



ORDINANCE NO. 3513-16

An Ordinance Pertaining to the State Environmental Policy Act Categorical Exemption Thresholds for Minor New Construction, Amending Ordinance No's. 2534-01, 1348-87 and 3272-12 (EMC Chapter 20.04), as Amended, and Including a Special Public Notice Procedure Amending Ordinance No's. 3185-10 and 2530-01 (EMC Chapter 15.24), as Amended.

WHEREAS, specified levels of minor new construction are exempt from review under the State Environmental Policy Act (SEPA), chapter 43.21C RCW, pursuant to Washington Administrative Code (WAC) 197-11-800; and

WHEREAS, the State Legislature amended the State Environmental Policy Act in 2012 to allow jurisdictions to raise SEPA exempt levels for minor new construction up to the maximum levels defined in WAC 197-11-800(1)(d); and

WHEREAS, WAC 197-11-800(1)(c) allows jurisdictions the option of adopting the maximum exempt thresholds in WAC 197-11-800(1)(d) in their own municipal codes; and

WHEREAS, Everett Municipal Code Section 20.04.130 specifies the SEPA exemption threshold levels adopted by the city for minor new construction; and

WHEREAS, Everett Municipal Code Chapter 15.24 specifies the public notice process; and

WHEREAS, currently the exemption thresholds for minor new construction in EMC 20.04.130 for residential structures, agriculture structures, non-residential structures, and fill and excavation projects are less than permitted under WAC 197-11-800(1)(d); and

WHEREAS, since the city of Everett established its existing SEPA categorical exemption thresholds in 1987, it has significantly improved its protection of environmental resources and mitigation of impacts through adoption of GMA-consistent development regulations, including critical area regulations; and

WHEREAS, compliance with city of Everett development regulations is determined during project review and required for all proposed development activity, including minor new construction, independent of SEPA review; and

WHEREAS, compliance with city of Everett development regulations for minor new construction proposals constitutes adequate analysis and mitigation of the specific environmental impacts; and

WHEREAS, the proposed amendment will still require that public notice with a comment period be provided for projects that meet the minimum SEPA thresholds and are exempted from the SEPA review process because of the higher thresholds; and

WHEREAS, the City of Everett Planning Commission has reviewed the proposed amendments to Everett Municipal Code Chapter 20.04, Environmental Policy and Chapter 15.24, Public Notice and Appeals at a public workshop held on May 17, 2016; and

WHEREAS, the Planning Commission held a public hearing on July 19, 2016 to receive public testimony concerning the proposed code amendments contained in this ordinance; and

WHEREAS, at the conclusion of the Planning Commission's public hearing, the Planning Commission voted to unanimously recommend approval of the code amendments contained in this ordinance as set forth in its Resolution No. 16-09; and

WHEREAS, on October 12, 2016, the Everett City Council held a public hearing after proper notice, and considered public comments and the entire record related to the proposal contained in this ordinance; and

WHEREAS, following the public hearing, the Everett City Council deliberated on the proposal contained in this ordinance and adopts the following findings in support of this ordinance:

1. The foregoing recitals are adopted as findings or conclusions as if set forth in full herein.
2. The proposed amendments are consistent with WAC 197-11-800(1).
3. The proposed code amendments meet the following requirements listed in WAC 197-11-800(c) which are necessary to raise the exempt levels:
 - a. Provide documentation that the requirements for environmental analysis, protection, and mitigation for impacts to elements of the environment have been adequately addressed for the development exempted.
 - b. Describe the notice and comment opportunities for the public, affected tribes, and agencies regarding permitting of development projects included in the increased exemption levels.
 - c. Before adopting the ordinance, provide a minimum of sixty day notice to affected tribes, agencies with expertise, affected jurisdictions, the Washington State Department of Ecology, and the public and provide an opportunity for comment.
 - d. Provide documentation describing how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 13 of Ordinance No. 1348-87, as amended by Section 3B of Ordinance No. 2534-01 (EMC Chapter 20.04 Article III. Categorical Exemptions, Section 20.04.130), which reads as follows:

20.04.130 Flexible thresholds for categorical exemptions.

The following exempt levels are established for minor new construction under WAC 197-11-800(1)(b) based on conditions in the city:

- A. For residential dwelling units in WAC 197-11-800(1)(b)(i): up to four dwelling units;
- B. For agricultural structures in WAC 197-11-800(1)(b)(ii): up to ten thousand square feet;
- C. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): up to four thousand square feet and up to twenty parking spaces;
- D. For parking lots in WAC 197-11-800(1)(b)(iv): up to twenty parking spaces;
- E. For landfills and excavations in WAC 197-11-800(b)(v): up to five hundred cubic yards.

