

Ordinance No. 00042

[\(Council Minutes 96/01/16\)](#)

ORDINANCE NO. 42

AN ORDINANCE of the City Council of the City of Lakewood, Washington, creating a Chapter 14.02 of the Lakewood Municipal Code relating to Environmental Rules & Procedures

WHEREAS, upon incorporation the City of Lakewood will become responsible for enforcement of certain State mandated rules and regulations; and,

WHEREAS, among the areas would be responsibilities for compliance with the Washington State Environmental Policy Act; and,

WHEREAS, in furtherance of those responsibilities, an Ordinance has been developed which would set the parameters of City enforcement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

SECTION 1. ADOPTION OF ENVIRONMENTAL RULES AND PROCEDURES.

That Chapter 14.02 of the Lakewood Municipal Code, be, and the same hereby is, created to read as follows:

Chapter 14.02

ENVIRONMENTAL RULES & PROCEDURES

Sections:

14.02.010 Authority.

14.02.020 Abbreviations

14.02.030 Adoption by reference.

14.02.040 Additional definitions.

14.02.050 Responsible official designated.

14.02.060 Timing of environmental review.

14.02.070 Determination of categorical exemption.

14.02.080 Use of Exemptions

14.02.090 Environmentally sensitive areas.

14.02.100 Emergency Action Exemption.

14.02.110 Environmental checklist required.

- 14.02.120 Fees and costs.
- 14.02.130 Environmental impact statement.
- 14.02.140 Public notice.
- 14.02.150 Internal circulation of environmental documents.
- 14.02.160 Timing of decision on non-exempt action.
- 14.02.170 Authority to condition or deny proposals.
- 14.02.180 Substantive authority.
- 14.02.190 City responsibilities as consulted agency.
- 14.02.200 Environmental appeals.
- 14.02.210 Time limitation on appeals.
- 14.02.220 Fee to accompany notice of appeal.
- 14.02.230 Notice of hearing.
- 14.02.240 Public hearing.
- 14.02.250 Testimony - Recording.
- 14.02.260 Substantial weight - Burden of proof.
- 14.02.270 Decision of the Hearing Examiner.
- 14.02.280 Dismissal of appeal.
- 14.02.290 Council review - Limitations for appeals.
- 14.02.300 Superior Court review - Limitations for appeal.

14.02.010 Authority.

These procedures are adopted under authority of the State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA rules, WAC 197-11-904.

14.02.020 Abbreviations

The abbreviations used in this Chapter are defined as follows:

- A. DEIS Draft Environmental Impact Statement
- B. DNS Declaration of Nonsignificance
- C. DS Declaration of Significance
- D. EIS Environmental Impact Statement

- E. FEIS Final Environmental Impact Statement
- F. NEPA National Environmental Policy Act
- G. SEIS Supplemental Impact Statement
- H. SEPA State Environmental Policy Act
- I. WAC Washington Administrative Code

14.02.030 Adoption by reference.

The following Sections of Chapter 197-11 of the Washington Administrative Code (WAC), as presently existing and as may subsequently be amended, hereby adopted by reference, as if fully set forth herein:

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of the SEPA process.
- 197-11-050 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.
- 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.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 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 nonproject proposals.

197-11-443 EIS contents when prior nonproject 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 Issuances of DEIS.

197-11-460 Issuances of FEIS.

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.

197-11-510 Public notice.

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.

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.

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

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 County/city.

197-11-730 Decision maker.

197-11-732 Department.

197-11-734 Determination of nonsignificance (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 Nonproject.

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.

197-11-800 Categorical exemptions.

197-11-880 Emergencies.

197-11-890 Petitioning DOE to change exemptions.

197-11-900 Purpose of this part.

197-11-902 Agency SEPA policies.

197-11-908 Environmentally sensitive areas.

197-11-916 Application to ongoing actions.

197-11-920 Agencies with environmental expertise.

197-11-922 Lead agency rules.

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 county/city.

197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, 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.

197-11-950 Severability.

197-11-960 Environmental checklist.

197-11-965 Adoption notice.

197-11-970 Determination of nonsignificance (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.

14.02.040 Additional definitions.

In addition to those definitions set forth in Section 14.02.030, the following words and terms shall have the following meanings, unless the context indicates otherwise:

A. "Advisory body" means any body, established by the City Council, the responsibilities of which include review of development proposals for the purpose of making recommendations to the Council.

B. Council means the City Council of the City of Lakewood.

C. "Department" means the Department of Community Development.

D. "Development" means the rezoning of property, the subdivision of land, the construction of buildings, or any physical alteration of the land which is subject to City approval and to the requirements of SEPA.

