BINGEN MUNICIPAL CODE

Chapter 15.20

STATE ENVIRONMENTAL PROTECTION ACT

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Article I  AUTHORITY
15.20.010  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.

B.  This chapter contains this city’s SEPA procedures and policies.

C.  The SEPA Rules, WAC Chapter 197-11, must be used in conjunction with this chapter. (Ord. 340 (part), 1984).

Article II  GENERAL REQUIREMENTS
15.20.020  Purpose of this article-WAC provisions adopted by reference.

This article 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.
WAC 197-11-050  Lead agency.
WAC 197-11-055  Timing of the SEPA process.
WAC 197-11-060  Content of environmental review.
WAC 197-11-070  Limitations on actions during SEPA process.
WAC 197-11-080  Incomplete or unavailable information.
WAC 197-11-090  Supporting documents.
WAC 197-11-100  Information required of applicants.

(Ord. 340 (part), 1984).

15.20.030  Responsible official designated-Powers and duties.

A.  For those proposals for which the city is the lead agency, the responsible official shall be the city council.

B.  For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required 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 were adopted by reference in Section 15.20.020.
C. The city shall retain all documents required by the SEPA Rules (WAC Chapter 197-11) and make them available in accordance with RCW Chapter 42.17. (Ord. 340 (part), 1984).

Article III DEFINITIONS

15.20.040 Purpose of this article and adoption of Washington Administrative Code sections by reference.

This article contains uniform usage and definitions of terms under SEPA. The city adopts the supplemented:

WAC 197-11-700 Definitions.
WAC 197-11-702 Act.
WAC 197-11-704 Action.
WAC 197-11-706 Addendum.
WAC 197-11-708 Adoption.
WAC 197-11-710 Affected Tribe.
WAC 197-11-712 Affecting.
WAC 197-11-714 Agency.
WAC 197-11-716 Applicant.
WAC 197-11-718 Built environment.
WAC 197-11-720 Categorical exemption.
WAC 197-11-722 Consolidated appeal.
WAC 197-11-724 Consulted agency.
WAC 197-11-726 Cost-benefit analysis.
WAC 197-11-728 County/city.
WAC 197-11-730 Decision maker.
WAC 197-11-732 Department.
WAC 197-11-734 Determination of non-significance (DNS).
WAC 197-11-736 Determination of significance (DS).
WAC 197-11-738 EIS.
WAC 197-11-740 Environment.
WAC 197-11-742 Environmental checklist.
WAC 197-11-744 Environmental document.
WAC 197-11-746 Environmental review.
WAC 197-11-748 Environmentally sensitive area.
WAC 197-11-750 Expanded scoping.
WAC 197-11-752 Impacts.
WAC 197-11-754 Incorporation by reference.
WAC 197-11-756 Lands covered by water.
WAC 197-11-758 Lead agency.
WAC 197-11-760 License.
WAC 197-11-762 Local agency.
WAC 197-11-764 Major action.
WAC 197-11-766 Mitigated action.
WAC 197-11-768 Mitigation.
WAC 197-11-770 Natural environment.
WAC 197-11-772 NEPA.
WAC 197-11-774 Non-project.
WAC 197-11-776 Phased review.
WAC 197-11-778 Preparation.
WAC 197-11-780 Private project.
WAC 197-11-782 Probable.
WAC 197-11-784 Proposal.
WAC 197-11-786 Reasonable alternative.
WAC 197-11-788 Responsible official.
WAC 197-11-790 SEPA.
WAC 197-11-792 Scope.
WAC 197-11-794 Significant.
WAC 197-11-796 State agency.
WAC 197-11-797 Threshold determination.
WAC 197-11-799 Underlying governmental action.

(Ord. 340 (part), 1984).

15.20.050 Additional definitions.

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

A. “Department” means any division, subdivision or organizational unit of the city established by ordinance, rule or order.

B. “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 non-significance (DNS) procedures).

C. “Ordinance” means the ordinance, resolution, or other procedure used by the city to adopt the regulatory requirements.


