



PLANNING COMMISSION AGENDA

Regular Meeting Date: 10/21/2020

BY REMOTE PARTICIPATION ONLY

[JOIN MEETING HERE](#)

Call in: 253 215 8782
Meeting ID: 892 4529 7605

Doc2

Planning Commission
Meeting:
First Wednesday of
every Month @ 7:00pm

Planning & Community
Development
Department

1812 Main Street
Lake Stevens, WA
98258 (425) 622-9430
www.lakestevenswa.gov

Municipal Code

Available online:
www.codepublishing.com/WA/LakeStevens/

- **CALL TO ORDER 7:00pm**
Pledge of Allegiance
- **ROLL CALL**
- **GUEST BUSINESS**
- **ACTION ITEMS**
 1. Approve minutes for 09-16-2020
- **DISCUSSION ITEMS**
 1. Permissible Use Table update Sr. Planner Levitan and Planner Needham
 2. SEPA Updates Sr. Planner Place
- **COMMISSIONER REPORTS**
- **PLANNING DIRECTOR'S REPORT**
- **FUTURE AGENDA ITEMS**
 1. November 18th- Comprehensive Plan Hearing;
2nd briefing on Permissible Use table;
3rd briefing on SEPA update
 2. December 2nd intro to Impact fees
- **ADJOURN**

SPECIAL NEEDS

The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact City of Lake Stevens ADA Coordinator, at (425) 622-9419 at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service.

PLANNING COMMISSION REGULAR MEETING MINUTES

Remote Participation

Wednesday, September 16, 2020

CALL TO ORDER: 7:00 pm by Chair Jennifer Davis

MEMBERS PRESENT: Janice Huxford, Vicki Oslund, Jennifer Davis, Linda Hoult, John Cronin, Todd Welch and Mike Duerr

MEMBERS ABSENT: None

STAFF PRESENT: Community Development Director Russ Wright, Senior Planner Dave Levitan, Associate Planner Sabrina Gassaway and Clerk Jennie Fenrich

OTHERS PRESENT: Councilmembers Gary Petershagen and Steve Ewing

Chair Davis called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

Roll Call: All present

Guest business: None

Approval of Minutes: Motion by Commissioner Welch, seconded by Commissioner Hoult, to approve the minutes for July 15, 2020 meeting. (7-0-0-0).

Discussion Items:

Associate Planner Gassaway briefed the Commission on the State Multi-Family Tax Exemption (MFTE) incentive program that the city is eligible for. The MFTE program is an incentive that cities can offer to developers to encourage the construction of market rate housing and affordable multifamily housing in predesignated targeted areas. This program would allow builders to apply for a tax exemption from property taxes related to residential units created through multifamily developments. After a discussion with Planning Commission and City Council, both the 8-year and 12-year options are to be included in a new code amendment.

Senior Planner Dave Levitan gave an update of the Waterfront residential task force. There were two meetings held and after thorough discussion the task force made the recommendation to leave Waterfront Residential Zoning as it currently stands. Multiple task force members were in attendance and gave their comments to the commission. The task force has completed their task and has now been disbanded.

Senior Planner Levitan gave a 2020 Comprehensive Plan update. Public service updates, in conjunction with Lake Stevens School District, Public Works staff and capital facilities updates are forth coming this year. Land Use amendments and Parks chapter will be updated. The Commission has no objection to moving this forward to Public Hearing.

Commissioner Reports:

Commissioner Hoult thanked Commissioner Huxford for serving on the task force. Commissioner Welch thanked the Waterfront Task for their work on the waterfront zoning. Commissioner Huxford reported Chief Dire reached out to her regarding the annexation meeting and encourages people to attend the meeting in October. Chair Davis thanked Councilman Petershagen for attending this meeting and giving his thoughts.

Director's Report:

Director Wright reported there will be Parks Meeting tomorrow, 9/17/2020 @ 6:30.

Adjourn:

MOTION: Moved by Commissioner Hoult, seconded by Commissioner Welch to adjourn the meeting at 8:25 p.m. The motion carried (7-0-0-0).

Jennie Fenrich, Planning Commission Clerk



Staff Report Lake Stevens Planning Commission

Planning Commission Briefing

Date: **October 21, 2020**

Subject: **Revising the Permissible Use Chapter (LSMC 14.40)**

Contact Person/Department: David Levitan, *Senior Planner*

Jill Needham, *Assistant Planner*

SUMMARY:

Staff has begun exploring potential revisions to the permissible use chapter (LSMC 14.40) and is seeking early direction and feedback from commissioners.

ACTION REQUESTED OF PLANNING COMMISSION:

This is an informational briefing and no action is requested at this time.

BACKGROUND / DISCUSSION:

As commercial land uses continue to expand and the city explores ways to facilitate greater economic development, staff has been considering ways to simplify and improve the permissible use table in LSMC 14.40, which currently includes overly detailed uses and antiquated terminology that has required numerous code interpretations in recent years and some arbitrary process distinctions. As the first step to improve the table and other components of LSMC 14.40, planning department staff have been researching permissible uses in cities of similar size and land use patterns. Staff anticipates the overall process to take approximately 4-6 months, with potential code amendments coming before the Planning Commission in February/March 2021 for a public hearing.

Permissible use chapters and tables vary widely among the ~25 cities that were researched as it relates to format and level of use specificity. Cities such as [Gig Harbor](#) and [Arlington](#) include all uses and zoning districts in one table, typically grouped by general land use categories (similar to the existing Table 14.40-I). Others such as [Monroe](#), [Auburn](#) and [Kirkland](#) break out their use tables into individual chapters for different zoning districts. Cities such as [Ellensburg](#), [Bothell](#) and [Woodinville](#) have a hybrid of the two approaches, with separate use tables for groups of uses (residential, commercial, recreational, regional, etc.) in a single permissible uses chapter.

Staff has identified [Ellensburg's](#) permissible use table as a good model as it relates to format and level of detail. In addition to the work on Table 14.40-I and the remainder of Chapter 14.40, the project will also need to explore:

- The use of the Conditional Use Permit (CUP) Administrative Conditional Use Permit (ACUP) process vs allowing more outright permitted uses with better defined development performance standards;
- How the use table interacts with the principal and secondary uses outlined in the Subarea code (LSMC 14.38), and how to better connect the two chapters, including for commercial areas outside of subarea boundaries; and
- The process and level of discretion for evaluating similar uses not clearly identified in the use table.

As staff continues its work, it anticipates holding 2-4 work sessions with the Planning Commission over the next few months to keep commissioners apprised of the project's status and to gather commission feedback. Staff will post information on the city's website to ensure that the community can weigh in on potential changes.

Attachments:

- 1. Ellensburg Permitted Uses (Ch. 15.310 ECC)**

Chapter 15.310 PERMITTED USES

Sections:

15.310.010 Purpose.

15.310.020 Interpretation of land use tables.

15.310.030 Accessory uses.

15.310.040 Use tables.

15.310.050 Supplemental P-R zone provisions.

15.310.010 Purpose.

- A. The purpose of this chapter is to establish the uses generally permitted in each zone which are compatible with the purpose of the zone and other uses allowed within the zone.
- B. The use of a property is defined by the activity for which the [building](#) or [lot](#) is intended, designed, arranged, occupied, or maintained.
- C. The use is considered permanently established when that use will be or has been legally established in continuous operation for a period exceeding 60 days. A use which will operate for less than 60 days is considered a [temporary use](#), and subject to the requirements of a [temporary use](#) permit (see ECC [15.250.010](#)). [Ord. 4656 § 1 (Exh. O2), 2013.]

