

CHAPTER 4.08

STATE ENVIRONMENTAL POLICY ACT

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4.08.010: State Environmental Policy Act:

- (1) The City of Kennewick adopts this ordinance under the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.
- (2) The SEPA rules, Chapter 197-11 WAC, must be used in conjunction with this Ordinance.
- (3) The City adopts the following sections of chapter 197-11 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 actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.

(Ord. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.020: Additional Definitions: In addition to those definitions in WAC 197-11-700 through 799, the following terms have the meanings described unless the context indicates otherwise:

- (1) "Department" means any division, subdivision or organizational unit of the City.
- (2) "SEPA Rules" means chapter 197-11 WAC as now or hereafter adopted.
- (3) "Early Notice" means the City's notice to an applicant that it considers a determination of significance likely for his proposal (mitigated DNS procedures). (Ord. 3644 Sec. 1, 1996: Ord. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.030: Designation of Responsible Official: The Director of Planning is the Responsible Official if the City is lead agency. He will make threshold determinations, determine the scope and supervise the preparation of EIS'S, and perform any other necessary or proper task to carry out this Chapter. (Ord. 3661 Sec. 2 (part), 1995: Ord. 2873 Sec. 1 (part), 1984: Ord. 2814 Sec. 3, 1984: Ord. 2486 Sec. 1, 1980)

4.08.040: Lead Agency Determination:

(1) Any department receiving or initiating a proposal must prepare an environmental checklist. The Responsible Official will determine the lead agency in accord with WAC 197-11-050 and WAC 197-11-922 through WAC 197-11-940; unless the lead agency has been previously determined or he is aware that another agency is in the process of determining the lead agency.

(2) If the City is the lead agency, the department receiving or initiating a proposal will forward the application to the Responsible Official who will make the threshold determination and, if an EIS is necessary, supervise its preparation.

(3) If the City is not the lead agency, the department must use and consider the DNS or the final EIS of the lead agency in making decisions on its proposal. No department will prepare or require a DNS or EIS in addition to that prepared by the lead agency unless required by WAC 197-11-600. The City may conduct supplemental environmental review under WAC 197-11-600.

(4) If the City receives a lead agency determination which appears inconsistent with WAC 197-11-922 through 197-11-940, it may object to the determination. The objection must be made to the agency originally making the determination. If not resolved within fifteen days, the Responsible Official may petition the Department of Ecology for a lead agency determination.

(5) Departments may make agreements as to lead agency status or shared lead agency duties, but the Responsible Official and any affected department must approve the agreement.

(6) Any department taking a license application must obtain sufficient information to identify other agencies which may have jurisdiction over the proposal. (Ord. 2873 Sec. 1 (part), 1984)

4.08.050: Transfer of Lead Agency Status to a State Agency: The Responsible Official may transfer lead agency status over a private project to the State agency with jurisdiction appearing first on the priority list of WAC 197-11-936. The City will remain an agency with jurisdiction. The Responsible Official must send notice of the transfer together with all relevant information on the proposal to the State agency. He will also give notice of the transfer to the private applicant and all other agencies with jurisdiction. (Ord. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.060: Time for Making Threshold Determinations: The following time limits (expressed in calendar days) apply to all private projects and proposals by other agencies:

(1) Categorical Exemptions. The City will identify categorical exemptions within seven days of receiving a complete application.

(2) Threshold Determination. The City will make a threshold determination which can be based solely upon the environmental checklist within forty-five days of receiving an adequate application and completed checklist. (Ord. 3644 Sec. 2, 1996: Ord. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.070: Use of Environmental Review: City staff will submit DNS's and EIS's along with all recommendations to advisory and final bodies such as the Planning Commission and City Council. (Ord. 2873 Sec. 1 (part), 1984)

4.08.080: Applicant's Request for Review: If the City's only action is issuance of a Building Permit or other license requiring detailed project plans and specifications, the applicant may request in writing that the City conduct its environmental review before he submits his plans and specifications. (Ord. 2873 Sec. 1 (part), 1984)

4.08.100: Categorical Exemptions and Threshold Determinations: The City adopts the following sections of the Washington Administrative Code by reference:

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.