(Ord. 340 (part), 1984).

Article IV CATEGORICAL EXEMPTIONS AND THRESHOLD DETERMINATIONS

15.20.060 Purpose of this article-WAC provisions adopted by reference.

This article contains the rules for deciding whether a proposal has a probable significant, adverse 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.
WAC 197-11-305 Categorical exemptions.
WAC 197-11-310 Threshold determination required.
WAC 197-11-315 Environmental checklist.
WAC 197-11-330 Threshold determination process.
WAC 197-11-335 Additional information.
WAC 197-11-340 Determination of non-significance (DNS).
WAC 197-11-350 Mitigated DNS.
WAC 197-11-360 Determination of significance (DS)/initiation of scoping.
WAC 197-11-390 Effect of threshold determination.

(Ord. 340 (part), 1984).

Article V ENVIRONMENTAL IMPACT STATEMENT (EIS)

15.20.070 Purpose of this article-WAC provisions by reference.

This article contains the rules for preparing environmental impact statements. The city adopts the following sections by reference:

WAC 197-11-400 Purpose of EIS.
WAC 197-11-402 General requirements.
WAC 197-11-405 EIS types.
WAC 197-11-406 EIS timing.
WAC 197-11-408 Scoping.
WAC 197-11-410 Expanded scoping. (optional).
WAC 197-11-420 EIS preparation.
WAC 197-11-425 Style and size.
WAC 197-11-430 Format.
WAC 197-11-435 Cover letter or memo.
WAC 197-11-440 EIS contents.
WAC 197-11-442 Contents of EIS on non project proposals.
WAC 197-11-443 EIS contents when prior non project EIS.
WAC 197-11-444 Elements of the environment.
WAC 197-11-448 Relationship of EIS to other considerations.
WAC 197-11-450 Cost-benefit analysis.
WAC 197-11-455 Issuance of DEIS.
WAC 197-11-460 Issuance of FEIS.

(Ord. 340 (part), 1984).
Article VI   COMMENTING

15.20.080   Adoption of WAC provisions by reference.

This article 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 in this article:

WAC 197-11-500   Purpose of this part.
WAC 197-11-502   Inviting comment.
WAC 197-11-504   Availability and cost of environmental documents.
WAC 197-11-508   SEPA register.
WAC 197-11-535   Public hearings and meetings.
WAC 197-11-545   Effect of no comment.
WAC 197-11-550   Specificity of comments.
WAC 197-11-560   FEIS response to comments.
WAC 197-11-570   Consulted agency costs to assist lead agency.

(Ord. 340 (part), 1984).

15.20.090   Public notice.

A. Whenever the City of Bingen issues a DNS under WAC 197-11-340 (2) or a DS under WAC 197-11-360 (3), the city shall give public notice as follows:

1. If public notice is required for a nonexempt license, the notice shall state Whether a DS or DNS has been issued and when comments are due.

2. If no public notice is required for the permit or approval, the city shall give notice of the DNS or DS by:
   a. Posting the property, for site-specific proposals;
   b. Publishing notice in a newspaper of general circulation in the county, city general area where the proposal is located;
   c. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered.

3. Whenever the city issues a DS under WAC 197-11360 (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.

B. 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:

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1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and

2. Posting the property, for site-specific proposals;

3. Publishing notice in a newspaper of general circulation in the county, city or general area where the proposal is located;

4. Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered.

C. 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.

D. The city may require an applicant to complete the public notice requirements for the applicant’s proposal at his or her expense.

15.20.100 Mayor to perform consulted agency responsibilities for the city.

A. The mayor and/or his office 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 a DEIS.

B. This office 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. 340 (part), 1984).

15.20.104 Reimbursement of city SEPA costs-Industrial projects.

For all industrial projects, the developer of the project shall reimburse the city for all costs and expense the city incurs in the review and administration of all permits and applications, including but not limited to checklists, environmental impact statements, mitigated DNS, DNS, DS, hearings, attorneys’ fees, consultant fees, litigation expenses in court or before administrative agencies, resulting from the project, whether directly or indirectly. (Ord. 421 §1, 1994).