15.310.020 Interpretation of land use tables.

- A. The land use tables in this chapter determine whether a use is allowed in a zoning district. The zoning district is located on the vertical column and the use is located on the horizontal row of these tables.
- B. If no symbol appears in the box at the intersection of the column and the row, the use is not allowed in that district, except for certain [temporary uses](#).
- C. If the letter “P” appears in the box at the intersection of the column and the row, the use is allowed in that district subject to the Type I review procedures set forth in Chapter [15.210](#) ECC plus other applicable requirements in this title. Where the use is associated with new [development](#), it is subject to the Type II review procedures, also set forth in Chapter [15.210](#) ECC.

D. If the letter “C” appears in the box at the intersection of the column and the row, the use is⁷ allowed subject to the [conditional use](#) review procedures specified in ECC [15.250.040](#) and the general requirements of the code.

E. If the letter “A” appears in the box at the intersection of the column and the row within the P-R zone column, the use is allowed as an [accessory use](#) to the primary permitted public on the property and is allowed in the district subject to the Type I review procedures set forth in Chapter [15.210](#) ECC plus other applicable requirements in this title.

F. Clarification of Uses and Special Conditions.

1. If a * appears after the use, then the use is defined in Chapter [15.130](#) ECC;
2. Where an ECC reference/link appears after a use, then the use is subject to standards set forth in that section or chapter;
3. If a number appears in the box at the intersection of the column and the row, the use may be allowed subject to the [development](#) condition with the corresponding number immediately following the land use table. If there are multiple numbers, then the use is subject to all applicable [development](#) conditions; and
4. If more than one letter-number combination appears in the box at the intersection of the column and the row, the use is allowed in that zone subject to different sets of limitation or conditions depending on the review [process](#) indicated by the letter, the general requirements of the code and the specific conditions indicated in the [development](#) condition with the corresponding number immediately following the table. [Ord. 4656 § 1 (Exh. O2), 2013.]

15.310.030 Accessory uses.

An [accessory use](#), as defined in ECC [15.130.010](#) and identified on the use tables in ECC [15.310.040](#) by an “A,” is permitted in any zone if:

- A. It is on the same [lot](#) as the principal use to which it is accessory; and
- B. It is of a nature customarily incidental and subordinate to, the principal use or [structure](#). [Ord. 4656 § 1 (Exh. O2), 2013.]

15.310.040 Use tables.

Table 15.310.040. Residential-based uses.

| Use | R-S | R-L | R-M | R-H | R-O | C-N | C-T | C-H | C-C | C-C II | I-L | I-H | P-R | MHP |
|--|------------------|------------------|----------------|----------------|----------------|----------------|-----|-----|----------------|----------------|-----|-----|------------------|-----|
| RESIDENTIAL, GENERAL | | | | | | | | | | | | | | |
| Dwelling, single-family* (ECC 15.540.020) | P | P | P | | P | | | | | | | | | P |
| Dwelling, cottage* (ECC 15.540.050) | P | P | P | | P | | | | | | | | A ⁶ | |
| Dwelling, duplex* (ECC 15.540.030) | P ¹ | P ^{1,2} | P | | P | | | | P ⁷ | P ⁷ | | | A ⁶ | |
| Dwelling, townhouse* (ECC 15.540.060) | P ^{1,5} | P ¹ | P | P | P | P ³ | | | P ⁷ | P ⁷ | | | A ⁶ | |
| Dwelling, multifamily* (Division V of this title) | P ^{1,5} | | P | P | P | P ³ | | | P ⁷ | P ⁷ | | | A ⁶ | |
| Dwelling, live-work* | P ^{1,4} | | P ⁴ | P ⁴ | P ⁴ | P | | | P ⁷ | P ⁷ | | | | |
| Manufactured home park* (ECC 15.340.040) | | | C | P | C | | | | | | | | A ⁶ | P |
| GROUP RESIDENCES | | | | | | | | | | | | | | |
| Boarding houses, lodging houses, sororities, fraternities* | | C | P | P | C | | | | P ⁷ | P ⁷ | | | A ⁶ | |
| Adult family home* | P | P | P | P | P | P | | | P ⁷ | P ⁷ | | | A ⁶ | |
| Community residential facility* | | | C | C | C | C | | | P ⁷ | P ⁷ | | | P/A ⁶ | |
| Senior citizen assisted housing* | | | P | P | P | P | | | P ⁷ | P ⁷ | | | A ⁶ | |
| RESIDENTIAL ACCESSORY USES | | | | | | | | | | | | | | |
| Accessory dwelling unit* (ECC 15.540.040) | P | P | P | P | P | | | | P ⁷ | P ⁷ | | | | |

| Use | R-S | R-L | R-M | R-H | R-O | C-N | C-T | C-H | C-C | C-C II | I-L | I-H | P-R | MHP |
|--|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Home occupations* (ECC 15.340.020) | P | P | P | P | P | P | P | P | P ⁷ | P ⁷ | P | P | P ⁶ | P |
| Yard sale use | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ | A ⁸ |
| TEMPORARY LODGING | | | | | | | | | | | | | | |
| Bed and breakfast (ECC 15.340.010) | | | P | P | P | | | | P ⁷ | P ⁷ | | | | |

[Development](#) conditions:

- Subject use may be permitted subject to density bonus [incentives](#) set forth in Table 15.320.030 and Chapter [15.330](#) ECC.
- [Duplexes](#) are permitted in the R-L zone per the following conditions:
 - [Lots](#) at least 10,890 square feet in area; or
 - [Corner lots](#) where [building](#) entries are provided on separate [streets](#).
- Residential uses are permitted in the C-N zone provided nonresidential uses occupy the ground floor of all [buildings](#) fronting on the [street](#). For example, residential uses could be on upper levels of [buildings](#) fronting on the [street](#) or, for deep [lots](#), subject residential uses may occupy any [buildings](#) away from the [street](#) and behind the [buildings](#) that front onto the [street](#).
- Nonresidential uses may be permitted within live-work [dwellings](#) subject to the use provisions for the applicable zoning district in Table 15.310.040 below.
- [Townhouses](#) and [multifamily dwelling](#) units shall not be located adjacent to existing [single-family dwellings](#), except where such uses were approved on an individual [plat](#).
- All uses permitted in the P-R zone must be either outright permitted and operated as a [public use](#) or must be an [accessory use](#) to the primary [public use](#) (see ECC [15.310.050](#)).
- Except for lobbies or similar entrances, all permitted residential uses in the C-C and C-C II zones are prohibited within 30 feet of the sidewalk on the ground floor of properties fronting on [storefront](#) streets per ECC [15.510.050](#)(E).

8. [Yard](#) sales are permitted as an [accessory use](#) to a [dwelling](#); provided, that the following conditions are met:

- a. Only two [yard](#)/garage sales per [dwelling unit](#) not exceeding three consecutive days in duration are allowed per year;
- b. The occupant or tenant of the [dwelling unit](#) shall supervise and be responsible for the [yard](#)/garage sale activities including ensuring that there is no impediment to the passage of traffic on public roads and sidewalks adjacent to the sale;
- c. No goods are to be displayed in public rights-of-way without first obtaining a [right-of-way use permit](#) from the public works and utilities [department](#); and
- d. Signs advertising the sale shall not be attached to any public [structure](#), sign, sign or utility pole or traffic control devices and shall be removed within 24 hours of the sale completion.