E. "Hearing Examiner" means the City Hearing Examiner as established by City of Lakewood Ordinance No. 13.

F. "SEPA" means Chapter 43.21C Revised Code of Washington (RCW), as now existing or as may subsequently be amended.

G. "SEPA rules" means Chapter 197-11 Washington Administrative Code (WAC) adopted by the Department of Ecology, as now existing or as may subsequently be amended.

H. "Final staff evaluation of checklist" means that documentation and report of City staff's analysis of the checklist and any identified impacts. The report identifies any necessary findings, policies and the type of determination.

14.02.050 Responsible official designated.

The City Manager, or designee, shall be the SEPA responsible official for the City, and shall carry out the duties and functions of the City when it is acting as the lead agency or as a consulted agency under SEPA and the SEPA rules.

14.02.060 Timing of environmental review.

A. Subject to the provisions of subsection B of this Section, the timing of environmental review shall be determined by the responsible official on a case-by-case basis, consistent with the requirements of SEPA and the SEPA rules. In general, the environmental review process shall take place at the conceptual stage of a project, rather than at the detailed design stage. If the City's only action will be a decision on a building permit or other license that requires detailed project plans and specifications, the applicant or prospective applicant shall be given the opportunity for environmental review under SEPA prior to submittal of such detailed project plans and specifications. An applicant or prospective applicant wishing to take advantage of the opportunity for pre-application environmental review shall submit a completed environmental checklist to the department, except as otherwise provided by WAC 197-11-315(a).

B. At the latest, the City shall begin the environmental review process when a completed application for City approval of a non-exempt action has been received. The official responsible shall make a threshold determination on a completed application within ninety (90) days after the application and supporting documentation are complete and received, with the determination being made on the direct and indirect cumulative effects on the elements of the environment set forth in WAC 197-11-444. The applicant may request an additional thirty (30) days for the threshold determination.

14.02.070 Determination of categorical exemption.

A. Any City department which receives an application for a proposal, or initiates a proposal which is potentially subject to the requirements of SEPA, shall make the following determinations:

1. Whether the proposal is an "action" as defined by WAC 197-11-704; and

2. If the proposal is an "action", whether it is categorically exempt from the requirements of SEPA; and

3. If the proposal is a non-exempt action, whether appropriate environmental review of the project has been conducted or commenced.

B. The responsible official or the responsible official's designee shall assist any department in making the determinations required by this Section, upon request by the department.

C. The City of Lakewood recognizes that the list of categorical exemptions included in the SEPA rules cannot be relied upon as the final determination of whether a proposed project, regardless of its environmental impact, must comply with SEPA and this Chapter. Where the responsible official determines that a proposal has a reasonable likelihood of causing more than a moderate adverse impact on environmental quality, whether that impact is direct, indirect or cumulative, environmental review under SEPA shall be conducted.

D. It is recognized that a particular development or land use, though otherwise consistent with City regulations and policies, may create adverse impacts upon facilities, services natural systems or the surrounding area when aggregated with the impacts of prior or reasonably anticipated future developments. The City shall evaluate such cumulative environmental impacts and make its environmental determinations and substantive decisions accordingly.

E. Pursuant to the provisions of WAC 197-11-800, proposed actions shall be categorically exempt from threshold determinations and EIS requirements if they do not exceed the levels of activity identified as follows:

1. The construction or location of residential structures of four (4) dwelling units.
2. The construction of an office, school, commercial recreational, service or storage building with 4,000 square feet of gross floor area.
3. The construction of an associated or separate parking lot designed for twenty (20) automobiles.
4. Any landfill or excavation of 250 cubic yards throughout the total lifetime of the fill or excavation.

14.02.080 Use of Exemptions

A. When receiving an application for a license, or when receiving a City initiated proposal, the Responsible Official shall determine whether the license and/or the proposal is exempt. The Responsible Official's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this Chapter apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.

B. In assessing whether or not a proposal is exempt, the Responsible Officer shall determine that the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and non-exempt actions, the official shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

C. If a proposal includes both exempt and non-exempt actions, the City may authorize exempt actions prior to compliance with the procedural requirements of this Chapter, except that:

1. The City shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact; or
 - c. Any action that would limit the choice of the responsible alternatives;
2. The City may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if later approval of a related major action is not secured;

3. The City may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if later approval of a major related action is secured.

