

# 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.
- D. “SEPA Rules” means WAC Chapter 197-11 adopted by the Department of Ecology. (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:

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 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 expensed 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.

(Ord. 340 (part), 1984).

## **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.

(Ord. (part), 1984).

**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).