Table 15.310.040. Nonresidential uses.

| Use | R-S | R-L | R-M | R-H | R-O | C-N | C-T | C-H | C-C | C-C II | I-L | I-H | P-R |
|---|----------------|-----|----------------|----------------|----------------|-----|----------------|-----------------|----------------|--------|-----------------|-----|----------------|
| RETAIL | | | | | | | | | | | | | |
| Auto sales, new and used | | | | | | | P ¹ | P | P ² | P | | | |
| Farmers' markets * | | | | | | P | | | P | P | | | |
| Fruit stands * | P | P | P | P | P | P | P | P | P | P | P | | |
| Heavy retail (ECC 15.130.080) | | | | | | | | P ¹⁰ | P ² | P | P | P | |
| Heavy service (ECC 15.130.080) | | | | | | | | P ¹⁰ | P ² | P | P | P | |
| Nurseries and greenhouses that are ancillary to a retail use* | P | | | | | | | P | P ² | P | P | P | |
| Restaurants, bars, and brewpubs * | | | P ³ | P ³ | P ³ | P | P | P | P | P | P ¹¹ | | A ⁹ |
| Coffee house, espresso bar | P ⁸ | | P ³ | P ³ | P ³ | P | P | P | P | P | P ¹¹ | | A ⁹ |

| Use | R-S | R-L | R-M | R-H | R-O | C-N | C-T | C-H | C-C | C-C II | I-L | I-H | P-R |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----|----------------|
| Retail , small scale (<2,000 sf floor area) | P ⁸ | | P ³ | P ³ | P ³ | P | P | P | P | P | | | A ⁹ |
| Retail , medium scale (2,000 – 20,000 sf floor area) | | | | | | P | | P | P | P | | | A ⁹ |
| Retail , large scale (20,001 – 60,000 sf floor area) | | | | | | P ⁴ | | P | P | P | | | |
| Retail , super scale (>60,000 sf floor area) | | | | | | | | | C | C | | | |
| Outlet center | | | | | | | | P | | | | | |
| Regional retail commercial projects* (subject to the requirements in Chapter 15.390 ECC) | P ¹³ | P ¹³ | P ¹³ | P ¹³ | P ¹³ | P ¹³ | P ¹³ | P ¹³ | | | P ¹³ | | |
| Marijuana retailer* | | | | | | P ¹⁴ | P ¹⁴ | P ¹⁴ | P ¹⁴ | P ¹⁴ | | | |
| PERSONAL AND GENERAL SERVICE | | | | | | | | | | | | | |
| Day care I facilities* | P | P | P | P | P | P | | P | P | P | P | | A ⁹ |
| Day care II facilities* | C | C | C | C | P | P | | P | P | P | | | A ⁹ |
| General service establishments (ECC 15.130.070) | | | | | | P ⁵ | P ⁶ | P | P ² | P | P | | |
| Heavy services (see Heavy retail and services definition in ECC 15.130.080)* | | | | | | | | P ¹⁰ | P ² | P | P | P | |
| Hotels/motels* | | | | | | | P | P | P | P | | | |

| Use | R-S | R-L | R-M | R-H | R-O | C-N | C-T | C-H | C-C | C-C II | I-L | I-H | P-R |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|
| Hospitals* | C | C | C | | P | | | | C | P | | | P ⁹ |
| Offices, medical* | P ⁸ | | | | P | P | P | P | P | P | | | P/A ⁹ |
| Kennels* | | | | | | | | P | | P | P | | |
| Nursing homes* | C | C | C | P | P | | | | P | P | | | P/A ⁹ |
| Marijuana cooperative* | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ | P ¹⁵ |
| Personal service establishments* | P ⁸ | | P ³ | P ³ | P ³ | P | P | P | P | P | | | A ⁹ |
| Places of assembly* | C | C | C | C | P | P | | | P | P | C | | A ⁹ |
| Radio station (commercial) | | C | | | | | | C | | | C | C | A ⁹ |
| Veterinary clinic | | | | | C | C | P | P | P | P | C | | |
| BUSINESS SERVICE | | | | | | | | | | | | | |
| Conference center* | | | | | | | P | P | P | P | | | A ⁹ |
| Offices, business or professional* , small scale (<2,000 sf floor area) | P ⁸ | | | | | P | P | P | P | P | P ⁷ | | P/A ⁹ |
| Offices, business or professional* , medium scale (2,000 – 20,000 sf floor area) | P ⁸ | | | | | | P | P | P | P | P | | P/A ⁹ |
| Offices, business or professional* , large scale (20,001 – 60,000 sf floor area) | | | | | | | | P | P | P | P | | P/A ⁹ |
| Miniwarehouse facility* | | | C | | | | | C | | | P | P | |
| INDUSTRIAL | | | | | | | | | | | | | |

| Use | R-S | R-L | R-M | R-H | R-O | C-N | C-T | C-H | C-C | C-C II | I-L | I-H | P-R |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-------------------|-------------------|-----------------|-----------------|----------------|
| Light industry (ECC 15.130.120) | | | | | | | | | P ^{2,11} | P ^{2,11} | P | P | |
| Hazardous waste treatment (off-site) (see definition of “ off-site ” in ECC 15.130.150) | | | | | | | | | | | C | C | |
| Hazardous waste treatment (on-site) (see definition of “ on-site ” in ECC 15.130.150) | | | | | | | C | C | C | C | C | C | A ⁹ |
| Heavy industry (ECC 15.130.080) | | | | | | | | | | | | C | |
| Marijuana processor * | | | | | | | | | | | P ¹⁴ | P ¹⁴ | |
| Marijuana producer * | | | | | | | | | | | P ¹⁴ | P ¹⁴ | |
| Tow vehicle storage area * | | | | | | | | | | | P | P | |
| Vehicle wrecking yard * | | | | | | | | | | | | C | |

[Development](#) conditions:

1. Sales of used [vehicles](#) in this zone are limited to uses that include sales of new [vehicles](#) as the primary use.
2. Use must be enclosed entirely within a [building](#).
3. Use is permitted if located adjacent to a [street](#) corner and within a [mixed-use building](#) or within a live-work [dwelling](#). Such uses shall be subject to secondary [street](#) frontage standards as set forth in ECC [15.510.060](#).
4. Grocery stores shall be the only [retail](#) uses permitted with more than 20,000 square feet of [gross floor area](#).

5. Except for gas service stations, the use must be enclosed entirely within a [building](#).
6. Includes gas service stations with truck stop facilities only. No other general service uses are permitted.
7. Except for office uses that are accessory to a permitted use, office uses may be permitted through the purchase of transferable [development](#) rights, subject to the adoption of a TDR program by the [city](#).
8. Subject nonresidential uses may be permitted in the R-S zone subject to the following conditions:
 - a. The location for planned nonresidential uses shall be designated on the [plat](#).
 - b. Nonresidential uses may be integrated into [subdivisions](#) provided the [subdivision](#) encompasses at least five acres in gross land area and the planned uses are at least 1,200 feet from an existing C-N zone or commercial use.
 - c. Nonresidential uses shall not be located adjacent to existing [single-family dwellings](#), except where such uses were approved on an individual [plat](#).
 - d. For the purpose of identifying appropriate site orientation standards for future nonresidential [development](#), the [plat](#) shall indicate the [street](#) frontage type designation for [streets](#) fronting planned nonresidential uses as either [storefront](#), secondary, or landscaped [street](#) (see Chapter [15.510](#) ECC).
9. All uses permitted in the P-R zone must be either outright permitted and operated as a primary [public use](#) or must be an [accessory use](#) to that primary [public use](#). See ECC [15.310.050](#).
10. [Heavy retail](#) and service uses are limited to [buildings](#) no larger than 50,000 gross square feet in area.
11. Includes light industrial activities that result in the production of goods placed for [on-site](#) retail sale. Special restrictions:
 - a. No power tools or equipment are allowed which by their decibel, frequency, and/or other feature of their operation would negatively impact the surrounding area by reason of decibel levels, light (see Chapter [15.580](#) ECC for standards), dust or other physical effect; and
 - b. Production or manufacturing activity shall not occur between the hours of 10:00 p.m. and 6:00 a.m.

12. Subject use is permitted in the district only when accessory to a permitted use (see [accessory use](#) definition in ECC [15.130.010](#)).