15.20.105 Reimbursement of city SEPA costs-Residential and commercial.

For all residential and commercial projects in which estimates of construction costs or in which actual construction costs exceed two hundred fifty thousand dollars, the developer of the project shall reimburse the city for all costs and expense the city incurs in the review and administration of all permits and applications, including but not limited to checklists, environmental impact statements, mitigated DNS, DNS, DS, hearings, attorneys’ fees, consultant fees, litigation
expensed in court or before administrative agencies, resulting from the project, whether directly or indirectly. (Ord. 421 §2, 1994).

15.20.106 Reimbursement by developer.

Developer shall pay the expenses incurred by the city through the date of the written statement and shall pay said sums within ten days of receipt of billing and also prior to the issuance of any SEPA determination. Payment in full shall be a condition to final project approval and issuance of any occupancy or other permit. Costs/expenses not paid on a timely basis shall become a lien against the real property upon which the development is located and shall be subject to the city’s foreclosure. (Ord. 421 §3 1994).

Article VII USING EXISTING ENVIRONMENTAL DOCUMENTS

15.20.110 Purpose of this article-WAC provisions adopted by reference.

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

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

(Ord. 340 (part), 1984).

Article VIII SEPA AND AGENCY DECISIONS

15.20.120 Purpose of this article-WAC provisions adopted by reference.

This article contains rules (and policies) for SEPA’s substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This article 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.
WAC 197-11-655 Implementation.
WAC 197-11-660 Substantive authority and mitigation.
WAC 197-11-680 Appeals.

(Ord. 340 (part), 1984).
15.20.130 Substantive authority.

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

B. The city may attach conditions to a permit or approval for a proposal so long as:
   1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
   2. Such conditions are in writing; and
   3. The mitigation measures included in 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 subsection D of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:
   1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
   2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and
   3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

D. The city designates and adopts by reference the following policies as the basis for the city’s exercise of authority pursuant to this section:
   1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources to the end that the state and its citizens may:
      a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
      b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life’s amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

E. 1. Except for permits and variances issued pursuant to the city’s shoreline management plan, when any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a non-elected official, the decision shall be appealable to the city council. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within ten days of the decision being appealed. Review by the city council shall be on a de novo basis.

2. Any person may informally request, orally or in writing, the city council to reconsider a SEPA determination. The council shall reconsider the determination and provide a response, but, as this is not to be considered a formal appeal within the meaning of RCW 43.21C.075 and WAC 197-11-680, the council is not required to make a record or furnish reasons for the decision or reconsideration. (Ord. 340 (part), 1984).

Article IX CATEGORICAL EXEMPTIONS

15.20.140 Adoption of WAC provisions by reference.

The city adopts by reference the following rules for categorical exemptions, as supplemented in this chapter, including Flexible thresholds, use of exemptions, and environmentally sensitive areas:

WAC 197-11-800 Categorical exemptions.
WAC 197-11-880 Emergencies.
WAC 197-11-890 Petitioning DOE to change exemptions.
Article X  AGENCY COMPLIANCE

15.20.150  Purpose of this article-WAC provisions adopted by reference.

This article contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, designating environmentally sensitive areas, listing agencies with environmental expertise, selecting the lead agency, and activities. The city adopts the following sections by reference, as supplemented:

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

(Ord. 340 (part), 1984).

Article XI  FORMS

15.20.160  Forms and notices-WAC provisions adopted by reference.

The city adopts the following forms and sections by reference:

WAC 197-11-960  Environmental check list.
WAC 197-11-965  Adoption notice.
WAC 197-11-970  Determination of non-significance (DNS).
WAC 197-11-980  Determination of significance and scoping notice (DS).
WAC 197-11-985  Notice of assumption of lead agency status.
WAC 197-11-990  Notice of action.
Article XII  SEVERABILITY

15.20.170  Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected. (Ord. 340 (part), 1984).