

**Instructions to reader:** This is a new chapter in the Unified Development Code. The final ordinance will repeal [EMC 20.04 Environmental Policy](#) and will be replaced by this chapter in the Unified Development Code (UDC) at Chapter 19.43. For a summary of the effect of this chapter from current standards, please visit the Rethink Zoning Library at <https://everettwa.gov/2453/Rethink-Zoning-Library>.

## Chapter 19.43 Environmental Policy

### Table of Contents

<b>CHAPTER 19.43 ENVIRONMENTAL POLICY</b> .....	<b>1</b>
19.43.010 TITLE.....	1
19.43.020 PURPOSE.....	1
19.43.030 STATE RULES—ADOPTION BY REFERENCE. ....	1
19.43.040 ADDITIONAL DEFINITIONS. ....	1
19.43.065 RULES.....	2
19.43.070 FORMS. ....	2
19.43.075 FEES.....	2
19.43.080 DESIGNATION OF RESPONSIBLE OFFICIAL.....	2
19.43.090 LEAD AGENCY DETERMINATION AND RESPONSIBILITIES.....	2
19.43.110 DESIGNATION OF OFFICIAL TO PERFORM CONSULTED RESPONSIBILITIES FOR THE CITY. ....	3
19.43.130 CATEGORICAL EXEMPTIONS—MINOR NEW CONSTRUCTION.....	3
19.43.140 CATEGORICAL EXEMPTIONS—INFILL DEVELOPMENT.....	4
19.43.200 RULES AND PROCEDURES CONCERNING SUBSTANTIVE AUTHORITY. ....	4
19.43.220 GENERAL POLICIES. ....	4
19.43.230 SPECIFIC POLICIES.....	4
19.43.240 SUBSTANTIVE AUTHORITY. ....	7
19.43.260 NOTICE—STATUTE OF LIMITATIONS. ....	8
19.43.320 THIRD PARTY LIABILITY. ....	8

#### **19.43.010 Title.**

The ordinance codified in this chapter shall hereinafter be known as the “city environmental policy ordinance,” may be cited as such, and will hereinafter be referred to as “this chapter.”

#### **19.43.020 Purpose.**

The purpose of this chapter is to establish a clearly understood and effective set of policies and procedures for implementing the State Environmental Policy Act as set forth in Chapter 43.21C RCW, through the adoption of city environmental policies, and rules and procedures designed to take into consideration the environmental impact of actions taken by or affecting the city. 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.

#### **19.43.030 State rules—Adoption by reference.**

This chapter applies to proposals by the city and to city review of, or decisions on, proposals by public or private applicants or other governmental entities. The city adopts the state SEPA rules, Chapter 197-11 WAC as may be amended, by reference, as supplemented by additional or more specific provisions contained in this chapter and Title 15, Local Project Review Procedures.

#### **19.43.040 Additional definitions.**

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

- A. "Planning Director" means the director of the department of planning and community development or successor agencies and his/her designee.
- B. "Ordinance" means the ordinance, resolution, or other procedure used by the city to adopt regulatory requirements.
- C. "Responsible official" means the planning director designated by the mayor who shall carry out the city's procedural responsibilities as the lead agency under this chapter.
- D. "SEPA rules" means Chapter 197-11 WAC adopted by the State of Washington Department of Ecology.

**19.43.065 Rules.**

The city is authorized to promulgate rules for the interpretation and implementation of this chapter through administrative rules adopted by the responsible official, and resolutions or ordinances adopted by city council.

**19.43.070 Forms.**

The city shall use the forms substantially as set forth in the SEPA rules. However, the responsible official may modify the forms if he/she determines that a modified format would improve clear presentation of the proposed action, the environmental impacts of the proposed action, the environmental determination being made by the city, and/or the opportunity for commenting on the proposed action or environmental determination.