13. Regional [retail](#) is administered as an overlay zone pursuant to Chapters [15.390](#) and [15.390A](#) ECC, and only permitted within the designated boundaries identified in ECC Figure 15.390.040(A), the south interchange area, and Figure 15.390.040(B), the west interchange area. Permitted uses and use restrictions within a [regional retail commercial](#) project are described in ECC [15.390.030](#). Design criteria for regional [retail](#) is governed by Chapter [15.390A](#) ECC.

14. All [marijuana](#) retail, production and processing facilities are subject to the requirements of Chapter [15.370](#) ECC.

15. All [marijuana](#) cooperatives are subject to the requirements of ECC [15.370.030](#), Chapter [314-55](#) WAC and Chapter [69.51A](#) RCW.

Table 15.310.040. Special uses.

| Use | R-S | R-L | R-M | R-H | R-O | C-N | C-T | C-H | C-C | C-C II | I-L | I-H | P-R |
|--|----------------|----------------|----------------|----------------|----------------|----------------|-----|----------------|----------------|----------------|----------------|-----|-----------------|
| PARK, OPEN SPACE AND RECREATIONAL | | | | | | | | | | | | | |
| Cemeteries, columbarium or mausoleums | P | P | | | | | | | | | | | |
| Golf course | P | | | | | | | | | | | | P ¹¹ |
| Golf driving range (not associated with a golf course) | C | | | | | | C | C | | | | | P ¹¹ |
| Recreation – outdoor (commercial)* | | | | | | | P | P | | | C | | A |
| Recreation – indoor (commercial)* | | | | | | | P | P | P | P | C | | A |
| Recreational vehicle parks (ECC 15.340.050) | | | | | | | P | | | | | | |
| Parks , playgrounds (public or private) | P ¹ | P ¹ | P ¹ | P ¹ | P ¹ | P ¹ | | P ¹ | P ¹ | P ¹ | P ¹ | | P |
| CULTURAL AND ENTERTAINMENT | | | | | | | | | | | | | |

| Use | R-S | R-L | R-M | R-H | R-O | C-N | C-T | C-H | C-C | C-C II | I-L | I-H | P-R |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|---------------------------------|
| Adult entertainment establishment * | | | | | | | p ² | | | | | | |
| Art, performing arts, and recording studios | | | | | | | | P | P | P | | | P/A ⁷ |
| Museums | | | | | | | | | P | P | | | P/A ⁷ |
| EDUCATIONAL | | | | | | | | | | | | | |
| Schools | C | C | C | C | C | | | C | C | C | | | P ⁵ |
| GOVERNMENTAL | | | | | | | | | | | | | |
| Court | | | | | | | | P | P | P | | | P |
| Fire facility | | | | | | | | P | | | | | P |
| Police facility | | | | | | p ³ | | P | p ³ | P | P | | P |
| Public agency or utility office * | | | | | | P | P | P | P | P | P | P | P/A |
| Public agency or utility yard | p ⁴ | p ⁴ | p ⁴ | p ⁴ | p ⁴ | P | | P | C ⁴ | P | P | P | P/A |
| Utility facility * ⁸ | P | P | P | | P | P | P | P | P | P | P | P | P |
| Fairgrounds | | | | | | | | | | | | | P |
| Public transportation passenger terminals | | | | | | | P | P | P | P | | | P |
| RESOURCE | | | | | | | | | | | | | |
| Gardening or fruit raising (accessory use or noncommercial) | P | P | P | P | P | P | P | P | P | P | P | P | P/A ⁷ |
| Agriculture * | p ⁹ | | | | | | | | | | | | |
| Small wind energy systems (ECC 15.340.060) | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ | P ¹⁰ /A ⁷ |
| REGIONAL | | | | | | | | | | | | | |
| Airport | | | | | | | | | | | | | PC ⁶ |

[Development](#) conditions:

1. Lighting for [structures](#) and fields shall be directed away from residential areas through the use of exterior full cut-off shields or through optics within the [fixture](#).

2. Adult entertainment is regulated pursuant to Chapter [6.72](#) ECC. Zoning locational standards within the C-T zone for adult entertainment [establishments](#) are:

All such [establishments](#) must be at least 1,000 feet from any residential zone, [parks](#), schools, historic district, any [dwelling](#), freeway, highway, interstate, or major arterial (see map on file in the [city](#) clerk's office).

3. Limited to "[storefront](#)" police offices. Such offices shall not have:

- a. Holding cells;
- b. Suspect interview rooms (except in the C-N zone); or
- c. Long-term storage of stolen properties.

4. Public agency or utility [yard](#) conditions:

- a. Utility [yards](#) only on sites with utility district offices; or
- b. Public agency [yards](#) are limited to material storage, [vehicle](#) maintenance, and equipment storage for road maintenance, facility maintenance, and [parks](#) facilities.

5. Excluding private or nonprofit commercial [schools](#), for which the principal course work is business, vocational, or technical.

6. A [conditional use](#) permit is required for the following uses:

- a. Facilities to sell, service and store airplanes, service [airport](#) patrons, and those ordinarily incidental and essential to operation of a municipal [airport](#); and
- b. [Airport](#) landing areas.

7. All uses permitted in the P-R zone must be either outright permitted and operated as a [public use](#) or must be an [accessory use](#) to the primary [public use](#); see ECC [15.310.050](#). Subject uses must be managed by a public agency.

8. [Wireless communication facilities](#), including [wireless communication support towers](#) and antenna arrays, are subject to the provisions of ECC [15.340.070](#).

9. [Agriculture](#) uses are permitted in the subject zone provided the following conditions are met:¹⁸
- The raising of swine, poultry or goats shall be restricted to youth educational projects or limited household consumption occurring on the same [lot](#), or [lots](#) of record;
 - No nuisances, such as noise, odor, air pollution, wastes, vibration, traffic or physical hazards, shall result therefrom; and
 - Fencing and housing adequate to certain livestock shall be provided where livestock are kept, and all livestock shall be kept and maintained in accordance with applicable laws and regulations.
10. [Small wind energy systems](#) on properties listed in the Ellensburg [landmarks register](#) are subject to [landmarks and design commission](#) certificate of appropriateness.
11. Subject use shall be permitted only if it is a public facility. [Ord. 4807 § 44, 2018; Ord. 4804 § 3, 2018; Ord. 4769 § 13, 2017; Ord. 4728 § 4, 2016; Ord. 4724 § 4, 2016; Ord. 4696 § 3, 2015; Ord. 4669 § 3, 2014; Ord. 4656 § 1 (Exh. O2), 2013.]

15.310.050 Supplemental P-R zone provisions.

A. Permitted [Accessory Uses](#).

- Services such as food, pharmacies, gift shops, bookstores, newsstands, flower shops and similar uses, and facilities such as [vehicle](#) service and repair, storage [yards](#), and physical [plants](#), that are associated with a permitted use, integral to the operation of the permitted use itself, and owned and operated by the public institution involved or conducted through a lease or contract with a private individual or entity;
- Facilities accessory to an institution, such as housing and dining facilities for students, staff or faculty of colleges, universities, and [hospitals](#), are allowed within the principal building(s);
- [Retail](#) services, such as concessions and rental facilities usually associated with public [parks](#), fairgrounds, other public recreation facilities, and public educational institutions;
- Helipads operated in conjunction with a public [hospital](#);
- Human [medical offices](#), such as doctor or dentist facilities, operated in conjunction with a primary permitted use.

B. [Conditional Use](#). Buildings located within 100 feet of a residential zone and intended to be ¹⁹higher than 35 feet may be permitted within the P-R zone through the granting of a [conditional use](#) permit according to the procedures set out in ECC [15.250.040](#).