(Ord. 5014 Sec. 1, 2003: Ord. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.110: Categorical Exemptions:

(1) The following types of construction are categorically exempt except when undertaken in any part on lands covered by water:

(a) The construction or location of any residential structures of two dwelling units or less.

(b) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure in an

agricultural zone, covering 30,000 square feet or less, and to be used only by the property owner or his agent in farming the property. This exemption does not apply to feed lots.

- (c) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, or less, and with associated parking facilities designed for twenty automobiles or less.
- (d) The construction of a parking lot designed for twenty automobiles or less.
- (e) Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a class I, II or III forest practice under RCW 76.09.050 or regulations thereunder.

(2) If the Responsible Official believes that special circumstances warrant further environmental review, he may so direct even for categorically exempt projects. (Ord. 3644 Sec. 3, 1996: Ord. 2873 Sec. 1 (part), 1984)

4.08.120: Use of Exemptions:

(1) Each department receiving an application for a license or making a proposal, will determine if it is exempt. Its determination is final and not subject to review and none of the procedural requirements of this chapter apply. No environmental checklist is required for exempt proposals.

(2) Each department will properly define each proposal and identify the licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the City will determine the lead agency even if the license is exempt.

(3) The City may authorize exempt actions before nonexempt so long as there is no significant adverse impact on the environment and choices are not limited, but may withhold approval which might lead to modification of the physical environment which would serve no purpose if nonexempt action were not approved, or might financially burden a private applicant if nonexempt action were not approved. (Ord. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.130: Environmental Checklist:

(1) A completed environmental checklist must be filed with all license applications unless exempt, but a checklist is not needed if the City and applicant agree that an EIS is required or SEPA compliance has been completed or initiated by another agency. The City will use the environmental checklist to determine the lead agency and make the threshold determination.

(2) The applicant must complete the environmental checklist. The City will assist as necessary. The department making a proposal must complete the environmental checklist.

(3) The City and not the private applicant will complete the environmental checklist if the City has technical information that is unavailable to the applicant or the applicant has previously given inaccurate information. The costs of preparing the checklist must be paid by the applicant before final approval. (Ord. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.140: Mitigated DNS - Early Notice:

(1) As provided in this section and in WAC 197-11-350, the Responsible Official may issue a determination of non-significance (DNS) based on conditions he attaches to the proposal or on changes to, or clarifications of, the proposal made by the applicant.

(2) An applicant may request early notice of the likelihood of a DS. His written request must be made after his application and environmental checklist but before the City's actual threshold determination.

(3) The Responsible Official will respond within fifteen working days indicating whether the City considers issuance of a DS likely and, if so, the areas of concern. The applicant may change or clarify his proposal to mitigate the indicated impacts and revise his environmental checklist or license application.

(4) The City will assist in identifying the impacts to the extent necessary to formulate mitigating measures.

(5) If an applicant submits a changed or clarified proposal or a revised environmental checklist, the City will base its threshold determination on the changed or clarified proposal within fifteen days.

(a) If the proposal includes sufficient, specific, mitigating measures, the City will issue and circulate a determination of non-significance.

(b) The City will make the threshold determination if the proposal does not include sufficient, specific, mitigating measures.

(c) Proposed, mitigating measures must be in writing and specific. For example, proposals to "control noise" or "prevent storm water runoff" are inadequate. Proposals to "muffle machinery to X decibel" or "construct 200 feet storm water retention pond at Y location" are adequate.

(d) Mitigating measures may be incorporated in the DNS by reference to agency reports, studies or other documents.

(6) A mitigated DNS is subject to a fifteen-day comment period and public notice.

(7) Mitigating measures incorporated in a DNS become conditions of the license and will be enforced accordingly.

(8) The City's Early Notice is not a determination of significance. Discussion on clarifications or changes to a proposal, as opposed to a written request for early notice, do not bind the City to consider the clarifications or changes in its threshold determination. (Ord. 2873 Sec. 1 (part), 1984)

4.08.200: Environmental Impact Statements: The City adopts the following sections of the Washington Administrative Code by reference:

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. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.210: Preparation of EIS:

(1) The preparation of draft and final EIS's and SEIS's is the responsibility of the Department of Planning under the direction of the Responsible Official.