**19.43.075 Fees.**

- A. Except as otherwise noted in this chapter, all fees required for processing of actions by the city in accordance with the provisions of this chapter shall be established by the land use permit fee ordinance.
- B. Environmental Impact Statement.
  - 1. Notwithstanding any provisions of this chapter, the responsible official may with the concurrence of the applicant contract directly with a consultant or subconsultant for preparation of an EIS, or a portion of the EIS, and may bill such costs and expenses directly to the applicant. The city may require that the applicant post bond or other guaranty device satisfactory to the city to otherwise ensure payment of such costs;
  - 2. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under this subsection which remain after incurred costs are paid.
- C. The city may collect a reasonable fee from an applicant to cover the cost of meeting SEPA public notice requirements relating to the applicant's proposals.
- D. The city shall not collect a fee for performing its duties as a consulted agency.
- E. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by Chapter 42.17 RCW.

**19.43.080 Designation of responsible official.**

- A. For those proposals for which the city is the lead agency, the responsible official shall be the planning director.
- 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 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.
- C. The city shall retain all documents required by the SEPA rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.17 RCW, and Chapter 2.92 of this code.
- D. Public information on SEPA can be obtained at the lead agency through the city's planning and community development department, 2930 Wetmore Avenue, Suite 8-A, Everett.

**19.43.090 Lead agency determination and responsibilities.**

- A. When the city receives an application for or initiates a proposal that involves a nonexempt action, the responsible official shall determine the lead agency for that proposal under WAC 197-11-050 and WAC 197-11-922 through 197-11-940. This determination shall be made for each proposal involving a nonexempt action unless the lead agency has been previously determined or the responsible official is aware that another agency is in the process of determining the lead agency.
- B. When the city is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the draft and final EIS.
- C. 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 require or conduct supplemental environmental review under WAC 197-11-600.
- D. If the city receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 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 responsible official.
- E. The 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.
- F. In making a lead agency determination for a private project, the responsible official shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

**19.43.110 Designation of official to perform consulted responsibilities for the city.**

- A. The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in pre-draft consultation, participation in scoping, and reviewing a draft EIS.
- B. The city's responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures which will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

**19.43.130 Categorical exemptions—Minor new construction.**

- A. The following exempt levels are established for minor new construction under WAC 197-11-800(1)(c) based on conditions in the city. The exemptions in this subsection apply to all licenses required to undertake the construction in question. The exemptions in this subsection apply except when the project:
  - 1. Is undertaken wholly or partly on lands covered by water;
  - 2. Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383 (waste discharge permits);
  - 3. Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 (air operating permits) or WAC 197-11-800(7) or (8);
  - 4. Involves demolition of a structure listed in a local, state or national historic register; or
  - 5. Requires a land use decision that is not exempt under WAC 197-11-800(6).
- B. The following types of projects shall be exempt:
  - 1. The construction or location of no more than thirty single-family dwelling units.
  - 2. The construction or location of no more than sixty multifamily dwelling units.
  - 3. The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering no more than forty thousand square feet and to be

used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

4. The construction of an office, school, commercial, recreational, service or storage building with no more than thirty thousand square feet of gross floor area and with associated parking facilities designed for no more than ninety automobiles. This exemption includes parking lots for no more than ninety automobiles not associated with a structure.
5. Any fills or excavations of no more than one thousand cubic yards throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in subsection (B)(1), (2), (3), or (4) of this section.

#### **19.43.140 Categorical exemptions—Infill development.**

The following exempt levels are established for new construction under RCW 43.21C.229:

- A. Residential development up to two hundred dwelling units in Metro Everett, Urban Residential 4 (UR4) zones, or Mixed Urban (MU) zones;
- B. Mixed-use development in Metro Everett, Mixed Urban (MU) or Business (B) zones;
- C. Commercial development up to sixty-five thousand square feet, excluding retail development; or
- D. Any minor new construction identified as exempt pursuant to Section 19.43.130.

#### **19.43.200 Rules and procedures concerning substantive authority.**

The following sections contain rules and policies for the use of SEPA's substantive authority, such as decisions to require mitigation of adverse environmental impacts in compliance with policies contained in this chapter, or decisions to deny a proposal on the basis of significant adverse impacts identified in the environmental review documents prepared under SEPA. Procedures for appealing SEPA determinations to agencies or the courts are set forth in Title 15, Local Project Review Procedures.