C. Master Planning. Recognizing that some institutions require long-range [development](#) plans and consist of large areas of land with multiple land uses, a master plan may be prepared for all, or a portion, of an entity's land area which is subject to this chapter and which master-planned land encompasses an area of three acres or more. See ECC [15.250.080](#) for application requirements, review procedures, and decision criteria for such master plans.

D. Rezone of P-R Property When No Longer Used for Public Purposes. Recognizing that over time some land and [structures](#) that are zoned P-R and are used for P-R purposes may change uses to non-public uses or may become obsolete or surplussed out of active [public use](#) and [occupancy](#), the property owner may in such situations seek a rezone out of P-R zoning pursuant to the terms and [processes](#) set forth in ECC [15.250.100](#), subject to the following:

The rezone [applicant](#) may request that the P-R zoned property be rezoned to any zoning district classification that abuts the subject property.

1. In the event that the P-R zoned property is developed with a [structure](#) that is not consistent with the [development](#) allowed in the abutting zones, such as a large [school](#) in the middle of a single-family residential zone, the rezone [applicant](#) may request to rezone the property to a different zoning classification other than the abutting zones; provided, that a concomitant agreement that identifies the types of future uses that will be permitted in the [structure](#) has been proposed by the [applicant](#) and agreed to by [city](#) council as part of any rezone approval.
2. In the event that the P-R zoned property is developed with a [structure](#) that has been identified on the Ellensburg [historic resource inventory](#) and the property owner desires to demolish all or part of the [structure](#), a [certificate of appropriateness](#) for such demolition must first be applied for and approved by the [landmarks and design commission](#) pursuant to ECC [15.280.090](#)(D) before the rezone [permit](#) review can be initiated. [Ord. 4807 § 45, 2018; Ord. 4656 § 1 (Exh. O2), 2013.]

The Ellensburg City Code is current through Ordinance 4856, passed July 20, 2020.

Disclaimer: The City Clerk's office has the official version of the Ellensburg City Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.ellensburg.wa.us/>

City Telephone: (09) 925-8614

[Code Publishing Company](#)



Staff Report Lake Stevens Planning Commission

Planning Commission Briefing

Date: **October 21, 2020**

Subject: **Amendments to the City of Lake Stevens SEPA exemption regulations**

Contact Person/Department: Melissa Place, Senior Planner and Russ Wright, Community Development Director

SUMMARY:

The consideration of two proposed amendments to the City of Lake Stevens SEPA regulations to:

1. Increase the flexible thresholds for categorical exemptions and;
 2. Possibly add an exemption for infill development as allowed by recent state legislation.
-

ACTION REQUESTED OF PLANNING COMMISSION:

This is an informational briefing and no action is requested at this time.

INTRODUCTION:

The purpose of this briefing is to discuss proposed amendments to the city's State Environmental Policy Act (SEPA) categorical exemptions based on state rule changes. These amendments would increase thresholds for minor new construction projects from SEPA review and add an exemption for infill development. The last update to the city's SEPA regulations was completed in 2012.

BACKGROUND:

SEPA requires state and local governments to consider the environmental impacts of its decisions ranging from permits to the adoption development regulations. The SEPA rules contain categorical exemptions under WAC 197-11-800 (**Attachment 2**) that exempt certain small projects from review. A categorical exemption is considered for projects, which do not affect the environment and therefore are not subject to additional SEPA review. Exemptions do not require an environmental checklist, threshold determination, or an environmental impact statement. The city has a SEPA categorical exemption form that it completes when a project is determined to be categorically exempt.

In 2012, the Washington State Department of Ecology (DOE), updated the SEPA rules to account for the many local, state, and federal regulations that were put in place subsequent to the rules being enacted in 1984, including growth management, critical areas and stormwater rules. The state rules are intended to streamline the regulatory process while still providing environmental protection when other protections are in place. The 2012 update allows increases to the exemption levels for minor new construction and amended the SEPA checklist.

The city of Lake Stevens began using the revised SEPA checklist after the 2012 update but did not amend the city's code to increase flexible thresholds for minor new construction. The city currently uses the minimum thresholds of WAC 197-11-800(1)(b) – **See Table 1 below and Attachment 1**. Given the increased environmental protection from the adoption of related regulations over the years, the city believes it is appropriate to consider increased exemption levels to simplify and streamline the city's code without foregoing environmental protection.

In 2020, Substitute House Bill 2673 (**Attachment 5**) was passed by the Washington State Legislature to address state affordable housing issues. The bill provides SEPA exemptions for infill development per RCW 43.21C.229 (**Attachment 3**) in areas where current development density or intensity is equal to or lower than identified in the city's comprehensive plan. The city adopted infill housing regulations in May of 2020, to provide increased housing options in accordance with the city's comprehensive plan's goal and policies. The city received grant funding from the State Department of Commerce to assist with planning effort to address the housing crisis in the state.

Prior to 2020, SEPA infill exemptions existed for areas where current land use/density was lower than the planned growth levels set in a local comprehensive plan. The city does not currently have an exemption for infill development but given the recent 2020 legislation it is now evaluating whether such an exemption makes sense for the city and its future growth.

DISCUSSION:

The city is considering the following changes to its categorical exemptions in accordance with LSMC 16.04.050(b):

1. Infill Development Exemption

A categorical exemption under SEPA for infill development in accordance with SHB 2673, would have to meet the following criteria in order to be adopted:

- a) It categorically exempts government action related to development proposed to fill in an urban growth area, designated according to RCW 36.70A.110, where current density and intensity of use in the area is roughly equal to or lower than called for in the goals and policies of the applicable comprehensive plan and the development is either:
 1. Residential development;
 2. Mixed-use development; or
 3. Commercial development up to sixty-five thousand square feet, excluding retail development.

Many jurisdictions have adopted infill exemptions based on the older SEPA legislation, but staff research did not find a jurisdiction in WA State that has adopted infill regulations based on SHB 2673.

2. Increased Minor New Construction Exemptions

SEPA requires governmental decisions to go through an environmental review process unless determined exempt. State rules establish a minimum threshold below which construction activity is considered minor and thus exempt. The rules also allow cities to increase minimum thresholds. Chapter 16.04 LSMC adopts SEPA and its associated state rules by reference. By default, the minimum categorical exemption thresholds are in place.

Under existing city code, the following project types are currently exempt from SEPA:

1. Residential structures of 4 dwelling units or less;
2. Multifamily residential of 4 dwelling units or less;
3. Agricultural structures covering 10,000 sf or less;
4. Commercial development: 4,000 sf or less and 20 parking spaces
5. Fill or excavation of 100 cubic yards or less.

The table below compares the increased thresholds authorized under the State SEPA rules with the existing SEPA thresholds of the Lake Stevens Municipal Code.

Table 1 - Minimum and Maximum SEPA Exemption Levels

| Fully planning GMA counties | | |
|---|--|---|
| Project types | *Minimum - Incorporated and unincorporated UGA | Maximum - Incorporated and unincorporated UGA |
| Single-family residential | 4 units | 30 units |
| Multifamily residential | 4 units | 60 units |
| Barn, loafing shed, farm equipment storage, produce storage or packing structure | 10,000 square feet | 40,000 square feet |
| Office, school, commercial, recreational, service, storage building, parking facilities | 4,000 square feet and 20 parking spaces | 30,000 square feet and 90 parking spaces |
| Fill or excavation | 100 cubic yards | 1,000 cubic yards |

*Current City of Lake Stevens Exemption Levels except for dwelling units, which is nine consistent with our short subdivision standards.

The city may adopt the maximum level, a level between the minimum and maximum level or different levels for geographic areas and mixed-use projects. The flexible thresholds must be designated through ordinance or resolution by the city or county, otherwise the minimum levels apply.