14.02.090 Environmentally sensitive areas.

A. In accordance with WAC 197-11-908, the City of Lakewood designates environmentally sensitive areas as follows:

1. Areas designated natural by the City's Shoreline Management Master Program environmental maps;
2. Fish and wildlife habitat conservation areas, erosion hazard areas, steep slopes, wetlands and streams, as described in the City's critical areas and Natural Resources regulations;

3. The following categorical exemptions set forth in WAC 197-11-800 shall not apply when a project proposal is located in or partially within sensitive areas: WAC 197-11-800(1), (2c), (2e), (2f), (2g), (6a), and (25h).

B. The City shall treat proposals located wholly or partially within an environmentally sensitive area no differently than other proposal under this Chapter, making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally sensitive area.

C. Certain exemptions do not apply to lands covered by water, regardless of whether such lands covered by water are mapped.

14.02.100 Emergency Action Exemption.

A. The following actions which must be undertaken immediately or for which there is insufficient time for full compliance with this Chapter are exempt from the procedural requirements of this Chapter:

1. Actions necessary to prevent an imminent threat to public health or safety;
2. Actions necessary to prevent an imminent danger to public or private property;
3. Actions necessary to prevent an imminent threat of serious environmental degradation.

B. The responsible official shall determine on a case-by-case basis emergency action which satisfies the general requirements of this Section.

C. Adoption of interim zoning or moratorium.

14.02.110 Environmental checklist required.

A. Whenever the department determines that a proposal is a non-exempt action for which appropriate environmental review has not been conducted or commenced, the department shall prepare or shall require the action proponent to prepare and submit an environmental checklist. Upon completion or receipt of a completed environmental checklist, the department shall immediately transmit the following to the responsible official, or designee:

1. The original, signed copy of the environmental checklist;
2. A copy of any completed application form in the department's possession relating to the proposal;
3. A copy of any project description, conceptual plan or plot plan which may have been prepared or submitted;

4. Any additional information in the department's possession addressing the proposed action's environmental impacts.

B. The environmental review process shall not begin until a complete application (an environmental checklist and requested supporting materials) is received by the responsible official. Incomplete environmental checklist applications will be returned to the applicant for completion as directed by the responsible official.

C. A department initiating a non-exempt City action may request that the responsible official, or designee, assist the department in preparing the necessary environmental checklist.

D. The provisions of this Section shall not apply when the responsible official and the proponent of a non-exempt action agree in writing that the proposal is likely to have significant adverse environmental impacts, and further agree that an environmental impact statement (EIS) will be prepared.

E. The responsible official may determine that the City will complete all or part of an environmental checklist for a private proposal with its own staff, or may contract with one or more consultants to prepare or assist in preparation of a checklist, and may charge and collect fees from the applicant to cover costs incurred by the City in preparation of the checklist, if either of the following circumstances exist:

1. The City has technical information on a question or questions that is unavailable to the applicant; or,

2. The applicant has provided inaccurate or incomplete information on previous proposals or on proposals currently under consideration.

If fees are to be collected, the applicant shall be advised of the estimated costs, and shall be required to make payment of such costs prior to the actual preparation of all or part of the environmental checklist.

14.02.120 Fees and costs.

In addition to the fees and costs provided in Section 14.02.110 and elsewhere in this Chapter, the applicant shall be responsible for and shall reimburse the City for all costs and expenses incurred by the City in enforcing the provisions of this Chapter relative to his/her application or permit, and for any legal costs, including attorney's fees, incurred by the City in taking steps to defend or support a position or decision in connection with his/her application for or issuance of a permit pursuant to this Chapter.

14.02.130 Environmental impact statement.

A. Whenever the responsible official has issued a Determination of Significance (DS) for a non-exempt action, a draft EIS and a final EIS shall be prepared by an independent consultant hired by the City, and the under the supervision of the responsible official. It is provided, however, that it shall be the responsibility of the individual, corporation or agency initiating or proposing the action to reimburse the City for the total costs of having the draft EIS and a final EIS prepared by the Consultant. Consultants hired to prepare draft EIS=s or final EIS=s shall be selected based on their expertise and knowledge related to the scoped environmental elements to be analyzed in the EIS documents. Regardless of who prepares an EIS, it is the EIS of the City and the responsible official must be satisfied that the EIS complies with this Chapter, with SEPA and with the SEPA rules prior to issuance of the EIS.

B. The responsible official may determine that City staff will complete all or part of an EIS for a private proposal, or the City may contract with one or more consultants to prepare or assist in preparation of an EIS, and may charge and collect fees from the applicant to cover costs incurred by the City in preparation of the EIS, if one or more of the following circumstances exist:

1. The City has technical information on a question or questions that is unavailable to the applicant; or

2. The applicant has provided inaccurate or incomplete information on previous proposals or on proposals currently under

consideration;

3. The responsible official and the applicant agree that the City will be responsible for completing the EIS.

If fees are to be collected, the applicant shall be advised of estimated costs, and shall be required to secure payment of such costs prior to the actual preparation of the EIS.