Is hereby amended to read as follows:

20.04.130 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;
- (3) requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8);
- (4) involves demolition of a contributing 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 (30) single-family dwelling units.
2. The construction or location of no more than sixty (60) multi-family 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 (40,000) 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 (30,000), d) : square feet of gross floor area and with associated parking facilities designed for no more than ninety (90) automobiles. This exemption includes parking lots for no more than ninety (90) automobiles not associated with a structure.
5. Any fills or excavations of no more than one thousand (1,000) cubic yards throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in (1), (2), (3), or (4) of this subsection.

C. Public Notice.

Development proposals that are categorically exempt under subsection A but exceed the minor new construction *minimum* thresholds set forth in WAC 197-11-800(1)(b) shall provide notice as specified in EMC 15.24.080.F.

Section 2. Section 1 of Ordinance No. 3272-12 (EMC Chapter 20.04 Article III. Categorical Exemptions, Section 20.04.140), which reads as follows:

20.04.140 Categorical exemptions—Infill development.

A. The following exempt levels are established for new construction under RCW 43.21C.229, for land located within the E-1 MUO (mixed-use overlay) zone:

1. Residential use and its required off-street parking: up to one hundred dwelling units;
2. Commercial use within a mixed-use building including eight or more residential dwelling units, and the required off-street parking: up to fifteen thousand square feet.

B. Review Process. Development proposals that meet the categorical exemption thresholds stated in subsection A of this section that exceed the city SEPA thresholds for categorical exemption as specified in Section 20.04.130 shall be subject to Review Process II as specified in Chapter 15.20; provided, however, that environmental review under SEPA is not required. The city shall provide notice of the proposed development application as required by Review Process II.

Is hereby amended to read as follows:

20.04.140 Categorical exemptions—Infill development.

A. The following exempt levels are established for new construction under RCW 43.21C.229, for land located within the E-1 MUO (mixed-use overlay) zone:

1. Residential use and its required off-street parking: up to one hundred dwelling units;
2. Commercial use within a mixed-use building including eight or more residential dwelling units, and the required off-street parking: up to thirty thousand square feet.

B. Review Process. Development proposals that meet the categorical exemption thresholds stated in subsection A of this section that exceed the city SEPA thresholds for categorical exemption as specified in Section 20.04.130 shall be subject to Review Process II as specified in Chapter 15.20; provided, however, that environmental review under SEPA is not required. The city shall provide notice of the proposed development application as required by Review Process II.

Section 3. Chapter 6 Section 2B of Ordinance No. 2530-01, as amended by Section 2 of Ordinance No. 3185-10 (EMC Chapter 15.24 Article II. Public Notice and Public Comment Periods), which reads as follows:

15.24.080 Review Process II—Administrative decisions.

Public notice shall include notice of application and notice of decision. Public notice of the notice of application shall be provided by:

- A. Posting notice on or near the property with two signs no less than twenty-four inches by thirty-six inches in size, as specified by Section 15.24.190;
- B. Posting additional signs if the project is a linear project, as specified by Section 15.24.190;
- C. Mailing notice to owners of property located within one hundred fifty feet of the subject property;
- D. Mailing notice to the SEPA mailing list (unless the project is categorically exempt); and
- E. Mailing notice to the neighborhood leader mailing list if applicable.

Is hereby amended to read as follows:

15.24.080 Review Process II—Administrative decisions.

Public notice shall include notice of application and notice of decision. Public notice of the notice of application shall be provided by:

- A. Posting notice on or near the property with two signs no less than twenty-four inches by thirty-six inches in size, as specified by Section 15.24.190;
- B. Posting additional signs if the project is a linear project, as specified by Section 15.24.190;
- C. Mailing notice to owners of property located within one hundred fifty feet of the subject property;
- D. Mailing notice to the SEPA mailing list (unless the project is categorically exempt); and
- E. Mailing notice to the neighborhood leader mailing list if applicable.
- F. For applications that require public notice under EMC Section 20.04.130, public notice shall be provided by posting two signs no less than twenty-four inches by thirty-six inches on or near the property. The signs shall contain the information specified in Section 15.24.190 C.

Section 4. Severability. Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 5. Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

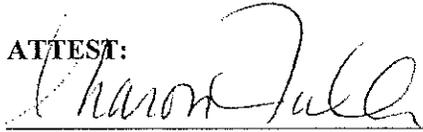
Section 6. Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 7. General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or

inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.


Ray Stephanson Mayor

ATTEST:



CITY CLERK

Passed: 10-12-16

Valid: 10-18-16

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