Higher exemption levels would support existing state policies encouraging development within city and UGA limits and city policies encouraging streamlined permit processes. Raising the exempt levels for minor new construction would simplify the city's code, shorten permit processing timelines, remove redundant process, and decrease potential SEPA appeals. This process would also be more consistent with the SEPA review process for our subareas. A large majority of environmental issues that SEPA was intended to address are now mitigated by other requirements such as stormwater and critical areas.

Jurisdictions that raise exemption levels must meet certain procedural requirements as set forth in WAC 197-11-800(1)(c) (**Attachment 2**). The Department of Ecology provides guidance for agencies considering adoption of the flexible thresholds (**Attachment 4**).

To address the requirement that environmental analysis, protection and mitigation for impacts to elements of the environment have been adequately addressed, staff proposes to create a table for the next briefing summarizing the existing local, state and federal regulations which address SEPA elements of the environment associated with minor new construction and provide documentation of the city's protections for cultural and historic resources.

Adoption of the Increased Thresholds by Other Jurisdictions

City staff researched other jurisdictions within the state to determine who has adopted increased SEPA thresholds and what thresholds were adopted. A brief summary of jurisdictions adjacent to Lake Stevens and their respective threshold levels follows:

- City of Everett – adopted the maximum thresholds
- City of Monroe – varies
 - 9 units (residential)
 - 10,000 square feet (agricultural)
 - 12,000 square feet and 40 parking spaces
 - 500 cubic yards
- City of Arlington – varies
 - 9 units (residential)
 - 10,000 square feet (agricultural)
 - 4,000 square feet and 20 parking spaces
 - 250 cubic yards
- City of Marysville - adopted the maximum thresholds
- City of Snohomish - adopted the maximum thresholds
- Snohomish County - adopted the maximum thresholds

The research shows that adjacent jurisdictions had adopted increased thresholds; none remained at the minimum level. The question posed to Lake Stevens is whether to increase the thresholds, and if so, whether to adopt the maximum or some intermediate level that is the right fit for the community.

STAFF RECOMMENDATION:

Based on the research of other jurisdictions thresholds combined with existing knowledge of previous development projects and our existing environmental regulations, city staff recommends that the SEPA exemption thresholds be increased as set forth in Table 2 below.

Table 2 – Minimum / Maximum and Proposed SEPA Exemption Levels

| Project types | Fully planning GMA counties | | |
|---|--|---|--|
| | *Minimum - Incorporated and unincorporated UGA | Maximum - Incorporated and unincorporated UGA | Proposed Lake Stevens Thresholds |
| Single-family residential | 4 units | 30 units | 9-30 units |
| Multifamily residential | 4 units | 60 units | 20-30 units |
| Barn, loafing shed, farm equipment storage, produce storage or packing structure | 10,000 square feet | 40,000 square feet | 20,000 square feet |
| Office, school, commercial, recreational, service, storage building, parking facilities | 4,000 square feet and 20 parking spaces | 30,000 square feet and 90 parking spaces | 20,000 square feet and 40 parking spaces |
| Fill or excavation | 100 cubic yards | 1,000 cubic yards | 500 cubic yards |

*Current City of Lake Stevens Exemption Levels

PLANNING COMMISSION INPUT:

As the proposed changes are discretionary, staff is requesting that the Planning Commission provide input to staff on the following:

1. Do you support increasing the flexible thresholds for minor new construction?
2. Determine the need for partially or fully raising the exemption levels. What is the city's desired level of thresholds? What considerations feed into that? (existing environmental regs, public participation opportunities, existing and future growth, subarea regulations, etc.)
3. Will the city's current development regulations effectively mitigate adverse environmental impacts without using SEPA? If not, where are the gaps?
4. Does an infill development exemption make sense for the city?

NEXT STEPS:

Based on input from the Planning Commission, staff will draft code for review at a future meeting.

The Planning Commission is required to hold a Public Hearing after the city issues its SEPA determination and sends the draft regulations to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, department of commerce and the public and provides an opportunity for comment. Additional changes may be forthcoming based on agency review and public comment.

Attachments:

1. Existing City of Lake Stevens SEPA Exemption Language – LSMC 16.04.045 – 16.04.055
 - a. <https://www.codepublishing.com/WA/LakeStevens/#!/LakeStevens16/LakeStevens1604.html#16.04.045>
2. WAC 197-11-800
 - a. <https://apps.leg.wa.gov/WAC/default.aspx?cite=197-11-800>
3. RCW 43.21C.229
 - a. <https://app.leg.wa.gov/rcw/default.aspx?cite=43.21C.229>
4. Requirements for Adopting Flexible Thresholds (from DOE)
 - a. <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Guide-for-lead-agencies/Exemptions>
5. SHB 2673
 - a. <http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/2673-S.PL.pdf?q=20201013150237>

16.04.045 Categorical Exemptions and Threshold Determinations.

This section contains information for deciding whether a proposal has a probable significant, adverse environmental impact, requiring an environmental impact statement (EIS) to be prepared. This section also contains rules for evaluating the impacts of proposals not requiring an EIS. The City adopts the following sections of Chapter [197-11](#) WAC by reference:

- [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 nonsignificance (DNS).
- [197-11-350](#) Mitigated DNS.
- [197-11-355](#) Optional DNS process.
- [197-11-360](#) Determination of significance (DS)/invitation of scoping.
- [197-11-390](#) Effect of threshold determination.

(Ord. 870, Sec. 2 (Exh. 1), 2012)

16.04.050 Categorical Exemptions.

(a) The City adopts by reference the following sections of Chapter [197-11](#) WAC regarding categorical exemptions:

- [197-11-800](#) Categorical exemptions.
- [197-11-880](#) Emergencies.
- [197-11-890](#) Petitioning Department of Ecology to change exemptions.

(b) Under WAC [197-11-800](#)(1)(a) and (c), the City may raise categorical exemption levels for certain types of minor new construction described in WAC [197-11-800](#)(1)(b). Local conditions, including zoning or other land use plans or regulations, implemented by ordinance, shall support any raised categorical exemption level. If the City increases any categorical exemptions levels, they shall send these to the Department of Ecology. The maximum level that any such category exemption may be raised is specified in WAC [197-11-800](#)(1)(c). (Ord. 870, Sec. 2 (Exh. 1), 2012)

16.04.055 Use of Exemptions.

(a) When the City receives an application or request for a proposed project or non-project action, the responsible official shall determine if the action is properly defined per WAC [197-11-060](#) and categorically

exempt per WAC [197-11-800](#). The 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 applies to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.

(b) If a proposed project or nonproject action includes both exempt and nonexempt actions, the City may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that the City shall not authorize:

- (1) Any nonexempt action;
- (2) Any action that would have an adverse environmental impact; or
- (3) Any action that would limit the choice of alternatives. (Ord. 870, Sec. 2 (Exh. 1), 2012)

WAC 197-11-800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

Note: The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

(1) Minor new construction - Flexible thresholds.

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection apply except when the project:

- (i) Is undertaken wholly or partly on lands covered by water;
- (ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;
- (iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or
- (iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The following types of construction shall be exempt:

- (i) The construction or location of four detached single family residential units.
- (ii) The construction or location of four multifamily residential units.
- (iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 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.
- (iv) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles. This exemption includes parking lots for twenty or fewer automobiles not associated with a structure.

(v) Any fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

(c) Cities, towns or counties may raise the exempt levels up to the maximum specified in (d) of this subsection by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904). Separate maximum optional thresholds are established in (d) of this subsection applying to both incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW 36.70A.040; other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the minimum and maximum level. An agency may adopt a system of several exempt levels, such as different levels for different geographic areas, and mixed use projects.

At a minimum, the following process shall be met in order to raise the exempt levels.

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations.

(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established notice and comment opportunities for the public, affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.

(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the agency shall provide a minimum of sixty days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.