14.02.140 Public notice.

A. Whenever public notice is required under the SEPA rules, the responsible official shall cause notice to be given in the following manner:

1. By posting the subject property as directed by the City Manager or designee (site specific proposals only); and
2. By publishing notice in the official newspaper of the City.

B. Additional public notice may be provided for proposals having, or potentially having, unusually widespread, unique or significant adverse impacts, or for other proposals, at the discretion of the responsible official.

C. Where notice is required for an action which has been proposed or initiated by a party other than the City or a City department, the cost of newspaper publication of such notice or notices shall be borne by the proponent or applicant.

14.02.150 Internal circulation of environmental documents.

A. Relevant environmental documents shall accompany proposals through existing City project review processes. The responsible official shall ensure that environmental documents are provided to decision makers in the following manner:

1. Where a non-elected City official is to make a final decision on a non-exempt action, the responsible official shall provide that deciding official with a copy of a final staff evaluation, a determination of non-significance (DNS), a mitigated determination of non-significance (MDNS) or a final EIS upon issuance of the DNS or FEIS.

2. Where the Hearing Examiner or other advisory body is to make a recommendation to the Council on a non-exempt action, the responsible official shall transmit to each member of the advisory body a copy of the following:

- a. Environmental checklist.
- b. A final staff evaluation of the checklist.
- c. Determination of non-significance (DNS).
- d. Mitigated determination of non-significance (MDNS).
- e. Draft environmental impact statement (DEIS).
- f. Final environmental impact statement (FEIS).

14.02.160 Timing of decision on non-exempt action.

A. For non-exempt actions, the procedural requirements of SEPA, the SEPA rules and this Chapter shall be completed prior to the City's issuance of a license, permit, or other approval, and prior to the City committing to a particular course of action, or prior to the City making a decision which would either have adverse environmental impacts, or limit the choice of reasonable alternatives.

B. A final decision on a non-exempt action for which a DNS has been issued or an EIS has been required, shall not be made until after expiration of the environmental appeal period or if, appealed, shall not be made until the decision on the appeal becomes final.

14.02.170 Authority to condition or deny proposals.

A. The policies and goals set forth and referenced by this Chapter are supplementary to other zoning, land use, and regulatory ordinances of the City.

B. The City may attach conditions to a permit or approval so long as:

1. Such conditions are necessary to mitigate probable significant 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 applicable to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies, plans, rules or regulations designated in Section 14.02.030 as a basis for the exercise of substantive SEPA authority, and cited in the license, permit, ordinance, 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 approval would result in probable significant adverse environmental impacts which are identified in a final EIS prepared pursuant to this Chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished which are sufficient to make the identified impacts nonsignificant; and

3. The denial is based on one or more policies, plans, rules, or regulations designated in Section 14.02.030 as a basis for the exercise of substantive SEPA authority, and cited in the license, permit, ordinance or other decision document.

D. If the lead agency determines, after the initial review of a project, that a proposed action could not comply with adopted plans, policies, rules or regulations, and where the City has authority other than SEPA to deny the proposal, the project can be denied outright without making a threshold determination, which denial shall be in writing. Proposed actions which are subsequently modified, amended, or deemed to be consistent with adopted plans, policies, rules or regulations shall not receive final approval until the proposed action is in full compliance with SEPA, the SEPA rules, and this Chapter.

E. Where the responsible official has issued a mitigated DNS, the decision maker shall not approve the proposal until:

1. The proponent has modified the proposal, either through modification of plans and other application materials or through a separate written instrument attached to the application, such that the mitigating measures of the mitigated DNS become part of the proposal; or

2. The decision maker has incorporated the mitigating measures of the mitigated DNS into the license, permit, ordinance or other approval; or

3. A combination of the aforesaid.

F. Where mitigating measures are agreed to, or imposed, and where the proponent fails to implement such mitigating measures, the City shall have the authority to revoke any permit, license or other approval granted on the basis of such mitigating measures.

