pursuant to RCW 36.70A.106, the City Administrator is hereby authorized and directed to provide a copy of this ordinance to the State Department of Commerce within 10 days of adoption.

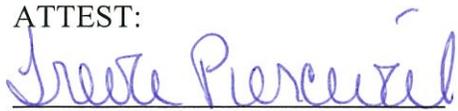
Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the city, and shall take effect and be in full force five (5) days after publication.

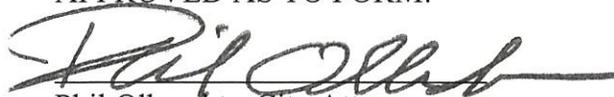
Introduced, passed, and approved this 23<sup>rd</sup> day of July 2019.

  
\_\_\_\_\_  
Mayor Pat Johnson

ATTEST:

  
\_\_\_\_\_  
City Clerk Treva Percival, MMC

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Phil Olbrechts, City Attorney

Published: July 31, 2019  
Effective: August 5, 2019