(iv) The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. The requirements for notice and opportunity to comment for the public, affected tribes, and agencies in (c)(i) and (ii) of this subsection and the requirements for protection and mitigation in (c)(i) of this subsection must be specifically documented. The local ordinance or resolution shall include, but not be limited to, the following:

- Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.

- Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.

- Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.

(d) The maximum exemption levels applicable to (c) of this subsection are:

| Project types | Fully planning GMA counties | | All other counties |
|---|--|--|--|
| | Incorporated and unincorporated UGA | Other unincorporated areas | Incorporated and unincorporated areas |
| Single family residential | 30 units | 20 units | 20 units |
| Multifamily residential | 60 units | 25 units | 25 units |
| Barn, loafing shed, farm equipment storage, produce storage or packing structure | 40,000 square feet | 40,000 square feet | 40,000 square feet |
| Office, school, commercial, recreational, service, storage building, parking facilities | 30,000 square feet and 90 parking spaces | 12,000 square feet and 40 parking spaces | 12,000 square feet and 40 parking spaces |
| Fill or excavation | 1,000 cubic yards | 1,000 cubic yards | 1,000 cubic yards |

(2) Other minor new construction.

(a) The exemptions in this subsection apply to all licenses required to undertake the following types of proposals except when the project:

- (i) Is undertaken wholly or partly on lands covered by water;
- (ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;
- (iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or
- (iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The construction or designation of bus stops, loading zones, shelters, access facilities, pull-out lanes for taxicabs, transit and school vehicles, and designation of transit only lanes.

(c) The construction or installation of commercial on-premise signs, and public signs and signals, including those for traffic control and wayfinding.

(d) The construction or installation of minor road and street improvements by any agency or private party that include the following:

(i) Safety structures and equipment: Such as pavement marking, adding or removing turn restrictions, speed limit designation, physical measures to reduce motor vehicle traffic speed or volume, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators;

(ii) Transportation corridor landscaping (including the application of state of Washington approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality;

(iii) Temporary traffic controls and detours;

(iv) Correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required;

(v) Adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required;

(vi) Channelization, rechannelization, elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation;

(vii) Installation of catch basins and culverts for the purposes of road and street improvements;

(viii) Reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders where capacity is not increased and no new right of way is required;

(ix) Addition of bicycle lanes, paths and facilities, and pedestrian walks and paths including sidewalk extensions, but not including additional automobile lanes.

(e) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(f) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

(g) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance such as listing in a historic register.

(h) The installation or removal of impervious underground or above-ground tanks, having a total capacity of 10,000 gallons or less except on agricultural and industrial lands. On agricultural and industrial lands, the installation or removal of impervious underground or above-ground tanks, having a total capacity of 60,000 gallons or less.

(i) The vacation of streets or roads, converting public right of way, and other changes in motor vehicle access.

(j) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(k) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(l) The installation of accessory solar energy generation equipment on or attached to existing structures and facilities whereby the existing footprint and size of the building is not increased.

(3) **Repair, remodeling and maintenance activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging of over fifty cubic yards of material;

(b) Reconstruction or maintenance of groins and similar shoreline protection structures;

(c) Replacement of utility cables that must be buried under the surface of the bedlands; or

(d) Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) **Water rights.** Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.

(5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to a specifically designated and authorized public use established by the public landowner and used by the public for that purpose.

(c) Leasing, granting an easement for, or otherwise authorizing the use of real property when the property use will remain essentially the same as the existing use for the term of the agreement, or when the use under the lease, easement or other authorization is otherwise exempted by this chapter.

(6) **Land use decisions.** The following land use decisions shall be exempt:

(a) Land use decisions for exempt projects, except that rezones must comply with (c) of this subsection.

(b) Other land use decisions not qualified for exemption under subsection (a) (such as a home occupation or change of use) are exempt provided:

(i) The authorized activities will be conducted within an existing building or facility qualifying for exemption under WAC 197-11-800 (1) and (2); and

(ii) The activities will not change the character of the building or facility in a way that would remove it from an exempt class.

(c) Where an exempt project requires a rezone, the rezone is exempt only if:

(i) The project is in an urban growth area in a city or county planning under RCW 36.70A.040;

(ii) The proposed rezone is consistent with and does not require an amendment to the comprehensive plan; and

(iii) The applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption; and the EIS adequately addressed the environmental impacts of the rezone.

(d) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, and short plats or short subdivisions within the original short subdivision boundaries provided the cumulative divisions do not exceed the total lots allowed to be created under RCW 58.17.020. This exemption includes binding site plans authorized by RCW 58.17.035 up to the same number of lots allowed by the jurisdiction as a short subdivision.

(e) Granting of variance based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(f) Alteration of property lines as authorized by RCW 58.17.040(6).

(7) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(8) **Clean Air Act.** The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(9) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

(10) **Activities of the state legislature.** All actions of the state legislature are exempted.

(11) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(12) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(13) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities including, but not limited to, cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities including, but not limited to, peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services including, but not limited to, detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities including, but not limited to, taxicabs, ambulances, and tow trucks: Provided, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution including, but not limited to, restaurants, liquor, and meat.

(h) All animal control licenses including, but not limited to, pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(14) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: Provided, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection.

(k) Classification of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(15) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

(16) **Local improvement districts and special purpose districts.** The formation of local improvement districts and special purpose districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880. A special district or special purpose district is a local government entity designated by the Revised Code of Washington (RCW) and is not a city, town, township, or county.

(17) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

(18) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(19) **Procedural actions.** The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment.

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

(c) Agency SEPA procedures.

(20) **Reserved.**

(21) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations, SEPA compliance may be limited to those items which differ from state regulations.

(22) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All stormwater, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines twelve inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (up to and including 115,000 volts); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station vault, pipe, or well: Additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, the chemicals used are approved by Washington state and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(24) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

(b) Licenses or approvals to remove firewood.

(c) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(d) Issuance of leases for Christmas tree harvesting or brush picking.

(e) Issuance of leases for school sites.

(f) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(g) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(h) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality.

(i) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(j) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

(25) Wireless service facilities.

(a) The siting of wireless service facilities are exempt if:

(i) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures that does not substantially change the physical dimensions of such structures; or

(ii) The siting project involves constructing a wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) "Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "Wireless service facilities" means facilities for the provision of wireless services.

(iii) "Collocation" means the mounting or installation of equipment on an existing tower, building, structure for the purposes of either transmitting or receiving, or both, radio frequency signals for communication purposes.

(iv) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(v) "Substantially change the physical dimensions" means:

(A) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(B) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

(26) **State transportation project.** The following Washington department of transportation projects and activities shall be exempt: The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation, as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

(27) **Structurally deficient city, town and county bridges.** The repair, reconstruction, restoration, retrofitting, or replacement of a structurally deficient city, town or county bridge shall be exempt as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

"Structurally deficient" means a bridge that is classified as in poor condition under the state bridge condition rating system and is reported by the state to the national bridge inventory as having a deck, superstructure, or substructure rating of four or below. Structurally deficient bridges are characterized by deteriorated conditions of significant bridge elements and potentially reduced load-carrying capacity. Bridges deemed structurally deficient typically require significant maintenance and repair to remain in service, and require major rehabilitation or replacement to address the underlying deficiency.