14.02.180 Substantive authority.

A. The City adopts 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 a trustee of the environment for succeeding generations;
- b. Endeavor to achieve for the people of Lakewood safe, healthful, and aesthetically 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;
- g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. Policies included in the following City documents as now existing or a hereafter amended shall supplement this Chapter:

B. The City supplements its policies set forth herein by the policies, plans, rules and regulations identified, referenced and/or described (in concept or actual name), as they may now exist or as they may subsequently be amended or developed, as a basis for the exercise of substantive authority to approve, condition or deny proposed actions under RCW 43.21C.060 of SEPA, as follows:

1. City Comprehensive Plan and related Community Plan;
2. Pierce County Shoreline Master Programs and City Shoreline Use Regulations
3. Lakewood Area Update Plan;
4. Lakewood Capital Improvements Plan;
5. Lakewood Six Year Street Plan;
6. State Growth Management Legislation or Initiatives;
7. Lakewood SubArea Plans and Policies;
8. Zoning Code and zoning map;
9. Subdivision Regulations;
10. Water Quality Ordinance;
11. Surface Water Design Manual;
12. Critical Areas and Natural Resource Lands regulations;

13. Site Development regulations;
14. Flood Damage Prevention regulations;
15. Public and private Street standards;
16. Title 8, Pierce County Code, Health and Welfare;
17. State Environmental Policy Act.

14.02.190 City responsibilities as consulted agency.

In carrying out the City's duties as a consulted agency, the responsible official shall request information from any department potentially affected by or having expertise on a proposal. Information timely received by the responsible official in response to such request shall be transmitted to the lead agency. The responsible official may transmit such information by forwarding copies of any department responses, or by consolidating all department responses into a single City response.

14.02.200 Environmental appeals.

Any person aggrieved by a final threshold determination of significance, final determination of nonsignificance, or inadequacy of a Final EIS may file an appeal with the City of Lakewood Hearing Examiner. Appeal of intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.

14.02.210 Time limitation on appeals.

A written notice of appeal identifying the grounds for appeal must be filed with the City Clerk within 10 days of the date of issuance of the final threshold determination of significance, final determination of nonsignificance, or final EIS.

14.02.220 Fee to accompany notice of appeal.

A fee as set forth in the City's fee Resolution shall accompany the written notice of appeal and be filed within the appeal period with the City Clerk. No notice of appeal shall be accepted unless accompanied by full payment of the filing fee. This fee shall be utilized to cover publication costs, mailing, and other costs directly associated with the appeal.

14.02.230 Notice of hearing.

Notice of appeal, timely filed shall be transmitted by the City Clerk to the Hearing Examiner and the SEPA responsible official. The Hearing Examiner shall determine the date, time, and place of a public hearing to consider the appeal, and shall notify the parties thereof.

14.02.240 Public hearing.

A public hearing upon appeal of a threshold determination shall be conducted by the Hearing Examiner.

14.02.250 Testimony - Recording.

All testimony taken at any public hearing shall be taken under oath. The hearing shall be recorded electronically.

14.02.260 Substantial weight - Burden of proof.

A threshold determination by the responsible official is entitled to substantial weight. The burden shall be on the appellant to establish that the determination is in error.

14.02.270 Decision of the Hearing Examiner.

Upon the basis of all of the information received in public hearing, and all information relied upon by the responsible official, the Hearing Examiner shall prepare a written decision, including findings of fact and conclusions.

14.02.280 Dismissal of appeal.

The Hearing Examiner may summarily dismiss an appeal without hearing, when such appeal is determined by the Hearing Examiner to be without merit on its face, frivolous, or brought merely to impede a proposal or secure a delay.

14.02.290 Council review - Limitations for appeals.

The decision of the Hearing Examiner on a threshold determination appeal may be appealed to the City Council in accordance with procedures specified in City of Lakewood Ordinance No. 13. Any such appeal must be brought within the time limits specified therein. Such Council review shall be conducted on the record compiled by the Hearing Examiner, consistent with other applicable law.

14.02.300 Superior Court review - Limitations for appeal.

The decision of the Hearing Examiner on appeal from a threshold determination that is not appealable to the City Council may be appealed to the Superior Court of Pierce County in accordance with City of Lakewood Ordinance No. 13. Any such appeal must be brought within the time limits specified therein. Such Superior Court review shall be conducted on the record compiled by the Hearing Examiner, consistent with other applicable law.

SECTION 2. GENERAL SEVERABILITY.

That if any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, the remainder of such code, ordinance or regulation or the application thereof to other person or circumstances shall not be affected.

SECTION 3. EFFECTIVE DATE.

That this Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary and on February 28, 1996.

ADOPTED by the City Council this 16th day of January, 1996.

CITY OF LAKEWOOD

/S/

Attest: Bill Harrison, Mayor

/S/

Alice M. Bush, City Clerk

Approved as to Form:

/S/

Daniel B. Heid, City Attorney

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