(2) The draft and final EIS or SEIS will be prepared by the City, the applicant, or by a consultant selected by the City or the applicant. If the Responsible Official requires an EIS and someone other than the City will prepare the EIS, he will notify the applicant immediately after making the threshold determination.

(3) The City may require an applicant to provide information it does not possess and make specific investigations, but the applicant need not supply information that is not required by this chapter or that is being requested from another agency. This does not apply to information the City may request under another ordinance or statute.

(4) Unless extraordinary circumstances dictate a longer time, and the applicant is in agreement, a DEIS shall be prepared within 120 days of a DS. If the DEIS is found to be inadequate after the comment period and any review, the Responsible Official may add additional time for correcting or supplementing the FEIS.

(5) Any public hearing required under WAC 197-11-535 shall be to the Responsible Official. Appeals of his decision shall be by closed record appeal to the Zoning Board of Adjustment or as otherwise provided by underlying permit application procedures in accord with Chapter 4.12. (Ord. 3644 Sec. 4, 1996: Ord. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.220: Additional Elements to be Covered in an EIS: The City may require consideration of any or all of the following additional elements as part of an EIS. These elements do not effect threshold determinations.

- (1) Economy.
- (2) Social policy analysis.
- (3) Cost-benefit analysis. (Ord. 2873 Sec. 1 (part), 1984)

4.08.300: Commenting: The City adopts the following sections of the Washington Administrative Code by reference:

- 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. 2873 Sec. 1 (part), 1984: Ord. 2486 Sec. 1, 1980)

4.08.310: Public Notice:

(1) When the City issues a DNS or a DS, and no public notice is required for the license or action (4.12.090(11)) it will publish notice in a newspaper of general circulation in the general area where the proposal is located; or notify groups which have expressed interest in a certain proposal or in the type of proposal being considered.

(a) Notice of a DS will indicate the scope of the EIS.

(2) Whenever the City issues a DEIS or SEIS, notice of the availability of those documents will be given in at least one of the following ways:

(a) Posting the property for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation;

(c) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;
or

(f) Publishing notice in agency newsletters or sending notice from agency mailing lists.

(3) Whenever possible, the City will integrate this notice with other public notices.

(4) The City may require an applicant to give notice at his expense. (Ord. 5014 Sec. 2, 2003; Ord. 2873 Sec. 1 (part), 1984)

4.08.320: Consulted Agency Responsibilities for the City: The Responsible Official will prepare written comments for the City as a consulted agency. He will ensure that responses to consultation requests are specific, prepared timely, and include information from all appropriate departments. (Ord. 2873 Sec. 1 (part), 1984)

4.08.400: Existing Environmental Documents: The City adopts the following sections of the Washington Administrative Code by reference:

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.

(Ord. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)

4.08.410: SEPA and Agency Decisions: The City adopts the following sections of the Washington Administrative Code by reference:

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

(Ord. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)

4.08.420: Substantive Authority:

(1) This Chapter supplements all existing regulations, powers and duties.

(2) The City may attach reasonable, written conditions to any license if the conditions are necessary to mitigate specific, probable, significant, adverse environmental impacts and based on one or more policies in subsection (4) below.

(3) The City may deny a license if it finds that the proposal would result in a probable, significant, adverse environmental impact for which there are no reasonable, mitigating measures and if the denial is based on one or more policies identified in subsection (4) below.

(4) The following policies are the basis for exercising authority under this section:

- (a) The City will use all practicable means to ensure that the State and its citizens:
 - (i) Fulfill their responsibilities to future generations as trustees of the environment;
 - (ii) Provide a safe, healthful, productive, and aesthetically and culturally pleasing environment;
 - (iii) Make the most beneficial use of the environment without degrading it, risking their health or safety, or causing other undesirable or unintended consequences by their actions;
 - (iv) Preserve important historic, cultural, and natural places and things;
 - (v) Maintain a diverse environment; and
 - (vi) Achieve a balance between population and resources permitting high standards of living and a sharing of life's amenities; and
 - (vii) Conserve natural resources.
- (b) Everyone has a fundamental and inalienable right to a healthful environment and a concomitant responsibility to preserve and improve it.
- (c) All City ordinances, rules, policies and actions shall be construed consistently with these policies. (Ord. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)

4.08.430: Appeals:

(1) Relief from a decision of the Responsible Official is to the Zoning Board of Adjustment if no other review is provided or to review a determination of significance. All other appeals shall be in accord with the proceedings reviewing the underlying permit.