#### **19.43.220 General policies.**

The city adopts by reference the general policies of the State Environmental Policy Act (SEPA) as set forth in RCW 43.21C.010 and RCW 43.21C.020 in order to achieve the environmental goals of the community.

#### **19.43.230 Specific policies.**

The city adopts the following specific policies in order to achieve the environmental goals of the Everett community:

- A. Policies Pertaining to the Natural Environment.
  1. Earth.
    - a. To encourage land development practices that result in a minimal disturbance to the city's vegetation and soils;
    - b. To encourage building and site planning practices that are consistent with the city's natural topographical features;
    - c. To insure prompt development, restoration and effective erosion control of property after land clearing through the use of phased development, replanting, hydroseeding and other appropriate engineering techniques;
    - d. Prohibit development on steep slope areas when such development would create imminent danger of landslides.
  2. Air.
    - a. To work in cooperation with the Air Pollution Control Agency having jurisdiction over the proposal, to secure and maintain such levels of air quality as will protect human health and safety and to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the

comfort and convenience of inhabitants, promote the economic and social development of the city, and facilitate the enjoyment of the natural attractions of the city.

3. Water.
  - a. To encourage development and construction procedures which conform to the South Everett Drainage Basin Plan and Chapter 14.28 of this code or as such may be amended or superseded, to minimize surface water and ground water runoff and diversion and to minimize erosion and reduce the risk of slides;
  - b. To encourage sound development guidelines and construction procedures which respect and preserve the city's watercourses; to minimize water quality degradation and control the sedimentation of creeks, streams, ponds, lakes and other water bodies; to preserve and enhance the suitability of waters for contact recreation and fishing; to preserve and enhance the aesthetic quality of the waters; to encourage water conservation and reuse;
  - c. To maintain and protect ground water resources, to minimize adverse effects of alterations in ground water quantities, locations and flow patterns.
4. Plants and Animals.
  - a. To protect the unique and threatened or endangered plants and animals and critical areas and habitat within the city;
  - b. To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;
  - c. To encourage the retention of trees and other vegetation for visual buffers and soil retention;
  - d. To encourage building and site planning practices that are consistent with the city's vegetational features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require the removal of certain trees and ground cover.
5. Energy and Natural Resources.
  - a. To encourage the wise use of nonrenewable natural resources;
  - b. To encourage efficient use of renewable resources;
  - c. To incorporate energy conservation features as feasible and practicable into all city projects and promote energy conservation throughout the community.
- B. Policies Pertaining to the Built Environment.
  1. Environmental Health.
    - a. To encourage development practices consistent with Chapter 20.08 of this code or as such may be amended or superseded. To minimize the exposure of citizens to the harmful physiological and psychological effects of excessive noise; to control the level of noise in a manner which promotes commerce; the use, value and enjoyment of property; sleep and repose; and the quality of the environment;
    - b. To require proposals involving the potential risk of an explosion or the release of hazardous substances to the environment to include specific measures which will ensure the public health, safety and welfare;
    - c. To restrict or prohibit uses which will expose the public to unsanitary conditions or disease;
    - d. To restrict or prohibit uses which are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities;
    - e. To require that uses vulnerable to floods including public facilities which serve such uses, shall be protected against flood damage at the time of initial construction;
    - f. To meet the minimum requirements of the National Flood Insurance Program and State of Washington Flood Control Program.
  2. Land and Shoreline Use.
    - a. Relationship to Land Use Plans and Estimated Population.