[Statutory Authority: RCW 43.21C.110. WSR 16-13-012 (Order 15-09), § 197-11-800, filed 6/2/16, effective 7/3/16. Statutory Authority: RCW 43.21C.110 and 43.21C.100 [43.21C.170]. WSR 14-09-026 (Order 13-01), § 197-11-800, filed 4/9/14, effective 5/10/14. Statutory Authority: RCW 43.21C.110. WSR 13-02-065 (Order 12-01), § 197-11-800, filed 12/28/12, effective 1/28/13. Statutory Authority: RCW 43.21A.090, chapter 43.21C RCW, RCW 43.21C.035, 43.21C.037, 43.21C.038, 43.21C.0381, 43.21C.0382, 43.21C.0383, 43.21C.110, 43.21C.222. WSR 03-16-067 (Order 02-12), § 197-11-800, filed 8/1/03, effective 9/1/03. Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. WSR 97-21-030 (Order 95-16), § 197-11-800, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110. WSR 84-05-020 (Order DE 83-39), § 197-11-800, filed 2/10/84, effective 4/4/84.]

RCW 43.21C.229**Infill development—Categorical exemptions from chapter.**

(1) In order to accommodate infill development and thereby realize the goals and policies of comprehensive plans adopted according to chapter **36.70A** RCW, a city or county planning under RCW **36.70A.040** is authorized by this section to establish categorical exemptions from the requirements of this chapter. An exemption adopted under this section applies even if it differs from the categorical exemptions adopted by rule of the department under RCW **43.21C.110**(1)(a). An exemption may be adopted by a city or county under this section if it meets the following criteria:

(a) It categorically exempts government action related to development proposed to fill in an urban growth area, designated according to RCW **36.70A.110**, where current density and intensity of use in the area is roughly equal to or lower than called for in the goals and policies of the applicable comprehensive plan and the development is either:

(i) Residential development;

(ii) Mixed-use development; or

(iii) Commercial development up to sixty-five thousand square feet, excluding retail development;

(b) It does not exempt government action related to development that is inconsistent with the applicable comprehensive plan or would clearly exceed the density or intensity of use called for in the goals and policies of the applicable comprehensive plan;

(c) The local government considers the specific probable adverse environmental impacts of the proposed action and determines that these specific impacts are adequately addressed by the development regulations or other applicable requirements of the comprehensive plan, subarea plan element of the comprehensive plan, planned action ordinance, or other local, state, or federal rules or laws; and

(d)(i) The city or county's applicable comprehensive plan was previously subjected to environmental analysis through an environmental impact statement under the requirements of this chapter prior to adoption; or

(ii) The city or county has prepared an environmental impact statement that considers the proposed use or density and intensity of use in the area proposed for an exemption under this section.

(2) Any categorical exemption adopted by a city or county under this section shall be subject to the rules of the department adopted according to RCW **43.21C.110**(1)(a) that provide exceptions to the use of categorical exemptions adopted by the department.

[**2020 c 87 § 1**; **2012 1st sp.s. c 1 § 304**; **2003 c 298 § 1**.]

NOTES:

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW **77.55.011**.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW **76.09.040**.

Severability—2003 c 298: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**2003 c 298 § 3**.]

<https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Guide-for-lead-agencies/Exemptions>

Flexible Exemption Thresholds

Most categorical exemptions use size criteria to determine if a proposal is exempt. The SEPA Rules allow cities and counties to raise the exemption limit for minor new construction to better accommodate the needs in their jurisdiction. The exemptions may be raised up to the maximum specified in the SEPA Rules (WAC 197-11-800(1)(c)). For example, cities and counties may choose to exempt residential developments at any level between 4 and 30 dwelling units in the urban growth area. The exemption for commercial buildings can range between 4,000 and 30,000 square feet. These "flexible thresholds" must be designated through ordinance or resolution by the city or county. If this has not been done, the minimum level applies.

The exemption level set by the county or city will also apply when an agency other than the county or city is lead agency. A state agency or special district may need to consult with the county or city to identify the adopted exemption level for a particular area.

It is also important to remember that the exemptions for minor new construction and minor land use decisions do not apply if any portion of the proposal/decision involves lands covered by water, if a license is needed for a discharge to air or water, or if a rezone is required. (WAC 197-11-800(1)(a) and (2)).

Requirements for Adopting Flexible Thresholds

Several criteria must be met for a city or county to adopt flexible thresholds. Most importantly, the proposal to amend SEPA policies to increase the size of projects exempt from SEPA review must include sufficient documentation that impacts to all elements of the environment have been adequately addressed. There also must be a disclosure of any loss of notice and comment opportunities for future permitting decisions that will be exempt from SEPA. The documentation that impacts have been adequately address should describe the types, sizes and locations of projects proposed for new exemption level. Impacts to the entire list of SEPA's applicable elements of the environmental must be considered. The proposal should also list the applicable authorities and regulations and describe how much these regulations reduce impacts on each element of the environment for each project types, sizes and locations. The jurisdiction must also document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. A local ordinance or resolution that addresses cultural resources shall include at minimum:

- Use of Available data and other project level review tools, i.e. inventories and predictive models provided by the Department of Archeology and Historic Preservation, other agencies and tribal governments.
- Planning and permitting processes that ensure compliance with applicable cultural resource state laws including Chapters 27.44, 27.53, 68.50 and 68.50 RCW.

Local development regulations that include preproject cultural resource review, where warranted, and standard inadvertent discovery (SIDL) for all projects.

ATTACHMENT 5

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2673

66th Legislature
2020 Regular Session

Passed by the House February 17, 2020
Yeas 98 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate March 3, 2020
Yeas 43 Nays 4

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2673** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2673

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By House Environment & Energy (originally sponsored by Representatives Barkis, Griffey, Gildon, Steele, Ybarra, Smith, Chambers, Boehnke, Hoff, Vick, Eslick, Volz, Graham, Jenkin, Klippert, Van Werven, Tharinger, and Dufault)

READ FIRST TIME 02/07/20.

1 AN ACT Relating to exemptions for infill development under the
2 state environmental policy act; and amending RCW 43.21C.229.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 43.21C.229 and 2012 1st sp.s. c 1 s 304 are each
5 amended to read as follows:

6 (1) In order to accommodate infill development and thereby
7 realize the goals and policies of comprehensive plans adopted
8 according to chapter 36.70A RCW, a city or county planning under RCW
9 36.70A.040 is authorized by this section to establish categorical
10 exemptions from the requirements of this chapter. An exemption
11 adopted under this section applies even if it differs from the
12 categorical exemptions adopted by rule of the department under RCW
13 43.21C.110(1)(a). An exemption may be adopted by a city or county
14 under this section if it meets the following criteria:

15 (a) It categorically exempts government action related to
16 development proposed to fill in an urban growth area, designated
17 according to RCW 36.70A.110, where current density and intensity of
18 use in the area is roughly equal to or lower than called for in the
19 goals and policies of the applicable comprehensive plan and the
20 development is either:

21 (i) Residential development;

1 (ii) Mixed-use development; or

2 (iii) Commercial development up to sixty-five thousand square
3 feet, excluding retail development;

4 (b) It does not exempt government action related to development
5 that is inconsistent with the applicable comprehensive plan or would
6 clearly exceed the density or intensity of use called for in the
7 goals and policies of the applicable comprehensive plan;

8 (c) The local government considers the specific probable adverse
9 environmental impacts of the proposed action and determines that
10 these specific impacts are adequately addressed by the development
11 regulations or other applicable requirements of the comprehensive
12 plan, subarea plan element of the comprehensive plan, planned action
13 ordinance, or other local, state, or federal rules or laws; and

14 (d)(i) The city or county's applicable comprehensive plan was
15 previously subjected to environmental analysis through an
16 environmental impact statement under the requirements of this chapter
17 prior to adoption; or

18 (ii) The city or county has prepared an environmental impact
19 statement that considers the proposed use or density and intensity of
20 use in the area proposed for an exemption under this section.

21 (2) Any categorical exemption adopted by a city or county under
22 this section shall be subject to the rules of the department adopted
23 according to RCW 43.21C.110(1)(a) that provide exceptions to the use
24 of categorical exemptions adopted by the department.

--- END ---