(2) An application for review from a decision of the Zoning Board of Adjustment must be made to the Benton County Superior Court within twenty-one (21) days of issuance unless a different time period applies to the underlying governmental action. Review of procedural decisions must be initiated within ten days. (Ord. 3644 Sec. 5, 1996; Ord. 2873 Sec. 1 (part), 1984; Ord. 2814 Sec. 3, 1984; Ord. 2486 Sec. 1, 1980)

4.08.440: Notice: The City will give public notice whenever it issues a license for which a statute or ordinance establishes a time limit for seeking judicial review. The City or applicant may publish a notice of action pursuant to RCW 43.21C.080. The form of the notice shall be substantially in the form provided in WAC 197-11-990 and published by the City Clerk or applicant pursuant to RCW 43.21C.080. (Ord. 2873 Sec. 1 (part), 1984)

4.08.500: Definitions: The City adopts the following sections of the Washington Administrative Code by reference:

- 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 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. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)

4.08.510: Categorical Exemptions:

(1) The City adopts by reference the following sections of the Washington Administrative Code for categorical exemptions, as supplemented in this chapter including KMC 4.08.110 (Flexible thresholds), KMC 4.08.120 (Use of exemptions), and KMC 4.08.530 (Environmentally sensitive areas):

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

(2) So much of the Washington Administrative Code, Section 197-11-800 as categorically exempts short plats or short subdivisions, in accord with RCW 58.17.060 (see KMC 17.13) is not adopted. (Ord. 3387 Sec. 1, 1992; Ord. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)

4.08.520: Agency Compliance: The City adopts the following sections of the Washington Administrative Code by reference, as supplemented by KMC 4.08.040 through KMC 4.08.050:

- 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 from more than one agency, when one of the agencies is a city/county.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a city/county, 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. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)

4.08.530: Environmentally Sensitive Areas:

(1) The City will designate environmentally sensitive areas under the standards of WAC 197-11-908 and file maps of such areas, together with the exemptions from the list in WAC 197-11-908 that are inapplicable in such areas, with the Department of Planning and the Department of Ecology.

(2) The City will treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposals, in making threshold

determinations. The City will not automatically require an EIS for a proposal merely because it is located in an environmentally sensitive area.

(3) Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not the lands covered by water are mapped. (Ord. 3661 Sec. 2 (part), 1995; Ord. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)

4.08.540: Fees: The following fees will be charged:

(1) **Threshold Determination.** The City will collect \$25.00 from the proponent before undertaking a threshold determination. The time for making a threshold determination does not begin to run until payment of the fee.

(2) **Environmental Impact Statement.**

(a) When the City is the lead agency for a proposal requiring an EIS and the Responsible Official determines that the EIS will be prepared by employees of the City, the City will charge and collect a reasonable fee from the applicant to cover its costs. The Responsible Official will advise the applicant of the projected costs and obtain security for them.

(b) When the Responsible Official determines that the City will contract for the preparation of an EIS, he will charge costs directly to the applicant. Consultants will be selected by mutual agreement of the City and applicant after a call for proposals. The Responsible Official will obtain security for the costs.

(c) If a proposal is modified so that an EIS is no longer required, the Responsible Official will refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.

(3) The City will collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter.

(4) The City will not collect a fee for performing its duties as a consulted agency.

(5) The City will charge for copies and for mailing. (Ord. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)

4.08.550: Forms: The City adopts the following forms and sections of the Washington Administrative Code 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. 2873 Sec. 1 (part), 1984; Ord. 2486 Sec. 1, 1980)