- i. To implement and further the city’s comprehensive plans, including the land use plan, transportation plan, open space, parks and recreation plan, Everett comprehensive plan, shoreline master program and other plans formally adopted by the city,
    - ii. To encourage orderly growth in undeveloped areas of the city by maximizing the efficiency of utilities and roads and other capital improvements;
  - b. Housing.
    - i. To encourage the provision and maintenance of adequate housing for the residents of Everett, for all income levels,
    - ii. To evaluate impacts of new nonresidential development which would reduce existing housing stock or reduce land available for residential development;
  - c. Light and Glare.
    - i. To minimize excessive light and glare;
  - d. Aesthetics.
    - i. To encourage development which maintains and improves the existing aesthetic character of the community,
    - ii. To maximize protection of existing public scenic vistas and scenic corridors;
  - e. Recreation.
    - i. To protect the existing open space areas for future generations and promote their expansion;
  - f. Historic and Cultural Preservation.
    - i. To consider the historical and archaeological importance of all buildings and sites prior to any change in use or development, and to recognize properties and structures included in the “Historical Resource Survey for Everett Washington” (1986) or as such may be amended or superseded, as properties of historical significance.
- 3. Transportation.
  - a. To approve street designs which are beneficial to the public in consideration of vehicular and pedestrian safety, efficiency of service, influence on the amenities and livability of the community, and economy of both construction and the use of land;
  - b. To encourage increased traffic volumes only in areas with sufficient capacity to provide safe and efficient traffic flow or where adequate traffic improvements will be provided in conjunction with the development; to require adequate vehicular and pedestrian access to new developments, and minimize pedestrian-vehicular conflict points.
- 4. Public Services and Utilities.
  - a. To encourage and approve development only where adequate public services, including fire and police protection, are available or will be made available to serve the proposal;
  - b. To encourage and approve development only where adequate utilities, including water, sewer, power, communications and drainage facilities are available or will be made available in conjunction with the proposal;
  - c. To protect the existing open space areas for future generations and promote their expansion.
- C. Other Policies.
  - 1. To minimize the reduction of available natural light due to the casting of shadows by new development;
  - 2. To encourage planned residential development; to preserve and maintain sensitive environmental areas which could be negatively impacted by traditional development techniques;
  - 3. A single development or land use though otherwise consistent with zoning and other city policies may create adverse impacts upon facilities and services, natural systems or the surrounding area when aggregated with the impacts of prior or other proposed development. It is the policy of the city to analyze such cumulative environmental impacts and condition or deny proposals to minimize or prevent adverse impacts in accordance with other provisions of this chapter;
  - 4. In assessing the environmental impacts of a proposal and in determining the need for conditioning or denying a proposal in accordance with other provisions of this chapter, the responsible official shall utilize

SEPA, all policies, guidelines and regulations adopted pursuant to SEPA, federal, state and regional environmental quality standards, and the legislative enactments of the city, both specific and general, now in effect or enacted in the future;

5. The city reserves the right to impose specific conditions upon any action or to deny action in conformance with the policies stated in this chapter, so as to mitigate or prevent adverse environmental impacts;
6. It is not the intent or purpose of this chapter to prevent or delay the reasonable development of land in the city.

**19.43.240 Substantive authority.**

- A. The policies, procedures and goals set forth in this chapter are supplementary to those set forth in existing authorizations of all branches of government of this state, including state agencies, municipal and public corporations, and counties.
- 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 Sections 19.43.220 and 19.43.230 and are cited in the license or other decision document (such as a DNS, MDNS or decision document issued pursuant to the publication of an EIS).
- 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 final EIS or final supplemental EIS 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 significant adverse identified impact; and
  3. The denial is based on one or more policies identified in Sections 19.43.220 and 19.43.230 and is identified in writing in the decision document.
- D. In addition to the policies established under Sections 19.43.220 and 19.43.230, 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.

**19.43.260 Notice—Statute of limitations.**

- A. The city, applicant for, or proponent of an action may publish a notice of action under RCW 43.21C.080 for any action.
- B. 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 or proponent pursuant to RCW 43.21C.080. Use of a notice of action shall not be construed to reopen an appeal period if a party previously failed to exhaust its administrative remedies.

**19.43.320 Third party liability.**

- A. This chapter provides for and promotes the health, safety and welfare of the general public, and does not create or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter.
- B. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the city, its officers, employees or agents, for any injury or damage resulting from the failure of any applicant to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or completed in connection with the implementation or enforcement pursuant to this chapter or by reason of any action or inaction on the part of the city related in any manner to the enforcement of this chapter by its officers, employees or agents.